INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

- - - - - - - - - - - - - - - - - - - -x
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 1

HEARING ON JURISDICTION, MERITS AND QUANTUM

Friday, February 7, 2020

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

The hearing in the above-entitled matter came on at 9:30 a.m. 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:

On behalf of ICSID:

MS. MARISA PLANELLS-VALERO
Secretary of the Tribunal

MS. KRYSTLE M. BAPTISTA
Assistant to the President of the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
info@wwreporting.com

MR. PAUL PELISSIER
MR. DIONISIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

MR. CHARLES ROBERTS

APPEARANCES:

On behalf of the Claimant:

MR. MARK W. FRIEDMAN
MS. INA C. POPOVA
MR. CARL RIEHL
MS. FLORIANE LAVAUD
MS. BERGLIND HALLDORSDOTTIR BIRKLAND
MR. GUILHERME RECENA COSTA
MS. SARAH LEE
MR. DUNCAN PICKARD
MR. JULIO RIVERA RIOS
MS. MARY GRACE McEVOY
MR. THOMAS G. McINTYRE
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
United States of America

MR. LUIS BEDOYA
MR. FRANCISCO CARDENAS PANTOJA
Rodrigo, Elias & Medrano
Av. San Felipe 758
Jesús María
Lima 15072
Perú

Representing Gramercy Funds Management LLC:

MR. JAMES TAYLOR

MR. JOSHUA M. O'MELIA

MR. NICK PAOLAZZI

MR. THOMAS NORGAARD

APPEARANCES: (Continued)

On behalf of the Respondent:

AMBASSADOR HUGO DE ZELA
Republic of Perú

MR. RICARDO AMPUERO
Republic of Perú

MS. MONICA GUERRERO
Republic of Perú

MS. GIOVANNA ZANELLI

Republic of Perú
MR. ALBERTO HART
Republic of Perú

MR. JONATHAN C. HAMILTON
MS. ANDREA MENAKER
MR. RAFAEL LLANO
MR. FRANCISCO JIJÓN
MR. JONATHAN ULRICH
MR. FRANK PANOPOLOUS
MR. JOHN DALEBROUX

White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005-3807
United States of America

MR. ALEJANDRO MARTINEZ DE HOZ
White & Case, S.C.
Torre del Bosque - PH
Blvd. Manuel Avila Camacho #24
11000 CDMX
Mexico

For the United States of America:
MS. LISA GROSH
MS. NICOLE THORNTON
MS. MARGARET SEDGEWICK
MR. JOHN DALEY
Attorney-Advisers
Office of International Claims and
Investment Disputes
Office of the Legal Adviser
U.S. Department of State
Suite 203, South Building
2430 E Street, N.W.
Washington, D.C. 20037-2800
United States of America

MS. AMY COLLINS
U.S. Department of Treasury

C O N T E N T S

PAGE

PRELIMINARY MATTERS.....7

OPENING STATEMENTS

ON BEHALF OF THE CLAIMANTS:

By Mr. Friedman.....24
By Ms. Popova.....30
By Mr. Friedman.....63
By Mr. Riehl.....152
By Mr. Friedman.....186

QUESTIONS FROM THE TRIBUNAL.....189

ON BEHALF OF THE RESPONDENT:

By Mr. Hamilton.....207
By Mr. Jijón.....233
By Mr. Hamilton.....255
By Mr. Jijón.....273
By Mr. Hamilton.....276
By Ms. Menaker.....284

QUESTIONS FROM THE TRIBUNAL.....353

CONFIDENTIAL PORTIONS:

1.....60
2.....173-180
3.....290-291
4.....318-324
5.....328-330
6.....339
7.....360-363

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ ARMESTO: Good morning, everyone.

This is the Hearing in the Arbitration between Gramercy Funds Management LLC and Gramercy Perú Holdings LLC v. the Republic of Perú.

On behalf of the Tribunal, on behalf of the Secretariat and the Tribunal's Assistant, we would like to extend a welcome to you to this Hearing in Washington, and we would like to extend an especially warm welcome to our Stenographers and Interpreters that are going to have a precise version in both languages of what we are saying.

A technical matter before we start, today--and I think the lawyers for both Parties know this--if there is any confidential issue of importance that needs to be raised, please, the individual from each side needs to let us know because there is a certain delay in connection with the publication of the data on the internet. But the editing system that we have today is set up that way to edit any phrase said, is not operational, so we do run into this

problem.

I give the floor now to Claimant. Mr. Friedman, would you like to introduce your team?

MR. FRIEDMAN: Given the size of our team and--well, first let me say: Good morning, Mr. President and Members of the Tribunal.

Given the size of our team, I might invite each member of our team to introduce him or herself. That would also give you the opportunity to hear each of them.

PRESIDENT FERNÁNDEZ ARMESTO: Please.

MS. POPOVA: Good morning. Ina Popova.

MR. RIEHL: Good morning. I'm Carl Riehl.

MR. THOMPSON: Good morning. Brian Thompson.

MS. LAVAUD: Good morning. Floriane Lavaud.

MS. HALLDORSDOTTIR BIRKLAND: Good morning. Berglind Halldorsdottir Birkland.

MR. RECENA COSTA: Good morning. Guilherme Recena Costa.

MR. RIVERA: Good morning. Julio Rivera.

MR. BEDOYA: Good morning. Luis Bedoya.

MR. O'MELIA: Good morning. Josh O'Melia.

MR. TAYLOR: Good morning. James Taylor.

MR. NORGAARD: Good morning. Thomas Norgaard.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. It may be easier if you come forward here to this standing platform.

MS. LEE: Good morning. Sarah Lee.

MR. PICKARD: Good morning. I'm Duncan Pickard.

MR. BULLARD: Good morning. Alfredo Bullard.

MR. PEGNOVIC: Good morning. Milan Pejnovic.

MR. WEGLEIN: Good morning. Samuel Weglein.

MR. McINTYRE: Good morning. Thomas McIntyre.

MS. McEVOY: Good morning. Mary Grace McEvoy.

MR. CÁRDENAS: Good morning. Francisco Cárdenas.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, Mr. Friedman.

And now I look to the Respondent, to the Republic of Perú.

Mr. Hamilton, good morning. Would you like to introduce your team?

MR. HAMILTON: Thank you very much. Good morning, Mr. President, Members of the Tribunal, Madam Secretary, the Tribunal's Assistant. Good morning, everyone.

On behalf of the Republic of Perú, I am Jonathan Hamilton from White & Case. It is a pleasure to be here with you, and I would like to specifically thank the Ambassador of Perú to the United States, who is here, and also Ricardo Ampuero, who is the Special Defender for the Republic of Perú.

Each one of the members of White & Case is going to introduce themselves, and then I'm going to give you a list.

MS. MENAKER: Andrea Menaker.

MR. JIJÓN: Good morning. I'm Francisco Jijón.

MR. ULRICH: Good morning. Jonathan Ulrich.

MR. CUEVAS: Good morning. Mark Cuevas.

MR. DALEBROUX: Good morning. John Dalebroux.

AMBASSADOR AMPUERO: Good morning. I am Ricardo Ampuero.

MR. HAMILTON: I'm going to read the list--from a list the names of the other members of our team. Obviously, we have a lot of people here in the room.

We have, apart from the individuals who have introduced themselves: Mr. Frank Panopolous, Alejandro Martínez de Hoz, Sandra Huerta, Soledad Pena, Sophia Castillero and Audrey Vivas, John Contrera, Julianna Goodman, and also Rafael Llano from White & Case.

From the Embassy, we have the Ambassador, Hugo de Zela, and also we have Giovanna Zanelli and Alberto Hart.

We also have a number of Experts present here today from the State of Perú in this matter: Eduardo García-Godos, Pablo Guidotti, Oswaldo Hundskopf, Rafael Artierra, Brent Kaczmarek, Isabel Kunsman, and Norbert Wühler.

Also, Professor Reisman and Ms. Arsanjani, they are going to arrive in the next few days.

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much.

Do we have a point of order that any of the Parties would like to raise? Give me the good news that there is none.

MR. FRIEDMAN: Sometimes I'm afraid I must disappoint you, Mr. President.

There are four what I think of as being fairly modest matters that I would have thought could have been agreed by counsel but unfortunately have not been. We can--yes, we should probably address them.

They involve one exhibit, witness sequestration, references to the Bondholder witnesses, and translations. Those are the--those four issues remain outstanding.

Shall I identify each of them?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, please.

MR. FRIEDMAN: Okay. First, there is an exhibit in the record, Respondents' Exhibit R-257, which is a Report from the Ministry of Economy and Finance from 2004 that the copy--we discovered as we

were preparing for the Hearing that the copy in the record is somewhat incomplete. It is missing at least one or two pages.

We then asked our colleagues in Perú to help us locate a complete version of the document. We were able to find at least some of the missing pages, and simply propose to substitute the fuller copy as "the document," or put it with the document that's in the record. We simply--it is not a new exhibit. It's a complete version.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman, you speak with Mr. Hamilton or someone from your team, and you solve that. If there is any difficulty, you come back.

MR. FRIEDMAN: We have. We have exchanged 18 emails over the past days trying to solve this what we thought was a very simple issue, and I don't know what the status is. So we are sort of--we've tried that.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

Mr. Hamilton, does R-257 draw a bell?

MR. HAMILTON: It rings a bell because this stunt has been evolving for a while now. We are glad

to talk about that document because it is very favorable to the Peruvian State.

However, there's a dilemma. The dilemma is very simple: In December of 2018, the Republic of Perú presented this document, together with a witness declaration, demonstrating the origin of the document. We have gone through two submissions by Claimants since that time. They have never mentioned it.

They raised this document late. They then raised it in a way that clearly was trying to set up some sort of conflict, in our view, and we have asked them repeatedly: When and where did you obtain this document? We believe that is material to understand the origin of the document, especially because it's been well-documented during the aggravation phase of this case that there have been shenanigans with respect to how they go about obtaining documents from the Peruvian State. So, we simply would like to know: When? How did you obtain this document?

Now, we've heard this morning "We asked our colleagues in Perú, and they were able to obtain it." We had been denied multiple times requests for this

simple information. So, it's not the document that is the issue. It is the procedure, as has been the case repeatedly in this proceeding, that we object to.

We object to it because we personally--I personally--could share with you many observations about the record that's been put in by Claimant, which is missing pages, full of redactions, and has many other issues. So, we're not sure why this one issue has come up now. We certainly will be glad to talk about this document, and look forward to it, but we would like to know: Where did this document come from? When was it obtained? How was it obtained?

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. That is another question.

Your point, Mr. Friedman, is that R-257 lacks certain pages?

MR. FRIEDMAN: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Which pages are lacking? Let's take the bull by the horns.

MR. HAMILTON: Mr. President, we don't object to introducing their document, but it clearly is a

different copy, and we would like to know where it came from because we believe that, since we properly presented it, we should know where they got this document.

PRESIDENT FERNÁNDEZ ARMESTO: Would you agree that some pages are missing?

MR. HAMILTON: There appear to be a couple of pages missing, perhaps.

PRESIDENT FERNÁNDEZ ARMESTO: Does the Republic of Perú have a full copy?

MR. HAMILTON: We presented the copy that we have, and that is the only copy that we have discovered at this time.

PRESIDENT FERNÁNDEZ ARMESTO: You don't have any full copy?

MR. HAMILTON: We don't have another full copy available to present, no.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And you have a full copy of a document from Respondent?

MR. FRIEDMAN: Yes. May I ask Ms. Popova to be clear on the details that exceed my knowledge?

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

Ms. Popova?

MS. POPOVA: Yes, Mr. President. We were able to find a copy of the document. The document is a cover letter, a report, and annexes. We found a copy of the document that has the pages that are missing from the body of the report. That copy is missing one of the annexes, which is in R-257.

So, what we had proposed to our colleagues is that we submit that document as well so that you have--neither one of them is complete, but taken together, they are getting there. And we have been trying to agree on language to submit it to the Tribunal. That's where we stand as of this morning.

MR. FRIEDMAN: May I just add: It's a 16-year-old public report by the Ministry of Economy and Finance that has been circulated through the Peruvian Congress, that is referenced in other documents amply, including the Respondent's own other documents. This seems like the most modest of matters, that we have a few more pages that are missing. I just don't understand why this wasn't agreed and already submitted to you in the interest of

completeness.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Let's not lose too much more time on this. It's an old document. They seem to have a copy of the pages which you are missing; you seem to have an annex which they are missing. Can we create a document on which both the Minister of Economy and Finance and the Claimants agree that it is the real document?

I think that is the decision. Let's not discuss more on it, Mr. Hamilton.

MR. HAMILTON: I'll leave it with this, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Let's leave it here.

MR. HAMILTON: I'll leave it with this sentence: They will not tell us where they got the document. It's a pattern of conduct. It's a pattern of lack of transparency, and we object to that. We are glad to receive the document, and we look forward to discussing it.

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And so,

you amalgamate both documents into a real document, and you present it as an exhibit in the Hearing, and we give it a Hearing number so that it is a Tribunal number and it has--your document is your document, and we give a full Hearing number to that document.

So, that is solved. First point of order, Mr. Friedman.

Let's try to solve the three others in the same fashion.

MR. FRIEDMAN: Thank you very much. The next--I hope the others are shorter.

The next one is Witness sequestration. We have instructed our Witnesses--because of the Witness sequestration order, we have instructed our Witnesses not to watch the video feed until after the time of their testimony in order to honor the Tribunal's Procedural Order. We have asked for assurances from our friends on the Respondent's side that they will instruct their Witnesses as well accordingly. We have not received a response to that.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman, we are all experienced lawyers and experienced members

of the arbitration community. We know nowadays that sequestration when you have LiveNote or, as in this case, where you have the internet, it goes without saying that Witnesses should not--sequestered Witnesses should not have access either to the LiveNote, nor to the internet; otherwise, the sequestration is purely formal. They are not in the room, but they are de facto following the procedure, and the whole purpose of the sequestration is lost.

So, it goes without saying. I don't think I have to remind anyone around this room. I think we are all--we all know what "sequestration" means, and I'm sure that the Republic of Perú and I'm sure that Claimant will adhere to the ethical standards of sequestration.

MR. FRIEDMAN: Yes. As I volunteered, we have indeed instructed Gramercy's Witnesses to that effect. We were hoping for the same assurance from Perú, but I understand the President's expectation that that has happened.

MR. HAMILTON: Mr. President, I'm sorry, but this is more fake news. We've had emails about this.

We have acknowledged it. It is so obvious, I don't know why we are wasting the Tribunal's time (in Spanish).

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Mr. Friedman, third point?

MR. FRIEDMAN: We have proposed that both Parties refer in speeches to Bondholder Witnesses by initials, rather than by names, as a simple way of preserving confidentiality.

PRESIDENT FERNÁNDEZ ARMESTO: The Bondholders who are appearing as Witnesses and the other Bondholders?

MR. FRIEDMAN: Yes, the Bondholders who are appearing as Witnesses, who have submitted Witness Statements, simply to preserve their confidentiality; again, because of the Transcript and the live feed. We would simply want confirmation from--that that will be honored.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton?

MR. HAMILTON: Again, Mr. President, we have had multiple email exchanges. We understand that this is the case. We are not blocking the names of these

individuals, but we are going to respect the Decision of the Tribunal to protect their identities. And that's it. A hundred percent, this is obvious.

PRESIDENT FERNÁNDEZ ARMESTO: Great.

MR. FRIEDMAN: The last item is that, with translations, there are some documents in the record that are only in one language, and the part--the practice of the Parties until now has been mixed, I think. Sometimes documents and exhibits have been submitted with translations as part of the exhibit; sometimes they have been quoted in written submissions in free translation.

What we propose to do is to continue that practice through the Hearing, basically, of being able to use free translation--there are a few in the Slides, frankly, that we have prepared this morning--or submit written copies of translations to the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: The Tribunal, if we see any mistake in the translation, we will draw your attention to that.

Very good.

Any point of order to start for the Republic of Perú?

MR. HAMILTON: No, Mr. President. We are ready to start. Thank you very much. We are here in goodwill.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Great. So, we are going to proceed in that manner. In the spirit of cooperation, we are going to start your presentation of Claimant for their initial presentation.

Mr. Friedman, do you have any idea how much time you will need? I ask that because of a break, if there will be a need for a break in between.

MR. FRIEDMAN: Yes. With respect, Mr. President, we will use all our time, and I suspect everybody will want a break at some point. We've planned for where it might be appropriate, but, of course, we are completely in your hands.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, except if I see some urgency or some request from our court reporters or the interpreters, we will break whenever you say. If I see that there is a need, you

will please accept that I ask you for a break.

MR. FRIEDMAN: Absolutely.

PRESIDENT FERNÁNDEZ ARMESTO: And I see some of your colleagues coming with a presentation. That should be the power slide, and we will give it the number H-1.

Very good. You have the floor, Mr. Friedman.

OPENING STATEMENT BY COUNSEL FOR CLAIMANTS

MR. FRIEDMAN: Thank you, Mr. President, Members of the Tribunal. Good morning.

On behalf of Gramercy, we thank you for convening this proceeding and devoting so much time and attention to this case already and through the course of the week to come.

Today marks the beginning of the end of Perú's ability to sweep under the rug the debt that it owes from its mass expropriation of millions of hectares of land, now 40 to 50 years ago. That debt had substantial value. It represented payment for Perú's sweeping land redistribution program in which it expropriated land the size of Portugal, conservatively valued in an undisputed report at

around $42 billion.

But, for decades, Perú has refused to pay what it owes, and the reason for that is not because Peruvian law wasn't sufficiently clear about the fact that Perú had to pay the Bonds' current value. Since 2001, Perú's Constitutional Tribunal and Supreme Court confirmed that proposition repeatedly.

It is not because there were serious questions about how to achieve current value. Just about everybody recognized that "real current value" meant that you should update the principal for inflation using the Consumer Price Index and add interest.

It is not because there was no legal framework for paying them. Bondholders could and did always go to the Courts to get that value calculated and ordered on the basis of bedrock constitutional principles, the right to property, and the express provision of the Civil Code that governs these kinds of debts of value.

If the Government had simply accepted the Constitutional Tribunal's 2001 directive to pay the

Bonds' current value, competent officials acting in good faith over several years surely could have figured out how to devise and implement a fair, transparent, and rational process that produced current value and provided a global solution to the Land Bonds debt

Instead, the Land Bonds have not been paid simply because the Ministry of Economy and Finance has, for decades, obstinately resisted the central command of paying current value that its own Constitutional Tribunal confirmed was a constitutional imperative. It instead chose years of stonewalling, delay, and putting its head in the sand, so the debt grew to the point where they argued it had grown too big to pay.

The genesis of this Arbitration, however, concerns the Ministry of Economy and Finance's attempts to not just continue stalling, but to effectively wipe out the debt altogether for almost no value.

In 2013, the Ministry seized a unique opportunity to use false information that paying

current value would bankrupt Perú to get the Constitutional Tribunal, through shocking conduct, to change the current value legal framework, and it exploited, then, that opportunity to foist on Bondholders its so-called "Bondholder Process." That process is arbitrary and unlawful in design and execution. It is a failure in practice, and it is also manifestly unjust.

After five years of its vaunted Bondholder Process, Perú has paid, in total, the princely sum to all the Bondholders who have been paid of about USD 450,000, with some Bondholders who endured it receiving less than $1,000 each for the 50-year-old expropriation of their land. It is, in the words of one of those Bondholders, "a joke."

It did not have to be this way. Gramercy did everything it could over many years to foster a consensual solution. You will hear from Robert Koenigsberger, Gramercy's founder and Chief Investment Officer. From the day Gramercy invested in Perú--through today, even--Gramercy has held out its hand to work with Perú to reach a productive solution

to this decades-old debt. Its approach was informed by Mr. Koenigsberger's long experience in working with sovereigns with far less capacity to pay and much more intractable issues, including Argentina, Nicaragua, Russia, and other countries, and with his experience with the Brady Plan in Perú that helped revitalize Perú's broken economy and put it on the path to growth.

As it had done in other countries, Gramercy's hope was always that, in concert with other Bondholders and the Peruvian Government, it would be able to forge a fair and practical solution to heal this scar on the nation's conscience.

PRESIDENT FERNÁNDEZ ARMESTO: You may wish to slow slightly because you are being interpreted as you are going. If you can make some pauses, I'm sure the interpreters will appreciate that.

MR. FRIEDMAN: Thank you, Mr. President.

Thus, it is not Gramercy, but Perú's, obstinate refusal to even sit down in a room and meet with Mr. Koenigsberger, his colleagues, and other Bondholders that has brought us to this point.

Instead of even trying to find common ground, Perú's former Minister of Economy and Finance and Prime Minister and President, Pedro Pablo Kuczynski, told the press: "I don't think we owe them anything. It is that simple."

Justice Urviola, who we will talk about more later, the Chief Justice of the Constitutional Tribunal who cast the decisive vote for the tainted July 2013 Order, echoed that sentiment just last year. He rebuffed a congressional investigation into the shocking circumstances in which that Decision was issued by claiming that behind it are the interests of the "Gramercy Vulture funds," who acted with the sole purpose of harming the Peruvian State by winning an arbitration. He warned the Peruvian Congress not to lift his immunity from prosecution because of the enormous damage that a decision that only favored the Vulture funds would do to Perú. He revealingly added: "We will not allow it."

That kind of animus against Gramercy permeates Perú's defense, but it is not and cannot be an answer to Perú's Treaty breaches.

In the rest of our time today, Ms. Popova will address Perú's objections to jurisdiction and admissibility. I will then address the Merits. Mr. Riehl will address remedies, and I will briefly conclude.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

Ms. Popova?

MS. POPOVA: Thank you, Mr. President.

Perú has raised every conceivable objection to jurisdiction and admissibility: Lack of personal, material, and temporal jurisdiction; no consent; and, even if all of those exist, abuse of process.

I will be comparatively brief this morning, because you have our recent Rejoinder, but you'll see that Perú's objections all have one thing in common: They do not rely on what the text of the Treaty actually says. They posit that, despite what it says, Gramercy should somehow be precluded from relying on it. None of these attempts to rewrite the Treaty have any merit.

At the risk of upending the classical order, I will begin by addressing why the Land Bonds are

investments within the meaning of the Treaty, and then why Gramercy is an investor.

Now, the Treaty defines an investment as: "Every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment."

It then identifies three such characteristics, but it does not make them either mandatory or cumulative; including, it says, such characteristics as "the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk."

It then adds context to that definition by including a list of forms that an investment may take, which expressly include, among other things, bonds, debentures--rendered in the Spanish as "obligaciones"--other debt instruments, and loans.

And then in the footnotes, the Treaty identifies specific assets that do or do not constitute investments. It says some forms of debt--like bonds--are more likely to be investments, while short-term debts from the sale of goods and

services are less likely. It also specifically excludes two kinds of assets that would otherwise qualify as investments under the broad definition of the Treaty. The first is State-to-State loans between the U.S. and Perú, and the second is local court judgments.

Then, in Annex 10-F, entitled "Public Debt," the Treaty states that the purchase of debt issued by a Party entails commercial risk, and it goes on to regulate what claims can be brought about defaults and restructurings and how.

Now, this--as the structure of the Treaty shows, the Treaty was negotiated under what is known as the negative list framework. Perú has not denied this, and, indeed, its own summary of the Treaty negotiations confirm that fact.

You'll hear next week from Ambassador Peter Allgeier. He was the Deputy U.S. Trade Representative with responsibility for all trade agreements in the western hemisphere and ultimate responsibility for the negotiation of the Andean FTA, from which the U.S.-Perú TPA derives.

Ambassador Allgeier explains that the negative list approach means that, if the State Parties had intended to exclude certain types of asset from the definition of an "investment," it would have been necessary to include specific exclusions.

And that's, indeed, what we see in the footnotes of the Treaty in the definition of the "investment" that we just looked at. The Treaty also contains schedules and annexes at the end of each chapter which list the Measures that each Party wants to exclude from the scope of the Treaty, perhaps because they might be politically sensitive for it--for example, bull fighting for Perú, or tuna fishing for the U.S.

And that is also the mechanism that Perú used in its Model BIT and in several other Investment Treaties in which Perú, unlike in this Treaty, expressly excluded public debt as a form of covered investment.

So, taken together, these Treaty provisions and the very structure of the Treaty confirm that long-term public debt, of which bonds are a

quintessential example, is a form of investment that was covered under this TPA.

Perú's own summary of the Treaty negotiations explains that the Treaty's definition of "investment" is "broad. It covers all possible forms of assets"; that it "contains an illustrative, not delimited, list of elements, which include, among others, debt instruments, including public debt."

Now, we believe that there is no dispute on four basic propositions:

First, that the Land Bonds are bonds.

Second, that the Land Bonds are sovereign bonds, in that they were issued by Perú.

Third, that sovereign bonds are generally a kind of covered investment. Perú appears to accept that what it calls "modern or global sovereign bonds" do qualify as investments within the Treaty's terms.

And fourth and finally, that the Treaty does not expressly exclude these Land Bonds from being investments the way it does other kinds of public debt and other kinds of covered assets.

So, Perú's objection that these Land Bonds

are not covered investments appears to depend on some kind of extra-textual tacit distinction about the nature of these bonds, as opposed to all other kinds of sovereign bonds.

And so, Perú places great emphasis on its submissions on how the bonds were "configured," it says. It says they weren't marketed abroad; they didn't contain Foreign Dispute Resolution Clauses; that they weren't issued in a foreign currency; that they related to another era in Perú's historical development.

Now, all of these things might be accurate factual observations, but there's no basis for turning them into mandatory jurisdictional requirements. They don't make the Land Bonds any less of a debt. They don't make them any less of a bond. They don't make them any less an asset that otherwise has all of the characteristics of an investment. And the Treaty makes no such distinctions at all.

For example, it makes no distinction based on the vintage of the investment. It protects old-fashioned investments just like "modern" ones, it

protects existing investments just like future ones, and it has no restrictions on how the investment was marketed or to whom. It also does not exclude what Perú calls "speculative" investments. Quite to the contrary, it identifies risk and the expectation of gain as defining features of an investment.

It also recognizes that assets that are even more speculative than a 30-year Government bond can be forms of investment; things like shares, futures, options, derivatives. And similarly, the Treaty does not exclude investments that were made in a local currency or governed by local law. In fact, it expressly includes rights conferred pursuant to domestic law, as well as contracts, without any limitation of governing law.

Now, prior Investment Decisions involving other kinds of sovereign debt don't help Perú, for the reasons we've said in our papers. Perú invokes several cases which will be familiar to this Tribunal, and all of those cases except Postova found that there was, indeed, jurisdiction. And in Postova, of course, the Treaty did not expressly include as forms of

investment bonds or public debt. It didn't have an express annex on public debt.

So, if Perú's laundry list of domestic touch points were really what the Treaty meant about the kinds of covered investments, the Treaty would have looked very different from the way that it does.

The Treaty, of course, does not contain any of these limitations. It does, however, identify three features that the State Parties in fact considered relevant. It identifies the commitment of capital, the expectation of profit, and the assumption of risk. And there's no question that the Land Bonds have all of those characteristics.

First, Gramercy committed over $32 million in capital to buy the Bonds. It incurred substantial management and opportunity costs, and it paid insurance and storage fees. But it committed other resources, too. It invested its know-how, its contacts, its expertise, its time. It also prepared several thoughtful proposals for a bond swap that could convert Perú's Land Bonds debt into new, productive investments, which it presented to the

Government several times.

Second, by investing in the Bonds, Gramercy also had an expectation of profit. It expected that Perú would restructure and pay its Land Bonds debt, as it had done with its Brady Bonds and its Paris Club obligations. If that didn't happen, Gramercy expected that it would be able to go to a Court and get a decision awarding the Land Bonds' current value, consistent with the unequivocal decisions of the Constitutional Tribunal and the Supreme Court.

And, finally, Gramercy also assumed risk. The Treaty itself expressly recognizes that the purchase of debt issued by a Party entails commercial risk. Now, the fact that Gramercy raised money from third parties to invest in the bonds, or that it bought them at a discount to their inherent value, doesn't mean that buying Peruvian debt was totally risk-free.

Perú doesn't meaningfully challenge any of this evidence. Instead, it argues that the Tribunal should apply the Salini factors as mandatory jurisdictional requirements and then hang its hat on

the fourth Salini criterion to deny jurisdiction, allegedly because Gramercy's purchase of the Land Bonds did not contribute to Perú's economic development.

Now, I will not dwell on the trials and tribulations of the fourth prong of Salini, which we set out in our papers. Many Tribunals, of course, have refused to adopt it, most recently in Seo and South Korea, under the identical definition of "investments" in the U.S.-Korea FTA. And, of course, as Ambassador Allgeier puts it in his Reports, "such a requirement would simply be too vague to be workable, and it is contrary to the text of this agreement."

Indeed, Perú's own statements about the Treaty tend to confirm that view. Neither Perú's nor the U.S.'s public descriptions of the kinds of assets that it would cover have any mention of a condition that an asset would only be covered if it also contributes to the State's economic development.

In any event, Gramercy's investment did, in fact, have the characteristic of contributing to Perú's economy. The whole point of the Land Reform

from which these Land Bonds emerged was, of course, to stimulate Perú's industrialization, its socioeconomic development, and Gramercy's investment in the Bonds had benefits for Perú as well.

On the microeconomic level, as Mr. Koenigsberger explains, Gramercy injected millions of dollars into the local economy. It created a secondary market for the stagnated debt. It provided much-needed liquidity to Peruvian nationals, and that, in turn, had multiplier effects of improving their standard of living generally.

Gramercy's Witness, Ms. G, confirms those benefits. She describes why she sold her Bonds to Gramercy and how lucky she's been compared to other Bondholders who went through the Government's Bondholder process, only to receive far less after many years than what Gramercy was offering, or even who died without receiving anything at all.

She could have told you about the microeconomic effects of Gramercy's investment firsthand, but Perú chose not to call her for cross-examination.

Now, Perú also does not dispute that, if it had accepted Gramercy's various proposals for a restructured bond swap, it would have benefited from what Mr. Koenigsberger calls "the virtuous shock" of cleaning up old debt. Professor Rodrigo Olivares-Caminal, who you will also hear this week, is an expert in sovereign finance, and he confirms those benefits, too.

Gramercy studied and prepared several such proposals, outlining them in a presentation that it sent to President García in May 2009. That presentation summarized the benefits of the swap to Perú. It had a whole section on the benefits of the exchange for the country, on the positive impact on investment and economic growth for Perú.

So, it's really no answer for Perú to say that Gramercy's hope for a solution to the Bonds didn't pan out, and so it didn't actually contribute to the Peruvian economy. Perú's breaches, of course, is what prevented that from happening. If a State unlawfully expropriates a Mining License before a shovel has hit the ground or a factory before a single

job has been created, that doesn't mean that those assets are not the kinds of assets that investment treaties protect as investments.

To see the absurdity of Perú's argument, just consider a hypothetical. Imagine Gramercy had owned a factory outside of Lima that manufactures typewriters. Imagine Gramercy had bought it from a Peruvian owner, paid in Peruvian soles under a contract that provided for resolution of disputes under Peruvian law, before Peruvian Courts, and for which there had been no international tender and no marketing to foreign investors whatsoever. Imagine Perú had then expropriated the factory the very next day, before the factory paid any taxes or created any jobs or built any typewriters. Would you say that that factory is not an investment? There is simply no basis for grafting limitations onto the text of the Treaty that just are not there.

Now, your analysis could stop there because that is enough to dismiss Perú's objection to material jurisdiction, but in this case, you have even more. You have lots of evidence about the context in which

this Treaty was negotiated, and that evidence dispels any suggestion that there could possibly have been that the State Parties secretly intended to exclude the Land Bonds but simply forgot to do so expressly.

Perú's Land Reforms were very much on the State Parties' radar during the negotiation of the Treaty in at least three ways: First, what the U.S. Congressional Research Service called "one of the most important issues" during the negotiation of the Treaty was Perú's expropriation of U.S. investors, including U.S. companies and citizens that had been victims of Perú's Land Reform.

As part of the U.S.'s Andean Trade Preference Program, Perú had committed to resolve these disputes in order to qualify for trade preferences. Ambassador Allgeier can tell you more about that this week, and, as he explains, making progress on resolving them was a condition for Treaty negotiations to begin with Perú, and Perú's slow progress in resolving them almost torpedoed Congressional approval of the Treaty in the first place.

Second, several of the Treaty's negotiation

rounds expressly dealt with the kinds of public debt that would be covered under the Treaty and the kinds of claims that could be made about them and how.

Now, Perú wanted to exclude all forms of public debt, the U.S. wanted to include them, and their agreed solution was to expressly exclude only state-to-state debt and to regulate claims about other kinds of public debt through the public debt annex. And we have in the record these negotiation summaries that were prepared and issued by MINCETUR, by Perú itself, describing the Parties' negotiation positions, what was conceded, what was obtained, and what the ultimate solution was.

Third, at the same time as these negotiations, Perú's Highest Courts were issuing several Decisions reminding the Government that it had to pay the Land Bonds at their properly updated current value, and there were various reports and draft bills, including R-257, that were being prepared at that time to create a global administrative solution for paying them.

Now, any one of these three narratives would

independently preclude a finding that the State Parties intended to carve the Bonds out of the Treaty but simply forgot. All three of them taken together, even more so. Given this context, it is not only implausible, it is simply impossible that the U.S. and Perú genuinely intended to exclude the Land Bonds and Perú's Land Reform from the scope of the Treaty but somehow forgot to do so.

Now, Perú's objections to personal jurisdiction also require imposing limitations on the Treaty that just are not there. Here's how the Treaty defines "investors": "A national enterprise of a party that attempts through concrete action to make, is making, or has made an investment in the territory of another party."

And the Treaty's definition of "investment" is also relevant because it says that "an investment is an asset that an investor owns or controls directly or indirectly."

Now, there is no question--there never has been--that both GFM and GPH are U.S. companies. There is also no question that GPH owns and GFM controls the

Land Bonds. And Perú is not invoking the Denial of Benefits clause in the Treaty and nor could it. And nothing in the Treaty excludes investment firms or asset managers from being investors simply because of their line of business.

Instead, Perú seems to argue that the fact that Gramercy owns and controls the Bonds is somehow not enough for it to have made an investment. Now, here, too, Perú's argument has no legal basis and it has absurd implications. There is no magic to the word "made." The ordinary meaning of "to make" is just to "cause something to exist" or "to give rise to it." And, here, the Treaty covers not just ownership of investment, but also control, and not just direct ownership or control, but indirect forms too.

As Mr. Koenigsberger explains, between them, GPH and GFM not only have both ownership and control, but they are the only entities who do.

Against that evidence, Perú has two arguments, neither of which survives scrutiny.

First, it says that in this Treaty, "made" an "investment" means something special, that it requires

some form of elusive "active contribution" that would mean something more than what Gramercy did. Now, Perú gives no support for that limitation and no explanation of why it wouldn't be met on the facts of this case, even if it existed. Neither Professor Reisman nor Mr. Herrera endorse this theory, and they're right, because it makes no sense.

The reference to "concrete action" in the Treaty, which appears to give rise to this argument, which we heard for the first time only in their Rejoinder, is just a misreading of the text, and the concrete action quite obviously relates to someone who is attempting to make an investment, not someone who already has made one.

This is also not a case about a passive investor who inherits an investment with no effort whatsoever. As Mr. Koenigsberger, again, explains, Gramercy developed a strategy to design a global bond swap that would resolve Perú's Land Bonds debt once and for all. It would make Perú attractive for other investors, and Gramercy executed on that strategy by identifying and acquiring a critical mass of bonds, by

developing restructuring proposals, and trying to turn them into reality through dogged efforts to engage with the highest levels of Peruvian Government.

So whatever the additional level of active contribution Perú seeks to infer, there can be no question at all on this record that Gramercy plainly mattered.

Second, Perú, again in its Rejoinder, says that Gramercy doesn't have "standing" because third parties, Gramercy's clients, also have an indirect interest in the Bonds. This argument, too, is confused. The fact that Gramercy has clients who invest their money in the funds and, thus, have in some sense an indirect economic interest in the performance of those funds, doesn't mean that Gramercy did not make an investment in Perú.

As Mr. Koenigsberger observes, Gramercy's clients have neither title to nor control over the Bonds. Perú's logic would disqualify any company from being an investor simply because it has shareholders or lenders or other kinds of stakeholders who in some way have an indirect economic interest in the

performance of its downstream assets. And, once again, the Treaty would have looked very different if that is really what these Parties intended to do.

Perú's next set of objections are both more technical and more inconsequential.

PRESIDENT FERNÁNDEZ ARMESTO: We will try to let you speak and at the end we will address questions. I think it's better. Please.

MS. POPOVA: Okay, Mr. President. Happy to be of assistance.

The first of these technical objections is an objection on the basis of the waiver precondition to submission of claims under Article 10.18. This objection is only relevant because of Perú's second inconsequential objection, which is that GFM's claims were submitted late.

Now, this is what Article 10.18 actually requires: Perú's waiver objection has no impact on the case for two reasons. First, there is no dispute that both of the Claimants here have, in fact, validly submitted their claims. Every one of Gramercy's three Notices of Arbitration was accompanied by the

Claimants' written waiver of any right to initiate or continue the proceedings with respect to the Measures that they allege were a breach.

The only question that Perú raises here is the date on which they should be deemed to have first done so, whether that was in June or July or August of 2016.

Second, Perú admits that GFM submitted its claims on June 2, and it appears to make no separate time bar objection to GFM's claims as opposed to GPH's. So, this waiver objection is really a moot point. It has no impact whatsoever on the scope of the claims that you will ultimately need to decide.

That being said, all that Perú appears to be disputing here is on which one of three dates GPH commenced arbitration. Now, GPH, of course, validly submitted its claims on June 2, 2006. The waiver in that Notice of Arbitration had a reservation in case the Tribunal finds its claims inadmissible or denies jurisdiction. And the Renco Decision, notwithstanding, that waiver complies with both the terms and the purpose of Article 10.18.

In any event, even if you are not with us on that, just days after the Renco Decision, on July 18, GPH submitted a second waiver without any reservations, so there could be no issue about Renco, and we say it validly submitted its claims on that date, even if you follow Renco, which we say you should not.

Now, at the time, GPH was a party to court proceedings in which it sought a court-ordered Expert valuation for its Land Bonds as many Bondholders had been forced to do. Those proceedings were not with respect to any measure alleged to constitute a breach of the Treaty, so they didn't need to be waived or discontinued.

(Interruption.)

MS. POPOVA: But given Perú's continuing objections and to minimize the points of dispute, GPH then withdrew those proceedings, too, and it submitted a further Amended Notice of Arbitration on August 5, 2016.

Now, Perú seems to say that even that material waiver was not actually effective until some

days later, maybe August 10, because that's when the Peruvian Courts accepted the withdrawal of petitions. I submit to you that that again makes no sense. It's not what the Treaty says, and it would be dangerous because it would make a Claimant's ability to submit its claims dependent on the conduct of the Respondent State. And, again, unsurprisingly Perú offers no authority whatsoever for that interpretation of the waiver requirement in the Treaty.

Now, June 2, 2016, is the principled and the correct choice between these three dates, but I will submit to you that it makes no difference because in all of these cases, Gramercy submitted its claims within three years, and Perú's objections on this score fail as well.

The Treaty is clear that the time bar runs from when the Claimant has actual or constructive knowledge of both the breach and the loss or damage. Perú says that Gramercy's claims all derive from the July 16, 2013, Constitutional Tribunal Order. Now, that's not actually true, but even on that case, all of GFM's claims are within the three-year period

because it submitted its claims on June 2, 2016, less than three years after the CT Order.

And even if you find that GPH only submitted its claims sometime later, only in August, that would still not make any of GPH's claims inadmissible. The only event that would fall outside that window is the mere issuance of the July 16, 2013, Order. But, of course, as we've explained in our Briefs, Gramercy could not possibly know from the face of that decision itself everything that would happen later. It could not know that Perú had committed the breaches it now claims, or that Gramercy had suffered the losses that it claims in this Arbitration.

The entire Bondholder process, of course, including Gramercy's inability to go to Peruvian Court, derived from the January 2014 Supreme Decrees, and the gross irregularities that led to the July 16 Order weren't uncovered until 2015 and much later.

So, really the only question is whether Gramercy did or should have appreciated that Perú had expropriated its investment and thwarted its entitlement to current value merely from the face of

the July 16 Order itself. And you could not reach such a conclusion from reading the Decision itself, as I'm sure that you will.

You also have testimony from Mr. Koenigsberger and documents in the record that show you how Gramercy was interpreting that Decision at the time that it received it, and the months of uncertainty in which it remained.

Mr. Koenigsberger explains in his statements that that Order came as a surprise, that the Decision simply did not provide enough information for Gramercy to assess its impact. Gramercy's contemporaneous emails confirm that fact. They show that Gramercy believed that the Decision was an opening gambit, that it would have to wait for the MEF to issue the Decrees that the Constitutional Tribunal ordered MEF to issue before it would know what Perú really intended to do. And Gramercy believes that that was an opportunity again for negotiation with the MEF.

And this sort of uncertainty about what the Order meant or what the State would do, it's just not the kind of knowledge that can trigger the Treaty's

time bar. The recent decisions in Resolute Forest Products and in Mobil Investments, for example, which Perú has never addressed, confirm that conclusion.

In its Rejoinder, Perú invoked a letter that Mr. Koenigsberger had written to President García in December 2013, and the argument appears to be that because Gramercy reserved its rights under the Treaty in this December letter, that that shows it had knowledge of breach and loss several months earlier.

In fact, that cannot be true. The fact that one writes a letter reserving rights in December cannot establish knowledge of breach and loss many months before that.

Moreover, the letter, in fact, corroborates Gramercy's conviction that there was still scope for negotiating a debt restructuring with the MEF. Earlier in the letter, Mr. Koenigsberger, in fact, says "a combination of factors has now created a historic opportunity for Perú to resolve this situation once and for all and to do so in a way that benefits all the Parties involved." And after reserving rights, he ends, "at the same time, we hope

you can appreciate the sincerity with which we are sending this letter and our clear preference to help Perú find a consensual nonconflictive solution to the difficult situation of the Land Reform Bonds."

Perú's argument that the Tribunal does not have temporal jurisdiction suffers from the same confusion of what Gramercy's claims are and what the Treaty's language says. The Treaty provides that it does not apply in relation to "any act or fact that took place or any situation that ceased to exist before the entry into force of this Agreement," which is February 1, 2009.

Perú's temporal breach argument appears to be that Gramercy's claims for breaches arising out of conduct in 2013, '14, and later are, in fact, the same dispute as the underlying Land Reform expropriation in the 1960s and '70s, and so they are temporally barred.

This objection is also conceptually flawed in a number of ways: First, Gramercy's claims are, of course, not that Perú breached the Treaty by expropriating land in the 1970s. As you can see on this timeline, all of the acts or facts to which

Gramercy seeks to apply the Treaty occurred well after February 1, 2009.

Second, this Treaty does not determine jurisdiction by whether the dispute that was submitted for Decision is the same dispute as the dispute that had already arisen before the Treaty came into force, as some treaties do. Instead, it links temporal jurisdiction by when the acts or facts that took place, whether they occurred before the entry into force of the Agreement or not.

And even in Perú's argument that the dispute is about Perú's nonpayment of the Bonds at their current value, well, that situation did not cease to exist before the entry into force of the Treaty. Again, a point that Perú has never addressed.

This brings us to Perú's final argument. And this is one that really infuses all of its objections to jurisdiction, that even though Gramercy is a qualifying investor with a qualifying investment that timely and validly submitted its claims, Gramercy should be precluded from exercising its Treaty rights that it undoubtedly has on account of an alleged Abuse

of Process.

This Tribunal will appreciate that an argument of Abuse of Process amounts to one of bad faith and that the standard is high.

Perú's arguments come nowhere near that high threshold. The relevant facts are, again, not in dispute. There is no change of nationality of the investor. GPH and GFM are, and they always have been, U.S. investors. And the timing itself disproves Perú's claims. Gramercy didn't buy the Land Bonds after Perú breached the Treaty, but seven years before. And it commenced this Arbitration 10 years after it invested.

As Mr. Koenigsberger had explained in detail, this Arbitration was Gramercy's last resort. It was not its primary goal. Gramercy invested for the purpose of recovering the real value of its Bonds by catalyzing an agreement on a fair and comprehensive solution that would benefit both Bondholders and Perú, which Gramercy believed could really happen through a bond swap proposal like it had done in other countries.

And this wasn't just posturing. The record shows that Gramercy carried through on that investment strategy. I'm about to show you a confidential document, so I would kindly ask the Non-Disputing Parties to leave the room and the feed to be interrupted.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MS. POPOVA: Gramercy made several proposals to Perú in line with that plan, which Perú does not even mention in its papers. For example, In May 2009, it sent President García its detailed proposal for that bond swap that it thought would achieve a definitive and constructive solution to the Land Bonds.

In June 2009, it submitted a similar proposal to the Agrarian Commission of Perú's Congress, which was considering legislative proposals to do just that at the time. And Gramercy continued advocating for this kind of solution even in late 2013 and even again after the arbitrary 2014 Supreme Decrees.

Yet, again, Perú does not challenge any of this evidence, and nor could it. Its entire Abuse of Process argument appears to be that Gramercy knew that a Treaty had been signed that might protect its investments if everything didn't go to plan and that through this Arbitration Gramercy is trying to take advantage of remedies that are foreclosed to Peruvian Bondholders.

This is one example of what they say in their papers.

Relying on a Treaty to make an investment is not abusive. It's the opposite. It's the intended effect of investment treaties in the first place. And, again, the fact that Nationals do not have claims against their home states under an investment treaty is also not abusive. It's an inherent feature of the system.

So, it is not abusive that Perú must answer for its arbitrary and expropriatory conduct before this Tribunal.

If anything is abusive, it's that Perú has not done right by its own thousands of Peruvian Bondholders who have no effective remedy at all and who today have scraps of paper when they should have farms and land.

You have statements in the record from some of these people whose families had their livelihoods and futures taken away from them. They won't be able to tell their stories this week, so I encourage you to read those statements.

Even today, Mr. Koenigsberger continues hoping that Perú will do the right thing by those Bondholders. So far, Perú has chosen not to handle its Land Bonds debt in a transparent, consensual, responsible manner like so many other sovereigns have done.

As Mr. Friedman will now explain, it has chosen to unlawfully wipe out that debt, in violation of the Treaty and the elementary notions of justice that it reflects.

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Ms. Popova, and we give the floor to Mr. Friedman.

MR. FRIEDMAN: Thank you, Mr. President.

As I turn to the merits of the case, I will concentrate during these remarks mostly on the facts, but at the beginning, I say a few preliminary words about the law.

Gramercy's first claim, of course, as you know, is for its expropriation. Article 10.7 of the Treaty prohibits a party from expropriating an investment, except in very limited circumstances,

namely for a public purpose in a nondiscriminatory manner and upon payment of prompt, adequate, and effective compensation.

The Treaty expressly recognizes that a measure can be expropriatory, even if there has been no formal transfer of title or outright seizure, so long as it has the effect equivalent to direct expropriation. In other words, it recognizes indirect expropriations.

It is, of course, settled law and not, I think, seriously disputed that an indirect expropriation occurs when the effect is significant or substantial deprivation of the value of the investment.

Perú doesn't dispute that, but it seeks to evade liability by arguing that it is actually, through its Bondholder process, imparted value to these Bonds where previously there was none. We will show that that's false in just a moment.

Before I get to that, though, I just want to address one argument that Perú made for the first time in its Rejoinder, based on a misreading of Annex 10-B

of the Treaty.

The Annex states that, "except in rare circumstances, nondiscriminatory regulatory actions by a party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute an indirect expropriation."

In its Brief, Perú cites this language but conveniently omits the words from this provision, "such as public health, safety, and the environment," to create what it claims is a presumption against expropriation.

Without citing any authority, Perú essentially argues that as long as the State has articulated some justification for its expropriatory measure, that measure is unimpeachable or at least strongly presumptively okay. But that is a gross misreading of the Treaty.

Every expropriating State articulates some justification, some purpose that it claims to have for its government acts. So Perú's construction would deprive the expropriation clause of any real meaning

and allow this public welfare exception to swallow the rule.

In any event, as you'll see, factually Perú's measures were not designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment. They have nothing to do with any of those activities. And as we will show, they were intended, in fact, to extinguish Perú's Land Bonds debt and compromise on the right to have that debt paid at current value.

Gramercy's second claim is that Perú's actions violate the Minimum Standard of Treatment in violation of Article 10.5 of the Treaty.

Article 10.5 imposes on Perú the obligation to accord Gramercy "treatment in accordance with the customary international law, including fair and equitable treatment, and full protection and security." And this Minimum Standard of Treatment includes the obligation not to deny justice and requires that Perú act in accordance with the principle of due process embodied in the principal legal systems of the world."

The Minimum Standard of Treatment is a dynamic and multifaceted standard that requires an assessment of the facts as a whole. As Professor Reisman, the Respondent's Expert in this case has argued in his academic writings, it is "an evolving concept, whose contents overlap with or are congruent with the fair and equitable treatment standard as it has been interpreted by international investment tribunals."

While not subject to the narrow and reductionist approach Perú advocates, this standard has certain frequently recognized dimensions or manifestations, some of which are expressly mentioned in the Treaty language and others of which have been elaborated in cases upon which both Parties rely in their papers. These include the protection of an investor's legitimate expectations, the prohibition against arbitrary conduct, and the prohibition against denial of justice.

In its Rejoinder, Perú cites to the United States' Non-Disputing Party submission for the proposition that "determining a breach of the Minimum

Standard of Treatment must be made in light of the high measure of deference that international law generally extends to the right of domestic authorities to regulate matters within their borders."

Well, there is, of course, a margin within which a State can act. It is limited by the State's obligations under the law and by the Treaty. Numerous Tribunals have recognized that "deference" does not excuse Treaty violations, and, of course, it couldn't.

For example, the Tribunal in TECO v. Guatemala explained that deference to a State's regulatory powers cannot amount to condoning behaviors that are manifestly arbitrary, idiosyncratic, or that show a complete lack of candor in the conduct of the regulatory process, and it is up to an International Arbitration Tribunal to sanction Decisions that amount to an abuse of power, are arbitrary, or taken in manifest disregard of applicable legal rules and in breach of due process and regulatory matters."

The Tribunal in Foresight Luxembourg similarly explained that the right to regulate must be

subject to limitations if investor protections are not to be rendered meaningless. And as the Tribunal in Burlington v. Ecuador explained, the principle applies also to national court decisions, for otherwise the purpose of investment arbitration would be seriously jeopardized, if not defeated.

Now, measures such as the ones at issue in this Arbitration deserve no deference, as we will show.

Gramercy's third claim arises under Article 10.4 of the Treaty. As we've explained in our papers, the most-favored nation clause imposes on Perú the obligation to afford "effective means" to Gramercy, but it has failed to do so. Perú has deprived Gramercy of effective means for enforcing its rights by imposing a mandatory and exclusive Bondholder process, which denied Gramercy the recourse it had previously enjoyed in Perú's Courts.

And Gramercy's forth claim arises under Article 10.3, which imposes on Perú the obligation to afford Gramercy treatment no less favorable than what it affords to its own citizens. As we have shown, and

Perú has not seriously rebutted, Perú has discriminated against Gramercy by placing "speculative investors," a term clearly intended to single out Gramercy, at the very end of the payment queue in its Bondholder process.

Now, I won't say more about the law--or not much more about the law right now because this is a hearing--a factual hearing. We have a lot of Witnesses here, and I do want to concentrate on the evidence. And while the case may seem highly complex, even in an evidentiary sense, we have over 2,000 exhibits, 19 Witnesses and Experts. Your decision in this case is very likely to turn on how you resolve just four key factual issues.

Those issues are first: Prior to 2013, was the current value principal just an amorphous idea, so uncertain as to be meaningless in practice, as Perú contends, or did it have real meaning, such that Gramercy and other Bondholders could ultimately expect a value based on CPI-updating plus interest?

Second, are the 2013 Constitutional Tribunal Orders perfectly normal Decisions of the country's

highest Constitutional Court, as Perú contends, or are they, in the manner in which they came about, tainted and part of Perú's illegal conduct?

Third, are the Supreme Decrees and the Bondholder process they create a proper, lawful, and well-supported set of administrative regulations simply executing the 2013 Constitutional Tribunal Orders and, as Perú puts it, conferring value on Land Bonds, or are they arbitrary, illegal, and unjustifiable efforts to destroy value?

And fourth, did the possibility of, perhaps, having exceptional claims, like Amparo proceedings, provide effective means for Gramercy to obtain current value in Perú as Perú contends, or did the Constitutional Tribunal and Ministry of Economy and Finance actions deprive Gramercy of effective means to obtain current value through their conduct?

Those four issues will very likely end up determining how you conclude the case. So I want to turn to the first of them now, which is that current value had clear meaning.

From at least 2001, current value had a real

meaning about the Land Bonds. It meant one thing. It meant CPI plus interest. Current value was not, as Perú claims, hopelessly uncertain and meaningless.

Now, the current value principle itself was already a staple of Peruvian law, and, as this Tribunal will know, a staple of other civil law systems as well, well before the 2001 Decision. Article 1236 of Perú's 1984 Civil Code explicitly recognized this principle for debts of value. Yet, in 1996, Perú enacted a law that would have made the Land Bonds an exception to this Article 1236 principle and allowed Perú to extinguish the Land Bond debt on nominal terms. The nominal value of those amounts was essentially worthless.

So while the law formally recognized the State's obligation to pay principal and interest, in reality it was an attempt to avoid paying anything at all.

A local Bondholder organization at the time, the Engineers Bar Association, challenged the Constitutionality of this law, and it won.

In 2001, the Constitutional Tribunal made

clear that it would be manifestly contrary to Perú's constitution to pay the Bonds at their nominal value because this violated the current value principle that is inherent to property, a right protected under Article 70 of Perú's Constitution.

The Tribunal recalled that Perú's Constitution protects the rights to property and fair compensation for expropriation, and that in response to what it called "a basic sense of justice," any deferred payments must, therefore, reflect an updated valuation of the Land Bonds. The Constitutional Tribunal explained that while the 1933 Constitution authorized payment of compensation through Bonds, doing so was constitutional only if the Government paid the current value, adjusted for inflation of the Bonds, not their nominal value, which was and continues to be, unconstitutional, and, as they put it, which turns confiscations--expropriations into confiscations.

Now, in doing so, the Constitutional Tribunal explicitly found that a failure to apply the current value principle violated Bondholders' rights. In

other words, in 2001, the Constitutional Tribunal made crystal clear that Perú's Constitution required Perú to pay the Land Bonds and to do so pursuant to Article 1236's current value principle, "which requires that debts be updated according to the current economic indices."

Now, the meaning of the current value principle was not--was actually clear. It was not meaningless or uncertain, as Perú contends. Instead, it had three very specific and concrete implications. First, it meant that Land Bond debt had to be inflation-adjusted using the Consumer Price Index, or CPI.

You've read the Report of Justice Delia Revoredo, one of the Justices who sat on the Constitutional Tribunal and joined in the 2001 Decision. She testified that the Decision ordered Perú to pay the current value of the Bonds and that the Peruvian Courts have used CPI in order to comply with the Constitution, the Civil Code, and the 2001 Decision.

You've also read the Report of Professor

Mario Castillo Freyre. He is the leading Expert on Peruvian law obligations. He's coauthored a treatise on the subject with the principal drafter of Perú's Civil Code.

Both Justice Revoredo and Perú's legal expert, Dr. Hundskopf, have relied on Professor Castillo's writings as an authoritative exposition of the current value principle. And Peruvian Courts, including the Peruvian Supreme Court, also cite him on this topic.

He, too, concludes that the Land Bonds are and have always been subject to the current value principle. And he explained in his treatise and other writings that the Courts are not at liberty to choose any updating factor in applying the current value principle pursuant to Article 1236. Rather, the factor used must reflect the nature of the obligation in question.

In applying this notion to the Land Bonds, which embody an obligation of value, it is clear that the 2001 Decision did not even need to expressly mention Peruvian CPI because its use was implicitly

required. After all, CPI is the economic index that measures the very thing that the Constitutional Tribunal said had to be eliminated, which is the erosion in value because of inflation.

Second, current value required that any updating of principal has to be done by reference to the Land Bonds' issuance date, not some later date. This reflects the very purpose of the current value principle, which, as Justice Revoredo explains, is to protect the value of the obligation as originally undertaken, vis-à-vis the loss in purchasing power of the currency used for the payment of such debt or obligation.

And Professor Castillo further explains that the only issuance--only the issuance date captures the value of the underlying obligation at the time it arose. The choice to update from any other later point in time is arbitrary and distorts the current value principle.

Now, to explain this, just consider a brief example. If I expropriated from you two cases of very good wine--Spanish wine, French wine, Canadian wine,

if we have some--a total of 24 wine bottles--

(Comments off microphone.)

MR. FRIEDMAN: A total of 24 wine bottles, but instead of paying compensation in cash, I give you 24 coupons, 24 certificates, each worth one--the equivalent of one of those bottles to be paid over 24 years. During the first 12 years, you cash in the coupons on a regular basis and you receive a total payment nominally worth 12 units of that currency, and so the first 12 bottles are basically paid for.

However, at that point in time, 12 units of currency are no longer enough to buy that case of wine. Instead, due to inflation, they can only buy one bottle of wine. So, you stop cashing the remaining coupons. And suppose further at the end of the 24-year period, the 12 units of currency are all but worthless, what does the current value principle require with respect to the 12 coupons that were still outstanding?

Well, if you pay nominal value today, you will receive nothing. That is, you'll get the empty box. You will not get any bottles of wine even though

you are still due the 12 that were taken from you 24 years ago. Even Perú doesn't advocate that that's the right solution in this proceeding, at least.

But consider the alternatives, if you update from issuance, which ensures that--that ensures that you will receive, today, an amount of currency that will allow you to buy all the 12 bottles that you were supposed to have 24 years ago. That's exactly the idea of the current value principle.

But the second method, and the one that Perú has adopted in its Bondholder process means something else. It is the equivalent of paying you for just that one bottle, which was the erosion in price after 12 years. And, consequently, what Perú's method does is it expropriates again the 11 other bottles that you were due from the beginning in the first place.

Finally, the third element of the Constitutional Tribunal's 2001 Decision is that Bondholder is also entitled to receive interest on the unpaid principal. Like other creditors, Bondholders must be compensated for the loss of use of money or the return that they would have earned had they had

the opportunity to invest that principal.

Professor Castillo explains this is separate and distinct from updating for inflation and payment of interest, of course, simply puts the expropriated Party in the position it would have been in absent the expropriation, and creditors' entitlement to interest under Peruvian law is clear.

Now, despite the clarity of these principles under Peruvian law, Perú's core defense in this arbitration is that in 2001 the Constitutional Tribunal Decision was not clear enough. Perú contends that the Decision left open more questions than it answered and ushered in what it calls "years of legal uncertainty."

That contention is false. The evidence shows that for over a decade, there was a consensus, as a legal matter, that the 2001 CT Decision required CPI-updating and compensatory interest. From 2001 until 2013, the Peruvian Courts, including Perú's Supreme Court, uniformly held that.

For example, in a 2003 Decision, the Peruvian Supreme Court held that the Land Bonds had to be

updated, so that they represent the value for which they were issued, plus compensatory interest accrued over the course of time.

In a July 2006 Decision, the Supreme Court again confirmed that Perú had to pay the Land Bonds at current value, awarding CPI-based updating and interest. In a September 2007 Decision, the Supreme Court again held that the "debt must be assessed according to the current value principle embodied in Article 1236 of the Civil Code and it said, i.e., according to the economic indices in effect on the date of payment."

In 2010, the Supreme Court issued yet another Decision confirming the settled framework. It held that the plaintiff must be paid the updated value of the Bonds using the Automatic Readjustment Index set by the Central Reserve Bank of Perú and also ordering the payment of compensatory interest."

Moreover, the Supreme Court did not consider--this is the Perú Supreme Court--did not consider that there was any uncertainty about that issue. To the contrary, the Court criticized the

Minister of Economy and Finance's appeal against that Order as in reality an attempt to reopen a debate that has been sufficiently settled by the lower courts.

In fact, the Peruvian Courts had since 2001 uniformly updated the Land Bond Debt for inflation using CPI, and awarded interest on that updated amount to compensate for lost opportunity.

For example, in--and these are just a few examples. There are hundreds of cases. In June 2007, the Superior Court of La Libertad ordered CPI updating and interest. In August 2008, the Superior Court of Lima did the same. In January 2010, Pacasmayo ordered the same.

And in the Pomalca Case, which concerned a subset of Gramercy's Bonds, the Court-appointed Experts used CPI from issuance date and applied compound interest. That approach valued those Bonds alone, just a portion of Gramercy's Bonds, at more than USD 250 million.

A decade after the 2001 Constitutional Tribunal Decision, Congress described Perú's--what it called "uniform jurisprudence"--uniform jurisprudence,

with respect to CPI updating. In contrast to that record, Perú has not identified a single court Decision employing an approach other than CPI updating and interest to arrive at the updated value of Land Bonds. Not a single case.

Given this record, it is not just wrong but disingenuous for Perú to argue that there was uncertainty about the legal framework or contend that there was no consensus as to how the March 2001 sentence should be interpreted. Perú's courts, including its Supreme Court and its lower courts, discerned no such uncertainty, and through their judgments and rulings reflected a widely-shared consensus.

Perú has never been able to understand how its own courts converged on these holdings, if the situation had really been so uncertain and there was no value in the Bonds, intrinsically. Instead, it offers two arguments in support of that claim, both of which, though, are meritless.

First, Perú relies on the August 2004 Decision of the Constitutional Tribunal, but that

Decision, which predated the Decisions we just saw, neither indicated nor created any kind of uncertainty about what current value meant or how it applied to the Land Bonds. To the contrary, that Decision actually confirms the CPI-plus interest framework.

Let me explain. The August 2004 Decision addressed the validity of an emergency Decree that the Ministry of Economy and Finance had issued in 2000, before the 2001 Decision. That Decree provided for the conversion of the unpaid principal into U.S. dollars at the time of the Land Bonds' issuance, plus interest at an annually compounding rate of 7.5 percent.

Now, I pause to note the irony that the updating method in that Decree from 20 years ago actually produces value that is many, many multiples of anything the Ministry has offered in its current Bondholder process. In any event, the Ica Bar Association, another association of Bondholders, challenged that Decree in court, and they were not alone in seeing problems in the Decree, as Perú itself acknowledges.

In February 2004 an Executive Branch commission that the MEF formed concluded that that Emergency Decree would contravene some aspects of the 2001 Decision. And so, for Perú to claim that it's wrong to argue--skip the next slide.

To salvage that Decree, therefore, the Ministry of Economy and Finance itself told the Constitutional Tribunal in that 2004 case that this Emergency Decree was not mandatory but just an option for Bondholders instead of going Peruvian Courts. And that was the overarching basis on which the CT denied the constitutional challenge.

It specified that the Decrees could survive because it does not seek to preclude the possibility of going to court, seeking a judgment to enforce the payment of the Bond, but merely constitutes an alternative, which the Bondholder has the opportunity to accept or reject.

Perú focuses on what the Tribunal said in a part of that Decision where it--about the Decree, but even there the Tribunal again noted first that the Decree did not purport to impose any formula on the

Bondholders, and only then to note that, unlike the provisions that had been struck down as unconstitutional in 2001, the Decree did not purport to pay nominal value.

That is, it did use some form of updating. It did not, however, say that that particular method or dollarization in general complied with current value. In fact, in dealing with another argument raised in the complaint, the Court implicitly acknowledged that dollarization meant something different from true current value, but that did not pose a problem because of the Decree's optional character.

Justice Revoredo, who was still on the Tribunal at the time and took part in that 2004 Decision confirms that the Constitutional Decision--the Tribunal decided that the Emergency Decree was constitutional insofar as it was an option for the creditor but did not preclude resort to the judicial branch. And the Peruvian Congress, analyzing the legal situation, said exactly the same thing several years later.

So, what the Constitutional Tribunal's 2004 Decision actually established was that the Ministry could, indeed, propose optional payment mechanisms, optional, that were not nominal, including maybe using dollarization, but could not deprive Bondholders of the right to go to court to seek the true current value, which, as we have seen, was CPI plus interest.

Perú's second argument here in support of its uncertainty contention is actually even more misleading. Perú contends that the current value was an empty concept because various legislative proposals attempted to establish a process to pay the Land Bond debt.

In 2006, the Peruvian Congress passed, and again in 2011 was about to pass legislation establishing an optional Bondholder swap program, but the Executive Branch vetoed or effectively vetoed both of those bills. From that fact, Perú argues "the very existence of attempts to establish a clear legal framework is evidence that no such framework existed."

But this argument confuses two things that we must separate out. These bills were not legislation

to establish what current value means or to displace what Perú's courts had already said it means.

Instead, they were attempts to address the fact that, despite the Bondholders' legal rights and all the results Bondholders were achieving in courts, the Ministry of Economy and Finance continued to resist payment without court judgments compelling it to do so. If you went to the MEF and you said, please pay my bonds, they said, sue me, get a judgment, and then I'll pay.

So, this legislation sought to create simply an alternative, and I stress "optional payment mechanism," so that Bondholders would not have to go to court to obtain payment.

Now, without going any further, that basic fact about the nature of the legislation defeats Perú's argument that this created uncertainty. The fact that Perú came close to but ultimately failed to legislate an additional payment mechanism outside of the Peruvian Courts in no way undermines the clear legal rights that Bondholders had established and continued to enjoy in the Peruvian Courts.

The absence of a legislative framework for paying the Bonds through an administrative process simply does not negate the fact that there most certainly was a legal framework for determining their current value through a judicial process.

And if we do go further in looking into this legislation that took place in 2006 and 2011, it only confirms the widespread consensus in favor of CPI plus interest.

First, you should understand that the process that produced this legislation was an incredibly thoughtful, transparent, and widely representative one that contained all different perspectives. It was a consensus view.

The range of participants involved in the 2006 legislation show that the Congressional Agrarian Commission which led the work on developing that bill formed a task force that included representatives from the Ministry of Agriculture, Bondholder associations, Perú's National Agricultural Convention, the Association of Water Usage, and aides to both the Commission and the Congressman who had presented draft

bills.

The Commission also received comments from, among other entities, the Public Defender's Office, the Central Bank, the Presidency of the Council of Ministers, the Financial Corporation of Development, the Agrobank, the National Superintendence of State Assets and ProInversion.

It also received input from Economic Experts, including the Expert who had assisted the Ministry of Economy and Finance Commission that had existed prior to that, which also endorsed an adjusted CPI method, and the representative from the Perú's National Institute of Statistics and Informatics, which publishes the official Consumer Price Index. The Commission held 15 working sessions, engaged in a real and broad-based effort and ultimately produced a thorough, detailed and sensible 46-page Report.

And that group's assessment was clear, and not the least bit uncertain. The Commission's Report included a comprehensive review of the existing legal framework. It explained that the Peruvian Civil Code required that "current value debts shall be updated in

accordance with the Reserve Bank correction factors" and that "debt instruments expressed in local currency" had to be updated using CPI, which it noted is "the official factor applied by the State to the national accounts."

The Commission also noted that both the judges of the Republic and the Ministry of Agriculture were already applying CPI to the Land Bonds, and it further emphasized that the full updated value of the Land Bonds encompassed not only inflation-updating but also paying interest on the updated debt to reflect the opportunity costs of the debt.

Hence, the draft law that the Commission issued and that Congress passed required that the Land Bonds be updated by applying the Consumer Price Index for metropolitan Lima, using the date of issuance of the Supreme Decree of Expropriation as a reference date for the calculation plus compound interest at a real rate of 6.7 percent.

So, far from creating uncertainty about how current value meant CPI plus interest, this bill and the work that led up to it strongly reinforced that

conclusion.

Now, Perú tries to resist that result by pointing out that President Toledo, in his final days in office, and then Prime Minister Pedro Pablo Kuczynski vetoed the Bond Swap bill. So, it did not become law. That meant, of course, that the Bondholders did not have an optional payment mechanism that the bill would have provided.

But the veto cannot detract from the widespread recognition of the Bondholders' legal rights, which the bill reflected and built upon. You couldn't go into court and plead that Congress had failed to pass a law, and so now we just don't owe a debt.

Perú also makes much of the fact that a single member of Congress introduced a bill on June 27, 2003, which called for dollarization. Unlike the Bond Swap bill, whose provenance I've just described to you, that loan dollarization draft bill never gained the support of anyone other than its author, and even he expressly cautioned that were serious questions about whether dollarization was

consistent with the 2001 Decision.

Dollarization was so far from serious consideration that even the Ministry of Economy and Finance's own commission, which issued a Report in 2004, concluded that valuing the Land Bond debt by reference to the U.S. dollar significantly underestimates the value of the Land Reform debt.

Moreover, if mere draft bills that did not ripen into actual legislation or any measure, during this period five other bills were also proposed to Congress calling for CPI updating plus interest.

And in 2011, when the Congressional Commission made a second attempt to pass legislation creating an optional administrative payment process, it, once again, concluded that the CPI should be used to adjust the value of the Land Bonds for inflation, plus compound interest at the coupon face rate.

Like the proposals and bills that preceded it, the 2001 legislation did not come into law, but it did not create any legal uncertainty about the current value principle, all of the work, all of the studies, and all of the reports, end result that led up to it

confirmed and reaffirmed that principle.

Now, Gramercy, as you know, invested right in the middle of that 10-year period. It accordingly formed legitimate expectations that it would eventually be able to recover payment on its Land Bonds at a value determined by CPI plus interest.

And on the basis of those expectations, it bought nearly 10,000 of the Land Bonds like these, which are two original Land Bonds, that can be found--the photocopies of which can be found at CE-224A, Appendix B, and production number is GCM-16704 and 6834.

Through painstaking effort in Perú, Gramercy bought thousands upon thousands of these Land Bonds.

Now, the abrogation--

PRESIDENT FERNÁNDEZ ARMESTO: These are the originals?

MR. FRIEDMAN: These are two of the originals.

PRESIDENT FERNÁNDEZ ARMESTO: Is there any problem if we have a look at them?

MR. FRIEDMAN: We would be delighted.

MR. HAMILTON: Mr. President, point of order, the Republic of Perú would like to point out this is the first time we have ever seen any of their original bonds. They have never been authenticated. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: That is fair, but us neither, so I do have some--if we can have a look, we will, of course, give them back.

MR. FRIEDMAN: Yes. And I will mention for the record.

(Laughter.)

MR. FRIEDMAN: Yes, I will mention for the record that Gramercy has offered repeatedly to make all of the Bonds available to Perú for its inspection and has been rejected in every one of those efforts.

MR. HAMILTON: Objection. We disagree. We will save our comments for later. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

MR. FRIEDMAN: You will see that there is one that has a number of coupons clipped and another that is pristine and has no coupons clipped.

I digress. But to give you an example.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Give us one second to have a look, and then we come back.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Just a quick factual question. All bonds are for 1,000 soles nominal value.

MR. FRIEDMAN: No.

PRESIDENT FERNÁNDEZ ARMESTO: No. These two are?

MR. FRIEDMAN: These two are. Yes, these two happen to be.

PRESIDENT FERNÁNDEZ ARMESTO: But others have other nominal values?

MR. FRIEDMAN: Others have other nominal values, different amount of coupons, different interest rates. It depends. They were issued in a complex way in the country in a whole series of measures and issuances over a number of years, with variables based also on the nature of the land and where it was located that determined what rights would attach, what value would attach to it.

PRESIDENT FERNÁNDEZ ARMESTO: We give them

back.

MR. FRIEDMAN: Okay.

MR. HAMILTON: Excuse me, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: There too.

(Laughter.)

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

MR. HAMILTON: Can we invite simply to confirm which particular bonds these are, so that we can take note of that.

PRESIDENT FERNÁNDEZ ARMESTO: I think it would be fair that we show them also to the Republic of Perú.

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, let's do the following: Let's make--would it be a good moment now to make a break?

MR. FRIEDMAN: Not--if you would bear with me, I have about five to seven minutes and then a break.

PRESIDENT FERNÁNDEZ ARMESTO: Would it be okay if he finalizes, and during the break you have the opportunity of looking at these two bonds?

MR. HAMILTON: Of course, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: So, on the basis of that, those--what I've just described as the legal framework existing at the time, Gramercy bought almost 10,000 of those. And, as you know, under Investment Law, the abrogation of legitimate expectations violates the Minimum Standard of Treatment.

And an investor is entitled to protection even if its expectations are not based on explicit assurances by the host State, although these are specific, explicit assurances to pay certain amounts. It may hold legitimate expectations based on an objective assessment of the legal framework, so the relevant question is simply whether that framework was stable and predictable.

And the contemporaneous record and the testimony of Gramercy's Chief Investment Officer, Mr. Koenigsberger, confirms that Gramercy made its investment in reliance on just such an objective assessment about how the Courts and also the legislature were working to implement the 2001

Constitutional Tribunal Decision.

A 2006 memorandum summarizing Gramercy's initial due diligence, that's in the record, for example, notes that "the landmark court rulings have reestablished the rights of Bondholders to inflation-adjusted value of their claims." They recognize that--those courts recognize that the claims had to be paid at its real value adjusted for inflation.

And they also observed at the time that Bondholders have won all lawsuits since the Constitutional Tribunal Decision was published, including in the Supreme Courts. The Supreme Court judges have clearly and explicitly said they are now applying the value principle as ordered by the Constitutional Tribunal, using Consumer Price Index for inflation adjustment, plus retroactive interest as required by law.

That's a contemporaneous memo from January 2006, recognizing the objective legal framework that I've just described to you. In other words, Gramercy understood at that time, as it should

have, that the Peruvian Courts at all levels recognized and were enforcing a clear legal entitlement to updated value using CPI plus interest.

And Mr. Koenigsberger has described to you how Gramercy has invested on the expectation that this "clear legal rule" would ultimately be upheld and continue.

Subsequent events that took place after the investment period of 2006 and 2008, some of which I just described to you as well, only further confirmed Gramercy's initial exceptions. Accordingly, Mr. Koenigsberger has testified and will confirm at the Hearing that Gramercy justifiably relied on that objective assessment of a stable and predictable legal framework.

Unfortunately, starting in 2013, Perú completely reversed that basic legal framework under which Gramercy had invested in the Land Bonds. It did so in a way that was not only arbitrary and unjust but also constituted a denial of justice in violation of basic notions of due process, which we will turn to in just a moment.

And I respectfully suggest, Mr. President, that this may be an appropriate time for a break.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. So, it is now 11:14. We will come back at 11:30.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing.

Could I kindly ask the Secretary for a time check?

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

The Claimants have used 1 hour and 15 minutes, and they have 1 hour and 15 minutes left.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, the break was right in the middle.

MR. FRIEDMAN: Perfect. Thank you.

MR. HAMILTON: Excuse me. Could I return to the point of order from before, just to confirm the particular Bonds that had been presented today for the record?

PRESIDENT FERNÁNDEZ ARMESTO: Sure. Have you had a chance to see them?

MR. HAMILTON: We may avail ourselves of the chance to do so, but in the middle of the hearing room is maybe not the moment we would do that.

PRESIDENT FERNÁNDEZ ARMESTO: Okay, but the Respondents do have the right to see these Bonds, and, yes, we should get to the record so that we know.

Maybe let's do two things: First of all, please do give us the number of the Bonds.

MR. FRIEDMAN: Yes. So, the number of the Bonds--there is Number 002231 and 009121. These Bonds, the images of these Bonds, are in the record. They can both be found at document--a very voluminous document called CE-224A Appendix B, and the specific pages on which these images, the images of these Bonds, can be found can be referenced by production number.

The production number for the first Bond--that is, the 9121 Bond--is GMZY-0016704 and 705, the front and the back. And the production number for the second Bond, which is the 2231 Bond, can be found as GMZY-0006834 and 6835.

Again, just--

PRESIDENT FERNÁNDEZ ARMESTO: With that said, thank you for the position. Anyway, I would like that the Respondent has opportunity to see the originals.

MR. FRIEDMAN: Of course. And we did offer them to them over the break, and they did not want to look at them at this time, and we will offer them another opportunity to look at them later.

MR. HAMILTON: We did not speak over the break. We did not know this was going to occur. We will coordinate in an appropriate manner and a respectful manner. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much.

So, we give you the floor back, Mr. Friedman.

MR. FRIEDMAN: Thank you, Mr. President.

I now turn to the second of the four key issues, namely that the 2013 Constitutional Tribunal Order was not a justification for Perú's actions. Instead, it was part of Perú's arbitrary and unlawful conduct in eliminating Gramercy's rights and expectations.

First, although none of us could know the

implications at the time, in hindsight, the 2013 Constitutional Tribunal Order constituted a reversal that changed the legal landscape from requiring the Government to pay current value to permitting it to pay something less than current value. Instead of requiring payment of current value directly, the 2013 Constitutional Tribunal Order purports to balance current value against other undefined budgetary considerations, what they call the principle of balanced budgets.

And, consequently, the Government--and they referred the reference to how much ought to be paid to the debtor itself, which is the State of Perú. And so, instead of requiring Perú to simply pay the current value, as had been done all along, they authorized Perú to do something maybe potentially different than that.

Now, both Justice Revoredo and Professor Castillo confirmed that the 2013 Constitutional Tribunal Order subverts the 2001 Decision and offends the current value principle, the Peruvian law of obligations more generally, and basic canons of

judicial reasoning. Professor Castillo also says that he is nothing short of astonished by judicial reasoning that is clearly designed to reduce the amount of the debt in favor of the State. It is like saying: "We took your land; you are supposed to get compensation for it, but we haven't really allocated a budget for that, so maybe we'll pay you less."

Second, the stated rationale for this reversal rests on two false, unfounded, and, frankly, irrational premises.

The first rationale that the Constitutional Tribunal identified was that CPI is an inaccurate method in times of hyperinflation, and, on that basis, the Tribunal speculated that CPI updating would disproportionately increase the value of the debt. But, as Professor Edwards has explained, and as you'll hear him say at the Hearing, that argument is baseless if you simply do CPI in the right way.

First, during periods of inflation in Perú, prices increased throughout the economy, and baskets of goods and services that underlie the CPIs are rebalanced in any event to account for the

substitution effects that this argument relates to.

But, moreover, even assuming that the CPI statistics from Perú itself during the period of hyperinflation were useless and you couldn't use them for anything, that they had become so disconnected from the economy that they were inaccurate, that would not affect for one second updating the Land Bonds debt through current value, because--through CPI, because, as Professor Edwards will explain, when you update the Land Bonds debt at a period of time like 2020, what you do is you look at the value--what the CPI was at the time of placement of the Bond, which took place only up until 1980, so before the period of hyperinflation, and then you look at the period of time today and whatever the CPI is, and whatever those prices are, there is no question that they are totally accurate and responsible. So, this whole notion that during the period of hyperinflation, people might not have bought bananas, and so the price of bananas doesn't count anymore is simply irrelevant. It's a false issue.

Finally, and this is most astonishing of all,

every one of the Ministry of Economy and Finance formulas in the Supreme Decrees also incorporates Peruvian CPI.

The second rationale is that the payment of the Land Bonds' full updated value would be too onerous for Perú, thus warranting some discount to current value.

Now, the three Justices who endorsed that Opinion based their choice of dollarization on--selected dollarization by saying that the other valuation methods described would generate severe impacts on the budget of the Republic, to the point of making impracticable the very payment of the debt. In other words, they were saying it was so colossal that Perú can't pay the debt if we actually apply current value in the way that it's done routinely in Perú up until now.

Put Professor Edwards has explained that Perú could, and still can, pay the full updated value of the Land Bonds. In fact, Perú's Quantum Experts agree with Professor Edwards that paying the Land Bonds debt would barely dent Perú's finances because it can float

Bonds and pay over time effectively, and it would add almost nothing to its debt-to-GDP ratio. And outside rating agencies that Perú has hired in its own issuances of public debt have confirmed the same thing. And they are not talking about dollarization value through the process. They are talking about true CPI value.

Moreover, the Constitutional Tribunal did not cite any evidence in support of this key central finding, the real basis for them departing and moving away from the current value principle. And, despite being under an obligation to do so in this arbitration, Perú has also never produced a single document substantiating that claim. They have never actually proven to you that they cannot pay the debt at CPI value or that it would cause a budgetary or fiscal crisis. There is not a bit of evidence in that, including from their own Experts, who say the opposite.

Third, the circumstances that led to the 2013 Order likewise fall below the minimum standard and are, frankly, shocking and, I submit, likely

unprecedented in your experience.

Let me explain. In October 2011, the Engineers Bar Association asked the Constitutional Tribunal to enforce the original 2001 Decision. They had sort of had enough. They said: "Okay. We can go through Courts and get our judgments, but why are you dragging us through the Peruvian court system time after time? Can the Constitutional Tribunal just please make clear to the Government that it just has to pay the debt?"

The Constitutional Tribunal took up that case from October of 2011 and deliberated for nearly two years, and by Tuesday, July 9, 2013, the majority of the Tribunal's Justices endorsed a Draft Decision prepared by the Rapporteur, Justice Eto, which used CPI plus interest, consistent with the well-established legal framework that existed at that time and that all the other Courts in Perú had been using. On the same day, President Humala publicly warned the Constitutional Tribunal, whose members were about to finish their term, to abstain from ruling on Land Bonds.

And then, over the course two of days, from Wednesday, July 10 through Friday, July 12, 2013, several meetings took place between members of the Constitutional Tribunal and representatives of the Executive Branch on an ex parte basis. On Wednesday, July 10, Chief Justice Urviola acknowledged that the President's advisors had visited the Constitutional Tribunal in regard to the Land Bonds case. That same day, former Minister of Economy, Luis Castilla, who is here as a Witness by video, and the President of the Council of Ministers met ex parte with Chief Justice Urviola. Then, likely on July 11, the entire Constitutional Tribunal had a meeting with the Ministry of Economy and Finance, and after-hours, President Humala's personal advisor, Roy Gates, who has since resigned under corruption allegations, visited the Constitutional Tribunal to discuss the case with Chief Justice Urviola.

On that same day, July 11, Minister Castilla publicly expressed to the press confidence that the Constitutional Tribunal would act with responsibility and would not harm the country's fiscal balance, and

Minister Castilla was right to be confident on July 11, because he knew exactly what had transpired in his meetings with the Constitutional Tribunal.

MR. HAMILTON: For the record, could I understand the citation to the record for the allegation related to the Minister? Thank you.

MR. FRIEDMAN: I'm getting to it right now.

Justice Eto described these events in sworn testimony before Perú's Congress. The Constitutional Tribunal and the Minister of Economy and Finance held what Justice Eto described as a historic meeting as part of what Justice Eto described in terms that, I must say, puzzle anyone who has faith in separation of powers as an interinstitutional relationship dealing with an interinstitutional issue.

At this historic interinstitutional meeting, former Minister Castilla himself told the Constitutional Tribunal Justices that paying the Land Bonds using CPI could cost Perú USD 18.5 billion, and USD 18.5 billion, as Justice Eto put it, was a stratospheric amount.

According to Justice Eto, this was all

conveyed during just that one interinstitutional meeting, without even the benefit of a written Report, without affording the Parties to the case any opportunity to comment on this exchange, and apparently without any interrogation of the information that the Minister provided.

This tactic had its intended effect. Because of that meeting, the Constitutional Tribunal backed away from the actual current value principle and the CPI method that they were about to endorse, and instead decided to cut it down with what Justice Eto described in his testimony before Perú's Congress as "the principle of pro-government interpretation," in which every Constitutional Tribunal must favor the State and not the litigant in budgetary matters.

But, as we now know, on the basis of the Ministry of Economy and Finance's own documents, information provided to the Constitutional Tribunal was false and baseless. The Ministry never prepared any estimates, calculations, or studies to back up this $18.5 billion figure. But even that remarkable tale of making up numbers, as far as we can tell, is

only half the story in this remarkable sequence of event.

Now, these all became known only to Gramercy much later, but they make clear exactly why Gramercy feels so aggrieved in this case. It turns out that on Friday, July 12--so, right after the Statement by Minister Castilla about his confidence that the Tribunal would act responsibly--on Friday, July 12, Chief Justice Urviola provided Justice Eto with an alternative Draft rejecting CPI in favor of dollarization.

And on Tuesday, July 16, 2013--so, the following--after the weekend, Justice Eto submitted Justice Urviola's Draft Order to the other Justices for discussion as if this were his own. But this last-minute change of position away from the CPI method that the Tribunal had built up to over two years, and changed in just days, had grave consequences for the Tribunal's deliberation and due process.

First, Justice Alvarez signed the 2013 CT Order without even really knowing its implications.

Justice Alvarez testified before the Peruvian Congress that he remembered that he--

PRESIDENT FERNÁNDEZ ARMESTO: It is impossible--it is impossible to hear you, to read this, and you must--Mr. Friedman, we will give you some more time if you need it, and--we will give you some more time, but it is--I cannot follow it.

MR. FRIEDMAN: Okay. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: It is important that I can follow it, and it is just--you jump from one document to the next, and it goes too fast. And I'm sure that the relief from our court reporters will be high if you go somewhat slower.

Thank you.

MR. FRIEDMAN: Yes. So, Justice Alvarez's testimony was that they were discussing the--they were deliberating on that Tuesday, July 16, and he says that he withdrew because, in the end, the discussion was no longer on the Merits, whether it was right or not. It was on the formula for payment, a technical issue of whose consequences we were at the time unaware.

So, there were two possibilities, and as most of us were constitutional lawyers, the truth is that, at the time, we were unsure of the consequences of either of them, so we withdrew and Liquid Paper was used. As a result, he and Justice Urviola endorsed Justice Eto's alternative Draft that had this bespoke unusual dollarization approach.

And the second implication of this haste that Justice Urviola was imposing is that Justice Mesía refused to subscribe to the new Opinion. Instead, he requested, as was his right, 48 hours to review the new Draft and write a dissenting Opinion. But Chief Justice Urviola denied Justice Mesía's request, disregarding the Constitutional Tribunal's own procedural rules.

Instead, Chief Justice Urviola and others doctored the existing draft. Whiteout correction fluid was applied to the original signature of Justice Eto, as well as to the signature blocks for Justice Alvarez and Urviola. And the sentence at the end, the decretal sentence at the end of the Judgment, had originally had the language that said: "For these

reasons, the Constitutional Tribunal, with the authority conferred on it by the Political Constitution of Perú, resolves" for CPI updating. But that was whited out, and in its place was typed the words: "For these reasons, my opinion is for," so as to turn what had been the Draft majority opinion into a forged dissent by Justice Mesía. And then, armed with that forged dissent--you know, the Decision now--Chief Justice Urviola concluded that there was now a 3-3 tie on the court and, consequently, he was entitled to issue a casting vote, which he did in favor of dollarization, and issued that Decision, along with the forged dissent and two other dissents, on that same day. That is how the 2013 Constitutional Tribunal Order came into existence.

Now, I submit to you that this is, by any stretch of the imagination, a remarkable story of impropriety: Secret ex parte meetings, materially false information, forgery of official documents, denial of the Parties' right to due process, violations of the Court's own rules, and a breakdown in the separation of powers.

Perú does not deny the majority of those extraordinary facts, nor could they. That misconduct has been the subject of multiple criminal proceedings and a Congressional investigation in Perú, and proved by the forensic report from the Lima police department. Instead, Perú seeks to downplay its misconduct by stating that the use of whiteout is part of the Constitutional Tribunal's habitual practice in order to make formal corrections without varying Decisions.

Now, we have some reason to question that factual description of the Tribunal's practice. Justice Alvarez seemed to testify that whiteout is used, essentially, to prevent Justices from changing their minds. What he said is he can remember there were some circumstances when whiteout was used, and, he said, why? Because it is preferable not to waste the signatures that are already on a Draft Opinion, because if we made another one again, remember that a high-ranking Tribunal is usually composed of public figures who are often older with very strong academic egos. Therefore, it is often the case that, if the

draft is passed round again because someone has left or withdrawn, the same number of signatures may not be obtained and, because of that, Liquid Paper is used.

In any event, the 2013 Constitutional Tribunal Order was definitely not a case where whiteout was used to correct some minor clerical error; a typo, a misspelling, or even a mistaken calculation. Here, it was used to transform a majority Opinion into a forged dissenting Opinion, violate the Court's own rules, and fabricate a tie.

Now, these concerted actions between the Executive Branch and certain Constitutional Tribunal members fall below the minimum standard, but through them, the Ministry of Economy and Finance had finally achieved its long-held ambition, which is subverting current value and paying as little as it could possibly get away with.

The fourth aspect of this dimension of the case is that, rather than take the opportunity to redeem itself and make things right, the Constitutional Tribunal later chose to further violate Gramercy's and other Bondholders' rights through

subsequent Decisions.

In the August 2013 Resolution, the Tribunal made the unusual dollarization method contained in its July Order mandatory for all Bondholders and said that claims on the Land Bonds had to be channeled through the MEF's exclusive procedure, which wasn't even created at that time. Then, in November 2013's Resolution, the Tribunal disclaimed any responsibility for how it had chosen the methodology would work, stating that the Bondholders' requests for clarification were premature, and that the formula was a matter for the MEF to work out by itself--in other words, the debtor could come up with how it was going to pay.

In March 2015, after the Ministry had issued its First and Second Supreme Decrees, the country's largest Bondholders organization at the time, joined by 300 individual Bondholders, including Gramercy, petitioned the Constitutional Tribunal over the Supreme Decrees. This petition was accompanied by thousands of pages of supporting material, including Expert Reports from Deloitte and Perú's former

Minister of Economy and Finance, Ismael Benavides, as well as international and local Experts.

Yet, after just three weeks, the Constitutional Tribunal dismissed it summarily, stating again that the challenges were premature, even though they showed what the MEF's Supreme Decrees would produce in terms of value if you ran Bonds through them and, astonishingly, the Constitutional Tribunal said that these 300 Bondholder petitioners had not provided any evidence of social representativeness.

Even today, the validity of the 2013 Order is still under a cloud, and not just from these proceedings, but within the Constitutional Tribunal itself. As recently as July 2019, four Justices declined to admit a motion to retract the 2013 Order on procedural grounds. This time they said that the challenge was too late, whereas before they had said it was premature. But three Justices joined in a scathing dissent that leaves no doubt as to its invalidity, where they say that the 2013 Order is void because it denaturalizes and fails to comply with the

seminal Decision of 15 March 2001.

Now, the 2013 Constitutional Tribunal Order and the subsequent rulings do not excuse Perú's liability. Quite to the contrary, we submit, they are part and parcel of Perú's Treaty breaches and a basis for that liability.

With that, I now turn to the third of the four key issues, and that is that the Bondholder Process that the Ministry created is not a fair or legitimate program to update the value of Bonds. Rather, it was intended to and does, in fact, destroy value so substantially as to be expropriatory and was carried out in ways that fell below the minimum standard of treatment.

In this Arbitration and elsewhere, the Ministry has touted this Bondholder Process as one that imparts value on the Bonds and that established a clear legal framework and is a transparent, detailed, carefully regulated procedure. These claims are false.

In creating the process, the Ministry badly bungled the job, promulgating a series of arbitrary

valuation formulas, failing to abide by basic requirements of Peruvian administrative law, and ignored important elements of the Tribunal's own Orders. The process has been a failure, and far from creating value, it unjustly destroys it.

First, the valuation formulas that are at the heart of the Supreme Decrees are irrational and arbitrary. Now, we submit to you that a Government act is irrational if it is not logical or reasonable, it makes no sense, or is clearly wrong, and it is arbitrary if it is based on random choice or whim rather than reason, or if the Measures are taken for reasons that are different from those that are put forward by the State.

The Ministry's Decrees have precisely those characteristics. Now, by now, it should be beyond dispute that the Ministry's original 2014 formulas--those are the formulas in place when Gramercy commenced this Action--are irrational and arbitrary. Professor Edwards demonstrated that the formula has no basis in economics and yields arbitrarily low valuations that are entirely

disconnected from the true, updated value of the Land Bonds. And just think about some of the characteristics of those Decrees and the formulas in them. They absurdly valued all of Gramercy's Bonds at less than $900,000--a sum, just by reference, that is 182 times smaller than what even the Ministry's Optional Dollarization Decree of 2000 would have provided for those Bonds.

They reduced--the formulas in them reduced to the mathematical impossibility that X equals X squared. They yielded parity exchange rates that could not be reconciled with actual exchange rates. Even the Ministry has now abandoned them in its subsequent Decrees, and Perú has not offered anyone to defend their substance in this Arbitration.

Now, the Witnesses and Experts that Perú has tendered on the subject of the Supreme Decrees are either silent about or disclaim responsibility for the formulas. Former Ministry Castilla purports to stand by the Ministry's decision-making process, but he cautions that he was "unaware of any issue related to the Decrees."

Dr. Wühler purports to opine on the legitimacy of the process, but he makes clear that he makes no assessment of the formula used to calculate current values. And Dr. García-Godos purports to vouch for the reasonableness of the Decrees, but he does not provide an opinion on technical, mathematical, or economic matters. So, Perú has brought you no Witness who will vouch for the validity of the formulas in the Decrees.

Moreover, documents Perú was forced to disclose in this Arbitration have revealed that these formulas were never even intended to carry out the Constitutional Tribunal's 2013 Orders, or even seriously evaluated by the Ministry prior to founding the entire Bondholder valuation process on them.

It turns out that the 2014 Supreme Decree formulas were simply copied and pasted from slapdash work of a Peruvian economist hired two years previously for a different purpose. On March 31, 2011, while Congress was working on Bondholder swap legislation, the Executive issued a Decree intended to "generate greater public savings" which authorized the

hiring of a financial Expert to produce a Report on the Land Bonds, and the Ministry hired a Peruvian economist named Bruno Seminario to come up with the alternative valuation approaches that would prioritize not true current value, but what the Ministry called in his contract "fiscal sustainability."

In short, they hired him to come up with ways of paying less than current value. He certainly wasn't hired to help the Ministry implement the Constitutional Tribunal's 2013 Decrees, because this was--that was still two years in the future.

Now, the Ministry has never explained or produced documents to show how or why, in 2014, when they were putting together their Decrees, they decided to use Seminario's work, which had been prepared earlier, or whether anyone at the Ministry even evaluated its substance, or why they chose to take from his work, which included six formulas, the one that yielded the lowest value, or what, if any, other formulas they considered and rejected, or why they were prepared to establish national policy on what they now say was an exercise designed solely on

theoretical grounds and that the Ministry apparently did not even test on a single Bond.

Moreover, Seminario's think piece was never a serious study that could form the basis for important Administrative Acts and national policy. The Ministry paid him 33,000 soles--about $10,000--for three weeks of work. It apparently took him all of two days to jettison, on a speculative and inaccurate basis, the CPI plus interest framework that the Courts, the Agrarian Commission, and the Congress had repeatedly endorsed, and his hasty work is riddled with problems and errors.

Despite not bringing Seminario here as a Witness, Perú has offered no justification for its 2014 valuation formulas other than its reliance on Seminario.

The Ministry's subsequent conduct in dealing with the valuation formulas is even less defensible, for the Ministry then tried dishonestly to cover up the problems with more equally irrational and arbitrary formulas.

If the Ministry had not known about the

unreliability of Seminario's work prior to publishing the January Decrees, it learned about it soon thereafter. Gramercy pointed out some of the formula's flaws as early as April 21, 2014, and ABDA, that Bondholder organization, exposed some of them in its March 2015 application to the Constitutional Tribunal.

Eventually, after receiving some proposed precisions from Seminario and a quick review of those precisions by another economist named Carlos Lapuerta, in February 2017, the Ministry published, with no prior notice or consultation, a new Supreme Decree with what it called a "clarification" of the original valuation formulas.

This so-called "clarification" included a statement--it was hardly a clarification. It was an obfuscation. It included a statement in one of the clarifications that, in their formula, U.S. CPI is expressed in soles de oro.

That clarification simply makes no sense. It is as arbitrary and irrational as the original formulas were, for, as Professor Edwards has

explained, the U.S. CPI is, by definition, a price index. As such, the U.S. CPI cannot be expressed in soles de oro, or, indeed, in U.S. dollars or any other currency. It would be like expressing the number of people in this room in degrees Celsius. It's irrational.

Trying to make sense of this clarification, Professor Edwards demonstrated that it could indicate at least six equally possible formulas. Those formulas yielded a range of value for Gramercy's Bonds--a range--of over $2.5 billion. In other words, even the World Bank's former chief economist for Latin America, Professor Edwards, couldn't make sense of the Ministry's so-called "clarification" in its formula.

Given that range of values, Gramercy wrote to the Ministry with a most modest request, that the Ministry at least disclose the actual valuation formula that incorporated this so-called "clarification." But Perú never responded.

Then, in August 2017, the Ministry did it again. As before, the Ministry refused to acknowledge the fundamental problems in its valuation formulas and

to engage with Bondholders. Instead, what it did was, unilaterally and without consultation, issue yet another Decree containing what it called "clarifications to specific variables of the mathematical expressions." But the Ministry was, once again, not being quite straight on that. These were not mere clarifications. The August 2017 formula was an entirely new formula which purported to rely on a data series published by the Central Bank that the Ministry had never mentioned before.

Professor Edwards testifies that this formula constitutes a radical departure from its predecessors. It's not a clarification. It's new. And this unprecedented formula not only has substantive problems of its own, but it is, if anything, even more arbitrary than the Ministry's prior attempts, because with the prior attempts, the Ministry at least has described some basis, however bizarre and unsupportable, in Seminario's deficient paper and its hopeless corrections, but the Ministry's August 2017 formula cannot claim even that provenance. There is literally not a single piece of paper in the record

that justified that formula. No explanation of where it came from, who prepared it; no articulation of the reasons for choosing it or considering other formulas; and, yet again, no Witness to defend it. It appears from the records in this case to have literally emerged out of thin air, fully formed, on August 19, 2017, the publication date of the Decree.

Now, I submit to you that this is the essence of arbitrary and unjust conduct. In the words of the Lemire and Waste Management Tribunals, Perú acted for reasons that are different from those put forward by the decision-maker and it engaged in conduct that is arbitrary, grossly unfair, unjust, or idiosyncratic, and acted with a complete lack of transparency and candor.

Second, the Supreme Decrees were issued in a manner that violates central tenets of Peruvian law. You will hear from Professor Bullard, who is a prominent Peruvian lawyer and academic and who helped create Perú's administrative jurisprudence on the validity of executive regulations. And he points out that, under Peruvian law, every act of authority must

comply with basic principles of legality and reasonableness, which have certain just core elements.

The legality principle requires discussing and rigorously evaluating alternative regulations, consulting with the public on draft proposals, and assessing the regulations' compliance with procedures.

And the reasonableness principle requires that an act, including a regulation, be adequate, be necessary, which means it must be the least restrictive of private rights, and proportional. In other words, the benefit of the regulation must not outweigh the cost.

These principles are so vital to the accountability in Perú's system that they also require government agencies to produce a report showing compliance with them.

But in this case, as Dr. Bullard has shown, the Ministry's regulations failed to meet every one of these fundamental requirements.

For example, as we saw before, none of the Decrees explains the valuation formulas or how they're supposed to achieve current value or what other

alternatives they considered. The Ministry didn't publish a draft of the Decree for comments, preventing stakeholders from expressing views and maybe even corrections. And the Ministry's legal office didn't even properly scrutinize the draft decree. In fact, it couldn't have done so, as it approved the draft just hours after it received it, according to the timestamps.

Moreover, of course, there is no regulatory report published, which is a complete violation of Peruvian law.

The illegality of the Supreme Decrees under domestic law, is, of course, a distinct question from their legality under international law, but the fact that they also violate Perú's own internal procedures and would be void under domestic law, certainly is an element that indicates their inconsistency with the Minimum Standard of Treatment that the Treaty imposes.

Third, and this is very strange, that the Supreme Decrees are not even what the Constitutional Tribunal ordered or thought it was ordering because the Ministry took every opportunity to reduce value

wherever it could. So, in trying to exploit the 2013 Decrees, the Ministry just created all kinds of other traps that weren't required by the Tribunal Order. So, we've already seen how they came up with several instances of arbitrary and inexplicable value-destroying formulas for parity exchange rates.

Additionally, although the Tribunal--the Constitutional Tribunal instructed the MEF that it should inflation-update using--converting to dollars, and then using what it said was the interest rate of United States Treasury Bonds, the Ministry took that as an invitation to use the yields on one year U.S. Treasury Bills, rather than 20- or 30-year U.S. Bonds whose tenors better correspond to the Land Bond Debt.

And the Ministry altogether ignored an even more important requirement, which was to pay interest. Peruvian law requires it, and you will recall that the Constitutional Tribunal ordered the Ministry to issue a Supreme Decree to quantify the debt according to the method it specified, and it continued: "This procedure must show the updated amount of the Land Reform Debt Bonds plus the interest."

The Tribunal thus ordered that interest would be attached also to the updated amount, as was fair and required under Peruvian law. But this aspect of the Constitutional Tribunal's July 2013 holding, was reiterated by Justice Blume of the Constitutional Tribunal in 2015, again observed that the Tribunal had ordered the Ministry to pay the full updated amount, plus interest, and this is precisely how the Peruvian Supreme Court has interpreted the 2013 Decisions.

In October 2015, October 2016, October 2017, and, again in April 2018, the Supreme Court held that under the 2013 Constitutional Tribunal Order, Bondholders should receive first the updated value of their Bonds, calculated using dollarization, plus the interest rate of U.S. Treasury Bonds, and second--second, compensatory interest at the face coupon rates of 4, 5, or 6 percent.

This is a massive omission from the Perú's Bondholder Process because you can imagine the interest on Bonds over 40 years is rather substantial. In fact, the majority of value is in the interest.

Now, the other way that you can understand

about--that this was a real requirement of the Constitutional Tribunal is that it's evident that the Constitutional Tribunal considered that the Land Bond Debt was very large and that it would be costly to repay even under their unusual dollarization approach.

Justice Eto, in his testimony to the Peruvian Congress, told the Congress that the dollarization method that the Court required would require payment to Bondholders of USD 2 billion. And that was why--if you understand that's their thinking, you can go back and look at the Decision, and you can understand why they went to such great lengths in that Decision to talk about options for the Government and how to pay that amount, including potential payments-in-kind by giving them land, new Bond issuances, a payment schedule over eight years, all kinds of freedom to come up with payment mechanisms, because they thought the number was going to be big.

Yet, the figures that Perú's Vice Minister of Economy, Ms. Betty Sotelo, who is a Witness here, has submitted, show that the Bondholder Process is actually paying tiny amounts, and over all this will

be a mere rounding error for Perú. After more than five years, Perú has paid a grand total of 1.5 million nuevo soles, the equivalent of approximately USD 440,000. After five years. $143,000 in cash and $297,000 in new Bonds. That alone is far less than the advances on costs in this Arbitration.

Furthermore, based on the data that Perú has made available, it appears the total payments to all Bondholders through the Bondholder Process will be trivial, even in the aggregate. Let me explain.

So far, according to the Ministry's own data, the Ministry has submitted Bonds with a face value of 36 million soles de oro to its updating process, its actualization, its process of determining what's that actually worth under our formula. And the result of that has been an updated amount, for those 36 million soles de oro face value, of 7 million nuevo soles.

PRESIDENT FERNÁNDEZ ARMESTO: So to get these numbers straight, the first one is the addition of the 1,000 soles face value of each of the Bonds--summing up all the existing Bonds--the face value of all existing Bonds?

MR. FRIEDMAN: That have been submitted--yes, that have been submitted through the actualization stage of the process. You recall their process has four phases, and towards the end they get to the phase where they say here's what value we would give you. And that's called actualization.

And in that phase, 35 million face value of Bonds, of all different denominations, have gotten that far in that process.

PRESIDENT FERNÁNDEZ ARMESTO: But remind me, there was like 10 percent went to actualization. I mean, only a small percentage of Bondholders did actually go to actualization.

MR. FRIEDMAN: So a very small number got to--we'll come up to--

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: A very small number got--there is another stage after actualization, which is then you have to also say, okay, now you've told me the value, and now I need to be paid. And then you have to negotiate over payment.

A very, very small fraction of people have

gotten to that final stage. Only 13 Bondholders have actually been paid after all this time. But we use actualization for this analysis because there are more people at that stage of the process. And so this face amount is bigger than the face amount that's already been paid.

In any event, the Ministry has assigned a value to this original face amount of 35 million soles de oro, 36 million, of about 7 million nuevo sol. And on that basis, we can calculate kind of the average for each soles de oro on face value. And so for each 5 soles de oro in face value, the Bondholder Process has yielded an updated amount of basically 1 nuevo sol. In other words, it's about a little less than 20 percent correspondence.

And now we also know the total aggregate face value of the Bonds that have been authenticated to date is 205 million soles de oro. The total population in the Bondholder Process is 205 million.

So, if we simply apply that same ratio of 19.85 percent, we can estimate that the total aggregate updated amount will be about 41 million

nuevo sol. At today's exchange rate, that is less than USD 12 million.

Now, we don't have the data to know whether the rest of the Bonds in the process are like the Bonds that have already actualized. We asked for that data, but it wasn't provided to us. But assuming that it is, and we don't have any reason to doubt it from the testing that we've done on that information, according to Perú's own numbers, Perú would exhaust all the Bonds in the Bondholder Process for less than $12 million.

That is anything but the sort of amount that the Constitutional Tribunal had in mind and which might warrant invoking the principles of balance, sustainability, and budgetary progressiveness or that would be financially impossible to pay in a single sum, as the Tribunal had in mind.

MR. HAMILTON: Excuse me. Just to confirm, the data that you just demonstrated, that's not in the record. That's something that you've calculated up for today?

MR. FRIEDMAN: From R-1062, which is

Ms. Sotelo's--exhibits to Ms. Sotelo's Report.

MR. HAMILTON: Right. But these calculations have never been put before Perú before. This is being presented for the first time today; is that correct?

MR. FRIEDMAN: That is correct.

MR. HAMILTON: Thank you for confirming.

MR. FRIEDMAN: So we submit to you--

PRESIDENT FERNÁNDEZ ARMESTO: To understand that, the total population of Bonds, which has been submitted to authentication, is 205 million soles in face value.

MR. FRIEDMAN: That have been authenticated, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Submitted to authentication. That is the gross submitted to authentication. Out of those, 35 million have actually been now updated--at the rate of from 35 to 7, at the rate of 20 percent. And you then take that rate and apply it to the total population.

MR. FRIEDMAN: Yes, exactly.

MR. HAMILTON: Mr. President, just to confirm, we've never seen any of these numbers before.

They have made them up for the argument. Thank you.

MR. FRIEDMAN: Well, they have seen--the numbers come from Perú. The data comes from Perú. The calculations are a demonstrative on this slide.

MR. HAMILTON: And they are new. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sure you'll have the opportunity to go with them through with the Experts to see exactly what they imply.

MR. FRIEDMAN: And it's certainly the case that Gramercy requested calculations by the Government, by Perú--in this Arbitration, has requested calculations of what they calculate the debt to be, and they haven't produced any documents. So, maybe they have never done this calculation.

In any event--

PRESIDENT FERNÁNDEZ ARMESTO: To be very objective, assume that only 10 percent of the Bondholders have actually gone into this process. Then the total Bonds would be 10 times more. It would be 120. The payment of the total outstanding Bonds would then be 120 million.

MR. FRIEDMAN: Yes, that's correct, if you

assume that all the Bonds existing in the world, yes, that's right. It would be about 120--maybe even a little more, 140 million, I think, by doing that ratio, which is a lot less than 2 billion and not the kind of thing that would indicate a budgetary impact that would be financially impossible for Perú to pay.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

MR. FRIEDMAN: Next, the Bondholder Process also unjustly deprives Bondholders, including Gramercy, of current value. And, therefore, it's hard to understand how Perú can contend that this process actually imparts value, what they say to Bonds that are worthless on their face, or they establish, through this process, a clear legal framework for payment of the Bonds.

The process does not create value. It destroys it in a way that is expropriatory and violates the Minimum Standard of Treatment. And it should thus come as no surprise that the participation rates in the process--and this gets to the point you were just raising, Mr. Chairman--the participation rates have been abysmal.

If the process actually created value in a great legal framework, Bondholders would run to it. They would have said, great, we'd love to submit our Bonds. And this would have been a great way of attracting people to Peru in solving this problem.

But that hasn't happened. As Professor Olivares-Caminal's calculations, based on the data Peru itself has provided show, the process attracted only about 8 percent by face value of the outstanding Bonds, which is the point the President was just making.

If a debt exchange attracts less than 90 percent of Bondholders, it is often considered a failure. So, an 8 percent rate is just appallingly low. The bottom line is that this Bondholder Process is not solving Perú's Land Bond problems.

Now, Perú has insinuated that this low participation rate is due to Gramercy's negative publicity about the process. But Perú has not even attempted to prove any such cause and effect. Indeed, Gramercy is not alone in criticizing the process. There are many critics of it in Peru. And, moreover,

there is a lot of negative news that they've generated themselves. Gramercy didn't make up the White-Out Scandal. It learned about it from the press, just like everybody else.

The more likely process of why you have these appallingly low rates is that it's just so value-depriving. Gramercy has presented to you, as you know, the Witness testimony of two Bondholders who participated in good faith in this process, only to be kind of devastated by it.

First, the Tribunal will recall the testimony of Ms. L whose family farm was expropriated in '73, creating a major financial blow to her family and leaving them in very precarious conditions. It took more than four years for Ms. L to receive a valuation of her Bonds, only to find out that Perú was only offering her the equivalent of USD 67--$67, which is less than a dollar for each of the hectares of land that were left unpaid.

As she's testified, by any definition of value, the Ministry's valuation is absurd. She challenged that resolution, but the Ministry dismissed

her appeal. After completing the Bondholder Process, Ms. L said she felt completely betrayed and deceived by her own Government.

Mr. S has suffered a similar experience. He's a 91-year-old agronomist and father of 10 children who has testified that when Peru expropriated his farm in 1975, he and his family were left with nothing. He waited three years to receive a valuation from the Ministry and was crushed to learn that it was only the equivalent of USD 240. As he says, he could not believe the Ministry was offering to pay so little after three years and eight months of having started the administrative procedure and more than 40 years since he had lost his land.

He called the offer to pay him $240 a joke and pointed out, of course, that with that little money he would not be able to buy back a single hectare of the 56 hectares the Government had expropriated.

Like Ms. L, he appealed the valuation, but, again, his appeal was dismissed.

Sadly, the experience of these two

Bondholders is consistent with the experience of others, as we've pointed out in the Briefs. So, the fact that Perú touts this process as consistent with international standards just defies reality. The process is no defense to Perú's conduct. It is another violation of its obligations under the Treaty.

With that, I turn to the fourth and last set of facts I want to discuss, and that concerns Gramercy's ability to vindicate its rights to current value before the Peruvian Courts.

You will recall that in 2004, the Constitutional Tribunal upheld the 2000 Emergency Decree because it was "merely an option" and affirmed the Bondholders' rights to go to court to obtain judgments on their Bonds using CPI-updating, plus interest. And hundreds of Bondholders did that and were availing themselves of this right.

As Mr. Koenigsberger has testified, when Gramercy made its investment, it best legitimately believed that if Peru failed to pay the Land Bonds, Gramercy would be able to initiate or participate in proceedings in Peruvian Courts to demand fair

compensation.

Prior to 2013, that is what Gramercy did. In 2010, it filed a series of conciliation requests, which are precursors to filing lawsuits. And then in 2011, when Perú refused to meet and conciliate, it reopened seven Court cases. In one of them, as I've mentioned before, the Pomalca case, the Court- appointed Experts assessed the value of 44 of Gramercy's Bonds at roughly USD 250 million. That valuation used CPI to update the principal, plus compound interest.

As Mr. Riehl will explain later this morning, Professor Edwards has shown that if the same method was applied to Gramercy's entire portfolio, the portfolio would be worth about 840 million as of May 2018. However, the August 2013 Tribunal resolution, coupled with the value-destroying January 2014 Supreme Decrees, deprived Gramercy of the right to obtain current value in Peruvian Courts by imposing this Ministry's grossly defective and value-destroying formula.

That formula, at its best, at its most

generous, would have valued those same Gramercy Bonds at less than 4 percent of the value. They would have had, through a normal court process, a 96 percent haircut, and more if you look at the original 2014 Decrees.

As Mr. Koenigsberger has explained, following these measures, Gramercy realized that proceeding further in Peruvian Courts had been futile. Either the Government could assert the Supreme Decrees as a basis, or the Court would on its own, or Perú would use them as a basis to excuse enforcement.

Now, Perú contends that the Bondholder Process includes both judicial and administrative appeal and others are potentially available. Yet, these potential remedies are fictional. For example, as we've shown, the contentious administrative action available under Peruvian law does not allow a Claimant to challenge the validity of the valuation formula or the mandatory process by the Supreme Decrees. It simply allows you to challenge that they apply their own Decrees correctly.

In any event, the idea that a party has a

theoretical right to try some extraordinary challenge in Peruvian Courts, like amparo they cite in their papers, is far different from actually having available the Court remedy that was there all along.

As you know, amparo is an extraordinary remedy that requires a showing at a very high standard, and so that alone would disqualify it. But look at the practical experience of the Bondholders who tried that very route.

Both Ms. L and Mr. S, the two Bondholders I mentioned before, both attempted and failed to secure relief through these very same amparo procedures in Peruvian Courts.

So, with the August 2013 resolution and the Supreme Decrees proved to deprive Gramercy of the basic form of effective means to assert its claim and enforce its right in local courts, which, as we've explained, had consistently vindicated Bondholders' rights to CPI-updated value, plus interest.

Before concluding this merits part of the opening, I'd like to invite the Tribunal to step back for a moment and reflect upon the issues that Perú

raises which are simply not relevant. You have heard a lot of about what Perú calls aggravation during the course of these proceedings. These allegations are legally irrelevant have no bearing on any claim or defense in this case. They're just prejudicial.

They are also totally unfair. As we have just shown, Perú has been, in a word, deceitful about how it dealt with the Land Bonds for over a decade. So, it was perfectly legitimate for Gramercy to try to shine light on Perú's so-called "process," especially after the events of the White-Out and other things that came to light for the first time.

Moreover, while Perú seeks to demonize Gramercy and its people as vultures who engage in bad practices and try to terrorize a poor helpless State, consider what the evidence actually shows. For more than a decade, Mr. Koenigsberger and his colleagues at Gramercy have been the ones reaching out to Perú trying to create a fair settlement process for all Bondholders, not just for Gramercy, involving--and that settlement process could have involved negotiated discounts to value, Bond swaps, so payment over time,

reinvestment in Perú of the proceeds from the Bond swaps. And every time--every time, Gramercy has had the door slammed in their face.

And consider also the people on whose behalf you are being told this story. Many of the senior government officials involved in the Land Bond Debt during this past decade are, even as we sit here today, subject to criminal charges or investigation. These officials include former presidents Toledo, García, Humala, and Kuczynski. They include former Chief Justice of the Constitutional Tribunal Urviola, who was brought to Congress on the idea that maybe they'd lift his immunity from prosecution, and a criminal prosecution underway against the Tribunal's Chief Secretary Oscar Díaz for the White-Out.

It also includes the former advisor to the President--President Humala--Roy Gates, who we saw visited the Court during that critical week in July. And, of course, it involves Perú's main fact Witness in this Arbitration, former Finance Minister Castilla.

The real story is that the Ministry has tried to subvert its country's own constitutional norms for

a decade. Since 2001, the clear legal rule in Perú was that as a constitutional matter, the Land Bonds had to be paid not at nominal value but at current value. That's what the Civil Code said, and the Court applied that to the Land Bonds.

And, yet, throughout this period, the Ministry has continued to argue in courts, in resisting Bondholder lawsuits, that the Bonds should be paid only at nominal value, as it did in May 2001, for example, just months after the Tribunal had ruled the opposite.

And the Ministry continued doing that in recent cases, recently as 2016, and probably even today. They're going to courts in Perú and saying that current value doesn't apply to the Land Bonds, that they're nominal obligations.

Now, these facts, we submit, lay bare the true motivation of Perú and its Ministry of Economy and Finance. There was never an effort to try to pay Bondholders true current value. And since 2013, until the present day, Perú went even further and tried to wipe out that debt for a pittance, and that violates

the Treaty.

With that, I would like to turn now to remedies and ask Mr. Riehl to the stand.

MR. RIEHL: Thank you. Mr. President, could I ask your indulgence in getting a time check, please, since there was some interchange?

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Could we ask the Secretary.

SECRETARY PLANELLS-VALERO: Claimants have 27 minutes and 40 seconds remaining.

MR. RIEHL: Thank you very much.

SECRETARY PLANELLS-VALERO: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: I would rather you go slowly and not very fast. If you need five or ten minutes more, that is better than if you go very, very fast.

MR. RIEHL: Thank you very much, Mr. President. We greatly appreciate that.

PRESIDENT FERNÁNDEZ ARMESTO: We will, of course, do exactly the same with the Respondent.

MR. RIEHL: Mr. President, Members of the Tribunal, I will now turn to the third part of our

presentation today, the remedy to which Gramercy is entitled.

As Mr. Friedman described, Perú's Treaty breaches stripped Gramercy of its entitlement to be paid the full updated value of its Land Bonds. Instead of honoring Gramercy's entitlement to that value, Perú eviscerated it.

Perú imposed a mandatory Bondholder Process that would have paid Gramercy less than a thousandth of a percent of the true value of its Land Bonds.

Perú must now make Gramercy whole.

Under the applicable full reparation standard, Gramercy is entitled to the full updated value of its Land Bonds. That value was USD 1.8 billion in May 2018, as Professor Edwards calculated in his Reports. It has increased since then as inflation has continued in Perú and as Land Bondholders have missed out on additional opportunities to invest the unpaid principal.

In the alternative, Gramercy is entitled to what it would have received if it had been allowed to vindicate its rights in Perú's Courts. That's the

CPI-updating, plus interest, that Mr. Friedman described.

Professor Edwards calculated that Gramercy's Bonds were worth USD 842 million in May 2018 using that approach, which was actually applied to some of Gramercy's Land Bonds in the Pomalca case. Like the full updated value, that $842 million value has also continued to increase over time.

Finally, although Gramercy does not agree with Perú that Fair Market Value applies here, even by that measure, Gramercy's damages would be far higher than the price it paid for its Land Bonds more than a decade ago.

All of the evidence contemporaneous with the Constitutional Tribunal's 2013 Order shows that Gramercy's Land Bonds had a Fair Market Value of more than USD 500 million immediately before Perú began the conduct that breached the Treaty.

I will discuss each of these remedies, in turn.

First, though, I will address the applicable legal standard. I will be brief because Perú has not

disputed that the customary full reparation standard applies here. Perú argues for Fair Market Value as the Measure of damages, but Perú has not disputed that Chorzów Factory articulated the proper legal standard that a measure must meet.

Indeed, there is no reason to depart from the customary international law standard in this case. Under that standard, as described in Chorzów Factory, Gramercy is entitled to an award that will, as far as possible, wipe out all the consequences of Perú's illegal acts. That award should take the form of restitution-in-kind or its monetary equivalent.

Under the full reparation standard, the question to ask to determine the proper remedy is: What has Gramercy lost? And the answer to that question is straightforward. Perú has stripped Gramercy of its legal entitlement to be paid the full value--the full updated value of its Land Bonds.

That full updated value is therefore the proper measure of Gramercy's loss. Gramercy's entitlement to that value is what must be restored under the full reparation standard.

Importantly, Gramercy is not claiming that it lost merely the right to sell its Land Bonds. That's why Fair Market Value does not apply here. Gramercy was deprived of the full value Perú's constitution and laws required Perú to pay to redeem its Land Bonds and not merely the value someone else might have paid to buy those Bonds.

In addition, to the extent the Bonds' Market Value was less than the amount Perú was required to pay on the Bonds, that was entirely because of the risk that Perú would not meet its legal obligation to pay that full legal value, which was intrinsic to the Bonds.

Awarding Gramercy a Market Value lower than its Bonds' intrinsic legal value would improperly reward Perú for its illegal conduct and at the same time would not make Gramercy whole for the loss of the full intrinsic value which is the loss Gramercy suffered. Such an award would violate the international law norm against rewarding wrongdoing, while at the same time failing to satisfy the customary full reparation standard.

So what is the full updated value of Gramercy's Land Bonds that must be restored? There are two components.

First, the unpaid principal has to be updated to its current value from issuance using CPI in order to erase the effects of inflation and restore the value of the principal to its original purchasing power.

Second, in order to compensate the Bondholders for the opportunity they missed out on to use the principal in other investments, interest has to be added to the inflation-adjusted current value from the date of the first missed payment at the actual average historical Rate of Return on investment in Perú.

Although the Parties disagree about how current value is to be calculated under Peruvian law, Perú acknowledges that the current value principle applies to the Land Bonds. And Perú also maintains that the MEF's Bondholder Process includes at least some compensation for foregone opportunity costs.

So, Perú's argument is not that the current

value principle does not apply. Rather, Perú argues that there was no certainty about how to calculate the Bonds' updated value until the Constitutional Tribunal issued its 2013 Order.

Perú tries to address that uncertainty argument up as two different quantum arguments, but it is actually just the same uncertainty argument that Perú makes on the Merits.

When Perú says that Gramercy has not proven its damages with reasonable certainty, what it means, as it explains in the text of its Brief, is that there is purportedly uncertainty as to how to calculate the value of Agrarian Reform Bonds.

And when Perú says that Gramercy has not proven causality, what it means, again, is that Gramercy's claim is purportedly based solely on its own beliefs about what the calculation formula should be.

Mr. Friedman has already addressed Perú's uncertainty arguments thoroughly. I will therefore limit my comments on this point to showing that Professor Edwards calculated the full updated value of

Gramercy's Land Bonds correctly.

Professor Edwards first updated the value of the unpaid principle for inflation using CPI. As Professor Edwards described in his Reports, the easiest and most accurate way to update for inflation is to use Perú's official CPI measurements. That's what economists, bankers, governments, and businesses do literally all the time, not only in Perú but throughout the world. Professor Edwards has provided a number of examples of this in his reports.

And as Mr. Friedman has already described in detail, CPI is the usual method that is used to apply the current value standard under Peruvian law.

The wide-ranging and vastly lower values produced by the MEF's various formulas do not show that there was uncertainty. They show only that the MEF did not update for inflation correctly.

In any event, Perú has not challenged either the appropriateness or the methodology and formulas that Professor Edwards used to update for inflation or the accuracy of his results. Perú has faulted Professor Edwards for updating from issuance rather

than some later date, but has not identified any computational errors in his inflation-updating formulas.

Professor Edwards' second step was to apply interest to the inflation updated current value of the rate needed to compensate Bondholders fully for the value of their foregone opportunities. To calculate the value of Bondholders' lost opportunity, Professor Edwards looked at what other investors in Perú actually earned on their investments during the same time period. He used a well-established macroeconomic method to estimate very conservatively the average Rate of Return that other investors actually earned.

Perú does not challenge the accuracy of Professor Edwards' computation of that rate. In their First Report, Perú's Quantum Experts did raise several technical criticisms, but Professor Edwards responded to each of those criticisms in his Reply Report showing that adopting Perú's Experts' suggestions would have actually increased the Rate of Return that he calculated.

Perú and its Experts have not challenged

those responses on rebuttal. But even if there were minor computational issues, they would be dwarfed by the supreme conservatism of Professor Edwards' calculation.

Professor Edwards described in his Reports a number of ways in which his calculation was conservative. The most significant is that Professor Edwards calculated the average return on debt rather than the average overall investment return on debt and equity. As Professor Edwards describes, investments in equity yield higher returns than investments in debt. As a result, the 7.22 percent average return on debt that he uses is lower than the average overall return on investments, which he calculated to be 10.97 percent.

And, although Perú's Quantum Experts dropped their technical challenges on rebuttal, they raised a number of new conceptual challenges for the first time. Those new conceptual challenges also lack merit. Perú's Experts' new arguments include that no one knows what the individual Bondholders would have invested in and that it is purportedly improper to use

ex post data and Rates of Return other than risk-free rates to assess the value of their lost investment opportunities.

These arguments all ignore the fundamental fact that the average actual historical Rate of Return that Professor Edwards estimated is not a hypothetical rate.

Professor Edwards did not build in any assumptions about risk or individual investment choices or expectations. He estimated the Rate of Return that was actually earned collectively by all investors in Perú. That actual rate captures all the risks and benefits of investing in Perú as they actually manifested during the time the Bondholders were deprived of their opportunity to invest.

Now, there are two different ways to think about why the actual average return on investment in Perú is the correct measure of foregone opportunity.

First, the value of the investment opportunity that the Bondholders collectively lost is equal to the average value of all the potential investments they might have made. If Bondholders had

been paid the unpaid principal when it came due, they could have used it to choose from a wide variety of other investments in Perú.

No one knows what any particular Bondholder would have invested in or how their individual investments would have turned out. The Bondholders themselves probably don't know that since they never actually faced the choice of how to invest. On average, though, the Bondholders would have earned the same average Rate of Return as other investors in Perú.

And even though some individual Bondholders might have earned less and some might have earned more, that is not relevant. The value of the Bonds does not vary from Bondholder to Bondholder. It doesn't depend on how any particular individual Bondholder's investments would have turned out. Indeed, it's not even possible to know that.

Instead, the value of the Bonds must compensate the Bondholders collectively for the aggregate returns that they missed out on collectively.

The other way to think about this is from the perspective of the people who actually did get to invest the Land Bonds' unpaid principal, namely, Perú and its taxpayers. The expropriated land itself was a productive asset that earned returns that went to Perú and the Peruvians to whom it was redistributed rather than to the Land Bondholders. And because Perú never paid the unpaid principal, Perú's taxpayers retained the capital and were able to invest it instead of paying it to the Land Bondholders. When they invested it, what they earned on average was the average actual Return on Capital in Perú during this period, which is what Professor Edwards estimated conservatively.

Those actual returns that Perú's taxpayers actually earned on the unpaid principal are, quite literally, the value of the opportunity that was lost to the Land Bondholders that has instead been enjoyed by Perú's taxpayers.

So, either way you look at it, the interest rate needed to compensate the Land Bondholders' lost opportunity is, in fact, the average actual return on investments in Perú.

So, to sum up, Professor Edwards' formula, which is shown on this slide, correctly and accurately calculates the full updated value of Gramercy's Land Bonds under Perú's constitution and laws as of May 31, 2018. This formula accurately updates for inflation from issuance using CPI and then applies interest to that updated value from the date of the first missed payment at a rate that conservatively compensates the Bondholders' foregone investment opportunities.

As I mentioned before, that full updated value is not static. It was USD 1.8 billion on May 31, 2018, but it continues to grow over time. The value at any particular date is obtained by substituting that date for May 31, 2018 in the full updated value equation.

Before Perú breached the Treaty, it had an obligation to pay Gramercy that full updated value. Restoring that obligation would effect restitution in kind under the full reparation standard. And that can be accomplished through an order requiring Perú to pay the full updated value as of the Award date, along with post-award interest calculated at the

7.22 percent compound real interest rate that was used in the full updated value formula.

I will now turn to Gramercy's alternative claim. That alternative claim is that Gramercy is entitled to at least the value it would have received under the standard approach that Perú's courts took to valuing Land Bonds. Mr. Friedman has described in more detail that Perú's courts consistently used CPI to update the unpaid principle to current value and then added interest.

Most significantly, that is the approach set out in the Constitutional Tribunal's original majority Opinion in its 2013 Order. That's the Opinion that was converted by whiteout into Justice Mesía Ramírez's dissent. That Opinion is particularly relevant because it shows the specific valuation approach that Perú's highest Constitutional Court was going to adopt immediately before Perú started the course of conduct that violated the Treaty. It confirmed that, absent Perú's Treaty breaches, Perú's courts would have awarded Gramercy the current value of its unpaid principal, updated for inflation from issuance using

CPI plus compound interest at the original coupon rates.

Indeed, court-appointed Experts in the Pomalca Case used exactly that same method to value some of Gramercy's Land Bonds. Now, Peru argues that Gramercy's reliance on Pomalca is misplaced because it says only a minor portion of Gramercy's Agrarian Bonds were part of the local court proceedings, but that is both misleading and beside the point.

The Bonds in the seven court cases Gramercy filed made up a relatively small portion of Gramercy's Bonds numerically, but they account for 27 percent of the total value of Gramercy's Land Bonds calculated using Professor Edwards' methods.

And even if that were not the case, the method that court-appointed Experts actually used to value Gramercy Bonds in a Peruvian court proceeding provides compelling evidence of how Perú's courts would have valued the rest of Gramercy's portfolio.

Thus, Peru's argument that Gramercy's alternative remedy is inherently speculative and merely reflects predictions about hypothetical cases

is incorrect.

Under the applicable legal standard, Gramercy need only establish its entitlement to damages on the balance of the probabilities, not least because any uncertainty as to the but-for world is attributable exclusively to Perú here as a consequence of its failure to pay what it owed on the Bonds.

And Gramercy relies not on hypothetical cases, but on the one actual case that involved Gramercy Land Bonds, the original Constitutional Tribunal 2013 Majority Opinion, and all of the other Peruvian Land Bond cases, which all used CPI and then applied interest.

That evidence is more than sufficient to establish that, on the balance of the probabilities, Gramercy very likely would have secured a valuation using that approach.

Professor Edwards calculated that Gramercy's Land Bond portfolio was worth USD 842 million in May 2018 using the method from Pomalca in the original Constitutional Tribunal 2013 Opinion. Like the full updated value of Gramercy's Case-in-Chief, that value

has also grown since then as there has been further inflation in Perú and Gramercy has continued to miss out on the opportunity to invest the unpaid principal.

As with the full updated value, the best way to effect restitution under the full reparation standard on this alternative claim would be to issue an award equal to the value of Gramercy would have received on the award date under the methodology used in Pomalca and then to add to that post-award interest calculated at inflation plus the original coupon rates consistent with that methodology.

I will turn now to the Fair Market Value of Gramercy's Land Bonds immediately before the Constitutional Tribunal issued its 2013 order.

There are two reasons why Fair Market Value does not provide the appropriate damages here. First, the Land Bonds are not like physical assets like factories or mines, which do not have legally prescribed values. The price a factory owner will receive if they sell their factory is not established by law. In the absence of such a legally prescribed intrinsic value, when factories are expropriated,

adjudicative bodies must rely on market pricing to determine their value.

But financial instruments like the Land Bonds are in their essence legal obligations to pay specific amounts. The only way to restore Gramercy to the position it was in before Perú stripped it of its entitlement to be paid the amount that Perú owed as a matter of law is to restore Perú's obligation to pay that legally required amount.

Consistent with that logic, and as Gramercy has described in its pleadings without rebuttal from Perú, courts and Tribunals seized with claims to payment on debt obligations have consistently compensated Claimants for the full intrinsic legal values of those obligations rather than their Fair Market Values.

Perú's courts too have awarded Bondholders the full intrinsic value of their Land Bonds and not their Fair Market Value.

The second reason why Fair Market Value is inappropriate in this case is because it would reward Perú for its long history of attempting improperly to

evade its obligations under the Land Bonds.

As Professor Edwards described in his Reply Report, the Fair Market Value of the Land Bonds would have converged with their intrinsic legal value if there had been no risk of nonpayment.

Instead, Perú's active efforts to avoid paying the Land Bonds even more than a decade after the Constitutional Tribunal's 2001 ruling greatly exacerbated that nonpayment risk and drove down the Fair Market Value. And that nonpayment risk, as we all know, ultimately manifested in the expropriatory Bondholder Process. That is the opposite of what should have happened. Sovereigns are supposed to pay their debts.

Awarding Fair Market Value would improperly reward Perú for its improper behavior in violation of the clear international law norm that wrongdoers should not benefit from their own bad conduct.

As Perú's own Expert Professor Reisman describes it, "It is a venerable and general legal principle that a delictor may not benefit from its own delict."

Should the Tribunal nevertheless determine that Fair Market Value does provide the appropriate measure of damages, all of the contemporaneous evidence of the Market Value shows that Gramercy's Land Bonds had a Fair Market Value exceeding USD 500 million shortly before the 2013 Constitutional Tribunal Decision.

And at this point, Mr. President, I'm going to discuss confidential information. So, I would request that non-parties leave the room and the video be stopped.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MR. RIEHL: In contrast to the contemporaneous evidence of the Fair Market Value of Gramercy's Land Bonds, from 2013 and late 2012, Perú's Quantum Experts argue that the Tribunal should look exclusively at evidence from a half decade or more earlier.

Perú argues that the USD 33 million Gramercy paid to acquire its Land Bonds from 2006 to 2008 provides the best estimate of their Fair Market Value a half decade or more later, and that "intervening developments would not have caused the Gramercy Bonds to either clearly decrease or increase in value."

That is frankly preposterous.

As Gramercy described in its Reply, Market Value does not remain fixed over time. At the most basic level, Perú's Experts ignore that Perú's payment obligation under the Land Bonds was not static but continued to increase over time. The methods for valuing the Land Bonds that have been proposed since 2001, including the MEF formulas, have included both updating the value of the unpaid principal for

inflation and applying interest in addition to the inflation updating.

So, no matter what updating method is proper under Peruvian law, the intrinsic value of the Land Bonds was higher in 2013 than it had been in the 2006 to 2008 period. Perú experienced additional inflation during that time that increased the intrinsic value, and interest continued to accrue and accumulate.

That higher intrinsic value would necessarily also increase the Land Bonds' Fair Market Value unless other events increased the risk that Perú would not fully pay its obligations under the Land Bonds.

In fact, though, a number of other circumstances that affected Market Value had also increased the Land Bonds' Market Value.

Those include: Numerous court judgments awarding Land Bond holders substantial value using CPI updating plus interest, substantial Congressional efforts to compensate Land Bond holders, including the Land Reform Bond Debt Swap bill, which called for CPI updating plus interest at the coupon rates, the petition filed in the Constitutional Tribunal in 2011

to enforce the 2001 Decision coupled with the Chief Justice's public statement that the Tribunal would issue a Decision ordering adequate compensation for Bondholders, and steady improvements in Perú's economy that lowered Perú's default risk with respect to all of its obligations, notably Perú's sovereign debt rating was below investment grade when Gramercy purchased its Land Bonds, but had increased steadily to a solidly investment grade rating by 2013.

As Gramercy's CFO, Mr. Joannou, has described in his Witness Statement, Gramercy's own internal valuations increased substantially during this period because there were many positive signs during the initial years of the investment.

In light of all these factors, it is simply not credible that the Fair Market Value of Gramercy's Land Bonds in 2013 had not increased from the USD 33 million Gramercy initially paid to acquire them.

Even if the Tribunal doesn't adopt Fair Market Value as the Measure of damages, the evidence I discussed during the confidential portion of this

presentation provides clear evidence that the price Gramercy would have received for its Land Bonds in a fair market transaction in 2013 would have exceeded USD 500 million. That amount plus pre-award interest is the proper amount of damages under the Fair Market Value measure.

I would like to conclude by pointing out that, at their core, Gramercy's primary and alternative remedies claims both involve the same two elements that Perú's courts consistently recognized.

CPI, to adjust to current value plus interest. The only difference between Gramercy's two claims is the interest rate. But whichever interest rate is used, and even under the Fair Market Value standard, Gramercy's Bonds clearly have substantial value. And that is the necessary consequence of the Constitutional Tribunal's 2001 ruling that Land Bonds are obligations of value that must not be repaid at nominal value.

The value of Gramercy's Bonds is substantial because Perú expropriated lands the size of Portugal and used the Land Bonds to compensate that

expropriation.

The sizable value of the unpaid principal when Perú issued the Bonds remains substantial when it is properly updated to erase the effects of inflation as the Constitutional Tribunal ordered in 2001 and using Perú's own Consumer Price data.

In addition to that, Bondholders have been deprived of the use of that principal for 30, 40, in some cases even 50 years. If you or I put money into a retirement account and left it there for several decades, it would grow to a sizable multiple of its original value. That's precisely the sort of opportunity that Bondholders missed out on because they did not have the principal to invest.

Because Perú did not pay the full updated value of the Bonds in accordance with the 2001 Constitutional Tribunal Decision and the multiple court cases implementing that Decision, the size of the debt has grown. But it is nevertheless a debt that Perú owes and it is a debt that Perú must now pay.

With that, I will turn the microphone back

over to Mr. Friedman, for concluding remarks.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Mr. Riehl.

MR. FRIEDMAN: This will be both brief and slow.

Gramercy, along with all other Bondholders, has suffered greatly from Perú's misconduct in trying, after all these years, in the words of the 2001 Constitutional Tribunal, to turn expropriations into confiscations, to eliminate its debt by literally whiting it out on the basis of false information, arbitrary formulas and a robotic insistence that Perú has offered a Bondholder Process, no matter how arbitrary and unjust that process is.

And if I could oversimplify just a little bit to reduce this case to its core. It is pretty simple. Gramercy invested from 2006 to 2008 under a very clear, current value legal framework, with at least the ability to vindicate those rights in Peruvian Courts. There was no question at all about that or what the Courts were doing. Perú has now taken that away in favor of a process that imposes a haircut of

96 to 99 percent on the value even that the Courts would have applied at that time.

So, much so, that this Bond that we were looking at before, 2231, on our calculations, under Perú's formula, is worth less than a quarter of one cent. It is probably not worth the paper that it is printed on. Yet it represents 9/25ths of land that was expropriated 35 years ago. So, the U.S.-Perú Free Trade Agreement and international law protect precisely against such conduct, arbitrary, irrational and value depriving.

So, contrary to Perú's overarching complaint that Gramercy has no right to be here and is abusing the Treaty process, this case is a paradigmatic example of the critical importance of investment Treaties and investment arbitration, to provide a neutral forum, to scrutinize critical--scrutinize critically Government Acts that have value deprivation and no real basis.

It is like many other cases that have come before in investment arbitration, including the dozens of cases involving Argentina, which basically just

changed the valuation principle on which it was offering to pay its debts. Changed it from dollars to pesos, and did so on a basis that did not have adequate justification under international law, even though it claimed a crisis.

And what Perú is doing here is the same kind of thing, but with less, defensively, even than Argentina. Argentina at least had a real fiscal crisis. Its officials had not spent years undermining its own constitutional norms.

It did not use false information about the crisis, it didn't use whiteout, secrecy, and other dubious means to manufacture a justification for its actions, and it took away, through the pesification, a "mere"--I put that in quotes--70 percent of the investors' value rather than the more than 95 percent of the value that Perú's conduct here has destroyed."

Now, Argentina eventually made peace with its creditors and came to consensual resolutions with them to its considerable benefit. Perú has had every opportunity to do the same and to amicably work out this problem with Gramercy and many, many other

Bondholders, but to a remarkable degree for a State that has ample capacity to pay, it has simply refused to do so and, instead, has engaged in the nefarious conduct that we've outlined today and in our papers.

And so, we turn to you to ensure that Perú now faces simply the consequences for its unlawful acts in violation of the Treaty.

Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Mr. Friedman.

I think Professor Stern has had a question.

ARBITRATOR STERN: Not only one.

PRESIDENT FERNÁNDEZ ARMESTO: A lot of questions.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR STERN: Yes. My question will concentrate on what you consider to be an investment, so it is mainly to Ms. Popova and maybe to others.

At one point in your presentation, you said "long-term public debt is a quintessential example of a form of investment."

And I would like you to comment on Note 12 in

the Treaty, in the BIT, which I read: "Some forms of debt such as bond debenture and long-term notes are more likely to have the characteristics of an investment, while other forms of debts such as claims to payments that are immediately due and result from the sale of goods or services are less likely to have such characteristics."

So, I personally understand this that some form of Bonds and debts are investment and some others are not.

Do you have another reading?

MS. POPOVA: I think I do, Professor Stern. This footnote, as I read it, distinguishes between different kinds of debt and not different kinds of Bonds.

ARBITRATOR STERN: Okay. So, how do you--can you explain? Because that is just a statement.

MS. POPOVA: Yes. Yes, of course. So, it says some forms of debt, such as Bonds, are more likely to have the characteristics of an investment. And so, it is giving the example of Bonds as a subcategory of debt that is, on one end of the

spectrum, that is more likely to be an investment.

And then it contrasts that with the kinds of debt that it says are less likely to have such characteristics. And if you look at the example that it gives, I think that is very different from the long-term public debt that I described as a quintessential kind of investment. It gives the example of claims to payment that are immediately due and result from the sale of goods and services.

And so, while the Treaty covers debt instruments in general, it also specifically mentions Bonds. I think the support--and the footnote also refers to long-term notes. This footnote to our reading supports the idea that a long-term debt like a Bond is more likely to be a form of investment.

ARBITRATOR STERN: Okay. Thank you for your explanation.

So, still, you know, trying to understand the limits of investment and, as you see it, without any reference to the Salini test or especially to the contribution to the development of a State, isn't it almost a layman understanding of an "investment" that

an investment is a contribution to an economic venture that creates value?

MS. POPOVA: I believe that's a fair description of a layman's understanding of an investment. You commit resources of capital and you expect that you will have something that has more value in return. And I believe that is exactly what Gramercy did here. The economic venture, if you will, is not just buying scraps of paper.

The venture is investing, not only in these Bonds, which themselves had a lot of value, and Gramercy hoped that they would be paid just like anyone else who invests in stocks and Bonds.

But there is also something else in this case that I think is important, which is the story that Mr. Koenigsberger and others have explained in their statements as to why Gramercy did that, that there was a broader economic venture behind that, that Gramercy hoped not just to be one of thousands of nameless investors, but it could actually create a solution that would help Perú solve this issue for the benefit of all Bondholders, not just for Gramercy but for

everyone, that it could create a consensual debt restructuring like it had for Argentina, like it had for Nicaragua, like it had for Russia, that would help Perú improve its investment ratings and attract new investment, that it would get all other Bondholders paid, not just Gramercy.

So, if you're thinking about in terms of contribution to an economic venture, I would submit that there is a very valuable economic venture here that Gramercy honestly and earnestly intended, and you see that in the testimony in the documents, and that, I think, is a little different from just looking at it simply as a financial instrument like any other.

ARBITRATOR STERN: Okay. Well, maybe we can go back to this because you have a specific presentation of what you call an economic venture, but I wonder whether--at one point you said, well, look, if Gramercy had a factory, would you say that this factory is not an investment?

I think this is precisely the example that shows that there is a big difference. I feel there is a big difference between Gramercy's operation and what

is the situation of investing in a factory which creates new goods, et cetera.

MS. POPOVA: Well, I think we would agree that it's not just a factory that can be an investment. And the fact that the--

ARBITRATOR STERN: You gave the example, so this is why I ask you.

MS. POPOVA: Yes, exactly. The Treaty here protects lots of different forms of investment, beyond things like a tangible factory. I gave the investment simply--gave that example simply to show you the kinds of distinctions that Perú is making really are not what you need to be looking at. What defines an investment is not whether it was marketed abroad, or whether it was denominated in soles, or whether--all of those things. That was the purpose of my example.

But if you look at this Treaty, further support for the fact that financial instruments can be investments, it doesn't just cover Bonds. It covers things like derivatives and futures and options and stocks and mortgages and liens, and it even goes so far as to say, you know, court judgments might even be

covered if we don't exclude them specifically in this footnote.

So, I think what everyone might take as the layman's understanding of an investment, and I'm conscious there is a whole body of jurisprudence about what Tribunals have held that to mean, if you look at this particular Treaty and how it was structured, if you look at the fact that the Parties specifically negotiated, okay, is public debt going to be included, what kind of debt, what kind of claims could arise out of it. How can they be made?

I believe in this particular Treaty, whatever one might think about the inherent characteristics of an investment, in this Treaty there are so many signals that public debt of this kind is covered, that it is almost--one can agree on whatever you wish to take as the inherent characteristics of an investment, and they would all be satisfied given the language of this Treaty and the nature of Gramercy's investment.

ARBITRATOR STERN: So, you think there is no interest to know what the public debt was for? For example, I mean, I guess you would agree with me that

a sale is not an investment.

MS. POPOVA: It depends on what kind of sale.

ARBITRATOR STERN: Ah. Okay. Go ahead.

MS. POPOVA: Well, you're asking me to agree with you what kind of sales.

ARBITRATOR STERN: No, I mean, I just take this as a statement and want to know if you agree. I mean, I think this is common knowledge, no? That the sale is not an investment?

MS. POPOVA: A commercial sale of an asset between private parties that has--that does not create a debt on the part of the State?

ARBITRATOR STERN: No, I mean, a sale, in general, is not an investment. You have an exchange of--you have an exchange of value. You have not a creation of value.

MS. POPOVA: I think it's hard to agree with you without specific facts on which you are basing that hypothesis, so I think I will beg to disagree, but if what we're looking at, again, is to take that test of the exchange or the creation of value, this is not a simple exchange of value.

To go back to what I was saying earlier, the proposition here is that not only are there multiplier effects of injecting $32 million into the Peruvian economy, and you have people who have testified about that, you have Professor Rodrigo Olivares-Caminal who confirms that, Robert Koenigsberger has seen that in other countries.

That--and I would say Perú has never disputed any of that. It is not only them. It is not just the microeconomic benefits of injecting that kind of liquidity into a market that had been stagnant for 40 years. There is also the macroeconomic benefit behind that, which, again, Perú has not denied.

ARBITRATOR STERN: Okay. So, would you say also that the Bonds before they were sold were an investment?

MS. POPOVA: Well, the Treaty said--

ARBITRATOR STERN: Because you seem to say that it's the fact that they were bought that it's an investment. So, I ask you the question: Were the Bonds given to the landowners an investment?

MS. POPOVA: I think they would be, but you

would also have to account for the fact that the--that you also--for them to be a "covered investment," strictly speaking under the Treaty, they have to have been bought by a covered investor.

ARBITRATOR STERN: Okay. Okay.

MS. POPOVA: But taking just the definition of investment, yes.

ARBITRATOR STERN: You would say so?

MS. POPOVA: Yes, I would.

ARBITRATOR STERN: Okay. Thank you. Maybe let's go a little bit further.

In the statement of Rejoinder--in Paragraph 186, you say we have been in regular contact with the Government of Perú. You cite an email. "We have been in regular contact with the Government of Perú since we started investing in these claims."

So, isn't that recognition that Gramercy has bought claims rather than made an investment in an economic venture? I mean, it is your Statement.

MS. POPOVA: I'm sorry, it's Paragraph 136?

ARBITRATOR STERN: 186.

MS. POPOVA: 186. It's Rejoinder--

ARBITRATOR STERN: And it cites an email. Yeah, it's the Statement of Rejoinder, Paragraph 186, and it starts--it mentions an email. I can tell you which one.

MS. POPOVA: I'm sorry. I believe I might be looking at the wrong--in Gramercy Statement of Rejoinder, submitted in November, Paragraph 186 which begins "Perú's continued mischaracterization of Berkowitz."

ARBITRATOR STERN: Wait a minute.

PRESIDENT FERNÁNDEZ ARMESTO: Berkowitz.

MS. POPOVA: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Mine refers to Berkowitz, the Interim Award.

MS. POPOVA: Yes. Mine too. Correct.

ARBITRATOR STERN: Statement of Rejoinder. Wait a minute. Maybe I have a wrong--

PRESIDENT FERNÁNDEZ ARMESTO: It seems to be all dedicated to Berkowitz.

ARBITRATOR STERN: No, no, no. Well, we can--wait a minute.

MS. POPOVA: Would it help if I--if you're

asking me whether Gramercy invested in an existing Investment Treaty Claim, so whether it bought a claim rather than an investment? Was that your question?

ARBITRATOR STERN: That was what I read, yes, but I can give you--

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: Ms. Popova, just address this, this point?

MS. POPOVA: Yes. At the time that Gramercy invested, which was from 2006 to 2008, none of the Acts that we currently say are breaches of the Treaty had occurred. So, what we invested in at the time were the Land Bonds, and not the claims that we are asserting today which didn't happen until many years later.

ARBITRATOR STERN: Okay. So, maybe we will leave this question of the definition of "investment." I was giving a lecture in the mids for many years and I used 10 hours, but it was not enough. So, here it is only 10 minutes.

MS. POPOVA: Yes, the feeling is familiar. I need to condense lots to say in little time.

ARBITRATOR STERN: Okay.

MS. POPOVA: Thank you for your questions.

ARBITRATOR STERN: So, just two questions, not on this topic. A question which has an important--which might relate to the waiver. I'm not sure I have understood the exact relation between GFM and GPH. GFM was a management company.

MS. POPOVA: Correct.

ARBITRATOR STERN: Can you explain a little bit better? Because I'm not sure I understood.

MS. POPOVA: Yes, in part, because that involves some confidential information, and also because Gramercy's Witnesses will be able to explain it to you far better than I can, but that is essentially right. GPH bought and owns the Bonds and GFM manages them, and all of that is explained in much greater detail in the Witness Statements of Robert Lanava and Robert Koenigsberger as well. And I'm sure they will be very happy to answer those questions.

ARBITRATOR STERN: Okay. So, GFM has no shares in GPH?

MS. POPOVA: Yes. There is one item of--the

answer is no, but the reason is confidential. It is in--it is, again, it is in Mr. Lanava and Mr. Koenigsberger's statements.

ARBITRATOR STERN: Okay.

MS. POPOVA: It does have an economic interest.

PRESIDENT FERNÁNDEZ ARMESTO: We'll ask Mr. Koenigsberger about that, and we'll also ask him about his relationship with the investors, so that we get a fair view of the relationship between investors and Gramercy.

MS. POPOVA: Yes. If it helps to think about it this way, GFM is the managing member. Yes. Yes.

ARBITRATOR STERN: Yes, this is what I understood, but it was a little bit cloudy. And now maybe a last question which might be more academic, but still I'm interested in your view.

You relied quite heavily on Gramercy's legitimate expectation that it was maybe not you--maybe you--so, I would just like you to comment on what you probably know on what the ICJ said in the Judgment on the Merits of October 2018 between Bolivia

and Chile, obligation to negotiate access to the Pacific Ocean in Paragraph 162.

We can read: "The Court notes that references to legitimate expectation may be found in arbitral Awards concerning disputes between a foreign investor and the Host State that applied Treaty clauses providing for fair and equitable treatment."

And this is what is--on what I would like you to comment more, what comes now. "It does not follow from such references that there exists in general international law a principle that would give rise to an obligation on what could be--to an obligation on what could be considered a legitimate expectation."

PRESIDENT FERNÁNDEZ ARMESTO: I am not sure where that Judgment is in the record.

ARBITRATOR STERN: But it's knowledge.

PRESIDENT FERNÁNDEZ ARMESTO: At least it does not ring a bell to me at this stage. If you want to--we should get it into the record, I mean, now that it has been referred to.

ARBITRATOR STERN: I'm sorry. I didn't know.

PRESIDENT FERNÁNDEZ ARMESTO: We will bring

it into the record. If you want to make your comment now, that's fine. If you want to do it afterwards, that's also fine. You have not referred to it in your presentation.

MS. POPOVA: Thank you. We will take a look at it. If your question is what the content of the Minimum Standard of Treatment is and whether our legitimate expectations are relevant to that, we do address that in our papers at some length.

ARBITRATOR STERN: Yeah, but I wanted you to address it taking this into account.

MS. POPOVA: We will take it into account on the break and will get back to you.

ARBITRATOR STERN: Okay. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: And let's get, to be very frank, I was not aware of that Judgment. Let us get it. Any Opinion from the International Court of Justice is important. So, if you agree, we will double-check whether it is in the record, because it's a very, very large record. I don't remember having seen it. It would have raised my awareness, but maybe I overlooked it. If not, we will get it in

and we will then give the Parties the opportunity to address it.

MS. POPOVA: Thank you, Mr. President.

And Paragraph 162, Professor Stern. Thank you.

ARBITRATOR STERN: Yes. And it's the Merits.

MS. POPOVA: Yes.

ARBITRATOR STERN: It's 1st October 2018.

MS. POPOVA: Thank you.

ARBITRATOR STERN: Obligation to negotiate access to the Pacific Ocean between Bolivia and Chile.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Drymer, any questions?

ARBITRATOR DRYMER: No, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you very much to Claimants for their presentation. Let us get a final time check.

Let's, of course, exclude the time of the Tribunal, but let's see the time of the presentation, Madam Secretary.

SECRETARY PLANELLS-VALERO: Thank you, Mr. President. The Claimants used 2 hours and

40 minutes.

PRESIDENT FERNÁNDEZ ARMESTO: So, you can also take 2 hours, 40 minutes if you wish.

So, it is now 1:22. Shall we be back at 2:30? 2:30? So, that you have also a couple of minutes more time to react. 2:30. Now, we are off the record.

(Whereupon, at 1:23 p.m., the Hearing was adjourned until 2:30 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT FERNÁNDEZ ARMESTO: Now we resume our Hearing. We are going to give the floor to the Republic of Perú.

Mr. Hamilton?

We just received a presentation that we are going to call H-2.

(Discussion off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: Now we do start the Hearing. We will resume the Hearing, and we do so in order to give the floor to the Republic of Perú.

Dr. Hamilton?

OPENING STATEMENT BY COUNSEL FOR RESPONDENT

MR. HAMILTON: Thank you very much, Mr. President, Members of the Tribunal.

On behalf of White & Case, it is an honor to represent the Republic of Perú, and to be delivering these Oral Arguments.

Perú is a sovereign country which is economically stable and fiscally responsible. It is a close partner of the U.S., it is a country that holds legal investment, and it is also a trustworthy issuer

of sovereign bonds. The Land Reform is a historical issue in Perú for more than 50 years now, always under the laws of Perú.

The Peruvian State has implemented a process for the historical resolution of the debt, originating with the Land Reform with all of the Bondholders that decided to participate in this legally established process. This process has worked properly, but the campaign to--in spite of the campaign by Gramercy to undermine its reputation, which has made an effort to cause damage to Perú and to Peruvians, to create an international case that is foundless. Gramercy is trying to obtain chaos, chaos to reap benefits, and our efforts--the efforts by Gramercy to present Perú as a country in arrears does not have any basis.

Instead of participating in this legitimate process, Gramercy is attacking the process that has been created to offer a solution to this historical problem. Gramercy, not Perú, has abused and violated the Treaty between Perú and the U.S.

This is a case under a Treaty. This is not a contract case; this is a case under a Treaty with very

clear standards applicable on the terms of the Treaty as well as under applicable international law. This Treaty between the United States and Perú dates back over a decade, to 2009. It is important to emphasize that Perú has demonstrated over time a commitment to the rule of law, to macroeconomic stability and a reliable partnership with the United States, and on behalf of Perú, we welcome the participation of the representatives of the United States Government, the non-disputing Party to this proceeding.

It bears mentioning that this is only the second investment case that has been filed under the U.S.-Perú Treaty. The first case, the Renco Case, concluded in 2016 and was decided in favor of Perú. As a matter of fact, it was decided in favor of Perú at a time that proved to be quite infelicitous and inconvenient for Gramercy, with implications that are highly negative for its case, as we will discuss. And in this case, it is Gramercy and not Perú that has not only violated, but abused, the Treaty between Perú and the United States.

In October 2015, Perú hosted the meetings of

the World Bank and the International Monetary Fund, and at that time it was the first such meeting held in Latin America in about half a century. Christine Lagarde said in her remarks: "Perú is no longer the proverbial country of the future; it is the country of the present." How ironic that this positive meeting hosting world leaders was one of the moments that Gramercy used to try to attack Perú for its own gain, in an improper manner, as we will discuss.

The reason that Perú is so well-regarded by the international monetary community is specifically because of its dedication to fiscal responsibility. Most of the world knows Perú for the World Heritage site of Machu Picchu, but Perú is internationally respected as a fiscally responsible sovereign, as a trusted ally of the United States. Multilateral institutions, the international markets, leading rating agencies, all consistently praise Perú for its continuing record of fiscal responsibility.

Gramercy's propaganda campaign has fallen flat. Perú, to this day and to this year, continues to be lauded for its fiscal responsibility. As Fitch

Ratings has summed up: "Perú's creditworthiness is underpinned by its established track record of macro policy credibility, consistency, and flexibility, which has delivered macroeconomic and financial stability."

Indeed, it is specifically because of Perú's fiscal responsibility that it does not simply make exorbitant payments to bullies. Claimants routinely sue States for old debt. They routinely lose. Perú has defeated billions of dollars of claims in federal courts here in the U.S. just in the last two years alone on old paper Bonds.

The "Land Bonds," as Gramercy refers to them, relate to agrarian debt with unique historical origins dating back half a century to 1969, to an era of agrarian reforms adopted across Latin America. These old bearer instruments are subject to local law and jurisdiction, and they were simply provided as compensation for land. That's why the other guys call them "Land Bonds" and insist on calling them "Land Bonds." They were payments for land. They were nothing more and nothing less than that. They are old

IOUs. They are utterly different from contemporary sovereign bonds.

After years of hyperinflation, two currency changes, and economic crises spanning the 1980s and the 1990s, the status of these Land Bonds became uncertain and fell into dispute. Court rulings, at best, left many loose ends. Efforts to establish a legal framework repeatedly failed.

After years of uncertainty, the legal status of the Land Bonds was settled by a Resolution of the Constitutional Tribunal of Perú on July 16, 2013. It was the ruling of July 16, 2013 which provided at last for the establishment of an Administrative Procedure and valuation for payment of the Bonds. Further to that mandate, the Ministry of Economy and Finance adopted Implementing Decrees, and it implemented and has advanced a process to pay legitimate Bondholders.

Perú already has authenticated well over 11,000 Bonds, more than the total number of old Bonds that Gramercy claims to hold. Bondholders are being paid, but Gramercy has attempted to undermine the procedure for its own self-interest in a bid for

vastly more preferential treatment than any Peruvian Bondholder could receive under the lawfully established procedure. Gramercy is not looking for a payment because it has been discriminated against. It wants extreme discrimination in its favor.

Allegations of a default are absolutely inaccurate. From the time that a legal framework was put into place, Perú has diligently established a procedure. It is paying Bondholders. The suggestions of default, even in this city, are faker than "fake news."

Where does Gramercy fall into this storyline? Because the storyline I just told is a historical storyline under domestic law about a domestic issue that Gramercy chose to interject itself into.

Gramercy is a fund that focuses on distressed debt. Distressed--the distressed piece is what Gramercy wants. It is what Gramercy seeks. It is a U.S.-based fund with varied entities and complex structures that, today, it will hide from the U.S. Government sitting here and kick them out of the room because they are unwilling to let our own Government

in Washington see the truth about the Gramercy structures.

Whereas an investor typically, in a claim arising under a treaty, would look for legal stability, long-term investment, a factory that actually produces something, Gramercy looks for uncertainty, even instability, and rampant speculation. It is telling that Gramercy was the lone fund that elected to amass Land Bonds, and we will see today how Gramercy obscured the documents behind its purchases of these old IOUs from Peruvians. As a matter of fact, we sat through hours of argument from Gramercy, and they did not once discuss and explain the Purchase Contracts that they withheld from this Tribunal. They did not reveal these contracts. We have them here with us today: 24 binders of material that were withheld from Perú during this proceeding and not revealed to the Tribunal. And we will see why that must have been the case. Even now, Gramercy continues to obscure relevant facts and evidence behind claims of commercial confidentiality.

There's one more piece that we need to

address in the introduction, and that is the--

(Comments off microphone.)

MR. HAMILTON: Gramercy--we obtained a document, a Gramercy document about distressed debt from 2010. And in this document, it lauds, I guess, the Gramercy philosophy: "Buy when there's blood in the street, even if the blood is your own." The Article says that it's citing Rothschild, but it can't prove the cite, but I think the sentiment speaks for itself. This is almost the opposite of what you would normally hear sitting in this hearing room, and similar hearing rooms, about a diligently structured investment based on clear legal rules.

Now, one of the most telling aspects of the utter weakness of Gramercy's Treaty claims is the fact that you, Members of the Tribunal, I'm afraid to say, are merely treated as a secondary piece of a larger strategy that Gramercy has been pursuing, and that is a campaign to try to disgrace the Republic of Perú internationally, in an effort to humiliate Perú, damage its international relations with multilateral institutions and its Treaty partner, the United States

of America, and thereby force Perú to do what Gramercy wants, despite what Peruvian law tells us to do.

This campaign is not a minor tangent. Gramercy has developed an attack campaign that it has been carrying out for years against Perú. We see smiles and the sounds of violins before the Tribunal. The reality has been knives into the gut of the Republic of Perú and a constant attack campaign that utterly disrespects the Tribunal and the Treaty. There is ample information in the record regarding the Gramercy campaign, but just a few details will suffice to reveal the depth of this totally unacceptable campaign meant to force a sovereign to change its laws for the benefit of a fund that made a strange choice about acquiring old pieces of paper.

In mid-2015--and I'm on Slide 7 of the presentation. In mid-2015, Gramercy created an entity called Peruvian American Bondholders For Justice. This entity was set up by a representative of Gramercy who is sitting in the room today and set up through the law firm of Debevoise & Plimpton. They set about trying to create propaganda at events--where is our

photograph, the big photograph?

One of their first events to focus on was the friendly soccer match between Perú and the United States which was held in September 2015, where they handed out T-shirts and propaganda materials for free. You could go onto the website: "Sign up, and you'll be eligible to win two free tickets to the U.S.-Perú football match." That was one of the signs of the campaign was getting underway. I know because I stood in line to go into that soccer match and talk to people about the T-shirts they were wearing who told me, "I have no idea what it's about, but I got it for free. Gratis."

The campaign intensified at the time of the aforementioned meeting of the World Bank and the IMF in Lima in October of 2015. Lobbyists and lobbyists and lobbyists were retained. There's a whole list of lobbyists who have been retained and involved over years. Gramercy has not contributed to the economic development of Perú. That much is clear. It has, however, done wonders for the lobbying industry in the City of Washington, and if any of the lobbyists

were left off from this list, we apologize. There are so many it is hard to keep up.

Now, not only did Gramercy intentionally try to interfere with the bilateral relationship, exactly contrary to the object and purpose of this Treaty; it sought to further internationalize its interference. It issued reports posing an independent reports. It used its relationships with these Bondholder groups and an entity that it formed in the U.S. to put out negative propaganda not only with the IMF, not only with other organizations, but with the OECD, in an effort to try to interfere with Perú's Accession to the OECD.

Bring it on down. You can lean it up right here.

PRESIDENT FERNÁNDEZ ARMESTO: I must ask Professor Stern, because she has sat on many more Tribunals than me and than anyone else in the world: But have you ever seen a photograph of a football match at an Investment Arbitration?

ARBITRATOR STERN: No, I don't think so.

PRESIDENT FERNÁNDEZ ARMESTO: So, that's a

first. But you must--we cannot see it. You must--oh, put it there. Yeah.

MR. HAMILTON: Well, I take note of the comment, and I will just say: If it is a first, it is because it is a highly unusual situation that an Investor spends its time creating fake propaganda at football matches when it claims to want to be pursuing a Treaty case. And one of the most telling comments among all of the propaganda that has been distributed in this matter was when a representative of Gramercy said: "We will stop when Perú stops seeking membership in the OECD."

Now, we have heard the crocodile tears today that Gramercy is here for Peruvian victims. Gramercy has been the tip of the spear in a campaign to try to stop Perú from admission to the OECD. There is no way that is good for Peruvians, or for the economic development of Perú.

And the final thing we would say about this campaign, which goes on and on and on--rewriting Wikipedia with information that clearly sounds like it was derived from Briefs that we read here--all of this

is in the record, from the unique and unusual two-round aggravation phase that started this Case. The Tribunal has, time and again, instructed that the Parties should abstain from action or conduct that may result in aggravation of the dispute, and the pattern continues and continues and continues. The lobbying reports are before you. You can look in the newspapers. It's abhorrent. It's abhorrent, it's irresponsible, and it undermines the legitimacy of this case. It is not a trivial aside.

Investor-State dispute settlement is designed to channel disputes into a neutral procedure. That is what the United States and Perú agreed to do when ratifying this Treaty. Professor Reisman of Yale University, the sole international Legal Expert before this Tribunal, shared the following comments on this issue in his First Report: "The system in an Investor-State dispute settlement rests upon the great compact in International Investment Law. Investor-States waive the deployment of their diplomatic protection powers in return for Host States agreeing to submit disputes with those Investors to

international arbitration by independent third-party determination. The consequence of this great compact is to depoliticize the process of resolving international disputes, which are channeled through a neutral procedural mechanism that is removed from the politics of the traditional diplomatic mechanism. By initiating arbitration under the Treaty, Gramercy has subjected itself to the norms regulating this system and the integrity of the arbitration process, including specific requirements set forth under the Treaty itself and, of course, by specific rulings of this Tribunal."

As you look within this propaganda campaign, you learn more about the fallacy of the arguments that you hear under the Treaty. The focal point of the Gramercy campaign has been the ceaseless repetition of an invented number, $1.8 billion. That is the amount that Gramercy claims in its Treaty claim and diffuses through its propaganda campaign.

It reminds me of the best pie at the best restaurant in my hometown. There's a tiny, thin piece of crust, and then there's about three inches of

meringue, and there's whipped cream on top of that. That's what we're talking about here. That is the number that has been used. It has been inserted into press releases. It has been inserted into paid Experts that they pay and release as supposed independent people to attack Perú.

Let's look in context, and I refer you to Quantum Expert Report 2, Appendix 6. Now, we've heard Gramercy itself said that the face value of these old Land Bonds were worthless, worthless at the time that it chose to purchase them. But what did we learn during the course of this proceeding?

Well, for a long time, we did not even have the Bonds. We've never seen an original Bond until today, but we did not even have copies of the Bonds for a long period of time.

Those Bonds that were withheld, they weren't attached to the Statement of Claim, not to the First Statement of Claim, not to the Second Statement of Claim, not to the Third Statement of Claim. They've got a lot of different Statements of Claims because their cases kept evolving, the whole time hiding

everything you see right here.

Now, just along the bottom level alone you see here 11 binders, copies of the Gramercy Land Bonds that ultimately we obtained from Gramercy. These Land Bonds have never gone through an authentication process as required under Peruvian law. No Expert Report has been submitted by Gramercy to authenticate these Bonds. They provide a report by Deloitte that says "these are actual copies." That's it. That's what you're riding on.

But there's a second piece that Gramercy didn't speak about today, did not discuss, did not attach to one, two, three, four versions of its Notice and Statement of Claim. Those are 24 binders, over 21,000 pages of Bond purchase contracts, because they want you to focus on this old paper, Bonds, and sneak through the definition of "investment" like that.

They don't want to talk about these contracts. If you look at these contracts--and it most certainly is the reason that they hid them for years--you can look at these contracts and determine that Gramercy paid $33 million to purchase certain

rights related to old paper, $33 million.

So Gramercy, meanwhile, out in the world, using figures like $1.8 billion, or the completely invented figure of $5 billion for Agrarian debt, was concealing from this Tribunal and certainly from the United States Government and others the reality they paid $33 million.

In addition, Gramercy has now admitted that it could have obtained $34 million through the Peruvian Bondholder process. So, Gramercy, by participating in the lawfully established process, could have recuperated 100 percent of the purchase amounts for those Bonds. It chose not to do so. It chose not to do so.

And, instead, it comes before this Tribunal, and it seeks a return in excess of 5500 percent. No lawful investor has any reasonable expectation of a return of 5500 percent. No Treaty provides any reasonable expectation of 5500 percent.

To the contrary, this was pure speculation, and as Gramercy tells its own investors, "you could lose everything."

One final detail: In the middle of this, the Gramercy valuations. Gramercy used the chart today. I will not show it because they want to keep it confidential, but it was Slide Number 215 of their presentation. And they gave you data over a certain period of years. They then the cut off the data that they showed to you.

Members of the Tribunal, the Republic of Perú is not going to request at this moment that the non-disputing party leave the room, but we'll just share a piece of paper with you.

PRESIDENT FERNÁNDEZ ARMESTO: So that should be H-3. We receive a paper and we give it the number H-3.

MR. HAMILTON: H-3, Mr. President, is the confidential version of Page 10 of Respondent's Opening Argument. We will leave that document with you, and you can take a look at it yourself, and we will certainly be discussing these issues, I'm sure, all together as the Hearing proceeds.

What's the bottom line of this campaign, of these inflated figures, of the hiding of information?

The Economist figured this out a few years ago. *The Economist* published an article on this issue, and it concluded as follows: "No reasonable person could construe Gramercy's speculative punt on archaic local IOUs as a foreign investment of the kind that the FTA is designed to protect. By invoking the FTA, Gramercy is doing its bit to discredit free trade and globalization. Its case should be thrown out." Exacto.

Respondent has structured its Opening Statement as follows: We're going to talk about the facts, and then we're going to talk about the law. We're going to talk about the facts by going through chronologically the storyline from 1969 to the present. We're going to go to the law, and we're going to talk about jurisdiction, merits, and compensation.

I will be assisted on the facts by my partner, Francisco X. Jijón, and Ms. Andrea Menaker will handle the argument on the law. And I would like to add also that you will be hearing during the days ahead from all of Perú's Witnesses and Experts,

including the former Minister of Finance and Ambassador of Perú to the United States, Luis Miguel Castilla; Betty Sotelo of the Ministry of Economy and Finance; Carlos Herrera, an experienced Peruvian public servant who personally participated in the negotiations for the U.S. Perú Treaty.

You will also hear from Professor Reisman. You will hear from Peruvian law experts, Messrs. Hundskopf and García-Godos. You will hear from Messrs. Wühler and Guidotti with regard to payment procedures, compensation procedures, restructurings, the characteristics of Bonds. And, finally, from Quantum Experts Mr. Kaczmarek and Ms. Kunsman.

Let's look at the facts.

ARBITRATOR DRYMER: Mr. Hamilton, excuse me. Without leading you into terrain that shouldn't be publicized--broadcast, can you tell me what we're supposed to make of H-3? Is this meant to be to scale?

MR. HAMILTON: It is based exactly on a chart that is in the record from the Quantum Experts.

ARBITRATOR DRYMER: Okay.

MR. HAMILTON: As a matter of fact, their chart is precisely what was used to make that presentation.

ARBITRATOR DRYMER: Understood. Thank you.

MR. HAMILTON: Yeah.

On the facts, we are going to discuss four elements: The origins of the Agrarian debt, the purchases of the Land Bonds by Gramercy, the ongoing uncertainty after Gramercy purchased Land Bonds, and, finally the Resolution through the July 16, 2013, Court Decision and subsequent establishment of a functioning Bondholder procedure.

I'm now to Slide 16. We will be a little bit more evidence-driven in this segment.

Regarding the origins of the Land Bonds, this period basically stretches from 1969 to 2006. That's when Gramercy appeared. And looking over that period of decades, what you see is an Agrarian reform established in Perú, followed by inflation and currency changes, the closure of the Agrarian Bank in the early 1990s, subsequent laws and decrees and court

rulings that left uncertainty about the status of the Land Bonds.

One example of that were the entire series of failed bills from 2001 to 2006 that were attempting to clarify the status of the Land Bonds, all of which failed. Let's look at this in more detail now.

Regarding the Agrarian Reform Bonds, these Land Bonds, as Gramercy calls them, relate to payments for land subject to local law in courts. They are the product of a unique era in Latin America history, one which we heard colorful comments about from Gramercy this morning, but, of course, what happened in 1969 is not subject of claims in this contemporary Treaty proceeding.

As indicated on Slide 18, an article from 1969 from the Foreign Affairs Publication, "Agrarian reform is an extremely complex process interlocked with the whole of sociopolitical and economic structure of a nation."

In Peru, the Agrarian Reform Law, Decree-Law 17716 was adopted on the 24th of June 1969. It's in the record as RA-155. And at the time that that law

was promulgated in the month of June 1969, the day was dubbed "the day of the campesinos"--"the day of campesinos" because Agrarian Reform was designed to redistribute land. That was the point. Like it or not. You can't claim about that.

It was not only something that happened throughout the region at the time, but it is something that the United States Government even encouraged certain reforms at the time, and all of this is explained in the record.

So in Perú, the Agrarian Reform Law was established, and on that basis the Executive Power was given the authority to compensate landowners for the expropriation of their land. That's the origins of these old instruments. Exactly the opposite of a contemporary sovereign Bond issuance that you go and market internationally.

And the law specifically authorized the admission of Bonds paying specific landowners, land IOUs. And over more than a decade, Perú redistributed millions of hectares of land to numerous beneficiaries and adopted multiple Supreme Decrees authorizing the

issuance of the Agrarian Reform Bonds. That is the story of the Agrarian Reform Bonds.

Just to be sure, consistent with their unique place in history and the targeted purpose of compensating landowners, these Land Bonds had very particular characteristics. The Bonds were provided as compensation for land. They were not issued to generate proceeds for the general use of the State or similar uses of contemporary Bonds. They were provided to landowners as part of a domestic land reform program. Perú never went on a roadshow to promote investment in these Bonds. They were given to expropriated landowners. They were not available for investment or listed on a stock exchange.

Whereas, contemporary Bonds are structured to attract international purchasers, the Land Bonds were issued in local currency, soles de oro, and subsequently impacted by two different currency changes. And, of course, subject to local law, subject to local jurisdiction, issued in paper, which I think becomes quite smelly over time, and it is part of the reason that an authentication process is

important to prevent fraud on the State.

Over the course of the 1980s and 1990s--early 1990s, Perú, like much of the region, faced hyperinflation, two currency changes, the end of the Agrarian Reform, and, finally the closure of the Agrarian Reform Bank in 1992. So the fate of these Bonds fell into uncertainty.

It is no surprise, then, that both the Quantum Experts of Perú, as well as the Quantum Expert of Gramercy, agree that the face value of these Bonds was virtually worthless, virtually worthless.

Slide 23. What happened after the hyperinflation and currency changes? A law in 1996, Exhibit RA-256, established nominal payment of these Bonds. Subsequently, in the year 2000, a decree, Exhibit RA-226, provided for dollarization. In 2001, in a court ruling of the Constitutional Tribunal, the Court held that nominal value was unconstitutional.

This is the decision that Gramercy now claims was the cornerstone of all of its Investment Decisions. This short decision made no reference to payment procedure, no reference to valuation method,

no reference to timing, and no reference to interest. This is not something you stake your claim on.

And what occurred over the subsequent several years before Gramercy began to purchase through all of these contracts that were hidden from you, Members of the Tribunal, left things uncertain, and they remained uncertain all the way until July 16, 2013.

Mr. Jijón will now summarize in further detail the legal status of the Land Bonds during this period from 2001 to 2006.

PRESIDENT FERNÁNDEZ ARMESTO: You have the floor.

MR. JIJÓN: Thank you, Mr. President. I'm going to speak English.

Mr. President, and Members of the Tribunal, I'm going to be addressing the value principle under Peruvian law, and I think it's very important that we define what it is we're talking about because what we heard this morning from my esteemed colleagues was incorrect as a matter of Peruvian law.

And they began their presentation this

morning by saying--by making reference to the value of their Bonds, saying "we know this has to be a significant amount because this was given out for compensation in exchange for land the size of Portugal." They also closed with a similar argument.

I think that we need to be very clear: We are talking here about valuing Bonds, not valuing land. And nobody in this procedure, as far as I know, has seriously argued that the value of the land is a relevant reference point for the value of these Bonds.

These Bonds were given out in exchange for land as part of the Agrarian Reform. At that moment, the Bonds had a debt, which was to be paid over time, and what the Constitutional Tribunal did in 2001 was to say that that value had to be brought up to--had to be updated.

The question, however, is what does that mean? What does that mean to update the value of the Bonds? And, unfortunately, the 2001 Constitutional Tribunal Decision was not clear about that. They said that the Congressional law that declared that the Bonds should be paid at a nominal amount was

unconstitutional, but they did not establish any alternatives.

Just for the record, I think it's important to note that that Decision was not only about Article 2 of that Congressional law. Today, I believe that Gramercy showed you the wrong provision of the Decision. They made reference to a part of that Decision that was referencing Article 1.

In reality, Article 2 is what we should be looking at. Article 2 is the one that says Bonds should be paid at nominal value. And what the Tribunal was saying, no, we don't pay at nominal value, but it didn't say what we do pay.

Now, once we get that straight, what can we take from that? Now, my colleagues on the other side have said, "well, yeah, it was implicit. Current value or the value principle, it has a clear meaning." They talk about a legal entitlement and they talk about consensus, and they said just about everybody knew what this meant.

On Slide 26 of the presentation, you will see what the Civil Code actually says about the value

principle. There are two provisions: Article 1235 and Article 1236.

Article 1235 makes reference to a series of different ways that an obligation can be updated that includes reference to different indices that are fixed by the Central Reserve Bank of Perú, reference to other currencies, or to goods.

Article 1236 does not reference those, but nor does it reference anything else.

So, in saying that we need to look to Article 1236, so what? How do we just derive CPI from Article 1236? CPI is not mentioned in Article 1236. Well, what Gramercy says is everybody knew that that's what it meant, and, in particular, they talk about a uniform jurisprudence. They said the Courts had uniformly held that 1236 meant you apply CPI. And, in fact, they today said that there is not a single case to the contrary. Well, that's just wrong.

If you look on Slide 27, you will see four cases. These are four cases that are in the record, dating back to around this time, 1998 through 2004. In each of these cases, a Peruvian Court referred to

using the dollar as a reference for updating an obligation. The Chamber used the dollar factor.

And in each of these cases, you see something similar. I'm not going to read them because I think it's clear.

PRESIDENT FERNÁNDEZ ARMESTO: These cases refer to "bonos agrarios"?

MR. JIJÓN: No. These cases are just, in general, applications of CPI. Sorry, general applications of the dollarization method.

PRESIDENT FERNÁNDEZ ARMESTO: If we can, can we use the proper--because a lot of confusion arises because we use English translation of Spanish legal terms. "Teoria valorista," that's the legal concept of the whole structure, of the whole--of the concept in Peruvian law, "teoria valorista."

MR. JIJÓN: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: So that is what we are really discussing: La teoría valorista del pago de las obligaciones. "This is the current value theory in the payment of obligations."

MR. JIJÓN: That's right, the "teoria

valorista" does not have an easy translation. And for precision, we can call it that. Current value principle is something that was made up for the purposes of this case.

Now, on the next slide, you're going to see some other cases, and these cases are cases where the Courts were updating the value of Agrarian Reform Bonds. And here, what can we see?

Again, no clear legal rule. Various different indices, at least two types of CPI, plus one reference to the Central Bank's automatic adjustment indexes.

What about the reference date? One of the cases said we'll update it from the placement date. Another one didn't say when they were updating it from. And a third case referred to updating from the last clipped coupon date.

The same, you see different methods of calculating interest as well.

PRESIDENT FERNÁNDEZ ARMESTO: Can I make another point, just for clarification for everyone? Because otherwise we will get lost. These Bonds have

something very special, that the coupons also relate to the principal. So, when we speak--normally when you speak about coupons, you only refer to the coupons for the interest. And in Spanish, to cut a coupon means to collect the interest, but these Bonds, surprisingly, have also coupons for the partial amortization of the capital, so, when it last clipped coupon can mean the last date when interest was collected or the last date when a portion of the principal was repaid. It's important that we keep that in mind because otherwise we will--a lot of the economic analysis does not make sense.

MR. JIJÓN: Of course, Mr. President, and that's an excellent point. On the last clipped coupon date, what we're really talking about is the last time that a Bondholder collected a payment on that Bond, and that's interesting because it really does go to the heart of what these Bonds were, and they are very different, as the President has noted, from other types of instruments, and I think that it shows why some of the analogies we heard this morning, such as putting money in a retirement account or buying crates

full of wine, they don't work. And the reason for that is these Bonds were not--they didn't have a separate interest coupon. No. They were really IOUs that were fixing payment on the principal, just fixing payment over time. So, the initial amount of the principal was not owed on the day of the expropriation. It was to be paid by Perú over time. And that's an excellent point.

Okay. What I think we can take away from the slide--and I don't want to get bogged down in the details anymore. I think what is clear here is not that any one of these methods was the "right method." The point here is there wasn't a consensus. There were various ways of looking at these Bonds, what these Bonds might have been worth, and someone who did a thorough due diligence at the time could have seen this.

If you look on the next slide, here is Slide 29. What we see is there's also not a clear legal rule in any of the legislation that was being talked about at the time, and this morning we heard that actually the legislation doesn't mean that there

wasn't a clear legal rule. All it meant was that Congress was trying to think of some payment method, a new alternative to the courts.

Well, that is just clearly not the case. If you go through the bills--and we have--they have different valuation methods considered in them. They have different ways of talking about interest, as well as different ways of paying the updated principal. Again, what's relevant here is not that any of these is the right rule. It is that there could not be a consensus if every single one of these bills was looking at a different method. So, to talk about a consensus or a clear legal rule or--it is just factually wrong.

And this is very important because when we talk about how there's a haircut or there's been some wiping out of value, well, first, you have to know what the value is, and the problem is that without knowing the methodology, you can't know the value. And what we see here is that there were lots of different methodologies. Lots of them were being talked about. Again, none of these passed. So, on

their face there was no consensus.

I'd like to make reference to R-257. This is the Report of the Commission 148. We've already heard about this document today. This is the document that was brought up by Claimants during the housekeeping portion, and as Mr. Hamilton anticipated at the time, this document is devastating to Gramercy's case.

Now, this document, Gramercy has tried to spin as showing that there was a clear legal rule because this Commission decided to apply CPI. They considered CPI to be one of the ways that they could go forward, but if you look at what the Commission actually said, and I'm going to read this in Spanish so that it is no confusion.

ARBITRATOR DRYMER: Can you give us the page reference, page number reference, please, as you're going forward.

(Comments off microphone.)

MR. JIJÓN: We will get that, sir.

ARBITRATOR DRYMER: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Let me get the facts clear. This is the Commission which was created

to study the Agrarian Bonds?

MR. JIJÓN: That's right. This Commission--

PRESIDENT FERNÁNDEZ ARMESTO: And it was with people from civil society and politicians. That is the Commission?

MR. JIJÓN: Yes, sir. You're anticipating some of my following comments. This Commission included members of the Government, and it included some Bondholder group representatives as well. And we'll get to that because that's an important point. One of the things that is important here is that this Commission was established to study: "All right, what do we do? How can we apply the 2001 Decision?"

And let's see what they say: "According to technical studies on the basis of the Commission's work, current legal regulations do not restrict nor limit the factors or indices that may be used to update the land debt.

The only restriction in the interpretation of the above-mentioned reports is that the index or factor to be used respect the current value principle."

What does that say? It means that the only limitation was you had to--and I am being told this is on Page 8.

So what does this say? This means that the Commission recognized there was no limitation in Peruvian law at that time as to what framework--sorry, as to what index or other factors should be taken into account in updating these instruments, these old Bonds. And the Commission went on and they tried to figure out how to proceed. So, they specifically considered three different types of index. They considered dollarization. That is "TC" on that table. They considered CPI, "IPC," and they considered adjusted CPI, "IPC ajustado"; three different types of index.

And what happened?

They did not go with dollarization. They did not go with CPI. They opted for a middle ground. Now, what's interesting here is even opting for CPI, this which Gramercy has said well, look, this Commission, they opted for CPI; hence, CPI was the rule. They used an adjusted form of CPI, which, even

in their calculations, gave a value less than half of what CPI would give you.

Obviously, what we're talking about here is figuring out a methodology to find value, not starting from a value and then working backwards to a methodology. In the interest of time, I'm going to move forward. The one point that I would add is that--to the President's question, the Bondholders who were part of that Commission, they didn't agree with this result, and they actually were quite critical of the decision. So, to present this as a consensus view is also wrong, just on the facts.

PRESIDENT FERNÁNDEZ ARMESTO: But do you agree? I mean, do you agree that they proposed--I think it is in Page 14--that they proposed "usted de acuerdo que ellos establecieron un IPC ajustado"--in accordance with--so, at the end the formula is based not on "IPC ajustado y al final", in accordance with a certain financial formula?

MR. JIJÓN: Yes, Mr. President. That was a recommendation of the Commission. It ended up going into one of these draft bills. Actually, I'm not sure

if it's here.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. It is on the same document.

MR. JIJÓN: And the point was--again, it did not become law.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

MR. JIJÓN: Again, there were lots of different methods being thrown around, talked about, not one of them became law because there was no consensus.

MR. FRIEDMAN: Forgive me, I'm sorry, but I think the--my references before to the bill that the draft legislation that had broad social representativeness was different from this. And I think it's being asserted that I made certain representations about this. This is a so-called "148 Commission" that was led by the Government. But what I was referring to was the Agrarian Commission, which was part of the 2005 and 2006 legislative efforts.

MR. HAMILTON: Have no fear, we will get there.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. There

are two Commissions. That was my question. There are two Commissions.

MR. JIJÓN: The following Commission, as you will be able to see in a few minutes, imported this analysis.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. JIJÓN: I will move quickly.

2004, what happened? Again, the issue of the Bonds goes before the Constitutional Tribunal. What's important here is that the Court upheld dollarization. And Gramercy has tried to make this into a nonissue. They say it's not important, that the Court upheld dollarization because they didn't make this mandatory. They said it was an option.

But, if we look at what the Court actually said--because one of the issues that the Court was asked to decide was how this squared with the 2001 decision? This is the Court addressing the issue of whether this was res judicata. They said that dollarization was acceptable because--and, again, I'm going to read in Spanish: "So, it says that this regulation that is now being put into question does

not seek to provide fair price."

My apologies.

What they are saying is the 2001 Decision, in their view, was--had ordered updating. You couldn't pay a nominal value, and here dollarization was okay because it was a method of updating and not paying nominal value.

Clearly, if this was only about giving Bondholders a choice, then it wouldn't matter whether it was about nominal value or updating because, you know, you could have given Bondholders a choice to take nominal value too; right? Presumably. Okay. Moving on.

I'd like to call your attention to Paragraph 29 of Dr. Revoredo Expert Report. That was put to your attention this morning as well. I think it is important here to note how Gramercy's legal arguments have evolved. We have here a red line of Dr. Revoredo's original report versus her amended one. In the original one, Dr. Revoredo took the position that Peruvian Courts had generally held Land Bonds have to be updated using CPI, and that the

Constitution, the Civil Code, and the 2001 Court Decision all imposed an obligation on the Government to pay the current value of the Land Bonds under CPI.

Now, Dr. Revoredo later walked that back, and she said that they generally had held this as a consequence of considering that the methodology respects obligations set up in the Constitution Civil Code and 2001 Court Decision.

Now, we would have loved to have Dr. Revoredo here to cross-examine. As Gramercy's attorneys have reminded us, she was part of the 2001 Constitutional Tribunal and would have been very good as a witness of what happened there and in 2004. However, we are not able to cross-examine her, either as a witness, and she certainly cannot be considered an expert now that she has withdrawn. She has said that this is for health reasons. We've known Dr. Revoredo a long time. Dr. Revoredo, in fact, when she was approached by Claimant to assist them in this proceeding, asked White & Case to be a reference.

So, we really were looking forward to cross-examining her. It is disappointing that we

can't cross-examine her. It is particularly since, even after this letter, we had held out hope that she might have reconsidered and been available, particularly since we have recently seen her making public appearances and statements by video.

Since she is not here, we will just point out that Dr. Revoredo's impartiality has been a concern with respect to the Agrarian Reform Bonds, and this is not a recent concern. This--all of this is in the record. This is, in fact, all in the record of the Constitutional Tribunal Decision itself. Dr. Revoredo was asked to recuse herself from that--from considering that case because an impediment that was thought to bring her impartiality into question. She refused. And we are unfortunately not able to cross-examine her about that or about whether she has some personal interest in the bonds or anything else.

And, with that, I am going to hand this over to my colleague, Mr. Hamilton.

PRESIDENT FERNÁNDEZ ARMESTO: Just to be--you are putting here some clips from newspapers?

MR. JIJÓN: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: I was trying to find them, and is it R-462?

MR. JIJÓN: Correct. R-462 is the record of the Constitutional Tribunal case.

PRESIDENT FERNÁNDEZ ARMESTO: No. That's not my question. You see here there is an article (in Spanish), and I see a photograph of a lady--

MR. JIJÓN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: --who may--or not. I don't know her--but it may be the Justice. And then (in Spanish), and it seems--reading it quickly, it seems that there is some impartiality problem, and it seems to affect Justice Revoredo. My point to you was, are these documents in the record?

MR. JIJÓN: Yes, they are, in R-426. They are in the record of this case and in the record of the Constitutional Tribunal Decision.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

ARBITRATOR DRYMER: Once again, I'll ask you for page references in due course.

MR. JIJÓN: I believe they are on the slide. I think they are Pages 160-169 of R-462. It's quite a

large record.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Yes. Let me say that it is extremely helpful because when we want to then double-check, it is a very, very--this is why I thought it could not be there because it starts with a judicial document.

ARBITRATOR DRYMER: It's at 163 of the PDF and following.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, it is there. This is--please, that goes for both Parties to put the page numbers so that we can actually. Oh, yeah, there are some pages there. Yeah. (in Spanish).

Sorry. Why do we have--I see this is a document with 3,596 pages. That's not really to be encouraged because it is impossible to find something. Why is this document 3,500 pages? What is the R-462?

MR. JIJÓN: That is the entire record of the Constitutional Tribunal's Decision in that case, Case Number 22/1996 brought by the Engineers Bar Association. That is an important case in our case because that is where the 2001 sentence came from, as

well as the 2013 Resolution that we will get to in a few moments.

PRESIDENT FERNÁNDEZ ARMESTO: So, you have been--under Peruvian law, you can get a copy of the whole case?

MR. JIJÓN: Yes. We obtained the whole copy and put it in the record.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And so, these documents are here regarding Justice Revoredo. Are documents from the 1997 where she was challenged?

MR. JIJÓN: She was challenged by the Congress at that time, which considered that she should not be hearing the case because of an impediment, specifically a link--a personal link that she had with the representatives of the plaintiffs.

Just to be clear, we are not alleging any--we do not want to disparage Ms. Revoredo or anything of the like. However, we do think it is important to note that she has given what appears to be almost Witness testimony at times, and we have not had the opportunity to cross-examine her.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank

you.

ARBITRATOR DRYMER: This was in evidence in that record.

MR. JIJÓN: Correct. Correct.

(Interruption.)

ARBITRATOR DRYMER: Pardon me. This is evidence in that record.

MR. JIJÓN: Yeah.

ARBITRATOR DRYMER: It's not a record of the Decision itself? It's the record of the case that appeared as it was filed before the Tribunal? Is that correct?

MR. JIJÓN: Correct, sir.

ARBITRATOR DRYMER: Yeah. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. JIJÓN: Mr. President--

PRESIDENT FERNÁNDEZ ARMESTO: Okay. In any case, these are things which happened in the past century? Because it is a 1997 case, so challenges would be in 1997, 1998, and that led then to the 2001 Decision?

MR. JIJÓN: Correct.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Okay.

MR. FRIEDMAN: And they were resolved a few pages later. You can see the Decision of the Court.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry.

MR. FRIEDMAN: You can see the Decision of the Court resolving that challenge--

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: --a few pages later in the PDF if you're interested.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. To be very frank, I was not aware of that.

MR. HAMILTON: All issues we will never have the opportunity to ask Dr. Revoredo about before you.

So, to conclude, as of 2005, as a matter of Peruvian law, there had been commissions, there had been various draft laws, but there was not only uncertainty but there was an ongoing dispute regarding the Agrarian Reform Bonds. It was precisely a dispute scenario that existed when Gramercy enters the story.

I told you we were going to discuss four things, the origins of the Agrarian Reform Bonds and

the uncertainties in dispute that already existed, the purchases by Gramercy, the ongoing uncertainties after their purchases and then the resolution. We are now on the second segment, which is the purchases of the Agrarian Reform Bonds by Gramercy. And I'm on Slide Number 37 right now.

Keep in mind that Gramercy touts a business model aimed at "exploiting distressed investment opportunities." So, distress is a part--is central to what Gramercy does, and that's why Gramercy advises investors, American pension funds, pension funds involving American workers, teachers, firefighters, state employees.

They tell them that the investment's performance may be volatile and investors may lose all or a substantial portion of their investment. They tell them clients must be prepared to bear the loss of their entire investment. And I refer you to Exhibits R-71 and R-540, page numbers listed on Page 37.

So, Gramercy's business model centers on distress. They tell American workers and pension funds whose money they bring into their fund: "You

may lose everything." But they demand of this Tribunal and in propaganda to the United States Government that they should magically be amped up from spending $33 million on purchase Contracts to receive over $1.8 billion. It is an incredible business model.

And one of the reasons it is so incredible is if you look at this Land Bond situation, what was their due diligence? They tell us now everything was so clear based on their deep research.

Let's look at Slide 38. Now, Slide 38 not only shows what is purported to be the Gramercy due diligence memorandum, and that's a due diligence memorandum dated 24 January 2006, CE-114.

But we also demonstrate here an email of the same date, CE-729, which is on the left side of this page. And what you see by comparing these two exhibits, which ended up in the record at different moments of this case, is that, on the left side, these are notes--and it says, "subject, ADAEPRA notes." These are notes that a Gramercy representative took in discussions with the Bondholders association

representatives.

Same day they turned that into a due diligence memorandum. If you look in the center of the page, you can see the changes that were made from the email notes write-up to what has been presented in this case as a due diligence memo. And let me point you to July 5 of 2016, a date I remember well because it interfered with July 4th, when Perú filed its preliminary response and we pointed out there the strangeness that this due diligence memo, the due diligence memo had no letterhead, seemed a little loose in terms of its provenance.

And we see now that this is actually a copy/paste of an email with a few tweaks, and an email based on notes from a discussion with the local Bondholders association. There is no other due diligence memo on the record.

There is one memo from later in 2006 that was withheld on the ground of privilege that appears to be related to the development of these purchase Contracts that they hid. This is their due diligence, and their own due diligence memo, if you look at Slide 39, this

is what it said.

It said: "The Peruvian Government serviced these Bonds until 1987 when President Alan García declared a default on Perú's obligations. Although Perú has reconciled most of its past debts, the Land Reform Bonds remain in arrears. The Land Reform Bonds have been in default for a period of 18 years. Why would the Government seek to reconcile these obligations now?" Good question.

They specified process of transferring title in Bonds is a bit complex. So, complex that they hid 21,000 pages from you through three or four submissions.

"Further complicating matters is the total updated debt denominated in nuevo soles." That's their due diligence memorandum.

And it goes on. Slide 40, the original Land Reform debt totaled 25 billion Soles de Oro, which today is worth approximately 25 nuevos soles. USD 1 equal 3.35 soles. Then it has various ranges of data, none of which was precise at all, and they went ahead and set out--and, again, I'm on Slide 41.

As I mentioned, this is a copy/paste from an email, notes from a discussion with the Bondholder representative. And they say: "ADAEPRA"--bondholder group--"is pursuing a parallel strategy, a transactional solution"--solution to what?--"solution to the dispute that already existed." "Negotiating a settlement," a settlement of what? "Of a dispute that already existed. A judicial track demanding payment. One potential strategy would be to lobby Congress." Lobby Congress to do what? "To change the law, to make things clear, to give us certainty."

And how did they target that change in law? "Let's focus on the period of time between the elections in April and inauguration at the end of July. During this lame duck period, a Congress representative may be willing to call for a vote."

So, let's see what happened in 2006. They tried it again in 2011; they failed. They tried it again in 2016, intentionally filing their Request for Arbitration, just prior to the second runoff for the election; they failed. They failed because they tried to force clarity to give them an exorbitant payout to

which they were never entitled. "Punto final."

Now, it's very telling that in 2006 how did their commencement of Bond purchases unfold? And let's look at this timeline on Slide 36.

The due diligence memorandum was from January 2006. In March of 2006, Congress approved a bill. Presidential elections were held on the 9th of April. The U.S.-Perú Treaty was signed on April 12, 2006. Obviously not in force, and, of course, as Perú has explained did not even cover these old instruments. Five days later Gramercy established GPH in Delaware. Two days after that, the President vetoed the bill that, in principle, would have brought legal clarity to the situation.

What did Gramercy do in the face of this ongoing uncertainty? They started buying thousands of Contracts. And even at that time, June 2006, when they started acquiring these Contracts, signing these Contracts, they--what was the status contemporaneously inside the Ministry of Economy and Finance? I'm on Slide 42.

Slide 42 from July 2006, this document, R-259

says: "This is awaiting the approval by the Congress in the legal framework."

There was no clear legal framework. There was only uncertainty. That's why, even in 2008, when Gramercy was still purchasing, signing Contracts and purchasing Bonds, Gramercy's document, which the Tribunal mentioned this morning, that is Exhibit CE-730, its own internal email said "we have been in regular contact with the Government of Perú since we started investing in these claims." In these claims.

"And the Government is aware of our investment activities." You simply can look, as an example, at Exhibit R-259, also demonstrated on Page 42. This is an internal Government document, aware of what Gramercy was doing, and specifying that there was no legal framework to pay on these Bonds.

Now, let me briefly note, as I said earlier, Gramercy did not turn over its Bonds to this Tribunal for an extended period of time, nor to the Republic of Perú. It did not file them with its case. It held them back. They have never been authenticated, nor has Gramercy put in an Expert Report that would in any

way suffice for that.

Even worse, Gramercy hid 282 Purchase Contracts. They did not provide these to you. They did not explain this to you. They didn't do it in Notice of Arbitration 1, 2, 3. They didn't do it this morning. These documents they finally produced during the document production process, and Perú in preparing its Counter-Memorial, expended great efforts hunting in Lima to try to find the Contracts that it could to piece together the puzzle and the reality of what happened when Gramercy signed Purchase Contracts.

And these Purchase Contracts that Gramercy doesn't like to talk about are highly telling. They are telling, number one, as on Slide 45, because they demonstrate that Gramercy paid $33 million. That is a data point that the press that Gramercy repeatedly ginned up, repeatedly said Gramercy refuses to reveal how much it paid for the Bonds. Of course. It interferes with the propaganda campaign, the meringue, the whipped cream, and the 1.8 billion.

ARBITRATOR DRYMER: Which you love.

MR. HAMILTON: The pie?

ARBITRATOR DRYMER: The pie.

MR. HAMILTON: I'll offer it to any of you. But the other thing that's interesting--

PRESIDENT FERNÁNDEZ ARMESTO: Tomorrow is Saturday. It would be a very appropriate date, if you want to bring us 50 or 60, and because we are quite--but we would certainly like them at the end of the Saturday.

(Laughter.)

MR. HAMILTON: Now, what do these Contracts say, these 282 Contracts? These Contracts that were Purchase Contracts for old pieces of paper. That's what they don't want to talk about. They want to talk about the word "Bonds" in the Treaty because they don't want to talk about this reality, and what is the reality of what these Purchase Contracts said?

Let's just give one example. Contract for the Assignment of Rights, Slide 46. 20 October 2006. This is in the record as CE-339.001. And it says--I'll read it in English for convenience, but the Spanish is key. "The possibility of an effective compensation derived from the assets constitutes an

expectative right, "derecho expectatitivo."

It's not an absolute right. It's not a clear right. It's not a clear legal certainty. It's a "derecho expectatitivo." The materialization of which is at the account and risk of the assignee, that is Gramercy's risk. It acknowledged it in all these Contracts that it didn't reveal to you. And it goes on.

The assignee, Gramercy, recognizes that notwithstanding the elapsed time it has not been possible to collect the debt that the Peruvian State maintains in its favor, "it has not been possible"

They sign Contracts to buy a claim for an existing dispute, and then they didn't reveal these Contracts to you. And we know why. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sorry. It took me some time to find the document. Can you repeat your argument? Sorry for that. I am here, it's--

MR. HAMILTON: Of course. Mr. President are you on Document 339.001?

PRESIDENT FERNÁNDEZ ARMESTO: Yes. And I'm

on Page 8.

MR. HAMILTON: Article 3.2--

PRESIDENT FERNÁNDEZ ARMESTO: It's a notarial document.

MR. HAMILTON: Yes. Article 3.2(vi).

PRESIDENT FERNÁNDEZ ARMESTO: Subclause--"the possibility of effective collection of the compensation derived from the goods." I am just reading to myself.

MR. HAMILTON: In short, Mr. President, the two things we're highlighting is that Gramercy did not magically come into possession of these Bonds. They want to treat this like a contract claim, like you would you go into federal court as Parties do. They took old pieces of paper. The origin doesn't matter because it's a contract claim in a court.

But in a treaty case all of these things matter. And if you look at the underlying Contract, what it says is--it refers to "derecho expectatitivo." "That it will become current at the risk of the assignee, therefore, the assignor will declare that the agreed provision under this Contract is proper or

adequate and it will be satisfactory, but it also indicate that it has not been possible to collect the debt that the Peruvian State has to itself."

So, it knew at the time that it was buying an expectative right, and that was the status of these instruments, as indicated in all of these Contracts, in all of these binders, which are all now finally in the record. That's the story of purchasing expectative rights by Gramercy at a time of legal uncertainty.

Now, we are going to move along in the interest of time, very quickly.

After Gramercy acquired these Bonds from 2008, when they finished acquiring Bonds, to 2013, July 16, 2013, the uncertainty that was preexisting, the dispute that was preexisting continued. It did not change.

As a matter of fact, there was no legal framework, there were no new laws, there was no resolution of the dispute, and you can see in the timeline on Slide 48, yes, the U.S.-Perú Treaty entered into force before and after there was no

clarity, there was no legal certainty, there was only an ongoing dispute. Yes, Gramercy made proposals inconsistent with the law. They introduced failed bills. They introduced conciliation proceedings.

They made reference to Treaty claims, conciliation efforts that were not viable. In 2011, yes, there was a draft bill. In fact, there were two draft bills contemplated. They failed. They failed. And so, the bottom line is not only did they sign Contracts that acknowledged the dispute, clearly purchasing the Claim, they continued in uncertainty, which is what they had arrived to.

Mr. Jijón, I'm going to ask very briefly, if I might, Slide 51, the draft bills that unfolded 2006 to 2011.

PRESIDENT FERNÁNDEZ ARMESTO: At some stage, we will have to make a break.

MR. HAMILTON: We will take just a few minutes and we will break.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. HAMILTON: Three minutes.

MR. JIJÓN: This will take 30 seconds. In a

word, "uncertainty," just the same as before, no method, nothing was approved, everything was in limbo. Thank you.

MR. HAMILTON: And as a final evidence of that, you can look at yet another internal document of the Ministry of Economy and Finance, Exhibit R-504, I'm on Page 53 of the presentation, once again confirming the lack of a legal framework. As this document says, addressed to then-Vice Minister Luis Miguel Castilla, "there is no legal framework."

Gramercy--yes.

(Interruption.)

ARBITRATOR STERN: Who sent the letter DNEP? I don't remember.

MR. HAMILTON: DNEP is the public debt component agency unit of the Vice Ministry of Hacienda within the Ministry of Economy and Finance. And so the debt office sent a communication to the Vice Minister of Finance, the Vice Minister of Hacienda, Luis Miguel Castilla, confirming, just as the contemporaneous documents in 2006 had confirmed, that there was no "marco legal."

That's a good place for a break, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Let's get a time check.

SECRETARY PLANELLS-VALERO: Thank you, Mr. President. The Respondent has used 1 hour and 18 minutes.

PRESIDENT FERNÁNDEZ ARMESTO: 1 hour and 18 minutes. Very good.

It is now 4:22. Shall we come back at 4:35? 4:35. 4:35.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: Very well. We resume the Hearing, and we now give the floor to the Republic of Perú.

MR. HAMILTON: Thank you so much, Mr. President.

We have one final section to discuss with respect to the facts as part of the Republic of Perú's Opening Statement.

We have discussed the origins of the agrarian debt and the dispute over their status. We have

discussed Gramercy's purchase of these old instruments at a time of great uncertainty. We've discussed the ongoing uncertainty reflected in the lobbying in Perú and the efforts to change the law and resolve the uncertainty. Now, as a final section, we will discuss the Resolution related to the status of the Land Bonds, and there are really three elements here: The Court ruling of July 16, 2013; the various Implementing Decrees; and the Bondholders Process which Perú has established and implemented to put an end to this historical issue.

I'm going directly to Slide 60. I refer you in the record to the Resolution of the Constitutional Tribunal. This is Exhibit RA-288 dated July 16, 2013. Now, we will discuss this in greater detail as the afternoon proceeds, but the critical elements to highlight are that, after all of those years of uncertainty, the Constitutional Tribunal put an end to the legal uncertainty by ruling with respect to the establishment of an Administrative Procedure and parameters for the valuation of the Agrarian Reform Bonds.

These two critical elements certainly did not exist in the Court ruling of 2001. They were not resolved through multiple efforts to change the law, which Gramercy admits that it personally or directly got involved in and failed. So, it was only the Court ruling that then gave clarity to these issues by establishing the basis for a procedure and parameters for valuation, and that is exactly what occurred over time. The fact that Gramercy started its case--to use a word from one of its own documents--"to the sound of canons," to the sound of canons all focused on 16 July 2013, and now has been running the other way ever since to say, "Actually, no, not 16 July 2013"--now, one of the things that they have highlighted today is attacks on the credibility of the one Court ruling that finally brought the necessary clarity for the legal framework.

(Comments off microphone.)

MR. HAMILTON: Mr. President, I direct your attention to Slide 65. The public sector reaction to the Court ruling of July 16, 2013 was not applause. This Decision was not welcomed as, "Look how great

this turned out for the State." To the contrary, there were expressions of surprise, there was disagreement, and the Ministry of Economy and Finance presented a Recurso de Reposición. So, the storyline that we hear today, while creative, really doesn't reflect the reality of what the public sector did when this Decision came out, which was to raise questions about it. They didn't like it. The Ministry proposed the Recurso de Reposición; it was rejected. The ruling stayed in place, the legal parameters established stayed in place, and since that time the Ministry has been carrying out its duties.

Now, we are going to very briefly address the efforts to attack the validity of this Court ruling which once was the centerpiece of Gramercy's case; now, not so much, because they have turned their attention elsewhere by necessity, but Mr. Jijón is going to briefly address these issues.

MR. JIJÓN: Thank you.

If you look on Slide 66, we refer to the whiteout red herring. That's because that's what every reference to whiteout is. It's a very colorful,

picturesque way of trying to make what the Constitutional Tribunal did look bad.

Gramercy has referred to a "forgery." They have used very colorful language, but one thing cannot be forgotten: There is no question whatsoever about the majority Decision in that case. The "whiteout" refers to a dissent, and we have several of the Justices who were on the Court at that time who explain that the use of Liquid Paper was not something crazy or out of the norm. That is in the Transcript of the Subcommission of Constitutional Complaints of Congress, which was investigating this issue, January 9, 2019. We invite the Tribunal to review that at your leisure.

Very important: This case is not about the validity of the Constitutional Tribunal's Decision. There have been several investigations. Perú takes allegations of this sort seriously. It has investigated these allegations in Congress and in a criminal proceeding. More to the point, it has investigated the allegations about the whiteout on the dissent. There is no question as to validity of the

majority decision.

The Resolution was approved--this is from the minutes of the approval; I won't read them now, but here, the Tribunal will be able to look and see how the Decision was actually made. There were three votes in favor and three votes against, and as a matter of Peruvian law, the President of the Tribunal has the tie-breaking vote.

The judges have subsequently confirmed the validity of the Resolution in testimony, and this goes to another colorful piece of argument that we heard this morning from Gramercy, that there was some vast conspiracy to pressure the Justices. The judges have themselves spoken about that, and they have said, "Never in my life has the Executive established any type of pressure. The Resolution was always going to be the same."

"We would not have accepted a draft."

"I reject absolutely that we have received anything from--that we have received from the Ministry of Economy and Finance a draft. This is absolutely false."

Just for the record, again, we refer to the Constitutional Complaints Tribunal's Transcript of 9 January in the record as R-1100, and the source--the specific pin cites are at the top of that cite. You will also see a reference to the article reporting that that Commission found that there was nothing to the fraud allegations.

Again, important to note that the 2013 Resolution has been upheld repeatedly. We heard today about the dissent in the July 2019 Resolution, and my colleagues on the other side suggested that this meant that there is still some question as to whether the Constitutional Tribunal made the right decision in 2013. In fact, again, that was a dissent. The majority has, over and over again, confirmed that that Decision was valid, and if we were to say that every time there is a dissent, that calls into question the validity of a decision, I am sure court decisions all over the world would all of a sudden be considered invalid, and maybe quite a few arbitral ones as well.

MR. HAMILTON: Now, Members of the Tribunal, the Court Resolution, far from being an opportunity

for propaganda and attacks on Perú or a basis for a Treaty claim, that was the cornerstone for the resolution of a dispute that was pending for years and years. It was pending together with great uncertainty during the time that Gramercy showed up to this issue. It was the state all the way until the 16th of July. The 16th of July Decision was the cornerstone for resolution and, subsequently thereto, The Ministry of Economy and Finance adopted a series of Supreme Decrees implementing the Court Decision.

First, there were Decrees in January of 2014. You know, sometimes in the process of governance, institutions have to carry out steps that are not that fascinating. They are granular. They require setting up the basic institutional arrangements for a Bondholder Process: Where will we receive these instruments? Where will we store these instruments? How will we authenticate these instruments? Who will provide the trained Experts who can examine old pieces of paper and make sure that there's not fraud on the State? These require institutional arrangements and a lot of institutional preparation.

So, in the aftermath of the Court ruling, the Ministry of Economy and Finance with its initial Decrees in January of 2014--those were Decrees 17 and 19--established the Bondholder procedure. At that time, it was already contemplated that there would be further steps required to conclude the implementation as the process went forward, and that's exactly what happened in 2017 as Bondholders made their way through the process. When it became time that people had gone through this authentication process, the Ministry made final preparations for the final stages of actualization and payment. And you see that reflected in the Supreme Decree of Number 34/2017 and Number 242, which is something called a texto único actualizado, a tua, or sometimes a tuo, is a typical form of integrating laws or decrees for clarity.

The exact same thing happened, for example, in, if I recall correctly, a case called Convial v. Perú. That was an ICSID proceeding. So, the concept of "a texto único" is not something new or particular. It's something that is, in fact, common and assures clarity. That is exactly what occurred here. As a

matter of fact, after that, Gramercy then calculated that it would be able to obtain almost $34 million for its Bonds through this procedure.

And the procedure itself--I am currently on Slide 74. The procedure, as you know, Members of the Tribunal, has four steps: Authentication, registration, actualization, and payment. You can see in Demonstrative 1064 a table prepared by the Ministry of Economy and Finance that, in fact, of the 11,000-plus Bonds received by the Ministry of Economy and Finance--that's more than the totality of the Land Bonds that Gramercy apparently has in its possession somewhere--they have concluded with respect to 88 percent of those Bonds. They have included processes of rejecting certain Bonds that did not satisfy the requirements. That's what authentication is all about, and, as you look at the percentages, looking through this process, what you see is that the Ministry established a valid compensation methodology that you see, through the number of Bonds and their success rate going through this process, that this is a system that is working. It is a system that is

working.

And one thing that is particularly disappointing is how Gramercy, through its propaganda campaign, has not only sought to damage Perú, but it has intentionally, maliciously interfered, trying to undercut the success of this Bondholder Process.

You know, one of the things that Gramercy said in a communication to Perú in 2016 is it emphasized that its Notice of Arbitration would be a highly public document which will provide grist for the media mill for a long time. "Grist for the media mill." Talk about taking the high mutual objectives of the United States and Perú in this Treaty and reducing it to grist is troubling.

And part of what they have done repeatedly--and you can see all of this in our Aggravation Briefs filed at the start of this proceeding--is to create talking points--"1.8 billion"; "default"--and repeat them over and over and over again. You can simply look--and I'm on Slide 37--at some of the kinds of language that Gramercy and the various websites, Twitter feeds that

it has been behind, that it has worked--you know, interesting that many of these entities have similar--they change just enough of the graphics to make them look a little bit different. But some of them appear to all be made by the same people, and they use terms like "subjective and discriminatory," "confiscatory formula," "inadmissible errors."

They are trying to bring down that procedure that would pay Peruvians. And why are they doing that? So they can try to help and inflate their own Treaty claim. And, just in case anyone is unclear, Gramercy is the alleged beneficiary of this claim, not Peruvians.

And at the end of the day, the reality is that some of the Gramercy Bondholders could have gotten more through the Peruvian procedure than they got from Gramercy. I'll give you just a couple of examples. I'm on Slide 75. All the citations are there, Mr. President.

But it's two examples, Gramercy Bond Contract Number 11--and you can't get this from the face of these instruments. Gramercy Bond Contract Number 11,

Gramercy paid $850,000. In the Bondholder Process, that Bondholder could have obtained $2.5 million.

Gramercy Contract Number 82, Gramercy paid $1.8 million. In the Bondholder Process, that Bondholder could have obtained $2.9 million. Difference of $1 million. Difference of $1.6 million.

(Comments off microphone.)

MR. HAMILTON: Yeah. And on top of that, take the two instruments that were put before you today, Mr. President. My counterpart said this Bond is worth nothing more than the paper it is printed on, and what that tells you is that, potentially, Gramercy overpaid, if anything, for that Bond.

If you look back to the Bond contracts and what they paid for it at the time, you look at the other Bond which wasn't mentioned in that example, and that other Bond, the purchase price was $160,000. And you can look at Perú's Quantum Expert's Second Report, Appendix 8. That Bondholder could have obtained twice as much through the Peruvian Bondholder Process. Twice as much. Meanwhile--I'm sorry, but please don't interrupt me right now.

PRESIDENT FERNÁNDEZ ARMESTO: Since you have stopped, can I just ask you how this process works, or will you be coming to explain to us how it actually works?

MR. HAMILTON: Ms. Menaker is about to discuss these things in great deal. So, I can't allow interruptions, because then I will have difficulties with my partner who is patiently waiting. Thank you.

ARBITRATOR DRYMER: We just learned that she is addressing it in great detail.

MR. HAMILTON: Fortunately the Slides address some of these things as well.

Bottom line, Mr. President, as we discussed in our introduction: This Bondholder Process has been functioning. These Bonds are no basis for the kind of exorbitant returns that Gramercy is seeking from you.

Now, we have concluded our presentation on the facts, origins, purchases, ongoing uncertainty, and resolution, and we now are going to turn from facts to law. Ms. Menaker is going to address jurisdiction, Merits, and compensation.

And, perhaps, if we could ask the Secretary

to confirm our current time.

SECRETARY PLANELLS-VALERO: Thank you. You have spent 1 hour and 38 minutes.

MR. HAMILTON: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: I think it is your turn now, Ms. Menaker.

MS. MENAKER: Thank you. Good afternoon, Mr. President, Members of the Tribunal.

So, I'm going to now discuss the legal bases on which Gramercy's claims ought to be dismissed, and I'm going to start in that regard with abuse, because their claim is a quintessential example of an abuse of right or an abuse of process that warrants dismissal. And although this a ground for inadmissibility rather than jurisdiction, I think it makes sense to begin here, because these facts really underlie many of the grounds for the remainder of our objections.

As the Tribunal is aware, and as Gramercy acknowledges, one cannot take advantage of International Investment Arbitration when it has acquired an investment either after dispute has arisen or when the dispute is reasonably foreseeable, and

several Tribunals have so held. You're familiar with those cases, no doubt. I saw mentioned just two of those, and Philip Morris versus Australia, of course, is one where the Australian government had announced its intention to enact legislation prohibiting--or requiring plain packaging of cigarettes. And notably in that case, Philip Morris had expressed its concern that, if such legislation would be enacted, that that would undermine or that would harm its businesses. And it took several months--in fact, it took over a year and a half--from the time of the announcement until such plain packaging legislation was enacted, and during that time, I think there are two things of note.

One is that in the interim, there was an election, and the Government became a minority government. So, in some respects, it was perhaps less likely that the minority government would have been able to enact such legislation, but nonetheless, the Tribunal said the Government's intention had not changed, and there was still a reasonable prospect that it would act upon its intention.

And during this interim, Philip Morris reorganized its structure and created an entity in Hong Kong that could take advantage of that Treaty, and that was deemed to be an abuse of process because the enactment of that legislation was reasonably foreseeable. And notwithstanding that it took, like I said, 19 months from the statement until the enactment of the legislation--because the Tribunal recognized that in democratic governments, there are often proposals for legislation--bills come, they go. They don't necessarily pass. There are debates. There may even be court challenges, but that doesn't make it any less foreseeable, because if it did, what that would mean is that an autocratic government that can basically act by fiat overnight, in that case, you wouldn't be able to abuse the system, but you could for a democratic government. And, of course, that cannot be the rule.

And you are all well aware, of course, of the Phoenix Action Tribunal, which held similarly where there were preexisting disputes between Czech companies, civil litigation as well as criminal

complaints, and thereafter the Claimant had incorporated an entity in Israel to take advantage of bringing Treaty claims based upon those preexisting disputes, and those claims were dismissed as an abuse of process.

And I think here, the claims so clearly fall within that category, and that is because this--Gramercy, when it purchased these Land Bonds, there was already a preexisting dispute. It was a decades-old preexisting dispute, because there is no dispute--or there is no contesting the fact that no payments had been made on these Bonds for decades. Whether or not you call that a default, the fact is that everyone agrees that, on their face, these Bonds became worthless when the Agrarian Bank closed in 1992. Thereafter, there were no payments being made. And as we heard in great detail, from then on, for decades, there were bills. There were court cases. And so, not only was there no payment, but as early as 1996, the Society of Civil Engineers, I believe it was called--or the College of Engineers in Perú, on behalf of Bondholders, brought a case that led to the 2001

Constitutional Court Decision, of course seeking payments on these Bonds.

So, there was a dispute over what should be paid for these Bonds, and certainly it was not only a case where it was reasonably foreseeable that there would be a dispute over payment of these Bonds, but there was a preexisting dispute as to the payment of the Bonds.

And I'm sorry, I'm going to refer to a document that is confidential now, so if Gramercy insists, we'll ask the United States to leave. I think it is an important document, but we need to do that.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. I'm sorry.

MR. HAMILTON: The Republic of Perú wishes to reiterate that it disagrees with the routine of excluding the United States Government. There have been years of lobbying and sharing of propaganda with the United States Government by Gramercy, and now it insists to kick them out of this hearing repeatedly.

We make a record. Thank you.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MS. MENAKER: And Gramercy admits that it acquired the Bonds--it says, "Well, no, we didn't purchase a claim, because it took us a decade to bring this investment treaty dispute." That is completely irrelevant.

What they are saying is, "No, we wanted an amicable resolution. We wanted to negotiate." But what do you negative other than a claim, other than a dispute? If there is no preexisting dispute, there is nothing to negotiate. So, they purchased--when there was a preexisting dispute, they purchased the claim. Whether they wanted to have a negotiated resolution or whether they were going to end up in court or before the Tribunal, it doesn't matter. They are still purchasing after a dispute has arisen, and what they are purchasing is a claim.

And, in fact, the only reason that they ever had any hope of negotiating a solution is because they had the bludgeoned threat of this investment treaty arbitration claim to hang over the head of Perú and to threaten them that, "If you do not negotiate with us,

you know that we're going to bring the Treaty claim." And that's exactly what they did from the very first instance.

And so, you can see here, they say that their motive and their investment strategy was to engage in negotiations with the Government, but that's an admission that they bought into a preexisting dispute. What else is there to negotiate, other than to negotiate a resolution of a dispute? And this is throughout their testimony, as well as their own press releases, where they admit that the Government, they say, has refused to negotiate for decades, and that they are purchasing with the hopes of negotiating a resolution of this preexisting dispute.

So, for all of those reasons, this is, like I said, a quintessential case of abuse. It is much more egregious, in our view, than the case in Philip Morris, for instance, when the measure had not even been enacted. There, they just said the dispute was reasonably foreseeable. Here, we don't have to look at reasonable foreseeability. The dispute had already arisen. It had arisen decades ago. It is more like

Phoenix Action, where you already have the dispute, and then you buy into the dispute, and you are basically purchasing a claim. And that, in essence, is the deep flaw with their claim and the reason why it should be dismissed at the threshold.

Now, there are also other timing issues that are of a jurisdictional nature that flow out of these same facts that I also want to discuss. And, in the same way that you can't purchase a preexisting dispute, the Treaty does not apply retroactively to acts or facts that predate its entry into force. Essentially, it's a general principle of international law of which you're all aware that, of course, a State can't breach an obligation when it doesn't have that obligation yet. And, as I said, it's a general principle of law, but it is stated expressly in the Treaty at Article 10.13, as you can see there.

And this applies as well--it doesn't only apply when you have an alleged breach before the entry into force of the Treaty, but just because you have measures that you were identifying as challengeable that postdate the entry into force of the Treaty, if

those measures are so inextricably intertwined with those earlier acts or facts that constitute a breach, then the principle of nonretroactivity also applies and bars the claim, and that also is the case here.

In other words, unremediated conduct does not become actionable just because the Treaty enters into force. And you can see this very clearly in the Berkowitz v. Costa Rica Case, where there, the Claimants alleged expropriations, both direct and indirect expropriations, of certain land that Costa Rica had designated as protected. With respect--and the Tribunal found that the vast majority of their claims were failed because those acts or facts existed prior to the entry into force of the Treaty.

So, with respect to the land that had been allegedly directly expropriated, the problem was--is that the State had offered an initial valuation for that land prior to the date of entry into force of the Treaty, and the Claimant had complained about that. So, the fact that the State had not made any final offer of compensation until after entry into force of the Treaty did not matter, because you could not have

a claim--a breach of a Treaty claim based on expropriation and insufficient compensation when the State had indicated earlier, before the entry into force of the Treaty, that it would intend to pay you less.

Similarly, with respect to the indirect expropriation claim, prior to the entry into force of the Treaty, some acts that had been part of the creeping expropriation had occurred. For instance, there were restrictions on development that were enacted. There were also environmental regulations that were enacted. That restricted the scope of activities on the land, and so the Tribunal said thereto, even if there were subsequent measures post-entry into force, those were inextricably rooted in or connected to those pre-entry-into-force acts and, therefore, they could not be actionable under the Treaty.

The only measure that they were allowed to contest was a Court Decision that postdated the entry into force of the Treaty, but, very notably, they were not able to contest the Court Decision on the grounds

that the Court had awarded them insufficient compensation for the expropriation, and that was because that is so related to a claim for expropriation that that occurred prior to the entry into force of the Treaty. They could only complain if they had suffered a complete lack of due process, they had been denied access, and such--in that vein.

And the analogy here is, with respect to the 2013 Constitutional Court case, that postdates the entry into force of the Treaty, and yet it is so intertwined and rooted, in fact, with the pre-entry-into-force events that it is not independently actionable as a post-entry-into-force measure. And, as the Claimants themselves have to acknowledge, of course, they can't complain about that lack of due process in that court case because they themselves were not Parties to that court case, and they can't complain about the substance of that court case because, again, that is no different from all of those prior court cases and bills and everything else that Mr. Hamilton and Mr. Jijón discussed that were trying to work out the valuation and the payment for

these Bonds.

And, again, Claimants themselves recognize that the 2013 Court Decision is inextricably intertwined with the earlier actions. And if you look at their Third Amended Statement of Claim at Paragraph 74, in fact, they explain that the 2013 Constitutional Court Decision stemmed from a request to enforce the 2001 Constitutional Tribunal Decision. So, if you can't challenge the 2001 Constitutional Court Decision and the earlier acts, you can't challenge the later ones, either.

PRESIDENT FERNÁNDEZ ARMESTO: But that would not affect the Supreme Decrees. Your argument would not affect the Supreme Decrees.

MS. MENAKER: They would affect the Supreme Decrees, because Supreme Decrees are implementing Decrees. They are implementing the ruling in the 2013 Constitutional Court Decision. If that is either time-barred or if it is pre-entry-into-force activity, and barred because of that, any kind of implementing legislation or Regulations or Decrees can't be independently actionable, and a host of Tribunals have

so found, because otherwise, these types of prohibitions, whether it's a prescription period, a statute of limitations, or the nonretroactivity principle, would become meaningless, because one could always find another additional measure, or typically one can always find an additional measure. But when it's so deeply rooted in that earlier conduct, it doesn't become independently actionable.

So then finally the last jurisdictional objection based on timing relates to the three-year prescription period in the Treaty, which, as the jurisprudence establishes, and also the United States agrees with Perú, it is a clear, rigid, inflexible requirement.

And that prescription period is triggered at the first time that the Claimant knows or should have known that it suffered--that there was a breach and that it suffered any damages.

It does not need to know the particular legal exposition of what constitutes its breach. It doesn't have to elaborate that in full elaboration. It needs to know, generally speaking, there has been a breach.

And in the same vein, it doesn't need to have fully quantified its loss. It simply needs to know that it has suffered a loss.

And here you can see from the time frame that its claims are time-barred, and that is because, even if you accept, as Gramercy has said, that its claim is predicated on the July 13--July 16, excuse me, 2006--I'm all confused. It's the July 16, 2013 Constitutional Court Decision--the last day to challenge that before this Tribunal would have been July 16, 2016. So that is the critical date.

And Gramercy was well aware of that. It filed its Notice of Arbitration just prior to that on June 2, 2016, so just prior to that. The problem, of course, is that it submitted a faulty waiver for GPH.

Now, that waiver, we don't have time to go into all of the arguments. You've seen them briefed. But that waiver did not conform with the express requirements that are in the Treaty. It is very easy to put in a compliant waiver. You just copy and paste the language that is in the Treaty.

They did not do that. They included a

carve-out. They included a carve-out that was identical to the carve-out that Renco included in its waiver that it submitted in the other case under the same Treaty.

Now, surreptitiously, that Tribunal ruled just--

MR. HAMILTON: Simultaneously.

MS. MENAKER: Simultaneously. It ruled one day prior to this critical date. It ruled on July 15. The Renco Decision came out and said "that waiver is noncompliant. You did not consent to--Perú did not consent to arbitrate with that noncompliant waiver."

And so Gramercy saw that, and what did it do? A few days later, July 18, it refiles its Statement of Claim with the compliant waiver. However, it complied only in form and not in substance. And when you look at everything from Waste Management to the subsequent jurisprudence, it is very clear that it is insufficient to put in a waiver that mimics or mirrors the language in the Treaty while you are simultaneously acting at odds with the language and the waiver.

And that's what they were doing, because they were engaging in local proceedings that ran afoul of the waiver. So, they recognized this as well, and so then they put in motions to withdraw from those local proceedings, and that was on August 5, 2016, and those motions were granted a few days later, but one can forget about the difference between August 5 or August 10, as far as submission to Arbitration. It does not matter.

Even if you take at face value what Claimants have said, as of August 5, 2016, that was the date as to all--as to when conditions had been met for the formation of an Arbitration Agreement. That date is after the three-year period had expired to challenge any aspect of that July Constitutional Court Decision.

And there can be no doubt that that is the effective critical date and that Gramercy, in fact, did recognize that it had--that there had been an alleged breach and that they had allegedly suffered loss as of that date, and you need only look again at their own materials, where today, for instance, even before this, they said this morning--and I quote--"in

2013, Perú seized the unique opportunity. They got the Constitutional Court to change the current value framework."

They called the 2013 Constitutional Court Order tainted in their discussions today. This all shows that the crux of their Claim is a challenge to this Decision, as much as they want to reframe it now that they find themselves having filed out of time if they wanted to challenge that.

And again, another thing they said this morning is that beginning in 2013, Perú completely reversed the basic legal framework in which Gramercy had invested in the Bonds. Of course, we disagree with that, but, again, it shows that, according to them, that alleged breach occurred in 2013.

And it didn't occur months after the Decision was issued. It occurred on the very day the Decision was issued because they were very, very closely monitoring this. They were very active in Perú, lobbying the legislature all the time, keeping an eye on the Courts, talking with the Executive. They knew exactly what was going on.

And so the very day of the Decision, Mr. Koenigsberger writes to Mr. Cerritelli, who was their Head of Sovereign Strategy down in Perú, who was involved in acquiring the Bonds, and says, "where do they come up with this nonsense"? If he's calling it nonsense, he's obviously read the Decision. He knows or he feels it is not favorable for him. There is your alleged breach. There is your knowledge that you've sustained some loss or damage.

And how does Mr. Cerritelli respond on that very same day? He says, "yes, the Decision is different from what we expected." So they understood the contours of the Decision, and they say "we expect that it would represent a significant haircut. We don't know how much, but a significant haircut."

That's your knowledge that you have sustained a loss or damage. Again, you don't need to quantify it at the time. Once you know that you've suffered a loss or damage, that is when the clock starts ticking.

And, again, the next day, they are saying to the press that this will result in a smaller payment than we had expected, and, again, the next day their

own Expert is before the press saying that they may sue in a foreign court.

Again, looking at their own submissions, what do they say? They say early on, the Government's intentions became apparent on the date of the Decision itself on July 16, 2013. In May, they are nervous that their time for filing the Claim is running out because they have to file by July 13. They say time is running out.

As we get to June, now they say time has run out. We can't wait any longer. And then as if there would be any doubt, on June 2, 2016, they say, "Gramercy first acquired constructive or actual knowledge of Perú's breaches on or after July 16, 2013." There they are saying it themselves. They know when they acquired knowledge. They acquired knowledge the day the Decision was rendered.

Then what do they do? After we make our objections, after they find out that they have to refile because the Renco Decision comes down and they have the faulty waiver, then they backtrack and they say, maybe that wasn't the best use of language. It

was truthful use of language, but not the best for their case.

And there are other examples. I won't disrupt to put in confidentiality mode, but there is another document that is cited on the top without any description that is another instance showing Gramercy's knowledge that the statute of limitations or the prescription period was running out and that they filed it with that in mind.

Now, what Gramercy has tried to do to get around that is to cherry-pick later-in-time measures, namely the Supreme Decrees, to say that, therefore, they are not time-barred, but, again, that doesn't work because the jurisprudence is very clear that they knew once you know you've suffered loss or damage, you can't rely on a subsequent measure to keep pulling out the statute of limitations because that would deprive it of all meaning.

And all those subsequent Decrees, all they did was implement the Decision about which they're finding fault. And you can see this very clearly on the next slide, and I think this is very telling, that

this is in December 2013, and they say--so this is after the July 2013 Constitutional Court Decision but before the 2014 Decree, right? And they are saying here, that based on the July 2013 Decision, that they've analyzed their rights under the Treaty, and they have a legal right to payment of more than 1.1 billion.

That's their claim in this very Arbitration. The 2014 Decree did not change their Claim. It's increased because of interest, but that's their Claim. So they're saying--as a result of that 2013 Decision, they're invoking the Treaty. They're saying they're owed $1.1 billion. How can they possibly say now, no, their Claim did not arise until that 2014 Decree came out? It didn't make sense.

And, in fact, when you look at the Philip Morris Decision, that Tribunal also took note of the fact that Philip Morris--they found relevant the fact that Philip Morris had also stated to the Government that the actions they were intending to take, if they would enact legislation, would deprive them of their legal rights.

And in internal memos, they had noted that they were considering the matter in, quote/unquote, "legal terms," and this showed that their claims really did emanate from those measures and that they had knowledge of that alleged breach and alleged harm at that time.

PRESIDENT FERNÁNDEZ ARMESTO: Does your argument only affect GPH, or do you extend it also to GFM?

MS. MENAKER: For the abuse and just for the prescription period. Yes just for the prescription--

PRESIDENT FERNÁNDEZ ARMESTO: My question comes because, as you state, the problem with the waiver only affects GPH. If I'm not wrong, GFM did make a normal waiver, and the waiver issue did not arise, or at least that is the point Claimants are making.

MS. MENAKER: Yes. No, that's correct. That's correct. So the first two objections, abuse and nonretroactivity, apply to both equally. The prescription period only applies to GPH because they are the ones that put in the faulty waiver.

GFM, I mean, they are not even an investor, but I'll talk about that later. So they have other problems. I mean, they basically have signed a management agreement.

So, now I'm going to discuss our other jurisdictional arguments, namely the lack of an investment, and I don't think that there is any dispute, at least at one level, that one needs to apply the Vienna Convention on the Law of Treaties, of course, to interpret the Treaty in accordance with its ordinary language in context and in light of its object and purpose.

And this means that one cannot take a simple word, like the word "Bonds," and just say, well, this is a bond, that's a bond, therefore it falls within the meaning of the Treaty. You cannot ignore the context. You cannot ignore the object and purpose when interpreting either the word "Bond" or when interpreting the word "investment" in the Treaty.

And in this regard, I'll just make a few comments about Gramercy's overreliance or reliance, really, on what it has termed "the travaux" because

that also is improper. That also is improper because the travaux, of course, is a supplementary means of interpretation that should only be looked at when your interpretation, in accordance with Article 31, leads to a result that is ambiguous, unreasonable, or absurd. And, here, our interpretation does no such thing.

So, there's no need to resort to travaux, and the danger with resorting to travaux is that you elevate a party's intention or a party's hope to put something into the Treaty rather than looking at what the Treaty actually provides.

Now, as opposed to that, when you look at a subsequent agreement of the Parties, as Perú does when it points out to the Tribunal areas on which the United States and Perú agree, there, there is no such danger because you're not looking to substitute what might have been included--

(Comments off microphone.)

MS. MENAKER: So, there you're not looking--there is no danger of basically altering what the Parties had agreed on in favor of what might have

been put there because you're talking about a subsequent agreement, which is why subsequent agreements always shall be taken into account.

Now, putting all that aside, the content of their so-called "travaux" is also--doesn't assist. First of all, it's not true travaux insofar as they are looking at the writings from one of the State Parties. It's not as if this is exchanged between the Parties. So it's not a record of the negotiations.

When you look at the actual documents there, there is no mention of the Bonds. There is no mention of the so-called "Land Bonds." What you're talking about is the United States coming forward and saying, oh, we have some U.S. Nationals in Perú who have disputes that we'd like you to resolve. Their disputes was that they were living in Perú, they had land, land was expropriated, and they either wanted their land back or they wanted Perú to comply with the Court Decision.

And so in the LeTourneau case, for instance, there it was a U.S. company down in Perú. Its land was expropriated. A road was built on that land.

They had a court decision from, I believe, 1970 where the Court ordered Perú to pay compensation for the value of the road, and Perú hadn't paid it. So they said, okay, comply with this Court Decision.

That has nothing to do with Land Bonds. No mention of Land Bonds. One cannot read into that that the Parties had any view as to what the Bonds, whether they would be included as investments or not.

In another case, it was a U.S. National down in Perú whose farm had been expropriated and since the 1990s had been seeking to get its farmland back, and they were saying, oh, can't you resolve this issue? Again, no, mention of Bonds at all.

So, when they say it is hard to believe that the Parties could have negotiated this Treaty, knowing about these Bonds and not dealing with them, we should just assume that they were included in the definition of "investment." There is no support for that whatsoever. That's not what the Parties were discussing.

And so the Parties did use a so-called "open-list approach," but that also is not what

Gramercy claims it to be. They have said they use a negative exceptions. And, yes, there are places in the Treaty where the Parties expressly provide that something is not considered to be an investment.

One cannot conclude from that that if it's not listed there it's automatically an investment because one could never think of all the possible things that someone could come up with. Just like you could never list every type of investment. That's why it's open-ended. It says "includes." So it's an open-ended list of what may be an investment.

The flip side of that, it has to be an open-ended list of some things that may not be investments. You can't think of all of those things in advance, and there is nothing to suggest that that is how the Treaty was drafted, and, in fact, the United States does not agree that that was how the Treaty was drafted.

Now, when you start by looking at the ordinary meaning of the word "Bonds" within the definition of "investment," we would just note that these Bonds, as we've been saying, don't fall within

the ordinary meaning as ordinarily understood by people to mean bonds or public debt. And the main reason is that a bond is typically considered to be an instrument that is sold in order to raise money.

That's the most like basic level. And here these were not instruments that were sold to raise money. These were more akin to promissory notes. We're taking your land, and we'll owe you the money. And that's what it was. So it's nothing--it doesn't function like an ordinary bond.

But beyond that, the Treaty expressly provides and requires an assessment of the characteristics of an investment. And this is important because you know many Tribunals have looked at the so-called "Salini factors," but not universally, and the Parties would have no reason to expect, necessarily, that every single Tribunal would do that. They wanted to make sure that these characteristics were considered, so they wrote it into their Treaty.

And so those things have to be looked at, and one cannot take anything on that list and say, "just

because it is listed it is an investment," because that would be ignoring the fact that you have to look at it by the characteristics. And just like a claim to money is listed, there are many things that would fall within the characterization of a claim to money that are not investments.

And Arbitrator Stern mentioned a simple sales contract. That is a quintessential example of something that is a claim to money but that everybody agrees is not a protected investment in investment Treaty Arbitration. In the ICSID travaux, it states that.

So, that's well-known and, yet, yes, it falls within the grammatical terms within that language, but you need to look at it in context.

And so, again, this is emphasized also in the footnote, Footnote 12, where it says some types of debt are more likely than others and some are less likely. It doesn't say some forms are investments and some are not, just they're more likely or less likely, so we could go either way depending on those characteristics.

And another thing that even though Bonds here are listed as those that are more likely, once again you need to look at the characteristics because the things that are less likely are going to be claims to payment that are immediately due.

And, again, these are not--typical bonds, when you're looking at a bond as an investment, you're either looking at it when it's been issued or even after it's been transferred, but while payments are still being made. And then payments are not immediately due. You're going to be paid over a period of time.

These are Bonds where payments had stopped being made decades ago. According to Gramercy and according to everyone else who was suing in Peruvian Court, the amounts were immediately due. They were past due. That's what they were suing for. The tenor of the Bonds had long since passed. So these were claims to payment that were immediately due.

That's another tick in the box as to why they don't bear the characteristic of a true investment.

I'm going to also go into some confidential

information before I get to Slide 24.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

PRESIDENT FERNÁNDEZ ARMESTO: On Page 108.

MR. HAMILTON: 108.

MS. MENAKER: Now, on here, if anything, the land that was distributed, that land distribution may have contributed to economic development, but the Land Bonds did not contribute to economic development, the Bonds themselves. Those were just given to the landowners as payment for that land. So, that is not an investment. That's no contribution.

Now, today we heard--and they have said in their pleadings as well--well, we made this influx of $33 million to the Peruvian economy by paying these Bondholders for their Bonds. That's the same amount on average that the Government would have paid had these Bondholders gone through the Bondholder process, because, as we've said, those Bonds, had Gramercy put them into the process they would have gotten 34 million. And you've seen the way it works out, some Bondholders would have gotten more than they were paid, some would have gotten less, but the full amount is approximately the same. So, how is that an influx

into Perú's economy, a contribution to Perú's economy. They are saying, well, we paid Bondholders, you would have done the same thing. That's not a contribution to the economy.

And, in fact, as Mr. Hamilton went on to discuss at great length, they've done the opposite of contributing to the economy. They have actually taken steps to try to harm Perú's economy by trying to keep them out of the OECD and the like.

So, I am now going to just go to the last slide in this section and just say that the jurisprudence further confirms this conclusion that these are not investments. We've discussed at length how these are different from modern sovereign bonds. But the one thing that I do want to emphasize is that, in redistributing the land, Perú is not borrowing money, and that's, again, the primary function of a sale of Bonds, is you receive money. They were not receiving money that they could then use for other purposes. They didn't get any exchange of money in--in exchange for the land, and they, essentially, just gave the landowners a promissory note.

So, now, I'll move on to our last jurisdictional objection, which is that they are not investors. I mean, it follows, of course, if you haven't made an investment, you are not an investor. And I would just note in that regard, of course, for an investor, you need to actively make your own contribution at your own risk. You can't rely on third-party contributions from ultimate beneficial owners and Gramercy has no standing to bring claims with respect to the interests of third-party beneficial owners. It is well accepted that international law favors beneficial ownership over nominal ownership and that that is the real party-in-interest, are the beneficial owners.

And as I've shown before here, all--

And I'm sorry, this is confidential again.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MS. MENAKER: And with that, I will turn to the Merits.

PRESIDENT FERNÁNDEZ ARMESTO: I am advised that it is now 2.5 hours. So, you have now, like, 10 minutes more.

MS. MENAKER: Okay.

MR. HAMILTON: Just one question, Mr. President. We did have significant time allocated to answering questions in the first part, so we may seek a few extra minutes. Thank you. We'll try not.

PRESIDENT FERNÁNDEZ ARMESTO: "Bueno, seguiremos avanzando."

MS. MENAKER: And I apologize. How many more minutes did you say? Did you say 10 altogether?

PRESIDENT FERNÁNDEZ ARMESTO: 10 minutes.

ARBITRATOR DRYMER: That's what he is saying.

MS. MENAKER: All right. I will try not to speak too quickly.

All right. So, on expropriation, it's--we all know--

PRESIDENT FERNÁNDEZ ARMESTO: Let's put the

cards on the table so that you know. I mean, it should be 10 minutes. That's what they took. If you take five minutes more, I mean, we will not--I will not take away, but, I mean, I think out of fairness to Claimants, you should not take more than 15; at the latest, 20 minutes.

MS. MENAKER: Okay. I will do that.

PRESIDENT FERNÁNDEZ ARMESTO: You concentrate on whatever you think is really important for the Tribunal to know before, and more than that, you cover all the area--I mean, we have read, as you have seen, your submissions.

And so my recommendation to you is take two or three areas where you really think the Tribunal needs some education and devote all your time to that and do it slowly.

MS. MENAKER: Understood. Okay.

So, for expropriation, the one point that I want to make for expropriation is that, for an expropriation claim to prevail, you need to show that you have suffered a deprivation of all or virtually all value. And on that very threshold

interest--threshold issue, their Claim fails and that's because, even according to their own calculation, they could have taken their Bonds, participated in the Bondholder Process, and obtained $34 million which is more than what they even had paid for the Bonds.

But that is certainly not a case where their so-called "investment" has been deprived of all value. So, on that basis alone, their expropriation claim fails.

And just for the avoidance of any doubt, because Gramercy had mentioned before, well, we could get that 34 million but only under the 2017 Decree. When that formula was adjusted to correct for some things, Perú made it clear that they were entitled to participate in the Bondholder Process even at that time. This is on Slide 123. And said notwithstanding the arbitration, notwithstanding the waiver, you know, let us know if you want to participate in that Bondholder Process. So, that was open to them.

So, the fact that they had that ability, that their Bonds were worth that much is clear that they

cannot prevail on an expropriation claim.

They've also said, well, you can't take into account these later-in-time events. That is also untrue. If you look at GAMI v. México, for instance. There it was an expropriation claim for--

Do you have a question, Mr. President?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, I do. The 34 million, your point is they arise if we apply the 2017 Supreme Decree?

MS. MENAKER: That's correct.

PRESIDENT FERNÁNDEZ ARMESTO: You do agree, or not, that, if we took the 2014, the first one, that the result would be different?

MS. MENAKER: I think Mr. Hamilton says he wants to answer. Go ahead.

MR. HAMILTON: The 2014 Decree was never applied to any Bondholder and contemplated that there would be further attention to valuation issues before they were ever applied to any Bondholder. So, whatever one thinks about the 2014 Decree with respect to valuation, in fact, it could have had no impact because the Ministry intentionally went through a

review process prior to finalizing the valuation arrangement and applying it to any Bondholder.

MS. MENAKER: And as far as taking into account these later-in-time events, Tribunals do that--properly do that all the time. And in GAMI v. México, there were five sugar mills that were initially expropriated, and a claim was brought by the subsidiary. The parent company in México, meanwhile, brought a challenge in courts, challenging the expropriation, and through those court proceedings, three of those mills were returned during the pendency of the arbitration. And on that ground, among others, the Tribunal found, well, there is nonexpropriation, you have three of your five mills back and then they are going to value those other two in the court proceedings. So, they took into account later events as well.

And you can see on the last slide in this section other cases where there had been a much greater deprivation of value and no expropriation.

So, then moving on to their Minimum Standard of Treatment claim, of course, you're well aware, I

believe, of the standard. It is a high one, it accords deference, it is for arbitrary, grossly unfair conduct. And legitimate expectations, contrary to what we heard this morning, is not part of that standard. It is insufficient to find a breach. Glamis Gold, that was applying that same standard, said so. The United States agrees in its third-party submission. In the Cargill Case also, they said there is no evidence that it's part of customary international law. And as Professor Stern noted this morning, the ICJ very recently--well, not-so recently now, I guess it is 2018, said that just because there are references to legitimate expectations in some arbitral awards that they were not convinced that it was a general principle of international law on which an obligation could be found.

And even in cases where they do apply legitimate expectations as part of fair and equitable treatment, which they ought not to do in a provision such as ours that is guided by the minimum standard of treatment, they do that only when there are very specific assurances made to an investor in order to

induce an investment. There is nothing of the sort here. Quite the contrary.

There was uncertainty throughout in the legal framework generally and there are no specific assurances. They said this morning there are specific assurances on the face of the Bond, but if you're applying the face of the Bond, it is worthless. So, those are not specific assurances.

And Gramercy has repeatedly acknowledged, as you know, that the Bonds were worthless. It could not have had--on their face, they could not have had any legitimate expectations that they would be paid any more than what they paid--at the very most that, they could be worth any more than what they paid for them because they are going out there and they pay what they say is Fair Market Value. How could they possibly have any expectation that they could be worth so much more?

They argued today that between 2001 to 2013, there was certainty. There was uniformity in the courts. Everyone knew that you used CPI plus interest, and so that's when they thought their Bonds

were so valuable, that this would be such a great investment, and then they were crushed in 2013. How can they square that with the fact that in 2006, in the midst of this alleged certainty, they bought these things for 33 million? Did they just, like, conduct the biggest fraud on the Peruvian people? If these things were really worth in the range of 1.1 billion at that point in time, given the intervening interest, and they paid 33 million for them because it was such a certain that they were CPI plus interest and that's the way they were going to calculate it? It just doesn't square. It cannot be that there was this certainty there, that everyone knew, and that they were these valuable, valuable things, and that they paid a pence for them and now they want such a huge return.

And again, apologies.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MS. MENAKER: And then finally, I'm not going to discuss the Bondholder Process itself, you've heard that from my colleagues.

But that process, to the extent that they are challenging that, it is not arbitrary, grossly unfair, or unjust, and you will be hearing from Experts throughout the week, both our Financial Experts as well as Dr. Wühler who says that the process that is in place accords with international standards, and, in fact, exceeds international standards in many respects.

PRESIDENT FERNÁNDEZ ARMESTO: I had one question here.

MS. MENAKER: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And that is, is it the position of the Republic of Perú that these decrease also conform with the instructions given by the Constitutional Court in their Resolution? Because the Resolution is quite specific in how the valuation is to be performed and how the Supreme Decrees are to be structured and the content of these Supreme

Decrees. Is it the position of the Republic of Perú that these Supreme Decrees conform with the instructions of the Constitutional Court?

MS. MENAKER: Yes. I mean, and then they there were changes, of course, post-2014 when they found issues with them, and so then they are conforming, but, yes, and there has been, to my knowledge, not a challenge that they have failed to conform in any way.

(Interruption.)

ARBITRATOR DRYMER: I think we'll hear more I suppose, but I believe that is one of Gramercy's arguments, is that they don't conform or at least they go beyond what the Court ordered, I believe.

MR. HAMILTON: To be clear, the Ministry of Economy and Finance and the Republic of Perú have implemented the 16 July 2013 Resolution through the Decrees and establishment of a Bondholder Process that that is working and paying Bondholders in compliance with Peruvian law.

PRESIDENT FERNÁNDEZ ARMESTO: That was not exactly the point, Mr. Hamilton. In compliance with

Peruvian law or with compliance with the instruction of the Constitutional Court as set forth in this resolution? That was the specific question.

MR. HAMILTON: Those were aligned. As I said, in compliance with carrying out the Decision of the Court, in compliance with the resolution of the Constitutional Tribunal, and in accord, in that sense, with Peruvian law.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

MS. MENAKER: Okay. So, moving on to just for the fair and equitable treatment claim--

PRESIDENT FERNÁNDEZ ARMESTO: That was on the Tribunal's time.

MS. MENAKER: Thank you. Okay.

So, on the fair and equitable treatment claim when it comes to there are two aspects, they also have a denial-of-justice claim. So, very briefly on that, they cannot challenge the 2013 Constitutional Court Tribunal's Decision as a denial of justice simply because they were not a party to that Decision. So, you cannot have a denial-of-justice claim in that respect.

And then so what they have done is in both of their notices of intent, in all four of their Notices of Arbitration, and in their Statement of Claim, their denial of justice claim was focused on that 2013 Decision and we made clear they could not challenge that as a denial of justice, not being a party to it.

So, then in their Reply, for the first time, they are making a claim of denial of justice for the totality of the Bondholder Process insofar as they are saying that they are denied justice because they are denied access to the courts. And that court access can be restricted for legitimate, nondiscriminatory reasons, for a public purpose, and that does not constitute a denial of justice. And you can see here--and, again, this will be discussed throughout the week, the fact that these claims are now being dealt with in this administrative process and the Court's role in the claims is curtailed to certain challenges is not a denial of justice. The administrative procedure is still according due process and the like, and that does not constitute a denial of justice.

And now, also, ironically they say that, even though they are challenging this, as a denial of justice, they chose to bypass the same system that they are now complaining about. So, you can't really complain that you are denied justice by a system that you've chosen not to bring claims in the Court.

They only brought their seven claims. They didn't bring the other claims, and they've chosen not to participate in the Bondholder administrative proceedings. So, they can't challenge that also as a denial of justice, as they chose not to participate in those claims.

On effective means, they have now sought, because of the problems with denial of justice, to make an effective means argument, arguing that is a lesser standard. They can't do that because they can't import that provision into the Treaty via the MFN Clause. There are several reasons for this.

First, the Treaty itself makes clear that, for the fair and equitable treatment provision, it does not require treatment in addition to or in excess of the minimum standard of treatment under customary

international law, so insofar as Gramercy is correct--we don't say they are correct, but if they are correct, and effective means is broader than that, they can't bring it in to be part of FET because the Parties have made clear that fair and equitable treatment does not go beyond the minimum standard.

The Parties have also made express in their Treaty the fact that a breach of another provision of another Treaty does not constitute a breach of this Treaty. That's another reason. Third, the Parties have expressly reserved the right to adopt Measures that accord different treatment than that accorded by any other Treaty that has entered into force or was signed prior to this Treaty.

The provision of the "effective means" provision that they are seeking to import is from the Perú-Italy Treaty, which was signed in 1994. It entered into force in 1995, both of which are a decade prior to our Treaty.

So, they simply can't do it, so I won't go into that any further other than to say at the end of the day, it would fail for the same reasons.

And finally, on national treatment, their only claim for national treatment violation is alleged discriminatory treatment based on the prioritization of cash payments. Here, they can't show national treatment because, again, the Parties have agreed that, for a national treatment claim, you need to show actual treatment, they've been accorded different treatment.

And here, they chose not to participate in the Bondholder Process, so they can't show that they have been accorded any treatment, much less that they have been discriminated against. But, again, what does this do?

All this does is for those people that participate in the Bondholder Process, to the extent that there are lots of people and in any single year you have a lot of Bonds that need to be paid. And Perú, if it didn't have the budget that year to pay them all in cash, it can pay them in a variety of ways including with other Bonds, and it takes the cash that it has and it prioritizes to whom it will pay the cash. And this is cash payments up to $30,000.

That's all this is.

And what they say is we are going to give priority to elderly people, perfectly legitimate. We are going to give priority to those who hold--are original owners of the Bonds, and then to their heirs, and then their heirs who are old, and then individuals we are going to prioritize over companies, et cetera, and then at the end of the list are the speculative investors that they complain about. But, again, this is priority treatment for payment of cash up to $30,000.

They can't even say they never sought it. They never sought to get cash. They don't know, if they participated, if there would be enough cash to give them the $30,000, and they have also said in their own arguments that they don't even care about getting cash. They are happy to take Bonds.

And, again, I have some--Dr. Wühler will talk about how this accords with international practice anyway.

So, I will just end with saying two brief words on quantum, if that's okay.

PRESIDENT FERNÁNDEZ ARMESTO: You are five minutes over Claimants', so five minutes is fine.

MS. MENAKER: Okay. Thank you.

So, on quantum, the first point is that Claimants, in making their claims, they ignore the existing legal framework, the context, and the acquisition price, all of this which can't be ignored when there they are calculating damages. As our Quantum Experts explained in their very First Report, what you look at is the Fair Market Value.

If this were an investment, and you are valuing an investment, you take the Fair Market Value of the investment on the date before the challenged Measure and you value it. And here--and then you bring that value forward. And the Fair Market Value is typically what a Willing Buyer and a Willing Seller would pay for something, and you would look at relevant factors, including what you paid for the asset.

What you did with the asset in the interim, if you bought a factory and then you spent 20 years improving the factory, or what you did, if there were

other transactions, all of those types of things. And the fact that these Bonds--the face value were utterly worthless, that any compensation that would be assigned to them would not be a matter of strict finance or economics, but would depend upon Decisions made by the executive, the legislature, and/or the judiciary to assign a value to these Bonds.

All of that needs to be taken into account. And none of that has been taken into account by Gramercy or its Experts.

So, that is why we also start from the starting point that you need to look at the acquisition price. What did they say the Fair Market Value was when they went in with all of this alleged certainty? $33 million? What happened? They didn't do anything to these. If anything, the price should have gone down because of uncertainty, but if you want to take that away, if you want to say, okay, that is the unlawful measure, you ignore that.

But it is not as if they are contributing to anything. They are not doing anything inherently that should increase the value of this worthless paper. It

is what it is. It is not like a factory, it's not like a gold mine. It is not like in, you know, some oil in the ground. It is just paper.

So, there's no--here they said you don't look at Fair Market Value for something that has a legally subscribed intrinsic value that you are legally obligated to pay a specific amount.

Again, here, there is nothing intrinsic about this paper that shows you that you are required to pay a specific amount, because when you look at the face of the paper, it is worthless. So, when you do get to valuing the Bonds, what accounts for the huge difference between our Parties' valuations and the Experts, you will hear from them next week. They will go into this in detail.

I thought it would be helpful to just focus on the three main areas because we say, of course, that these are valued at approximately 33 million. They say they are valued at about 1.8 million. The biggest driver, the biggest difference is interest, $1.5 billion, depends on the different interest rates being used by the Parties, and Perú is not using an

interest rate of like, you know, LIBOR from five years ago when it was zero or negative interest rates or .5 or something like that.

The interest rate that we're using is a one-year Treasury Bill yield over many, many, many years, averaging it out. It comes to 5.2 percent, a pretty healthy interest rate. What is Gramercy using to get a $1.5 billion more is they are using CPI plus, on top of that, an interest rate of 7.22 percent, which comes to an average between 10.5 and 10.9 percent, nearly 11 percent interest. That's $1.5 billion. So, there's a big chunk of the difference.

Second, $91 million of the difference is the fact that they calculate the principal from the date that the Bond was issued rather than the date of the last clipped coupon of the Bond. Okay. And that is it. So, they essentially are inflation protecting these Bonds from the date of issuance in 1969, even though they didn't contain any such protection.

Finally, for the exchange rate, what they are doing, we go back, we say, okay, what is the exchange

rate. You have to convert this currency that doesn't exist anymore into dollars, so you go back and you do that, and you figure out the exchange rate, and we do that at the date of the issuance. He takes the exchange rate between 1999 to 2018. And why does he pick those dates? He says that's when the Peruvian economy stabilized.

So, he gives the Bondholders the benefit of this window when the economy was stabilized, notwithstanding the fact that Perú was paying on these Bonds in the '70s and the '80s, and it wasn't a stable economy, but they don't worry about that with their exchange rate. They are, you know, cordoned off from that, and that accounts for 40 million.

So, thank you very much for your patience and indulgence and I'll end with that.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much.

Let us get a time check from the secretary.

SECRETARY PLANELLS-VALERO: The Respondent has used 2 hours and 50 minutes.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, with

that we close. Questions. Sorry. I apologize. Professor Stern has questions. No, no. I did interrupt, so and you did not, so I'm sure you have questions. Please. Sorry for that.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR STERN: In fact, I have two questions. First, let us go back to Slide 80.

(Interruption.)

ARBITRATOR STERN: On Slide 80, I would like to--that you clarify a little bit what is this test for the foreseeable dispute. I understand you say the dispute existed, but supposing we consider the dispute didn't exist or it was another dispute, I would like to have a general theoretical framework.

So, you mentioned Philip Morris and you cite here at Paragraph 539, speaking about the specific foreseeable dispute, and then you say--you also mention Paragraph 555 to 569, in fact, there are different tests. You might know. You didn't cite it, again, I don't know if it's in the record. I wanted to cite Pac Rim where there is this gray line.

Is it in the record?

MS. MENAKER: Yes.

ARBITRATOR STERN: Okay. And so, in the--here, you remember, there is this gray area, and the Tribunal said, in the Tribunal's view, the dividing line occurs when the relevant Party can see an actual dispute or can foresee a specific future dispute as a very high probability and not merely a possible controversy. So, that's Pac Rim.

Then we have Tidewater, where the test is just reasonably foreseeable. And, according to you--Slide 80, it would seem that it's a little bit the same in Philip Morris. Well, I'm not so sure because in Paragraph 554, which you do not mention, the Tribunal says the following: "The Tribunal is of the Opinion that a dispute is foreseeable when there is a reasonable prospect that the Measure, which may give rise to a treaty claim, will materialize.

And, again, in 569, if it's reasonably foreseeable, that legislation equivalent to the plain packaging would eventually be enacted and consequently a dispute would arise. And in Paragraph 585, which you do not mention, again, a dispute is foreseeable

when there is a reasonable prospect that the measure, in fact, may give rise to a treaty claim will materialize."

So, I would be interested to know what is your position, which criteria you would personally adopt, and I know you would argue in this case because they are quite different.

MS. MENAKER: Yes. Thank you. I think in this respect Pac Rim is an outlier, that Tribunals have said that they have imposed a slightly higher standard of a high probability.

ARBITRATOR STERN: Okay. Pardon. Go ahead.

MS. MENAKER: Okay. And that the other Tribunals have rejected that and said that you need, instead, just a reasonable--it needs to be reasonably foreseeable or a reasonable prospect, as you've said, and if my recollection is correct, in the Philip Morris case, when they are talking about a reasonable prospect, I thought it was also in the context of the fact that, after the elections, the Parliament was equally divided and, so you had a minority government and they said, well, it might have been more difficult

and, perhaps, less likely that they would have been able to get the legislation through, but there was still a reasonable prospect because the Government had not announced that it was abandoning the effort.

In Pac Rim, I believe what had occurred was that they were having problems getting their mining licenses approved, but then there was a period of time when the Government seemed to engage with them.

And they had--and the Government was making comments that were "friendly," for lack of a better term, that were seemingly to engage with them, and it wasn't until after that time period when the Government--the President made a speech that was interpreted as, like, enacting a de facto mining ban, and so they said that they could have still held out hope up until that other announcement that there was a possibility that this would not turn into a dispute, that a--adverse measure would not be adopted, that their licenses would still be considered, and so that's different than in these other cases, but I do think that the standard is more one of a reasonable foreseeability or reasonable prospect and not a high

probability.

ARBITRATOR STERN: Okay. I mean, in fact, if you read what--I mean, what Philip Morris says, a dispute is foreseeable even when a measure has not been adopted. So, I would think it's a higher test than Pac Rim but, you know, this is a question--

MS. MENAKER: I think I was just looking at it at the converse, because they do say that it could be foreseeable even when the Measure is not adopted. That is precisely what happened in Philip Morris, the legislation is not enacted until after, or I think the day that they file, so that it was not before. But they are saying that notwithstanding that it could still be reasonably foreseeable that it would be enacted. To me, I was calling it a lower standard. I think you were saying it's a higher standard.

ARBITRATOR STERN: But so, finally, you would argue just a reasonable foreseeability of a Measure, not of a dispute? Of a Measure that could lead to a dispute?

MS. MENAKER: Yes, of a Measure that could lead to a dispute, and then separately, of course, if

the dispute has already arisen, that's a different problem.

ARBITRATOR STERN: That's a different story.

MS. MENAKER: Exactly.

ARBITRATOR STERN: Okay. My other line of question goes to Slide 104 and, in fact, also 117. We will see the two because the questions are a little bit linked.

First, you said: "We spent tens of millions of dollars that we had raised from our clients."

Is it your position that the origin of the fund has an importance on the existence of an investment?

MS. MENAKER: Yes. Now, that's not to say that in some circumstances--

ARBITRATOR STERN: Or maybe I say all the--my concerns, because you might have handled differently.

MS. MENAKER: Okay.

ARBITRATOR STERN: So, again I would understand that it might be more a question for the Claimant, who is Gramercy Emerging Market Fund? Who is [redacted]? What are their relation? And this

goes, of course, to Slide 117. We have a few companies.

I would like to know the links between all these, and also in 117, you said: "Our clients are the ultimate beneficiary of Gramercy's Land Bonds." So I would like to know whether there is a distinction between a legal owner and the beneficial owner, who has the proper, who has the--

MS. BIRKLAND: This question is about confidential documents.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

PRESIDENT FERNÁNDEZ ARMESTO: Further questions?

ARBITRATOR STERN: That's all.

PRESIDENT FERNÁNDEZ ARMESTO: Any further questions?

ARBITRATOR DRYMER: No, not at the moment. No.

PRESIDENT FERNÁNDEZ ARMESTO: I have no further questions. I'm sure that a lot of--there are a lot of questions, of course, but I'm sure we'll have opportunities to address them in the course of the Hearing.

And I think it is appropriate that we now close the Hearing. We thank our interpreters and court reporters for their effort, and we will then reconvene tomorrow at 9:30.

MR. FRIEDMAN: There is one confidential information that was disclosed prior to the feed being turned off. It came up in response, I think, to an answer by Respondent's counsel. Has the--are you now on recording mode or not?

SECRETARY PLANELLS-VALERO: The system for editing confidential information that was inadvertently disclosed will be available starting tomorrow morning.

PRESIDENT FERNÁNDEZ ARMESTO: So, let's cut the--can we cut off the--I think we are at the end, and we will now discuss what has happened.

(Whereupon, at 6:34 p.m., the Hearing was adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing 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

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

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

Volume 2

HEARING ON JURISDICTION, MERITS AND QUANTUM

Saturday, February 8, 2020

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

The hearing in the above-entitled matter came on at 9:30 a.m. 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:

On behalf of ICSID:

MS. MARISA PLANELLS-VALERO
Secretary of the Tribunal

MS. KRYSTLE M. BAPTISTA
Assistant to the President of the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
info@wwreporting.com

MR. PAUL PELISSIER
MR. DIONISIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

MR. CHARLES ROBERTS

APPEARANCES:

On behalf of the Claimant:

MR. MARK W. FRIEDMAN
MS. INA C. POPOVA
MR. CARL RIEHL
MS. FLORIANE LAVAUD
MS. BERGLIND HALLDORSDOTTIR BIRKLAND
MR. GUILHERME RECENA COSTA
MS. SARAH LEE
MR. DUNCAN PICKARD
MR. JULIO RIVERA RIOS
MS. MARY GRACE McEVOY
MR. THOMAS G. McINTYRE
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
United States of America

MR. LUIS BEDOYA
MR. FRANCISCO CARDENAS PANTOJA
Rodrigo, Elias & Medrano
Av. San Felipe 758
Jesús María
Lima 15072
Perú

Representing Gramercy Funds Management LLC:

MR. JAMES TAYLOR

MR. JOSHUA M. O'MELIA

MR. NICK PAOLAZZI

MR. THOMAS NORGAARD

APPEARANCES: (Continued)

On behalf of the Respondent:

AMBASSADOR HUGO DE ZELA
Republic of Perú

MR. RICARDO AMPUERO
Republic of Perú

MS. MONICA GUERRERO
Republic of Perú

MS. GIOVANNA ZANELLI

Republic of Perú
MR. ALBERTO HART
Republic of Perú

MR. JONATHAN C. HAMILTON
MS. ANDREA MENAKER
MR. RAFAEL LLANO
MR. FRANCISCO JIJÓN
MR. JONATHAN ULRICH
MR. FRANK PANOPOLOUS
MR. JOHN DALEBROUX
MR. ALEJANDRO MARTINEZ DE HOZ

White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005-3807
United States of America

For the United States of America:
MS. LISA GROSH
MS. NICOLE THORNTON
MS. MARGARET SEDGEWICK
MR. JOHN DALEY
Attorney-Advisers
Office of International Claims and
Investment Disputes
Office of the Legal Adviser
U.S. Department of State
Suite 203, South Building
2430 E Street, N.W.
Washington, D.C. 20037-2800
United States of America

MS. AMY COLLINS
U.S. Department of Treasury

C O N T E N T S

PAGE

WITNESSES:

ROBERT KOENIGSBERGER

Direct examination by Mr. Friedman.....376
Cross-examination by Mr. Hamilton.....391
Redirect examination by Mr. Friedman.....608
Recross-exam. by Mr. Hamilton.....657
Questions from the Tribunal.....660

ROBERT LANAVA

Direct examination by Ms. Lavaud.....665
Cross-examination by Mr. Ulrich.....667
Redirect examination by Ms. Lavaud.....770
Recross-exam. by Mr. Ulrich.....772

ROBERT JOANNOU

Direct examination by Ms. Lavaud.....779
Cross-examination by Mr. Jijón.....789
Redirect examination by Ms. Lavaud.....877
Recross-exam. by Mr. Jijón.....884

CONFIDENTIAL PORTIONS:

1. 466-472
2. 514
3. .....538-(open session not noted)
4. 560-572
5. 634-640
6. 661-663
7. 704-727
8. 734-735
9. 747-767
10. 776
11. 780-790
12. 828-866
13. .....875-(open session not noted)

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ ARMESTO: Good morning.

This is the second day in the Hearing in arbitration for Gramercy Funds Management LLC and Gramercy Perú Holdings LLC v. the Republic of Perú.

Is there any housekeeping? None.

MR. FRIEDMAN: Not from Claimants' side. Good morning.

PRESIDENT FERNÁNDEZ ARMESTO: Good morning.

And from Respondent's side.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Let me make one point of order from the Tribunal's side. Although this is not strictly an ICSID procedure, we have the formula for the declaration by the Witness, and if this is agreeable by the Parties, we will make Witnesses aware of their duty to say the truth by asking them to make the declaration.

MR. FRIEDMAN: Yes. We agree.

MR. HAMILTON: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent. So, without further ado, we call Mr. Robert S. Koenigsberger.

ROBERT KOENIGSBERGER, CLAIMANTS' WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Good morning, Mr. Koenigsberger.

THE WITNESS: Good morning.

PRESIDENT FERNÁNDEZ ARMESTO: I think you have to press the button.

THE WITNESS: Good morning.

PRESIDENT FERNÁNDEZ ARMESTO: Good morning, Mr. Koenigsberger. Thank you for being here with us and especially for being here with us on a Saturday.

THE WITNESS: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO:

Mr. Koenigsberger, you are here as a witness, and as a witness, you have a duty to say the truth, and you must take an oath. So, can I kindly ask you to stand up.

Can we all stand up, please.

Mr. Koenigsberger, you have your oath formula in front of you. Can you take that, please.

THE WITNESS: Sure thing.

I solemnly declare, upon my honor and

conscience, that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT FERNÁNDEZ ARMESTO:

Mr. Koenigsberger, I don't know if you have been in an arbitration procedure before. On your left, this is counsel to your company; and on the right side, this is counsel to Perú. There will be some questions from counsel, first from counsel to Claimants and then from counsel to Perú.

You are probably familiar, most questions, especially from counsel from Perú, will be phrased in such a way that you can answer with "yes," "no," or "I don't know" or "I don't recall." Could I kindly ask that you say "yes," "no," or "I don't know" or "I don't recall" on the Transcript, and then you are most welcome to add any clarification that you would like to add.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Who will take the lead?

MR. FRIEDMAN: I will. Thank you, Mr. President.

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. Good morning, Mr. Koenigsberger.

A. Good morning.

Q. You have in front of you, to your left, five documents. Those are the First Witness Statement of Robert S. Koenigsberger dated June 2, 2016, if you could just take a look at that.

And do you recognize that?

A. Yes.

Q. And can you just take a look at the last page. Is that your signature?

A. Yes, it is.

Q. Okay. The next document is the Amended Witness Statement of Robert S. Koenigsberger dated August 5, 2016.

Do you see that one?

A. Yes, I do.

Q. And can you just confirm that that also contains your signature?

A. It does, indeed.

Q. Okay. There are three more, if I could just

ask you to look at them. They are the Second Amended Witness Statement of you dated July 13, 2018, the Reply Witness Statement of you dated May 21, 2019, and the Rebuttal Witness Statement of you dated November 13, 2019.

If I could ask you to just look at them. Take a look at the back pages of each, and can you just confirm for the Tribunal that these are your Witness Statements.

A. Yes, they are my Witness Statements. The third one has my name, but I don't see the signature on it.

Q. Okay. All right. Do you recall actually having signed that?

A. Yes, I do.

Q. Okay. All right. Do you have any corrections or amendments to make to any of these Witness Statements at this time?

A. I do not.

Q. All right. Are you content for the Tribunal to rely upon that as your evidence in this case?

A. Yes, I am.

Q. I would now like to ask you about certain allegations that Perú has made in its Rejoinder, and I'm wondering if we can put that on the screen in front of you. In particular, I'm going to start with Paragraph 228.

(Comments off microphone.)

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. 228 can be found on Page 86.

So, we are on Page 86, Paragraph 228, and we've put also on the screen the particular paragraph, if that's helpful, Mr. President.

(Comments off microphone.)

MR. FRIEDMAN: All right. May I proceed?

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

MR. FRIEDMAN: Yes, thank you.

BY MR. FRIEDMAN:

Q. You'll see it in the last sentence there, Perú contends that the record shows that: "The evidence on which Gramercy may have relied"--and it's talking about its diligence during the 2000--"the investment origination phase was minimal, not

objective, and the result of Gramercy outsourcing its due diligence to self-interested third parties."

Do you see that?

A. I do. Yes, I do.

Q. Do you agree or disagree with that claim?

A. I disagree.

Q. Okay. Can I ask you--there is this charge here that the diligence that you did was minimal.

Can I ask you to just describe for the Tribunal the diligence that Gramercy did in thinking about and then ultimately getting into the Land Bonds investment?

A. Sure. The due diligence that we did on this, I would describe as both a top-down and a bottoms-up due diligence process. The top-down is first on, kind of, the State of Perú at the time, a sovereign analysis, if you will, a credit analysis of Perú, and the notion of, kind of, the ability and willingness for Perú to pay, but also to continue along the process of resolving its claims that were outstanding.

The bottoms-up was really the micro relative to the Bonds themselves, which is understanding that

the Bonds are valid obligations, that they have to be paid, looking at court rulings at the highest court of the land, looking at local courts, conversations with counsel, multiple trips by the team in order to do due diligence, both on the top-down and the bottoms-up leading up to the investment.

Q. Okay. And how did Gramercy go about carrying out that diligence?

A. You know, it is predominantly a process of primary research, where there is travel to verify that the things that we're learning along the way, discussions with counsel, analysis of cases that had occurred, conversations with Bondholders, conversations with Bondholder associations. We have an ongoing Investment Committee process, so we would typically meet formally once a week or telephonically once a week, and then really our research is an ongoing process.

Q. So, over what period of time?

A. Well, over the entire time of the investment, but as we were acquiring Bonds, there is typically a thesis that is put forward in underwriting, and then

we continue to ask ourselves or continue to re-underwrite vis-à-vis that thesis, are we finding information along the way that confirms that original thesis.

Q. Okay. There is also the charge here in the paragraph we looked that the Gramercy's diligence was not objective.

Do you agree or disagree with that?

A. I disagree with that.

Q. Okay. And can you maybe explain to us, then, what you think was objective about the work that you were doing.

A. Well, the information that we observed in order to do the research was certainly objective. So, I mentioned before court cases. So, if we are talking about something that came from the Tribunal or something that came from the lower courts, I would consider that to be objective research.

If we are looking at what's the sovereign analytics of Perú, what's the ability and willingness of Perú to pay, I mean, that's all objective sovereign analytics that we were done.

Q. Umm-hmm. And can you--there is also the charge that you outsourced your diligence to self-interested third parties. Do you agree or disagree with that charge?

A. I disagree with that.

Q. Who led the diligence for Gramercy?

A. So, I appointed a gentleman by the name of David Herzberg to lead that. That is not uncommon for us to interact in dialogue with outside Parties. I mean, even to this day, typically banks or brokers will take us on investment due diligence trips, but at the end of the day, the due diligence are ours and the conclusions we make are ours.

Q. Okay. We won't go to it, but the allegations that Perú makes about this are that you relied on José Cerritelli and ADAEPRA, both of whom may have had financial interests or received commissions when Gramercy purchased Land Bonds, and so that's the idea of self-interestedness.

Does that, in your view, make the diligence self-interested and outsourced to these people?

A. Not at all. We understand the counterparties

that we deal with and the incentives to the counterparties that they deal with, but we have our own incentives and we have our own due diligence process.

Q. Umm-hmm. What about Mr. Cerritelli? Did you have any concern that he was acting in a self-interested way and not objective?

A. No, I did not. José was someone I had known and worked with since the late 1980s. He's Peruvian. He's an expert on sovereign debt. I worked with him at CR-P in the late '80s. I worked with him again when I started at Gramercy, and we worked on the Russian debt restructuring. I worked with José on the Argentine debt restructuring. I worked with him in multiple organizations and never had that concern about José.

Q. Okay. I want to turn to another allegation that Perú makes. Before we look at that allegation in particular, do you recall David Herzberg having prepared for you a memo in January 2006?

A. Yes, I do.

Q. Okay. If we could just put in front of you

that memo so that you have it. It is CE-114.

A. Thank you.

Q. Okay. And then I'd like to take you to the allegation, or one of the allegations that Perú makes about this memo, which can be found on Page 88 of the Rejoinder in Paragraph 234. And it says: "The 2006 memorandum is replete with errors. For example, in addition to typos, the paragraph addressing the Constitutional Tribunal rulings is unclear and has factually inaccurate statements, including, for example, several references to a March 15, 2005, Constitutional Court Decision, even though the Constitutional Tribunal did not rule on the Agrarian Reform Bonds on March 15, 2005".

Do you see that?

A. Yes, I do.

MR. HAMILTON: Mr. President, if I could, just a point of order. I just want to understand. Mr. Koenigsberger has already provided a witness statement after Perú's Rejoinder, and so my understanding is that we're going to give him a leash to talk about these issues, but keep in mind that he

already had submitted a witness statement since our Rejoinder.

MR. FRIEDMAN: May I point out, Mr. President, that the Witness Statement after the Rejoinder was limited to issues of jurisdiction. We were very disciplined about not having any Witness who put in evidence at that stage, put in further evidence on merits because that would have been outside the procedural rules. Our procedural rules here pertaining to this are set forth in our Procedural Order, in which we may ask people about information that has come up since their last opportunity to comment on it. We may ask questions regarding submissions made by the opposing Party since the Witness submitted his or her last statement.

And on the Merits, Mr. Koenigsberger has not had a chance to confront any of the allegations set forth in Perú's Rejoinder about the diligence.

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you continue?

MR. FRIEDMAN: Thank you.

BY MR. FRIEDMAN:

Q. Mr. Koenigsberger, so, we are looking at this Paragraph 234 where Perú alleges that this 2006 memorandum is replete with errors and draws our attention to this March 15, 2005, date about a Constitutional Tribunal Decision.

Do you agree or disagree that the 2006 memorandum is replete with errors?

A. I disagree.

Q. Okay. And do you see that they point out that there is this date of March 15, 2005, that seems to be wrong.

Do you see that?

A. I do.

Q. Do you agree or disagree that this is talking about a phantom decision of the Constitutional Tribunal?

A. I disagree.

Q. Can you tell us why?

A. Sure. I believe that the March 2005 is the publication date, and the actual issue date was prior to that, I believe, in late 2004, in August.

Q. And why do you believe that?

A. Because I looked at that myself, and I actually looked at the underlying ruling.

Q. The underlying ruling. What do you mean you looked at underlying ruling?

A. Well, David--you know, when I saw this, I just couldn't believe that that would possibly be the case. I looked at, in particular, this Paragraph Number 17 and saw that it actually exists, and so, when I investigated what's the difference here, it is not uncommon in Latin America to have an issue date and then to have a publication date.

Q. You said Paragraph 17. If I could ask you to look at the memo itself, CE-114, which is Mr. Herzberg's memo on Page 2, and I think we see the paragraph that Perú was quoting kind of midway, halfway down the page, the one that starts the Constitutional--yeah, "the Constitutional Tribunal of March 15, 2005."

Do you see where they quote that? Do you see where that's in there and it describes--that paragraph?

A. Yes, I do.

Q. At the end of that paragraph, it refers to--it summarizes that Decision, and it says they have the right to--it says that: "The Constitutional Court Decision explicitly names holders of Land Reform Bonds saying that they have the right to go to court to demand payment of their claims, adjusted for inflation, plus the interest mandated by law. The obligation to pay interest is contained in the judicial foundation, Number 17, and is an integral part of the second article of their ruling."

Do you see that?

A. Yes, I do.

Q. Okay. And do you have an understanding about what that is referring to?

A. Yes, I do.

Q. And what is that?

A. This ruling--that the conclusion of this ruling was that Bondholders always had the right to go to local courts.

Q. Okay. But I could ask you to turn to CE-107, which is the--what has been described in these proceedings as the Constitutional Tribunal ruling of

2004.

(Comments off microphone.)

Q. If you could turn with me to Foundation 17 in this document. That's the one that says: "Consequently, the procedure regulated by Emergency Decree"--

PRESIDENT FERNÁNDEZ ARMESTO: Pages?

MR. FRIEDMAN: I'm sorry. Page--I have a translation. It is Foundation 17, the paragraphs are numbered.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: 17. Okay.

BY MR. FRIEDMAN:

Q. And it says--

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Let me get the document. Sorry for that.

MR. FRIEDMAN: Yes, of course. Sorry.

PRESIDENT FERNÁNDEZ ARMESTO: Document CE-117?

MR. FRIEDMAN: No, 107. Forgive me, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no, my mistake. Sorry for that.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: I'm with you.

MR. FRIEDMAN: Yes, thank you, Mr. President.

BY MR. FRIEDMAN:

Q. So, Paragraph 17, in these proceedings this has been described as the 2004 Constitutional Tribunal Decision, but it seems to have been characterized differently in the memorandum. So, I'm just bringing to you to this Article 17, Foundation 17, which says: "Consequently, the procedure established by Emergency Decree Number 88-2000 for crediting and paying the outstanding debt from the land reform expropriation proceedings must be interpreted as an option, but the Bondholder is free to select instead of going court to demand payment of the updated debt, plus the interest that is applicable under the law in a court judgment that must be enforced."

Do you see that?

A. Yes, I do.

Q. Okay. And how, if at all, does that compare

with what Mr. Herzberg was describing in his memorandum to you?

A. I think it's the same.

Q. Okay. Thank you.

MR. FRIEDMAN: No further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent. Thank you very much.

Mr. Hamilton, do you have any questions for the Witness?

MR. HAMILTON: Mr. President, for the record, Respondent has provided three binders.

Alejandro, those are for the translators.

We have provided three binders to the Witness and also the same three binders to counsel for Gramercy, and we understand they are going to rely on electronic presentation of any materials that we discuss.

PRESIDENT FERNÁNDEZ ARMESTO: We will try. I hope you have a spare bundle just if the Tribunal is not sufficiently diligent with the electronics.

CROSS-EXAMINATION

BY MR. HAMILTON:

Q. Mr. Koenigsberger, good morning.

A. Good morning.

Q. I'm Jonathan Hamilton. We met one time before a couple years ago.

A. How are you doing?

Q. How are you?

A. Doing well, thanks.

Q. Good. I have questions for you that will be based upon your four--five Witness Statements that you have provided to this Tribunal, and I understand that you have in front of you copies of your five Witness Statements provided to this Tribunal; is that correct?

A. Yes, I do.

Q. Very good.

Now, Mr. Koenigsberger, you founded Gramercy Asset Management in 1998; is that correct?

A. Yes. I believe I founded Gramercy Advisors in 1998. I don't recall the date for Gramercy Asset Management.

Q. And did you found the Gramercy Asset Management business by yourself?

A. Just for clarification, the Gramercy's Asset

Management business and the Gramercy all the entities we managed since then?

Q. In 1998, you founded the Gramercy Asset Management business; is that correct?

A. Yes. I founded Gramercy Advisors in 1998.

Q. And you founded Gramercy together with Marc Helie; is that correct?

A. That is correct.

Q. Who is Marc Helie?

A. Mark Helie is an individual that I had worked with at Merrill Lynch in the mid-1990s, and then when I was at Lehman Brothers, he was a client of the bank, and I believe he was at Wasserstein Bros (phonetic).

Q. And he was deeply involved in sovereign debt issues related to Ecuador; is that correct?

A. Gramercy was involved in Ecuador at the time.

Q. He was known as the man who brought Ecuador to its knees; is that correct?

A. I think that was some sensational journalism by one of the magazines.

Q. Okay. And he is no longer affiliated with Gramercy; is that correct?

A. He is not. No, he is not.

Q. Okay. Now, given that Gramercy has chosen to bring this case under United States-Perú Treaty, of course, Gramercy--it is important to understand what Gramercy is, how you do business, and you've discussed that at some length in your Witness Statements, and you, in particular, had focused on Gramercy's business of investing in distressed emerging market assets; is that correct?

A. Yes, it is.

Q. If you could turn to Tab 1, this is a Gramercy Funds Management brochure.

PRESIDENT FERNÁNDEZ ARMESTO: If you want us to follow, you have to give us a number.

MR. HAMILTON: Give me just a moment. We will get there. Thank you so much. I'm making reference to Exhibit R-540. This is a document titled "Gramercy Funds Management LLC brochure dated March 29, 2018," which will be displayed on the screen, please.

BY MR. HAMILTON:

Q. Okay. Do you see that document?

A. Yes, I do.
Q. Okay. What is Gramercy Funds Management?
A. Gramercy Funds Management is the registered investment advisor that has investing management responsibility for the various funds and managed accounts that we manage.
Q. What is the relationship between Gramercy Funds Management and the holding of the Peruvian Agrarian Reform Bonds?
A. Gramercy Funds Management is the entity that is responsible for managing the Bonds, be it the holding entity.
Q. Okay. And this is a document that Gramercy has filed with the Securities and Exchange Commission of the United States; is that correct?
A. I don't believe this--I don't understand this to be an SEC document.
Q. Okay.
A. I think it's a firm due diligence memorandum.
Q. Okay. So, as it states in the first couple of lines of this document, this brochure provides information about the qualifications and business

practices of Gramercy Funds Management LLC, which is an investment advisor registered with the United States Securities and Exchange Commission; is that correct?
A. Yes, it is.
Q. Thank you.
Now, if you turn to Page 3 of this document, you can see in the Table of Contents is indicated a range of issues related to Gramercy's business practices.
Do you see that list on Page 3?
A. Yes, I do.
Q. Thank you.
Now, on Page 4, there's a reference to "assets under management."
So, if I read this correctly, as of January 31, 2018, Gramercy had approximately $6 million of regulatory assets under management; is that correct?
A. I'm sorry. What's the question again?
Q. Mr. Koenigsberger, I'm reading the document in front of you. It says: "As of January 31, 2018,

Gramercy had approximately $6 billion of regulatory assets under management"; correct?
PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I mean, it's what the brochure says.
MR. HAMILTON: Correct.
PRESIDENT FERNÁNDEZ ARMESTO: Okay.
BY MR. HAMILTON:
Q. Do you agree, Mr. Koenigsberger?
A. I agree that that's what the brochure says.
Q. Thank you. So, moving forward to--
PRESIDENT FERNÁNDEZ ARMESTO: Can I--I know that this is now getting cultural, but if we could avoid reading into the Transcript--and this goes for both because I'm sure that Mr. Friedman will have the same attitude of reading into the Transcript a portion of a document, and then asking the Witness: "Is this what the document says?"
I personally prefer because I think it is faster to ask the Witness: "Can you read this?" and then put the question. I think it's more efficient.
MR. HAMILTON: No problem. Thank you very much.

BY MR. HAMILTON:
Q. Now, Mr. Koenigsberger, on Page 5, there's a discussion of fees and compensation, and it refers to asset-based compensation and performance-based compensation.
Which type of compensation do the two Gramercy Claimants in this case--are they entitled to with respect to the Peruvian Agrarian Bonds?
A. Give me one second. I'm sorry, can you repeat the question?
Q. Of course. Gramercy has different types of fees and compensation. One is asset-based compensation, which includes a management fee; is that correct?
A. Yes, it is.
Q. Okay. And are there--are the Claimant entities in this case entitled to Management Fees in connection with the Peruvian Agrarian Bonds?
A. Yes, they are.
Q. Okay. And how are those Management Fees calculated?
A. Management Fees are typically calculated on

the amount of assets that are managed.

Q. Okay. And so, would your management fee be based on a valuation of the Agrarian Bonds?

A. In part.

Q. Okay. So, under the management fee approach, the calculation of the valuation of the Bonds, in turn, determines the management fee to which Gramercy is paid; is that correct?

A. Yes. That's an externality.

Q. And there's also a reference here to performance-based compensation, which ranges from 10 percent to 20 percent of annual capital appreciation; is that correct?

Mr. Koenigsberger, does Gramercy utilize performance-based compensation in order to make money off of its business activities?

A. Yes, we do. I was trying to look at document because you asked me a question relative to the document, but go ahead and please ask your question. I'll be happy to answer.

Q. Does Gramercy use performance-based compensation as well?

A. Yes, we do.

Q. Okay. And does that typically range from 10 to 20 percent of annual capital appreciation?

A. Yes, it.

Q. Okay. And is performance-based compensation part of way that the Gramercy entities before this Tribunal either make money or stand to make money in connection with the Agrarian Reform Bonds?

A. Yes.

Q. Okay. Now, turning to Page 7 of this document, there is a reference to Item 7, "types of clients."

Do you see that on the page?

A. Yes, I do.

Q. Okay. Now, Gramercy has a client base that includes a range of types of clients, and that includes, among others, pension plans, for example; is that correct?

A. Yes, it is.

Q. So, state pension plans are examples of Gramercy clients; is that correct?

A. That's correct.

Q. Okay. And that's a range of different types of pension plans; right?

A. Yes.

Q. Okay. And in addition to that, there are other types of clients of Gramercy; is that right?

A. Yes, it is.

Q. Okay. And what other types of clients does Gramercy have?

A. We have U.S. pension funds, universities, endowments, foundations, individual investors.

Q. Okay. And those individual investors, that includes, for example, you, your family, your employees?

A. Yes, it does.

Q. Okay. And so, there's a full range of different beneficiaries of Gramercy Funds Management and potentially are--and the Peruvian Agrarian Reform Bonds; is that correct?

A. Sorry. Could you repeat that?

Q. Sure.

There are a range of potential beneficiaries in connection with Gramercy Funds Management and the

Peruvian Agrarian Reform Bonds; is that correct?

A. There is a limited range relative to Gramercy Funds Management relative to the Bonds. There's multiple parties that have economic interest.

Q. Multiple parties that have economic interest. Okay.

Now, Mr. Koenigsberger, are you aware that at the end of the Hearing yesterday, there was a bit of a dust-up here where Gramercy representatives were quite exercised in dealing with World Bank employees in connection with the confidentiality issue?

A. I am not.

Q. You are not aware of that?

MR. FRIEDMAN: Whoa, whoa, whoa whoa, whoa. Excuse me.

MR. HAMILTON: Yes.

MR. FRIEDMAN: What--

PRESIDENT FERNÁNDEZ ARMESTO: He's here to tell us about facts.

MR. HAMILTON: Yes. I'm going to ask a question about facts.

MR. FRIEDMAN: I don't know what the dust-up

is.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. What is your follow-up question?

MR. HAMILTON: Yes. I'm getting there, my friend. Have no fear.

BY MR. HAMILTON:

Q. So, why is confidentiality such an obsession of Gramercy in this hearing?

A. I'm sorry. I don't understand the context of the question.

Q. We'll come back to it.

PRESIDENT FERNÁNDEZ ARMESTO: You'll have to put the question in an objective way.

Mr. Koenigsberger, is confidentiality of your procedures and your ways of doing business an important part of your assets, of your intellectual assets?

THE WITNESS: I would say there's two things, which is there's transparency and all sorts of audits that go with our business, but then there's confidentiality provisions that we have with our clients that we have to adhere to.

BY MR. HAMILTON:

Q. Now, Mr. Koenigsberger, on Page 8, this brochure refers to "methods of analysis, investment strategies, and risk of loss."

Do you see that section?

A. Yes, I do.

Q. The third paragraph on this page refers to "emerging markets distressed; special situations."

Do you see that paragraph?

A. Yes. Give me one moment, please.

Q. Well, before you have to read it, let me just ask you a question.

Do the Peruvian Agrarian Reform Bonds fall into the category for Gramercy of emerging markets distressed, special situations?

A. Can I read the paragraph now?

Q. You can read it out loud.

PRESIDENT FERNÁNDEZ ARMESTO: No, no.

Please, do read the paragraph. When you are ready, Counsel will put the questions to you.

THE WITNESS: Thank you very much.

MR. HAMILTON: Fair enough.

PRESIDENT FERNÁNDEZ ARMESTO: Read it at your leisure.

THE WITNESS: Thank you. Sorry, go ahead.

BY MR. HAMILTON:

Q. We are in R-540, Page 8.

Mr. Koenigsberger, my question was whether the Peruvian Land Bonds fall into the Gramercy category of emerging markets distressed.

A. Yes, it does.

Q. Okay. And according to Gramercy's brochure, Gramercy utilizes proactive distressed investing in emerging markets, and that includes sovereign-related investments; is that right?

A. That's correct.

Q. Okay. And according to Gramercy's own brochure, your strategies typically target "stressed and distressed and defaulted Bonds, which are typically large, global eurobond issues governed by U.S. or U.K. law, underwritten in public capital markets and generally U.S. dollar-denominated."

Did I read that correctly?

A. Yes, it says typically, but not--

PRESIDENT FERNÁNDEZ ARMESTO: The Tribunal can answer that question. Yes, it was an excellent read.

MR. HAMILTON: Thanks.

THE WITNESS: Can I clarify?

PRESIDENT FERNÁNDEZ ARMESTO: If you want to add anything--you are welcome to add any clarification, but up to now, Counsel has just read what is said in your brochure.

Have you ever seen this brochure before?

THE WITNESS: Yes, I have.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And, in general, you agree with the content of the brochure?

THE WITNESS: Generally, I agree with the content. There are things that aren't--this says "typically," but it does not say "exclusively."

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Right.

Mr. Hamilton.

BY MR. HAMILTON:

Q. Why does Gramercy typically focus on situations that involve U.S. or U.K. law underwritten in public capital markets and U.S. dollar-dominated?

A. All things equal, if we have equal risk that would be in U.S. or U.K. law, we would tend to focus on that.

Q. Now, you also state here that part of your business strategy includes trade claim opportunities.

Do you agree with that?

A. Let me go see where that is.

Q. Mr. Koenigsberger--

PRESIDENT FERNÁNDEZ ARMESTO: It's in the middle of the paragraph.

THE WITNESS: Thank you very much. I'm just getting--

BY MR. HAMILTON:

Q. It's an open question, as the President has encouraged. Does Gramercy's business plan include trade claim opportunities?

A. Mr. Hamilton, I'm trying to be helpful to you, but you asked me a question relative to the document, so I'm trying to be very accurate.

Q. I understand, but I frankly am a little chapped between the President telling me not to read the document and you wanting to spend a lot of time

reading the document. It's a simple question.

The simple question is, does Gramercy's business plan include trade claim opportunities?

A. Yes, we have looked at trade claim opportunities in the past.

Q. Thank you.

Now, final question about this paragraph: It states that your "portfolios are hedged, typically using sovereign credit default swaps"; is that correct?

A. Yes, it is.

Q. Okay. How does that hedge work and how does that protect Gramercy?

A. Well, one of the things we have to think about when we monetize an investment is what would the underlying Discount Rate be for the underlying security, and credit default swaps typically are highly correlated to the Discount Rate or the yield.

So, you can be right about the numerator in terms of what you get, and you can get more or less, depending on what the underlying Discount Rate or risk-free rate for the country may be. So, the

overlay in a credit default swap is a way to create that hedge.

Q. Okay. So, that's part of the way that you manage the risk to Gramercy of investing relating to emerging markets distressed situations; is that correct?

A. At times, yes.

Q. Okay. And are there other ways that you try to protect against the risk associated with distressed situations like this?

A. Other ways that we look to protect?

Q. Yes.

A. Sure.

Q. What are those other ways?

A. Cash is a--using cash as a hedge is one way that you are not fully invested at any given time.

Q. Okay. Do you use insurance, for example?

A. We have used insurance in the past.

Q. How do you use insurance for situations like this?

A. Well, in fact, I look at credit default swaps as a form of insurance. I actually say to our clients

that it's portfolio insurance, so it's a credit default swap, and I look at it as a life insurance for a portfolio for a given position so that if you have something like the financial crisis or the Russian Debt Crisis, whatever it may be, that you have ensured the portfolio with that insurance.

Q. And are these hedging strategies or insurance protections applied to the totality of Gramercy Funds Management portfolio, or are they specifically related to pieces of the portfolio?

A. It can be both. So, from--and we've developed our hedging strategy over time, as the market has evolved over time. So, there can be what we would call a paired hedge, where it's actually relative to a specific asset, and then we'll do analysis to--once we've done paired hedges, put different shocks at the portfolio and say, what are the expected outcomes from a scenario analysis?

And if we still feel that there's risk that we want to mitigate, we'll overlay additional hedges up at the top.

Q. And this hedging is designed to insulate

Gramercy from the risk of loss; is that correct?

A. The idea behind a hedging is to ensure or insulate the underlying portfolio against risks that we prefer not to bring into the portfolio, or--it's also a function of what it costs; right? So, if insurance is cheap, and it's asymmetric, which oftentimes it has been in emerging markets, you bring that into the portfolio.

And then we're dynamic about it. Sometimes the cost of it gets too expensive, and we'll not renew it, or we'll not renew it in the same nominal amount.

Q. So, with respect to the Peruvian Agrarian Reform Bonds, did Gramercy employ hedging strategies, such as credit default swaps or utilize insurance?

A. Yes, we did.

Q. And what were those strategies?

A. In the case of the Land Bonds, we--as indicated here, we did use credit default swaps. We felt one of the biggest risks of the underlying investment, again, was what's the Discount Rate for Perú going to be when we get those cash flows.

So, credit default swaps are a very eloquent

way to handle that risk, so we definitely used CDS on what we would call a paired basis with the Bonds.

But we also, in the case of the Bonds--given their physical character, we actually insured the Bonds themselves against loss, fire, theft, whatever it may be.

Q. Okay. And who was that insurance arranged with?

A. I believe it was Lloyd's with London, but I don't recall.

Q. What was the amount of that insurance?

A. I believe it was upwards of $500 million.

Q. $500 million.

And when did you establish that insurance arrangement?

A. I believe it was in 2014 or '15, but I don't recall.

Q. 2014 or '15. So from 2006 or 2008 to 2014, you didn't have any insurance in place?

A. It's easy to explain. No, we didn't. We had the Bonds at Citibank, and Citibank had insurance. The Bonds were custodied in Lima at Citibank, and when

Citi suddenly no longer wanted custody of those Bonds, it was a huge endeavor to move those Bonds from Citibank to the next safekeeping location, one that was fraught with risk.

And that was the first time that we felt--in fact, there was a time when Citi lost a bond or destroyed a bond that they or their insurance paid for it. When we went from outside the building at Citibank to the new safekeeping location, we felt that insurance was in order.

Q. Are you aware, Mr. Koenigsberger, that Gramercy provided a view to the Tribunal yesterday of, I guess, two actual Land Bonds actually held by Gramercy?

A. No, I'm not.

Q. Do you know how those Bonds were transported from Perú?

A. I believe that an employee brought those out.

Q. Okay. And were they declared to Customs as negotiable instruments with a value of more than USD 10,000?

A. I don't know.

Q. Okay. Thank you.

Now, returning to the issue of credit default swaps and insurance, let me ask one other question. Did you ever work with a--ever deal with an insurer called Hermes, Euler Hermes?

A. Sorry. Did we have a--

Q. Are you familiar with a firm called Euler Hermes?

A. I know something of Hermes.

Q. Not the ties.

There's a company called Euler Hermes. Are you familiar with it?

A. I'm familiar with an entity Hermes, which I believe is some sort of export credit.

Q. Correct. Has Gramercy ever done business that entity?

PRESIDENT FERNÁNDEZ ARMESTO: The entity you are referring to is--because it does not come out well in the Transcript--is Hermes. It's H-e-r-m-e-s.

MR. HAMILTON: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. The German export insurance agency. Is that the one

you're referring to, Mr. Hamilton?

MR. HAMILTON: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: So, depending, it's Hermes, the German export insurance state-owned agency. That's, I think, Counsel's question.

BY MR. HAMILTON:

Q. My question is, has Gramercy done business with this entity before?

PRESIDENT FERNÁNDEZ ARMESTO: If you remember.

THE WITNESS: Not that I recall.

BY MR. HAMILTON:

Q. Okay. And do you know if Gramercy has ever had contact with that entity before?

A. Not that I recall.

Q. Okay. Let's look at Page 9 of this Gramercy brochure. There's a section here called "risk of loss."

Do you see that section?

A. I do.

Q. All right. Now, according to this Gramercy brochure, there's no assurance that the objectives

associated with Gramercy's investment strategies will be met; is that correct? You give your clients no assurances that your strategies will be achieved; is that correct?

A. I'm trying to answer the first question.

So, the document says: "There can be no assurance that the objectives associated with any of the Gramercy's investment strategies will be met."

Q. Do you agree with that?

A. Yes, I do.

Q. That's what you advise your clients?

A. Yes. We're not in the business of giving certainty or assurances, so we want people to understand that there's no assurances that investment objectives will be met.

Q. Okay. Similarly, you advise your clients that the type of investments that Gramercy pursues involve risk of loss, and clients must be prepared to bear the loss of their entire investment in Gramercy; is that correct?

A. Investments involve risk of loss, and clients must be prepared to bear the loss of their entire

investment, that is correct.

Q. Okay. Does that mean that Gramercy is also prepared to bear the loss of its entire investment?

A. To the extent that Gramercy has investments, we take that--typically take the same risk. There can be no assurance that--on our investments either.

Q. Okay. So if I look to the first bullet here, here you discuss the risk of loss related to emerging markets. And so certainly Gramercy is well familiar that the risk of foreign investment may be greater in what are referred to as emerging markets.

You agree with that; correct?

A. Yes.

Q. Right. And looking further down, with respect to "distressed situation risk," now, we discussed before that the Peruvian Agrarian Bonds were considered a distressed situation from Gramercy's perspective, and, of course, investment in distressed situations expose clients to significant risk.

You agree with that, correct?

A. Let me read the distressed situation risk.

Q. Please.

And, for the record, we are in document R-540, Page 9, "Risk of loss, distressed situation risks."

A. I'm sorry, what's the question?

Q. The question, Mr. Koenigsberger, is if you agree that investment in distressed situations exposes a client and Gramercy to significant risk.

A. I think risks are--they are exposed to risk. It doesn't mean--it doesn't speak of the likelihood, just the possibility.

Q. Okay. And to the extent you are dealing with sovereign debt obligations, you would agree that those investments are subject to even additional risk and considerations; is that correct?

A. They have--each sovereign and corporate has its own idiosyncratic risk characteristics. I'm not sure I would weigh them one way or the other.

Q. Well, does your brochure here weigh them? It states that, "Moreover, to the extent client accounts are invested in sovereign debt obligations, those investments will be subject to additional risks and considerations."

Do you agree with that?
A. I agree that it says that.
Q. Okay. Thank you very much.
Now, let's go over to Page 12. The third bullet refers to non-U.S. securities. Do you see that on Page 12, Mr. Koenigsberger?
A. Give me one moment, please. Non-U.S. securities?
Q. Non-U.S. securities.
So my question is, do you consider the Peruvian Land Bonds to be non-U.S. securities?
A. Let me read this for a moment.
I'm sorry, the question?
Q. The question was, do you consider the Peruvian Land Bonds to be non-U.S. securities?
A. Yes.
Q. Do you consider a contemporary Global Bond issued by, for example, the Republic of Perú to be a non-U.S. security?
A. I think it could be issued in U.S., or in global form it could be non-U.S.
Q. And do you consider that comparable to the

bearer Bonds that date back to the 1960, '70s, and '80s, that are the Peruvian Land Bonds?
A. Comparable, as if you mean that it's a valid obligation of the State that's owed, yes, I do.
Q. Now, according to your own brochure, there are significant risks related to non-U.S. securities, and we can debate which constitutes a non-U.S. security, but that includes fluctuations in foreign currencies. That's a risk; right?
A. Yes. It's a risk that could be hedged. We talked about hedges earlier.
Q. And by hedging, you mean you have methods to try to avoid loss for your business activities; is that right?
A. By hedging, I mean to insulate or insure the portfolio and its positions against losses.
Q. Okay. Now, it also states here that foreign investments, especially those in emerging markets, can be more volatile and less liquid than U.S. investments; is that right?
A. Yes. Of course, volatility isn't loss of capital. It means the up and down of price, and less

liquid means that you can't necessarily turn it into cash as fast as other securities that may be more liquid.
Q. Okay. So, if you go now to Page 13 here, there's a bullet called "Risk Management Failures."
Now, according to your brochure, the risk management techniques employed on behalf of clients may be incomplete; is that correct?
A. Give me a moment to read it.
Q. Sure. Mr. Koenigsberger?
A. Yes.
Q. My question was, is it correct that clients and Gramercy may face risk management failures? Is that correct?
A. Yeah, and I think what that means is that the underlying risk insurance or strategy that's put there. Earlier in the paragraph, it talks about some of the reasons that what may have worked in the past may not work in the future, and that's what's meant there.
Q. Okay. Now, if we turn to Tab 2, Tab 2 is in the record at R-1205.

This is a Gramercy document dated September 2012, and it states on its cover "Gramercy Distressed Opportunity Fund II."
Do you see that document?
A. Yes, I do.
Q. Okay. Now, Gramercy, if I understand it correctly, establishes funds and goes out and seeks investors in those funds; is that correct?
A. Yes, it is.
Q. Okay. And so what was the initial fund that Gramercy established and raised funds in connection with the Peruvian Land Bonds?
A. I believe the initial vehicle was the Gramercy Emerging Markets Fund.
Q. Gramercy Emerging Markets Fund. And the Gramercy Distressed Opportunity Fund II, did that fund hold the Peruvian Land Bonds, or was this a different activity?
A. This-as it says here, it's September 2012, so it's after the financial crisis. It's our second fund that looked at distressed opportunities in emerging markets after the financial crisis.

Q. Okay. So the initial fund that Gramercy set up to raise money to acquire Peruvian Land Bonds, does that fund still exist?

A. That fund wasn't set up to acquire Peruvian Land Bonds. That fund was set up in April 1999 to do diversified investing in emerging markets, Latin America, Eastern Europe, Asia, et cetera.

The purpose of Gramercy Emerging Markets Fund was not to invest in Peruvian Bonds.

Q. So the Peruvian Bonds were just one little piece of a bigger fund; is that correct?

A. It was one position within the Emerging Markets Fund.

Q. How many positions were in that fund?

A. Gosh, I would say, on average, maybe 30 different investment themes with multiple lines.

Q. Okay. And if that fund no longer exists, where do the Peruvian Land Bonds sit today vis-à-vis your funds?

A. So the Land Bonds exist within Gramercy Perú Holdings, which has been there since Day 1. So the Emerging Markets Fund had an interest in the Bonds via

Gramercy Perú Holdings. The economic interest for those Bonds and beneficiaries may have changed over time, but the Bonds have been in the same place the entire time.

Q. Okay. Now, if you turn to Page 1 of this document, there's a disclaimer up front, and this disclaimer appears in various Gramercy documents. If you look at the second paragraph to the left side.

A. Give me one moment, please.

Q. Sure. It's the paragraph that says: "The purchase of investments is suitable only for sophisticated investors."

Did you read that, Mr. Koenigsberger?

A. I'm almost done.

Yes, I've read it.

Q. All right. And it says here that "the investment's performance may be volatile and investors may lose all or a substantial portion of their investment"; is that right?

A. Yes, it does.

Q. That's a disclaimer that Gramercy routinely makes to its clients; is that right?

A. These are standard boilerplate disclaimers that all investment managers made to their clients.

Q. And so you would have made similar disclaimers in the funds related to the Peruvian Land Bonds, I take it; correct?

ARBITRATOR DRYMER: There's an error in the Transcript, which I have an interest in correcting immediately.

At 10:30:26, it says, "these are standard boilerplate Drymer." I believe the Witness said "disclaimers."

MR. HAMILTON: We can agree. Let's make a change on the Transcript.

You got it?

(Comments off microphone.)

BY MR. HAMILTON:

Q. So, just to correct, these are standard boilerplate--what does the Spanish tell us? Clauses, I think you were saying? These are standard boilerplate clauses; is that right?

A. Disclaimers.

Q. Disclaimers. These are standard boilerplate

disclaimers.

And so these disclaimers would have been made to--in connection with the Peruvian Land Bond Fund, as well; right?

A. I imagine there's similar disclaimers in the Gramercy Emerging Markets Fund or other vehicles that may have an economic beneficial interest in one of the positions in those funds.

Q. Correct. Now, if you turn over to Page 13, Page 13 refers to investable pipeline in connection with this fund.

Now, you see here on the left-hand side and the right-hand side references to "immediate opportunities" and "approaching opportunities."

And I note here, for example, on "approaching opportunities," some of which are corporate, some of which are sovereign, same on the left side, that the rate of return that you are anticipating and targeting strategically appears to be in the range of average of 28 percent or, on the upside on the left, up to around 39 percent; is that right?

A. I see that.

Q. Okay. So, this is a Gramercy document seeking funds, and you're telling potential investors, such as state pension funds in the United States, that they can anticipate or that you are targeting a potential return of, say, 28 to 40 percent average with some movement around the edges. Some less, some more; is that right?

A. I think what Page 13 is doing is it's showing opportunities that are available immediately, and it's an investment pipeline. And when you go out to talk to potential investors, they want to understand what's the underlying strategy, and when--remember, this is not the PPM. This is what we would call a pitch doc, right, so a marketing doc.

So, you're in the room talking to them about what are the opportunities that are available and can you unpack those for us, and, of course, we say that these are the expected returns; possible returns could be higher, could be lower.

Of course, this isn't the governing document between us and the underlying fund. There will be a PPM, a subscription document, that, again, has all the

standard--not Drymer, but disclaimers that go with the fund.

Q. Right. So, when you're pitching, promoting, marketing, say, to an American pension fund or other potential investors, the kind of ranges that you're flagging are in the range of averaging 30 to 40 percent; is that right?

A. Absolutely depends on the underlying fund, the era, the investment strategy, hedged, not hedged. Of course, this is--I believe--I haven't looked at this document in some time, but this is just one side. We spent a lot of time talking about the long side and the short side.

So, it's a pretty broad question. I think it just depends on the era and the underlying investment strategy.

Q. Well, you can agree that this document cites averages of 28.6 to an average of 39.8 percent. We can agree on that much; right?

A. Yes.

Q. So, you would not, even as part of marketing material, promise or anticipate or strategize the

scenario, for example, of 5500 percent return on any particular position in a portfolio; is that right?

A. Well, these are average returns. I suspect that we talked about things that could be below the average and things that could be above the average, so--

Q. And that range on this page runs, it looks like, from, say, 20 percent on the low end to 87.5 percent on the high end; is that right?

A. For this particular set of pipeline, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Let me understand this. When you're pitching this and saying 39 percent is the average expected return, it means the average expected return if you collect the principal, because this is distressed debt.

So, if you don't collect the principal, then that is not taken into account in this average expected return, or is it?

THE WITNESS: It depends on what the underlying investment is. So, the average return could be a function of where you enter and where you exit, but also the interim cash flows, the interest

payments that come your way while you hold it or interest payments that come your way for past due interest over the time.

PRESIDENT FERNÁNDEZ ARMESTO: So, that is net. When you say here "average expected return," it's net of default? If I were your client, that would be my first question to you, and I hope I get a good answer from--

(Overlapping speakers.)

THE WITNESS: Net of default. It's the capital we put in.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

THE WITNESS: The capital we get back and the interim cash flows that we get, and that can be cash that you receive or the value of the securities that you receive in exchange for whatever exchange or new consideration that you may get for those securities.

PRESIDENT FERNÁNDEZ ARMESTO: Because your strategy is not to hold to the titles until maturity. You often just resell the securities whenever you think it's appropriate.

THE WITNESS: That's right. There's

additional cash flows in claim that's available for the purchaser thereafter. So, typically the idea is funds have a fund life. We're in it for a subset of that fund life, and our idea in securities such as these is to identify kind of why they are cheap and what Gramercy can do to kind of change that element of cheapness.

It's typically some sort of leading a consensual ad hoc restructuring process, and then selling that on into the market and leaving additional value for other buyers.

PRESIDENT FERNÁNDEZ ARMESTO: So, yours are always closed-ended funds?

THE WITNESS: Most of them are.

PRESIDENT FERNÁNDEZ ARMESTO: And you typically go--what?--three, five years? What is your--what is what you offer to clients?

THE WITNESS: So the original fund that we did, the Emerging Markets Fund in '99, that was more of a--investors could come in and out, I think, with 90-day notice or 180-day notice.

After the financial crisis--and this is

post-financial crisis--they were typically kind of medium-term credit funds, so similar structures you see in the market today with private credit where there's a known start date and a known end date, and there's no flows of clients in and out.

PRESIDENT FERNÁNDEZ ARMESTO: So, it's a closed-ended fund with a maturity of?

THE WITNESS: Typically five to seven years.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And so your whole strategy is to resell the securities towards the end, to resell them either to the market or to another fund. That is your exit strategy.

THE WITNESS: Sometimes you're paid out in a cash flow within that period.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, of course.

THE WITNESS: So, you can monetize the asset just through the internal cash flows.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

Thank you, Mr. Hamilton. Sorry for that.

MR. HAMILTON: Thank you.

BY MR. HAMILTON:

Q. And when you use the term "monetize" and you refer in your statements to monetizing your holdings, what do you mean by that?

A. So monetizing means turning the investment into cash, and that monetization, as I was just explaining, could come in the form of selling the investment, whatever that investment may be, to the marketplace. It can be receiving cash flows. Monetization, the actual receiving of cash flows of interest payments and amortizations and what have you.

Q. And when you use the term "distressed"--because Gramercy says it's in the business of distress, what do you mean by "distress"?

A. "Distressed" means something that trades in the marketplace, or it can be bought below its true inherent value.

Q. Now, if we turn to Tab 3, Tab 3 is--

PRESIDENT FERNÁNDEZ ARMESTO: Sorry. Because I had--instinctively, I had thought "distressed" was there had been a default or there was a risk of default or there was some insolvency. And for you, that is not distressed.

You must explain that to me because I had misunderstood what you meant by "distressed."

THE WITNESS: Thanks for asking.

So "distressed" starts with something that trades below its inherent value, and then we have to understand why does it trade below its inherent value. And we'll oftentimes talk about some sort of element of distress.

Say, for example, maybe there's no organization of creditors, there's no advocacy group, or whatever it may be. And then our strategy would be to introduce that catalyst to change the element of distress.

So, it can be--"distressed" doesn't necessarily mean default. Oftentimes it does. "Distressed" can be something that's--today, I think a lot of distress you see in the marketplace is dislocation distress, which is there's just illiquidity in the marketplace. So, the size of the asset class has become so much bigger than the small amount of banks that disintermediate.

So, one element of distress might be lack of

balance sheet, lack of liquidity providers, and it could be a situation where there's no--there's no credit issue. There's an underlying exogenous risk like credit--pardon me--liquidity risk in the marketplace.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

BY MR. HAMILTON:

Q. I'm sure we'll discuss that more.

Let's look at Tab 3. Tab 3 is Exhibit R-1212. This is an article published by the Financial Times on January 12, 2013. It has a nice sketch of you there, Mr. Koenigsberger. And the title of this article is "Hedge Fund Gentleman Wages Argentine War."

Do you see that document under Tab 3, Mr. Koenigsberger?

A. Yes, I do.

Q. Okay. This article says that "Robert Koenigsberger never intended to get mixed up in a war. But he has."

What war were they talking about in this article?

A. Sure. I haven't read the article in quite some time.

Q. That's okay.

A. But what I believe they're referring to was Gramercy owns securities in Argentina. The war was not our war. The war was versus holdout investors in Argentina back in 2011, '12, '13, that had gone to the U.S. District--the U.S. Court in order to get an injunction that other Bondholders couldn't get paid.

So, the way that we inserted ourselves was we stood with the Republic and, in fact, went to the Second Circuit and all the way to the U.S. Supreme Court, making an argument that whatever issue that the Republic had with the holdout creditors, that 92 percent of us who had tendered, that we had legal property and we had the legal right to collect on that property, and that we felt that this notion that we couldn't get paid while holdout investors were battling Argentina didn't make sense. So, again, it wasn't our war.

Q. So, there, the other side of that was Elliott Fund, for example?

A. I believe that was one of the holdout investors. I can't remember the name of the entity that aggregated their claims.

Q. You're familiar with the Elliott Fund; right?

A. Yes.

Q. How is Gramercy similar to or different from Elliott?

A. Well, I think there's a lot of differences. One, we're a dedicated emerging markets firm. I mean, all of our investments are in emerging markets.

If I understand Elliott correctly, which I don't, but I think they tend to invest substantially outside of emerging markets. They tend to be an activist equity investor.

I think I read yesterday that they're getting involved with the Japanese Fund Management that was involved with the real estate firm. So, they are a very broad firm. So very different, dedicated emerging markets versus a much broader strategy.

Q. And, Mr. Koenigsberger, this article states that some of Gramercy's clients are pension funds hoping to achieve annualized returns of 7 to

8 percent.

Does that sound right in terms of the expectations that a pension fund might expect when investing in Gramercy?

A. Sorry, where are you referring?

Q. I am on the next page. It's the third page of that document, penultimate paragraph: "Some of Gramercy's clients are pension funds hoping to achieve annualized returns of 7 to 8 percent."

A. Yeah. I think what this refers to is over the years, we developed kind of a traditional long-holding emerging market debt business, and those returns are kind of consistent with those more plain vanilla strategies.

Q. I see.

Now, if we turn to Tab 4, Tab 4 is Exhibit R-624. This is an article from the New York Times dated December 18, 2012, and it's called "Hedge Fund in Middle of Argentine Debt Battle."

PRESIDENT FERNÁNDEZ ARMESTO: 264?

MR. HAMILTON: 624.

BY MR. HAMILTON:

Q. Now, the New York Times says, "Gramercy Funds Management is not exactly a household name in the investing world."

Do you agree with that?

A. I agree it says that.

Q. Okay. Do you agree with that statement?

A. Well, I think Gramercy is very well-known in emerging markets. I really don't know what she meant by that.

Q. Okay. Now, this article refers to Gramercy's past legal problems coming into focus and refers to tax problems experienced by clients of Gramercy advisors. And according to this article and according to federal and state court filings here in the United States, Gramercy Advisors arranged deals involving distressed Brazilian debt that the Internal Revenue Service later ruled to be sham transactions. Is that correct?

A. Well, let's talk about this article.

Q. Okay.

A. This clearly wasn't Gretchen's finest journalism. Just to put it in context, we got a call

one day--

Q. Let me ask you a question. Who is Gretchen?

A. The author here, Gretchen Morgenson.

Q. Okay. You referred to her by first name. You're very familiar with journalists in the financial services world, I guess.

A. I maybe have spoken to her once or twice. So, it's not Ms. Morgenson's finest bit of journalism.

So, I'd like to provide some context to the article.

You talked about this--the holdouts and the previous article about Gramercy being involved. This, to me, was clearly a hit piece because we had sided with the Republic of Argentina in the battle against the holdouts. We were given a call one afternoon about 3:00 p.m. and she said, "I'm going to go to market with a story that's about your tax involvement in the past. Do you have any comment?" We said, "Yeah, we'd love to comment. How about we come down tomorrow and we talk about it?" She said: "No, I'm going to print in an hour."

Sorry, what's your question?

Q. Well, this article--according to this article, Gramercy investors contended that Gramercy's investment strategy involved false valuations--false valuations of worthless instruments--false valuations of worthless instruments that generated illegitimate profits to the firm.

Was that an allegation that was made against Gramercy?

A. If it was, I disagree with it. Our role in these transactions was to simply source distressed debt and manage that distressed debt. These clients were typically clients of BDO, which is a tax firm or other firms.

We made it very clear to the clients what our role was. It was simply to source distressed debt, and we got paid a fee for sourcing distressed debt. But we were very clear with the clients that we don't provide tax advice. We don't understand tax. We're an investment manager.

We had agreements with them that disclosed everything that was out there in terms of notices from the IRS and what have you. So, I disagree with that

notion.

Q. Now, on the next tab, Number 5, this is Exhibit R-1094. This document relates to the proceeding of U.S. v. Advisors. That's the United States Government, the Non-Disputing Party in this proceeding, and this is a document from 2011 in connection with federal court proceedings in Connecticut.

And according to this document, the United States asserted that it was seeking production of 1300 pages of relevant and withheld documents that Gramercy sought to withhold on the basis of proprietary or trade secrets.

Do you recall that dispute, sir?

A. What I recall is--first of all, we're not a party to whatever the underlying case was. We were asked to provide documents. We went and looked at the underlying investment management agreements that had confidentiality clauses that said "unless compelled by a court."

Despite that, we went and spoke with the underlying investors and said there's a subpoena or

whatever it may be, a document request, and we tried to negotiate with that client the documents to provide. And while that process was going underway, I believe the U.S. just went right into the Connecticut Court.

Of course, we complied with that, but we had a provision that says "confidentiality unless the client agrees or we're compelled by a Court." So, that's what we did.

Q. Okay. Now, Mr. Koenigsberger--we can take the screen black.

Mr. Koenigsberger, we talked before about the types of opportunities that Gramercy typically pursues with emerging markets distressed debt situations.

Now, you have highlighted in your Witness Statements your experience with and knowledge of Perú. And, in particular, you have highlighted that at least from 2000 onwards, Perú demonstrated economic growth and tight fiscal policies. You agree with that; right?

A. That it's in the document? Sorry, what's the question?

Q. Do you agree that Perú adopted tight fiscal policies, at least from the year 2000?

A. Yeah, I believe from the year 2000 this was an upwardly mobile reform story that included fiscal constraints and debt management policies, and I think it was an upwardly mobile story.

Q. Okay. And by 2005, you've emphasized that Perú was performing well and maintaining fiscal responsibility.

Do you agree with that?

A. Sorry. Where are you referring to?

Q. I'm asking you a question.

A. As I said before, when we looked at the Bonds in that era, certainly part of what attracted us to Perú was this reform story, that Perú was reinserting itself into the capital markets and improving its creditworthiness along the way.

Q. Okay. And it wasn't just a story. Perú did, in fact, become a successful issuer of contemporary sovereign bonds; is that correct?

A. They issued Bonds; correct.

Q. Correct. And, in particular, in 2005, for

example, there were at least a few occasions when Perú successfully issued contemporary Bonds; is that correct?

A. I don't recall the dates, but I do know they were issued in the mid-2000s.

Q. Well, you attached them and discussed them in your Witness Statement and refer to 2005. So, let's take a look.

A. Okay.

Q. Under Tab 7, this is document CE-8. This is a Perú Global Bond Prospectus dated January 27, 2005.

Do you see that document?

A. The cover here has got January 19, 2005?

Q. No. This is a supplement to the Prospectus dated January 19, because, of course, as, you know, supplements are provided when there are additional issuances of Bonds.

A. Okay. I'm sorry, what's the question?

Q. Well, do you see here the Prospectus Supplement of the Republic of Perú?

A. Yes, I do.

Q. Okay. Now, if we go over to Page 3. Page 2,

you get a nice map of Perú.

Have you spent a lot of time in Perú, Mr. Koenigsberger?

A. I've spent a fair amount of time in Perú.

Q. Over how many years?

A. I think I did my first trip to Perú in 1988.

Q. Okay. So, if we look over to the next page, here's the Table of Contents for a Contemporary Global Bond Prospectus Supplement, and, of course, as is typical, this document includes a range of different issues that would be relevant to acquiring these Bonds.

Do you see that table of contents?

A. I see the Table of Contents, yes.

Q. Okay. Now, let's flip over to page number--give me a second here--third page, "Summary of the Offering."

So, this is just a summary section of this document, but, for example, there's a reference to "status" that "these Bonds and previously issued Bonds will constitute a single class of securities for all purposes."

Do you see that?

A. Give me a moment.

Q. S-4 is the page. S-4.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. There are a number of pages. I mean, Mr. Hamilton, this is a standard prospectus of a sovereign of issuing Bonds in the United States. He's here to tell us about--I mean, is there anything specific to our case? Because I would like to get to our case at some stage.

MR. HAMILTON: Yes. We're getting there.

PRESIDENT FERNÁNDEZ ARMESTO: Is there anything--let me make a very simple question.

MR. HAMILTON: Sure.

PRESIDENT FERNÁNDEZ ARMESTO: Is there anything on Gramercy in this Prospectus?

MR. HAMILTON: Gramercy is not mentioned in the Prospectus.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. That's a good point.

MR. HAMILTON: But I do have questions because he attached three of these Bonds and says that it was Perú's issuance of these Bonds that Gramercy

relied upon in connection with its decision to acquire the Land Bonds.

So, he discusses this in his statement. That's why I would like to ask some questions about it.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Okay. It's your time.

MR. HAMILTON: It's his due diligence, sir. He has emphasized these documents.

PRESIDENT FERNÁNDEZ ARMESTO: I think we all know exactly what this Prospectus will say, and, yeah, if you want--let's not lose too much time on that because I think it's a very--but I'm not--it's your time. I just draw your attention that, to me, it's not something which looks extremely important.

We are all aware that--and it is undisputed that the Republic of Perú was a successful issuer of Bonds, came back to the international market, had a responsible fiscal policy, is a well-managed sovereign debtor. I think we all agree.

BY MR. HAMILTON:

Q. By the way, do you agree with that,

Mr. Koenigsberger?

A. I agree with that.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. We have stated that. He has stated that. You all have stated that. I think Mr. Friedman has stated that.

MR. HAMILTON: Okay. But I will continue with some questions, if you don't mind.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

MR. HAMILTON: Sometimes the path is less clear from that seat than from other seats.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. HAMILTON: But, again, it's Mr. Koenigsberger's insistence--

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: It will be full of disclaimers, huh?

MR. HAMILTON: That much is clear. There are no promises from Gramercy. We've got that clear.

PRESIDENT FERNÁNDEZ ARMESTO: And we will find the same disclaimers--in the prospectus of Gramercy. We will find them here.

MR. HAMILTON: Of course. Of course.

Exactly.

PRESIDENT FERNÁNDEZ ARMESTO: That's what bond lawyers do, is they draft disclaimers and they put them in.

MR. HAMILTON: Yes, they do. Yes, they do. Those lawyers do that at times, unless it is 1969 and they have nothing at all to do with these kinds of documents and contemporary financial markets. In which case--

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Quite different.

BY MR. HAMILTON:

Q. So, Mr. Koenigsberger, you emphasize and you stated in your earlier comments that you relied heavily on an understanding of Perú's fiscal responsibility and, in particular, you cited and attached three of these Bond prospectuses, including this one in particular.

Now, this Bond prospectus, for example, indicates at Page S-6, the use of proceeds of this document.

So, for example, the use of proceeds from

this Bond issuance--the net proceeds of the sale of Bonds here would be used for "general purposes of the Government, including financial, investment, and refinancing, repurchase or retirement of domestic and external indebtedness."

Do you see that?

A. Yes, I do.

Q. So, in 2005, did Gramercy have positions in contemporary Peruvian Bonds?

A. I don't recall.

Q. Has Gramercy ever held positions in contemporary Peruvian sovereign bonds?

A. Yes, we have.

Q. Does Gramercy currently have any positions in contemporary Peruvian sovereign bonds?

A. I'm not sure.

Q. You don't know whether Gramercy has any positions in--

A. We have--

Q. --Peruvian sovereign bonds?

(Interruption.)

Q. Does Gramercy hold positions in contemporary

Peruvian sovereign bonds?

A. And my answer was, I can't tell you with certainty. As I mentioned before, we have three different investment divisions. We have one that does public credit, one that does private credit, one that does special situations.

Q. Excuse me. It's just a simple yes-or-no question.

PRESIDENT FERNÁNDEZ ARMESTO: He doesn't know.

THE WITNESS: I'm not the portfolio manager.

MR. HAMILTON: I find that remarkable. I find it remarkable, Mr. Koenigsberger, that you claim to have no idea of whether Gramercy has any holdings in Peruvian sovereign bonds since you spent years in a propaganda campaign to trash Perú. You have no idea whether Gramercy holds Peruvian sovereign bonds?

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton, this is your question. He's answered. He doesn't know. Let's go on to the next question. Let's not get into discussions with the Witness. He doesn't know. We ask the next Witness--

MR. HAMILTON: I'll ask a different question.

PRESIDENT FERNÁNDEZ ARMESTO: And if you want, at the end, if you want that we put a question to Gramercy whether they have it, we will discuss it, but he does not know.

BY MR. HAMILTON:

Q. Okay. You don't know whether Gramercy holds Peruvian sovereign bonds; is that correct? Under oath, you do not know if Gramercy holds positions in sovereign bonds of Perú?

A. We do hold Bonds in Perú, the Land Bonds. That I can confirm.

Q. Okay.

A. You asked me about other Bonds, and I'm trying to speak the truth, the whole truth, and nothing but the truth.

Q. Okay.

A. And I'm telling you I don't know.

Q. Okay. And do you know if Gramercy has ever held contemporary sovereign bonds of Perú, 2005 to the present?

PRESIDENT FERNÁNDEZ ARMESTO: He has already

said that, yes.

BY MR. HAMILTON:

Q. Okay. And, is it--

PRESIDENT FERNÁNDEZ ARMESTO: His statement is to be very clear. His statement is yes, they have held contemporary Bonds and he does not know if at this time they hold Bonds.

BY MR. HAMILTON:

Q. Have you ever had meetings with potential investors in Gramercy funds where you discussed holdings of contemporary Peruvian sovereign bonds?

A. Not that I recall.

Q. Okay. Now, Mr. Koenigsberger, it is true that Gramercy considers that receiving contemporary Peruvian sovereign bonds would be an acceptable payment method in connection with any resolution of the Peruvian Land Bonds?

A. I'm sorry. Could you ask that one more time?

Q. Would Gramercy be content to receive contemporary Peruvian sovereign bonds as a method of payment in connection with any resolution of the Land Bonds?

A. Yes, we would.
Q. And that's because you have confidence in contemporary Peruvian sovereign bonds?
A. There is all sorts of consideration that we would consider in exchange for resolution of the Land Bonds.
Q. But you specifically have indicated in the past that that would be your preferred method of payment in connection with the Peruvian Land Bonds; isn't that correct?
A. A method. We also would be happy with local security soberanos in Perú, we would be happy turning these into debt equity certificates where actually Perú would never pay us, that we would actually have to go out to a secondary market to find foreign direct investors to convert these things into foreign direct investment.
Q. All of those things would give you confidence?
A. All those things would--resolution would make us happy, and I don't know what you mean by "confidence," but to be able to resolve this and get

consideration that could either be held for a very long period of time and collected as it performs or sold onto the market to other Bondholders, or used to attract Foreign Direct Investment into the country, yes, that would be satisfactory.
Q. If we go to Page 132 of this document, there's a section called "Jurisdiction Consent to Service and Enforceability." Page 132. This is the wrong page.
At the top it says Page 158. If you look at the printout, that will make it easier. Top right, Page 158 of 202.
All right. Now, this document, I think you might say, is sort of boilerplate of the contemporary era in providing a method for resolution of disputes and submission to jurisdiction of any disputes that would arise in connection with this contemporary bond.
Do you see that?
A. Give me a moment to look at it.
Q. This is pretty basic, sir. My question is, doesn't the submission to jurisdiction of the sovereign in this Bond, as with most contemporary

sovereign bonds, give you greater confidence in your enforcement options with respect to this instrument?
A. Can I read the--what you've asked me to refer to?
PRESIDENT FERNÁNDEZ ARMESTO: Very frankly, I think you can--it's a very boilerplate question that, if you have jurisdiction to a U.S. court that gives you more confidence that the Bond will be enforceable. I think that was basically the question.
MR. HAMILTON: That's the question.
THE WITNESS: It gives us an additional venue. I don't know how I would rate the confidence, per se, but definitely gives you an additional place to go.
PRESIDENT FERNÁNDEZ ARMESTO: Yeah. It is important in international Bonds that you have access to U.S. court. It's boilerplate.
BY MR. HAMILTON:
Q. It's boilerplate in contemporary Bonds. But you even expressed doubt about enforcement under a contemporary Global Bond with submission to jurisdiction; is that right?

You have your doubts about that too; right?
A. I'm sorry. I don't follow.
Q. You expressed doubt about the enforcement potential against a sovereign even under a contemporary Bond instrument like this. Is that correct? I'm just reading the Transcript.
A. Will you take me there, then.
Q. You indicated that you have doubts about the possibility of enforcement against a sovereign despite the language of boilerplate language like this?
A. I don't know where you're referring to, and I don't know if you are--
MR. FRIEDMAN: I don't think he said that is the problem.
PRESIDENT FERNÁNDEZ ARMESTO: I think the question is irrelevant. In any case, if you read the first phrase, you will see a nice disclaimer. Perú is a foreign sovereign State. And it may be difficult to obtain judgment in the United States. So, the submission to U.S. courts starts with a disclaimer about the possibilities. But, really, he cannot help us much more with this.

MR. HAMILTON: Well, again, he's the one who relied on this--these Bond issuances. He's the one who put it in his various Witness Statements. He's the one who has said that he relied on Perú issuing contemporary Bonds in order to buy these old, decaying, rat-eaten pieces of paper, in some instances. So, that's the reason for the question, Mr. President, but I understand your comment.

BY MR. HAMILTON:

Q. Now, with respect to the Land Bonds, you said you first became interested in the Land Bonds in 2005; is that right?

A. That's correct.

Q. And you learned about the Land Bonds from an emerging markets boutique called "Exotic;" is that right?

A. Exotix.

Q. Exotix. What is Exotix, Mr. Koenigsberger?

A. Exotix was an emerging market boutique broker-dealer that researched and sourced and brokered and made markets in emerging market securities debt.

Q. It sounds exotic. So, these are not

cookie-cutter scenarios that they bring to your attention?

A. No. Exotix did the--pardon me, Exotix covered the gamut of emerging market securities. Anything from, as you say, global Bonds. I knew the principal there, Peter Bartlett. As I mentioned earlier in my testimony, I was highly involved in the Russian debt restructuring. They provided exceptional and reliable research on Russia at the time and they would also talk about relative value of one Bond versus the other, and that's--I have known Exotix since 1998.

Q. Okay. And so, they are the ones who brought the Land Bonds to your attention; right?

A. Yes.

Q. Okay. Now, you've emphasized that you--I guess from a relatively young age were aware of, involved in restructuring issues in Latin America. You had never heard about the Land Bonds before.

That's your testimony to date?

A. That's correct.

Q. Okay. So, you went through all the

restructurings of the 1990s, the exposure that you had, that deep experience, and you had never heard of the Land Bonds; is that correct?

A. When I started in the late 1980s, emerging economy markets had yet to emerge, and the beginning of that emergence was the restructuring of bank loans. So, what I dealt with--and I talk about it in my testimony at CR-P Associates, was the resolution of the bank loans, the Brady debt restructuring, in fact I worked on the first Brady debt restructuring in the Republic of Costa Rica in '88-'89.

Q. I'm sorry, but I'm not asking for your entire profile. My question was very simple: Had you heard of--you have now confirmed you had not heard of the Land Bonds before 2004?

A. No. I don't recall--

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Let's go to the next question.

MR. HAMILTON: Let's keep going.

BY MR. HAMILTON:

Q. Okay. Now, you indicated that when you learned about the Peruvian Land Bonds, you knew that

Perú had defaulted on the Land Bonds long before you learned about them; correct?

A. That's correct.

Q. And you knew that the Land Bonds had been issued in an outdated and massively devalued currency, the Soles de Oro; correct?

A. I was aware of that, yes.

Q. And you knew that the face value of the Land Bonds as denominated in the Soles de Oro was worthless, even in 2005; correct?

A. Not that it was worthless. We looked at the research that was provided to me at the time, whether it was by Mr. Herzberg or others. They referred to, despite all these things that you are reading, why there was value, that it was well-established, that these Bonds had to be paid, and just because of these two currencies, it didn't mean that Perú didn't have an obligation to pay them under current value which compensated for this hyperinflationary period that they went through.

Q. We'll get there.

MR. HAMILTON: Mr. President, I'm trying to

keep a good pace and we don't need to get the whole history every time.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

BY MR. HAMILTON:

Q. Let's take a look at Mr. Koenigsberger's Third Statement at Paragraph 21. Put that up on the screen, please.

A. Sorry, which one?

Q. Your Third Statement, Paragraph 21.

MR. FRIEDMAN: Do you mean the Second Amended--the one that is entitled Second Amended Witness Statement?

MR. HAMILTON: There are a lot of amendments, but I think it's the Third Witness Statement of Mr.--Second Amended Witness Statement.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. HAMILTON: Which was the third try. Paragraph 21.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Unfortunately--

MR. HAMILTON: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Now, we get into the--but at some stage, we will have to make a break, because in a quarter of an hour, in the next quarter of an hour we'll have to make a break, whenever you say.

MR. HAMILTON: Okay. Okay. Again, Mr. President, we also agree that relying on some of the things they've highlighted as their basis for due diligence and supposed Decision to invest are completely--not applicable in the way they assert them to be. That's the reason it was necessary to learn about their business and learn about these things that they emphasize so much. Now, turning to this Witness Statement, Paragraph 21--

MR. FRIEDMAN: I must object. Speeches like that have no place in the middle of an examination.

PRESIDENT FERNÁNDEZ ARMESTO: Let's go.

BY MR. HAMILTON:

Q. Paragraph 21, the face value of the Land Bonds as denominated in Soles de Oro was worthless even in 2005; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Let's move on.

MR. HAMILTON: Okay. Now, we are going to

briefly go into confidential session.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

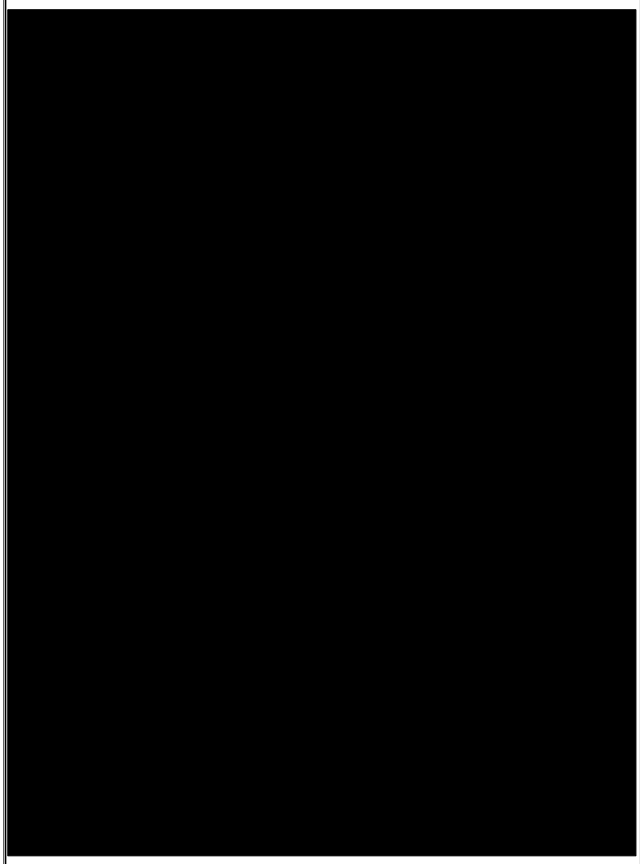
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



(End of Attorneys' Eyes Only session.)

OPEN SESSION

BY MR. HAMILTON:

Q. Tab 9 is Exhibit CE-729. This is a--email from José Cerritelli to David Herzberg.

Do you see that document? You don't have to read it. I'm just asking if we're on the same page.

A. I see the document.

Q. Thank you. Now, you have said that while you were encouraged by Perú's fiscal stability, you wanted to understand the history and status of the Land Bonds, in particular; is that right?

A. Yes.

Q. And you wanted to understand why Perú remained in default on the Land Bonds; is that right?

A. That's correct.

Q. Okay. So, you considered Perú to be in default at that time; correct?

A. I considered Perú to be in default on the Land Bonds at that time, correct.

Q. Okay. And you instructed David Herzberg, a Gramercy employee, to conduct the due diligence; is that correct?

A. That's correct.

Q. Okay. Now, are you, Mr. Koenigsberger, one of these hands-off guys who just delegates everything and doesn't get involved in what you do, and--I don't know. On a movie, you would be on a yacht, doing something other than thinking about these details. Or, you know, how do you conduct your business, and what role do you play within your business?

A. Well, as the Chief Investment Officer, I was responsible for the investment process, the research process, the trading process, so I sit on top of the entire platform. So, in a situation like this, I'll have individuals, research analysts, that go and do the primary research, bring that back to an Investment Committee, we talk about that Investment Committee, and we continue to iterate in terms of ask more questions and send them down for more due diligence.

So, for the record, I don't have a yacht.

Q. Okay. And you're a hands-on kind of guy, though?

A. What do you mean by that?

Q. You get deeply involved in the principal

Projects of Gramercy; is that right?

A. Yes, I do.

Q. Okay. Now, this document, CE-729, CE-729, the email from Mr. Cerritelli to Mr. Herzberg, says: "Subject, ADAEPRA notes."

Do you see that document?

A. I see the document.

Q. And this document--this document you discussed--okay. You discussed Mr. Cerritelli during the direct examination. Do you recall that?

A. Yes, I do.

Q. Okay. Now, if you turn to page--Tab 10, this is Document CE-114.

Now, your counsel gave this document to you on direct. I think everybody in the room knows it by now. This is the due diligence memorandum to you from David Herzberg, dated January 24, 2006.

You know this document; correct?

A. Yes, I do.

Q. Okay. And had you ever noticed, Mr. Koenigsberger, that this memorandum is substantially lifted from the email called "ADAEPRA

notes?"

A. I see the similarities, and I imagine what happened there is David and José were working on this together and perhaps they drafted the other one together. I don't know--what David wrote here I think is accurate, and, as I said before, José, at Exotix at the time, was helping to facilitate due diligence, and it wouldn't be unusual for a research analyst at Exotix to summarize the--what had happened on that trip.

Q. Okay. And would you consider that shoddy if they had a meeting with Bondholders and basically largely cut and paste that, and that became your principal due diligence memorandum?

A. I don't think that is what happened.

Q. Have there been any internal complaints or recriminations about the handling of the due diligence and the Land Bonds within Gramercy over time?

A. Not that I recall.

Q. You've never had a frustrated meeting inside Gramercy about these Land Bonds?

A. We've never had a frustrated meeting. We've

been frustrated for the better part of 14 years that we haven't been able to get resolution.

Q. And have you been fully satisfied with the level of due diligence undertaken with respect to this matter?

A. Yeah. As I look at it, 14 years later, I think they--David did a very fine job on the due diligence. And, of course, this wasn't all the due diligence that we did. I spoke to that earlier.

Q. Okay. But are you aware that this is the only due diligence memorandum that Gramercy has submitted to this Tribunal?

A. I believe that may be the case.

Q. Okay. And that there is no other due diligence memorandum that's been produced, despite document requests.

Are you alert to that?

A. I'm aware of that. As I said before, due diligence--this was the beginning of a due diligence process. Most of what we did--remember, these guys are down in Perú doing research. There is telephone conversations, there is weekly Investment Committee

meetings, there is emails.

To this day, we tell our research analysts don't spend so much time on the memorandum. We can talk about it. Doing a 17 page Report on every single thing we do can be laborious. Just go do some initial work, bring it back to the Committee, and let's talk about it.

Q. Okay. And there is no other due diligence memorandum that you're aware of?

A. Not that I'm aware of.

Q. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Did you engage counsel, Peruvian counsel, at that stage?

THE WITNESS: I believe we did.

BY MR. HAMILTON:

Q. And are you aware of a memorandum that Mr. Herzberg requested from your Peruvian counsel a few months after this due diligence memorandum related to the purchase mechanism that would be put into place for acquiring the Bonds?

A. I don't recall, but I'm not surprised that David would ask that of counsel.

Q. Because they were working on the mechanism under Peruvian law for the transfer of rights related to the Land Bonds; is that correct?

A. That could very well be.

Q. Okay. Now, this due diligence memorandum, of course, acknowledges that the Peruvian Government serviced the Bonds until 1987, and then afterwards, your memorandum said the Land Bonds had been in default for a period of 18 years.

A. Sorry, where you are looking?

Q. The Land Bonds had been in default for a period of 18 years.

That was your conclusion; correct?

A. Do you want to take me to that part of the document in order to confirm it?

Q. Sure. First page, "Why now? The Land Reform Bonds have been in default for a period of 18 years;" correct?

A. I see that, yes.

Q. Okay. Now, turning over to the third page of this document, "potential recovery analysis." Now, you say here that ADAEPRA, that's a Peruvian

Bondholder association, was pursuing a parallel strategy, a transactional solution of negotiating a settlement and a judicial track;" is that correct?

A. That's what David wrote in this memorandum.

Q. Okay. So, on the next page, there were various calculations related to valuations of Land Bonds.

Do you see those valuation tables?

A. Yes, I do.

Q. Three different valuation methods are presenting here.

A. I do see that, yes.

Q. Okay. Now, Mr. Koenigsberger, doesn't the existence of different valuation methodologies in your due diligence memorandum suggest that there was a lack of certainty in terms of the then-current value of the Land Bonds?

A. There was a lack of certainty, but I think there was the ability to come up with high probabilities of what to expect.

Q. Okay.

MR. HAMILTON: I'll go about five more

minutes and then take a break, Mr. President?

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. HAMILTON: Five minutes, approximately. Okay. Now, we can take the break now, actually, and then can I plan some efficiency. Does that sound good?

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton, how long do you have to go?

MR. HAMILTON: We don't know yet. It depends how fast Mr. Koenigsberger reads.

PRESIDENT FERNÁNDEZ ARMESTO: Oh, no, no, no. That is not fair to Mr. Koenigsberger. Because we have not really got into the thrust of his deposition--of his Witness Statement. I am slightly worried about timing.

MR. HAMILTON: We're getting there, sir, and, again, he put in five Witness Statements, many of which repeatedly talk about the issues that we've been talking about so far. So, you might--as you might understand, I have a duty to address the issues.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Of course. No. We should, I mean, we all know when the

really relevant facts took place, and we are--we are looking at 2004 document--no. 2006 document, I mean. There is--if you are going chronologically, which I do not know, I'm still worried that there is still quite some years to cover. So, we must--my point here is we must start the Second Witness before lunch.

MR. HAMILTON: Well, sir, I'm going at the pace that is appropriate from Respondent's point of view to manage a Witness who has put in five Witness Statements.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. HAMILTON: And maybe reads a little bit slower than--than sometimes, so.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. FRIEDMAN: Mr. President, if I just may, I just want to say for the record that there may be a bit of confusion here. We do not believe that the document at Tab 8, which is Respondent's 1095 and was the due diligence checklist was designated as confidential. We believe we produced that on February 8, which was prior to our Confidentiality Order in the case, and I don't think we've designated

that as confidential.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank you. It's now 28 past 11:00. We will come back at 45 past 11:00.

Mr. Koenigsberger, there is some coffee outside and there may be some refreshments. You are most welcome to have a coffee and anything else you would like. Can I please ask you not to speak to any of the counsel to Gramercy?

THE WITNESS: You bet. Thank you very much.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: So, we resume the Hearing.

Mr. Hamilton, I was just trying to help you. I mean, do the cross-examination the way you want. Please don't misunderstand me. There was nothing--I just was trying to be helpful so that you use your time. But if you think that it is important for your case, do it the way you want. It is your cross-examination, not mine.

MR. HAMILTON: Thank you, sir. I understand you have many practical tasks here, and I respect

that. I've also learned the virtue of patience sometimes in life, so there is that too.

BY MR. HAMILTON:

Q. Mr. Koenigsberger, we're going to resume, and we're going to pass out an exhibit.

What exhibit number is it? CE-120. This is one of the--it's a copy. We don't carry around original Land Bonds, but this is a copy of one of the Land Bonds, and I'm also providing you an English-language copy. We'll share with everybody else.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank you. So, we must give a number to this. This should be then H-4? H-4.

(Comments off microphone.)

MR. HAMILTON: Of course. Yes, sir.

BY MR. HAMILTON:

Q. This is CE-120. It's a copy, it smells a lot better than the old ones.

So, Mr. Koenigsberger, we were discussing due diligence undertaken by Gramercy with respect to the Land Bonds.

Could I get a copy of that document, please. I gave mine to the Witness.

(Comments off microphone.)

Q. So, Mr. Koenigsberger, this is familiar to you, I take it. What agrarian debt--Bonds of the agrarian debt is actually the best translation of this.

You're familiar with these instruments?

A. Yes, I am.

Q. Okay. And this is one of the instruments that Gramercy has provided a copy of in this proceeding. Now, this instrument, on its face, has various language, four elements down below.

Do you see that?

A. Yes, I do.

Q. Okay. Now, we were speaking earlier about a contemporary Peruvian sovereign bond, such as the one that you provided into the record.

Do you recall that?

A. Yes, I recall the conversation.

Q. This kind of document.

Now, Mr. Koenigsberger, when you were making

your risk assessment, how did you compare the protections of a contemporary Global Bond with which you were familiar at the time with these old pieces of paper? How did you compare those two as part of your due diligence process?

A. Well, as highlighted by the--David's memo, a big part of what we wanted to do was not necessarily compare one versus the other--because this is the one that we invested in--the idea was to look at what the laws were at the time to be able to confirm the validity of the debt.

And I'm not really sure where the cutoff is between contemporary and noncontemporary, but what we were able to confirm is that it's a valid obligation of the State, it's transferable to us, and it's due to be paid in current value. That is the type of work that we did looking at, of course, it didn't have the other document that you had, but there was certainly plenty of governing information as it related to the Land Bonds.

Q. So, did you consider, Mr. Koenigsberger, that acquiring this paper reflected greater risk than, for

example, acquiring Peruvian Bonds issued in 2005?

A. Different risk.

Q. Thank you.

Now, Mr. Koenigsberger, you mentioned that due diligence was an ongoing process, and that's why you just had the one memorandum. It was an ongoing process, and so let's take a look at the month of April of 2006.

Now, in the month of April in 2006, several interesting things happened. Now, first of all, you've indicated that you were aware that in April of 2006, on April 12, the United States and Perú signed, but, of course, had not yet ratified the U.S.-Perú Trade Promotion Agreement; is that correct?

A. Correct.

Q. And you were aware of that at the time.

A. We were aware of the free trade agreement.

Q. Okay. And you then--promptly after the Treaty was signed, you then established a new entity GPH in the State of Delaware on April 17, 2006; is that correct?

A. I believe that could be the date.

Q. And you established that entity five days after the signing of the U.S.-Perú Trade Promotion Agreement; is that right?

A. Yeah. I think it was completely unrelated. It was related to preparing for the first acquisition of Bonds.

Q. And you were preparing for the first acquisition of Bonds.

Now, on the 19th of April 2006, you were aware that President Toledo vetoed a pending Agrarian Reform bill.

Are you aware of that?

A. Yes. I'm aware of the veto and I'm also aware of the circumstances that he highlighted, the first one being that he was concerned that they might have to pay the debt twice, that, in fact, there was no registry. But looking at the veto, it wasn't about the validity of the debt, whether it was contemporary or not. He was concerned about double-counting in terms of no registry, but he wasn't disputing the validity of the debt, the current value, the notion of CPI. So, to me, as I said, that would have been

confirmation of the thesis, that despite at that moment someone wanted to kick the can to the next administration, that doesn't mean it wasn't currently payable.

Q. What "can was being kicked to the next administration," to use your words?

A. Well, it seems to me that part of the difficulty for Bondholders over many years is this notion that no government has really wanted to deal with it, and they have just kind of moved it to the next government.

So, we go back to April 2006, again, I saw confirmation that this was a valid obligation. It had to be paid. He was worried that it might be paid twice, not at all and confirmed a lot of things that David underwrote.

Q. So, in your view, the Toledo Government didn't want to resolve the situation, and they "kicked the can" to the García Government; is that right?

A. I think it's quite possible.

Q. And so, that April was prior to your first purchase of a bond; is that correct?

A. Yes, it is.

Q. Okay. Now. I take it that you are--and I refer your attention to Tab 27. I take it you're aware of the position of the Peruvian Government at that time and over many years with respect to the status of the land bonds. I refer your attention to Exhibit R-259. This document is an officio report of the Ministry of Economy and Finance dated 17 July 2006.

Do you see that document?

A. I see the document.

Q. Okay. Now, in the first paragraph it makes a reference to--do you prefer to look at the Spanish or the English?

A. I prefer the English.

Q. Okay. Are you fluent in Spanish?

A. I'm not fluent, but I speak Spanish.

Q. That's fair enough.

A. I speak it, I don't read it as well.

Q. Okay. No problem. Then we'll look at English version for your convenience, and there's a translation included behind the blue page of your

binder.

And so, in this document, it refers to an offer to purchase the Agrarian Reform Bonds that the Gramercy investment funds made by a written notice addressed to the association, the ADAEPRA.

Do you see that reference?

A. Am I going to get an English version?

Q. It's behind the blue piece of paper.

A. Oh, sorry.

ARBITRATOR DRYMER: Mr. Hamilton, my apologies to you, just so that I can follow on the same document you're showing the Witness, is there an English version in the record? If not, I'll work on the Spanish.

MR. HAMILTON: No, at the suggestion of their counsel, we are using free translation.

ARBITRATOR DRYMER: Fair enough. Thank you.

MR. HAMILTON: Yes.

THE WITNESS: Is it all right if I look at the document? Can I look at it a moment?

BY MR. HAMILTON:

Q. Yes, but please--I understand you want to

look at document, but these are really not questions that require reading the entire document.

A. All right. Then go ahead and ask your question, and I'll read it if necessary.

Q. Okay. So, document refers to a written notice or offer to purchase Agrarian Reform Bonds that Gramercy sent to ADAEPRA. Do you remember Gramercy sending an offer to purchase to Bondholders through ADAEPRA?

A. I do remember.

Q. Okay. In the second paragraph of this document, the position of the Ministry of Economy and Finance indicated here is as follows:

"I would like to inform you that the Peruvian Congress has yet to approve the legal framework that will presumably prescribe how to treat in general all liabilities derived from the land reform process, which, due to its complexity and implications has been the subject of coordinated action between the legislative executive branches."

Do you see that?

A. I don't. Sorry, where is that in the

English--

Q. Second paragraph.

A. "I'm writing to you in reference"?

Q. "In that regard." The second paragraph begins "in that regard."

A. Sorry. "I'm writing with respect."

Q. Mr. Koenigsberger, the first paragraph says "I'm writing to you," and the second is "in that regard."

(Overlapping speakers.)

A. Sorry. I missed this page. "In that regard," yes, I see that.

Q. Right. And so, the Peruvian Congress has yet to approve the legal framework.

Do you see that?

A. Yes, I do.

Q. Okay. And that's what you've just confirmed, of course--right?--that there was a pending law, but it was vetoed and did not come into force. Is that right?

A. That's correct.

Q. So, I have one additional item here. Give me

just a moment.

Subparagraph (d). According to this internal document of the Ministry of Economy and Finance, which was signed by Ms. Betty Sotelo Bazán, "with respect to all liabilities arising from the Land Reform Process, the Government's rights and interest may only be determined once the above-mentioned legal framework is in place."

Do you see that, Mr. Koenigsberger?

A. I do see that here.

Q. Okay. And that's consistent with what you've said, which is that there was a pending law, but it, of course, did not come into force in 2006; is that right?

A. There was a law put forward by the Congress that did not--that was not enacted.

Q. Okay. So--

A. But this is a legal framework for how the Ministry intends to resolve it. That's not the only legal framework. This a memorandum of the obligor, the Ministry.

Of course, as I mentioned earlier today,

there's two paths. There's the consensual path, which might have gone along the path of what the Congress might pass and how the Ministry might interpret it, but there was always another legal framework, which is Bondholders always had the right to go to local courts to pursue their claims if what was offered here, voluntarily or not, because it wasn't passed, didn't pass.

Q. So, do you accept that the status of the Land Bonds before the Ministry of Economy and Finance in 2006 was that there was no legal framework for them to pay the Bonds?

A. I do not.

Q. You don't agree that that was the position of the Ministry? It's on black and white in front of you.

A. I believe that that was a position of the Ministry, but I do think there were other mechanisms, other legal frameworks to collect on the Bonds.

Q. Okay. So that--that was the position of the Ministry, and it was in that context that Gramercy set about acquiring the Land Bonds.

Now, you mention in your Third Statement that you gave Bondholders three different options: Sell the Land Bonds to Gramercy, contribute the Land Bonds to an investment vehicle, or hold onto the Land Bonds and free ride on Gramercy's efforts to settle the Land Bond debt. Is that right?

A. Yes. I think that third option is in exchange for working with us to implement some sort of resolution.

Q. Okay. And the Bonds that are presented before this Tribunal, those were Category 1 where Bondholders sold Land Bonds to Gramercy; is that right?

A. That's correct.

Q. Okay. Were there any Land Bonds that were contributed to an investment vehicle in exchange for certificates?

A. No.

Q. Does Gramercy or any affiliate of Gramercy hold any Land Bonds other than the Land Bonds before this Tribunal?

A. Sorry, repeat that one more time.

Q. Does Gramercy or any affiliate of Gramercy hold any Land Bonds other than the Land Bonds that have been presented to this Tribunal?

A. Yes, we do.

Q. How do you hold those Bonds?

A. We hold them in physical custody in Lima.

Q. How many Bonds do you hold?

A. I'm not certain of the number of Bonds.

Q. Is it 5? 5,000? 10,000?

A. I don't know the number of Bonds.

Q. So, apart from what Gramercy has disclosed to this Tribunal, Gramercy holds more Land Bonds; is that correct?

A. That's correct.

Q. So, what entity controlled by Gramercy holds these additional Land Bonds?

A. I'm not certain of the entity that holds it.

Q. Okay. And when were those Land Bonds acquired?

A. I believe in 2017.

Q. So, in 2017 while this Arbitration was pending, Gramercy acquired additional Land Bonds; is

that correct?

A. The way that we acquired them--we talked about the three different versions. There was an acquisition where someone wanted to keep interest in it but also have us contribute some cash to them. So, it was like that middle option that we talked about before.

Q. So, this would be the contribution of Land Bonds to an investment vehicle; is that correct?

A. I'm not sure the mechanism that was used for the acquisition. I don't recall.

Q. Okay. So who coordinated those transactions for Gramercy?

A. I imagine it would have been through our operations group.

Q. Okay. You've emphasized that you're a very hands-on kind of guy and that you personally get involved in these details. You have no awareness who--in the relatively compact team of people that work at Gramercy, who would have been involved in a 2017 acquisition of Land Bonds?

A. I think you were talking about the closing of

it, so I talked about the operations person.

Q. Who in Gramercy was responsible for its 2017 acquisition of Peruvian Land Bonds?

A. A group of people. Of course, I'm the Chief Investment Officer, and I'm responsible for the investments that we make, but there are other individuals on the investment team, the legal team, and the operations team that would have worked on that as well.

Q. Okay. How much did Gramercy pay for this acquisition of Land Bonds in 2017?

A. I don't recall.

Q. What time of year in 2017 were these Land Bonds acquired?

A. I believe it was in the first quarter, but I don't recall the date.

Q. The first quarter of 2017.

A. I believe so.

Q. Okay. And so Gramercy thought that it would be a good investment decision in the first quarter of 2017 to acquire additional Peruvian Land Bonds?

A. Yes.

Q. Okay. Thank you.

Now, the money that was used to buy these additional Land Bonds, did you raise that money from investors here in the U.S.?

A. That money came from funds. It was from funds that had U.S. investors.

Q. Okay. Now, just to be clear, as Gramercy has indicated here, some of the beneficial interests in the Land Bonds through Gramercy are U.S. interests and a smaller percentage are not U.S. interests; is that correct?

A. That's correct.

Q. That's correct. Okay.

And so these 2017 acquisitions did include U.S. interests and, perhaps, non-U.S. interests?

A. The vehicles--the purchasers were U.S. purchasers. When you have all these beneficial owners, I can't recall whether they're all on 100 percent U.S. or not because there are investors in the underlying fund vehicles.

Q. Mr. Koenigsberger, are the individuals and entities--any of the individuals or entities who have

beneficial interest in the Gramercy Land Bonds Peruvian?

MR. FRIEDMAN: Sorry, excuse me. I think this is unclear. There are certain Land Bonds that are the subject of this Arbitration, and--

MR. HAMILTON: Excuse me. I'm asking him a question.

PRESIDENT FERNÁNDEZ ARMESTO: Wait. Make clear what you are asking for because it was dubious.

ARBITRATOR DRYMER: Yes, again, Mr. Hamilton, I was going to hit the button before anyone else, just to ask whether you are asking about the Bonds at issue in this case or the 2017 Bonds.

MR. HAMILTON: Please, sir, I'm going to ask about both, I assure you.

ARBITRATOR DRYMER: Thank you.

MR. HAMILTON: Because we've just learned about Bonds that Gramercy has hidden from this Tribunal--once again things that have been hidden from this Tribunal.

BY MR. HAMILTON:

Q. Mr. Koenigsberger, the Land Bonds that are

before this Tribunal have beneficial owners. Are any of those beneficial owners Peruvian?

A. I don't believe so.

Q. You don't believe that any of the beneficial owners, entities, individuals who stand to benefit from a ruling of this Tribunal in connection with the Gramercy Land Bonds--none of them are Peruvian?

A. The--what I said is I don't recall if there's any Peruvian investors that are beneficial owners of the Bonds that are part of what we hold here for this Arbitration. The Resolution that we would get would certainly benefit a lot of Peruvians.

Q. That's not my question, sir.

So, you're not able to confirm here today that there are no Peruvians with beneficial interests in the Gramercy Land Bonds before this Tribunal; is that correct?

A. I don't believe so. I don't believe there are Peruvians in our vehicles with beneficial interests.

Q. You're not sure.

A. I'm not sure.

Q. Thank you.

Now, with respect to these other Bonds--we'll call them the new acquisition of Peruvian Land Bonds--did Gramercy acquire those Land Bonds through purchase contracts similar to the purchase contracts with which it acquired the Land Bonds before this Tribunal?

A. I don't know.

Q. Mr. Koenigsberger, at the time that you acquired those Land Bonds, you were engaged in a high-profile propaganda campaign against the Peruvian state. You're the lead Witness in this proceeding. You've emphasized how you're a hands-on kind of guy, and you have no idea how you acquired--

PRESIDENT FERNÁNDEZ ARMESTO: Is that a question? Is that the question?

MR. HAMILTON: Yes. I'm repeating the question.

PRESIDENT FERNÁNDEZ ARMESTO: He has told you he doesn't know.

MR. HAMILTON: I'm expressing uncertainty about how he would not know.

BY MR. HAMILTON:

Q. Are you sure that you don't know how Gramercy acquired Bonds?

A. I do not know the technical characteristics of how we acquired the Bonds.

Q. Did you purchase the Bonds?

A. Gramercy purchased the Bonds, I believe. Some vehicle--some entity of Gramercy purchased the Bonds.

Q. You're the Chief Investment Officer--that's your title, Chief Investment Officer of Gramercy?

A. That's my title.

Q. And you're not familiar with these details is your testimony.

A. Well, when you sit on top of an asset management firm of $6 billion, you're not in the weeds on the closing of transactions. There's different departments that do different things. So, I certainly understand what's going on with the underwriting of it, but the closing of it--as I said before, there's a legal team that works on that, there's an operations team that works on that.

It is not unusual for me not to be in the weeds on the technicalities of how to close a transaction.

Q. So, sometimes you get your hands on and sometimes you take your hands off. Is that what you're saying?

A. I don't understand the question.

PRESIDENT FERNÁNDEZ ARMESTO: That's not a question.

BY MR. HAMILTON:

Q. Okay. So, Mr. Koenigsberger, with respect to this acquisition as Chief Investment Officer, how much money was allocated to acquire Peruvian Land Bonds in early 2017?

A. I don't recall the number.

PRESIDENT FERNÁNDEZ ARMESTO: I think we don't--the exact amount is not--is it $200 million? Is it $10 million? $50 million? Is it as big as the investment we are discussing in this case? Is it much smaller? I mean, you must have some idea of magnitudes.

THE WITNESS: Sure. And I apologize. What's

different here, as I mentioned, is we acquired a partial interest in the Bonds, so it's not a full interest. We, in essence, partnered with a previous Bondholder. I believe it was around $50 million.

BY MR. HAMILTON:

Q. Around $50 million.

Now, who was the other party or parties that you transacted with in connection with these Land Bonds in 2017?

MR. FRIEDMAN: I think that may be confidential and may have nothing to do with the Arbitration.

MR. HAMILTON: Mr. President, my comment is that Gramercy entirely tries to manhandle this Tribunal, not to mention the United States Government, in terms of picking and choosing what it discloses. And there may be serious issues with what they have disclosed to their own investors. So, if you're going to deny the information, we will take note of it, and I'm sure we will talk about it further.

BY MR. HAMILTON:

Q. It's a simple question. Who did you transact

with? Who did you participate with in connection with acquiring Land Bonds in 2017?

MR. FRIEDMAN: Sorry, I raised an objection to that question.

PRESIDENT FERNÁNDEZ ARMESTO: You can say it's confidential or you can say the name or you can say whatever you want. I mean, it's up to you to provide the answer.

THE WITNESS: I'm happy to answer the question. I believe that would be covered under the Confidentiality Agreement with the purchaser--as the purchaser from the seller.

BY MR. HAMILTON:

Q. Oak. Is that an entity? An individual? If so, is that Peruvian or non-Peruvian?

A. I believe it's non-Peruvian, but I'm not sure of the structure of the seller.

Q. Okay. And were the funds that you utilized to acquire Land Bonds in 2017--were those funds provided by Gramercy, or did Gramercy, as per the routine that you've explained earlier today, acquire funds from investors and use that money to acquire

additional Land Bonds?

A. That--the proceeds for that came from the funds that Gramercy had raised for diversified funds. There was not a specific raise for the Land Bonds.

Q. Okay. And which fund did that relate to in particular? Which Gramercy fund? Gramercy Distressed Opportunity Fund II, for example?

A. I believe it's [redacted].

Q. [redacted] raised funds that were then used to acquire Peruvian Land Bonds in 2017; is that correct?

A. The funds that were raised by [redacted], in part, were used to buy an interest in the Bonds, correct.

Q. How many Bonds were acquired for--how many Bonds were acquired?

A. I said earlier I'm not sure of the number of Bonds.

Q. So you don't know if it was 100 Bonds? 5,000 Bonds? 10,000 Bonds?

A. I don't know the number of Bonds.

Q. Now, Gramercy distressed--let me tell you,

Mr. Koenigsberger, I have one more question at this time.

MR. HAMILTON: And, Mr. President, given that this is new information for the Republic of Perú, we may have additional questions.

BY MR. HAMILTON:

Q. Mr. Koenigsberger, you provided three Witness Statements in this case; correct?

A. Correct.

Q. All right. And the first one and the second one were in 2016. The third one was in 2018, the fourth one was in 2019, the fifth one was in 2019.

A. Let me correct the statement. There is actually five here. So, you said three. There is five, five Witness Statements.

Q. Five. That's right. That's right. Five Witness Statements.

Three of those Witness Statements have come after 2017. In none of those Witness Statements did you reveal to this Tribunal that Gramercy had acquired additional Land Bonds; is that correct, Mr. Koenigsberger?

A. That's correct.

Q. Now, Mr. Koenigsberger, why did you not reveal to the Tribunal that Gramercy had bought additional Land Bonds?

A. I don't believe that those Bonds are relevant to this--they are not part of this dispute.

Q. And Mr. Koenigsberger, you understand, of course, that this is not a contract dispute.

This is a treaty proceeding; correct?

A. It's a treaty proceeding, correct.

Q. And in a treaty proceeding, one doesn't just take, say, an old bearer Bond, present it to a Court and debate the value. In a treaty proceeding, there are much broader range of facts that are pertinent; correct?

PRESIDENT FERNÁNDEZ ARMESTO: I think he's not a legal Expert.

(Overlapping speakers.)

MR. HAMILTON: I think it's pertinent given that Gramercy includes in their own business summary that treaty claims are part of their business, that an understanding of whether he has a basic understanding

about the difference between a treaty claim and a claim on a contract is pertinent.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sure--whether he has or not, it is really not a fact on which he can help us.

MR. HAMILTON: It is evident, sir. Thank you.

BY MR. HAMILTON:

Q. So, Mr. Koenigsberger, you decided not to tell this Tribunal that Gramercy had acquired additional Land Bonds; correct?

A. It didn't occur to me. It wasn't the Bonds that are part of this Tribunal.

Q. Okay. Let me ask you this: Did you undertake additional due diligence with respect to the acquisition of Land Bonds in 2017?

A. Yes, we did.

Q. What due diligence did you undertake?

A. The validity of the Bonds, the character of the Bonds, we certainly looked at the--there was--talk about--there must have been, you know, five or six different Supreme Decrees that came out with varying

levels of valuations associated with them.

Q. Okay. And do you have internal documents or memoranda related to your assessment of Land Bonds in 2017 or in connection with that acquisition in 2017?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. You said earlier that Gramercy would typically prepare due diligence memoranda before making an acquisition; isn't that correct?

A. I don't recall a specific due diligence memorandum on this. Obviously, as I said, this was an ongoing story that we've understood for quite some time. I'm not denying or confirming whether there were. I just don't know.

Q. Okay. With respect to the Bonds that Gramercy acquired in 2017, you said that you raised the funds through [redacted]y [redacted]; correct?

PRESIDENT FERNÁNDEZ ARMESTO: That's what he said.

BY MR. HAMILTON:

Q. Okay. And [redacted], that includes, for example, state pension funds from the U.S.; is that correct?

A. Yes, that's correct.

Q. [redacted]? Yes?

A. They're not a state pension fund, but yes.

Q. [redacted]?

A. Yes.

Q. [redacted]?

A. Correct.

Q. What other state pension funds? You personally pitched these pension funds; correct?

PRESIDENT FERNÁNDEZ ARMESTO: We should go into confidential mode.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

BY MR. HAMILTON:

Q. Again--

PRESIDENT FERNÁNDEZ ARMESTO: Please.

MR. HAMILTON: Are we out of the confidential session now?

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

MR. HAMILTON: Okay. We don't know what's going on over on the side here, but Gramercy doesn't get to dictate what is public and nonpublic information. The Tribunal has the authority to regulate that, and it has been very cooperative with Gramercy in that regard. So, if there is any issue to discuss, we will be part of that discussion, please.

Now, Mr. Koenigsberger, when you went--

MR. FRIEDMAN: Whoa, whoa, whoa. Hold on. We have Confidentiality Orders. It is quite clear and we have discussed this and the Tribunal has ruled on this.

MR. HAMILTON: Correct.

MR. FRIEDMAN: That client confidences are simply not relevant for the more general public. This

is a very standard, regular thing that happens in every case. There is nothing--really. Please stop making an issue of it.

PRESIDENT FERNÁNDEZ ARMESTO: Let's go on with the questions to the Witness.

MR. HAMILTON: We will continue to make an issue, sir. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Please.

MR. HAMILTON: Mr. Koenigsberger, when you go--when you go--

MR. FRIEDMAN: And we will continue to rely on the Tribunal's rulings.

BY MR. HAMILTON:

Q. When you go to state pension funds, for example, and other investors, and pitched [redacted], did you advise them that you were planning to acquire additional Peruvian Land Bonds?

A. We raised [redacted] in, I believe, [redacted], and I don't believe that we did because I don't think we anticipated at the time.

MR. HAMILTON: Please pause our clock, if you can.

Mr. President, we can discuss this openly if you would like. We would be glad to assist. Thank you. Thank you. Thank you.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: What the Secretary is informing me about is that apparently some new confidential information, which is the names probably of some of the clients, was disclosed before we went into confidential mode, and that they are asking that at 12:23, which is four minutes ago, we, at a certain time--

MR. HAMILTON: Mr. President--

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no. Can I finish, please.

MR. HAMILTON: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton, please let me finish.

That we add a cut in the--or that we put in an addition, that we edit some minutes, from the minute 23 to the minute until the confidentiality starts. And that is how much time, one minute, that we edit one minute from there, because the reason

being that the names of certain clients were disclosed. Is that the reason?

MR. FRIEDMAN: Yes.

MR. HAMILTON: Mr. President, we strongly disagree, and please allow me to comment. The first reason we disagree is because we don't think that managing the confidentiality of this case is something that should be done on the side by Gramercy representatives talking to the Secretary. We are glad to do it in open discussion.

Second of all, the information in the entities that I mentioned are in the record of this case. You can find them as my colleagues just have in press announcements. These are all mentioned in the record of this case, and I cite to, among other things, R-573, R-71, R-1012, R-1014, R-1005, all of these documents, none of which of are designated confidential, all which of are discussed in our Briefs, mention the very specific entities which I carefully raised.

There is nothing confidential here. So, the reality is their press releases, it's all in the

record of case. I paused--I paused and did not insist for him to name other investors. So, I just want to caution that just because somebody goes, tells the Secretary this is confidential, and we have to cut it off, that obviously does not make it so.

So, we would object to blocking that out, and we are trying to be careful. Note that we have scarcely been calling for confidentiality because we've planned to try to avoid wasting your time and his time with confidential session. That's why I ask questions in a careful manner.

MR. FRIEDMAN: I'm not familiar exactly what the documents that Mr. Hamilton just referenced. They--yeah. Those are not Gramercy documents. Those are also, as you know, that the exhibits are not part of the ICSID website. They are not part of the public forum information. And it seems to me quite a different thing if a press reports that in general Gramercy has certain client relationships, that's one thing.

The questions that are being put now are more specific. They relate to particular investments, and

when you're asking the CIO and the founder of the Company, who is under confidentiality obligations to his clients, to talk about specific investments or funds that those clients are in, that becomes different.

And so, I do think that the same principle that the Tribunal has already upheld about confidentiality with respect to client names, because that's an obligation of Gramercy and has no particular relevance otherwise, is fine. Mr. Hamilton can certainly ask about it, but we're just asking that it be done in confidential session or, if he doesn't go into confidential session first, which is now much easier to do than other days. We don't even have visitors in the room, then that we eliminate it.

I don't know why this is a hard rule for anybody to follow. The Tribunal was quite clear about the parameters of confidentiality. I just would request that you continue to abide by it rather than try to get around it because you think that it makes a point.

MR. HAMILTON: Mr. President, I'm sorry, but

I can refer you here to Exhibit R-1012, for example. This is minutes available, I believe, on the internet of the [redacted] stating that they have approved an investment in the [redacted].

Now, if Mr. Friedman wants to draw a line, then I understand, I guess, he doesn't want to acknowledge whether, in addition to [redacted], they also invested in [redacted], given that we have been given so little information, I admit that we would appreciate greater transparency, but I am literally referring to documents that are in the record and in our Briefs.

So, I'm glad for this to be discussed in some other moment, but I'm not very glad to continue to have the testimony interrupted by this issue.

MR. FRIEDMAN: Well, the [redacted], I do not believe has any investment that is at issue in this case. So, yes, I believe that investors in other funds are not relevant, and, therefore, are the kind of thing that should be within confidentiality. And what does it matter--

MR. HAMILTON: Mr. President, he's making up

argument in the middle of my testimony, sir. I'm sorry, but it's appropriate. We've just learned explosively that they hid Land Bond acquisitions from us.

PRESIDENT FERNÁNDEZ ARMESTO: Gentlemen. Gentlemen.

We have two ways to go. Either we leave the situation like it is and we--in whatever time it is, in an hour, we go live, or we have to go through this whole procedure and it will only--we will have to deliberate and see where we stand and take a Decision. We are losing time.

Mr. Hamilton, please, let me finish. I pray. Please, let me finish.

So, we will be losing time. I would make the--and if you insist, we will do that, and we will have to deliberate. I cannot take a Decision. We have to look at instructions, we have to deliberate. It will just take some time. The information which has been disclosed was the name of some American pension funds, and they, by themselves, have probably a lot of their own disclosure obligations.

My proposal would be that we are more careful towards the future and we are careful, and everyone is careful when confidential information is likely to occur, and that we just move on in the interest of time. That said, if you feel very, very strongly about this, we will--then we have to break. We have to deliberate, and to have to come back.

MR. FRIEDMAN: If I may just have a moment. Because it's the client's confidence--

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course. You take instructions if you need. If you need two minutes' break. That's fine. If you want to go outside and give instructions outside, that's fine. We will just remain seated.

(Pause.)

MR. FRIEDMAN: Mr. President, thank you.

I am pleased to report that, once again, your pragmatic solution, I think, is acceptable and makes great sense. However, I would just want to put down a marker that this needs to stop.

So, we are prepared to--without waiving confidentiality over client information, we accept

and--we can accept your practical solution in this instance to not make things very technically complicated, but we really must insist that client names--it is very simple. Just don't use client names anymore because that's where the sensitivity arises.

So, if we could have the Tribunal's careful reassurance on that, then I think we are fine to proceed.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Let's ask Mr. Hamilton--thank you, Mr. Friedman.

Mr. Hamilton, let's be careful with client names, and can I please also--yeah, you must be careful when using client names because otherwise we'll have this instance all the time, and it makes the examination much more slow.

So, let's go on.

MR. HAMILTON: I just want to say that the Republic of Perú not only has respected the Order of the Tribunal about confidentiality, my questions have respected the Order of the Tribunal. Any allegation to the contrary is pure interference with our cross-examination, in our view. And I leave it at

that.

We will continue to be cautious.

PRESIDENT FERNÁNDEZ ARMESTO: Please.

BY MR. HAMILTON:

Q. There is one--I would be interested to ask one question, but it relates to you. Are you a client of Gramercy?

A. I'm an investor in Gramercy vehicles.

Q. You are an investor in Gramercy vehicles. Individually? You are a beneficiary?

A. Yes, I am.

Q. Okay. Now, and that includes in connection with the Peruvian Bonds.

A. I'm an investor in [redacted].

Q. In [redacted]. And are you an investor with beneficial interest in PARB, the entity that holds the Land Bonds before this Tribunal, apparently?

A. I have a beneficial interest in PARB and the underlying securities below that. I'm not a--I don't own direct equity in PARB, but I have a beneficial interest through funds above PARB.

Q. So, you have a personal interest in the

outcome with respect to the Land Bonds before this Tribunal and a personal interest with respect to the new Land Bonds that were acquired in 2017 and are part of the [redacted] vehicle; correct?

A. In the [redacted] vehicles, we are--as you see in the documents, we co-invest, so we put a--if the client's put in a dollar, we put in a certain amount with that. So, that's where that interest comes from, aligned with our clients.

Q. So, the answer is, yes, you do have a personal interest in the outcome.

A. As an investor in [redacted], I have a personal interest. As a member of GFM, I have an interest, yes.

Q. Okay. Now--

MR. HAMILTON: Mr. President, for the sake of efficiency, I have to say that--as a procedural observation, that the fact that Gramercy, while this case has been pending, has acquired additional Land Bonds we consider to be relevant and material, both to prior document requests and to the issues before this Tribunal.

Respondent is, frankly, amazed to learn in the middle of the Hearing that there are entire other holdings of Land Bonds that we have never heard about.

We reserve the right to consider this, request the opportunity to see relevant materials, and comment. And so we may have future questions about this. We consider it highly relevant and material.

I am being put in a complex position because this is entirely new information that we have never heard about before, and I have still yet other questions to go.

So, I put down that flag.

BY MR. HAMILTON:

Q. Now, let me ask you a question.

ARBITRATOR DRYMER: Pardon me, are you moving off the 2017 Bonds, or are you still on that subject?

MR. HAMILTON: I think I'm basically saying we haven't even gotten started with that subject, and we will have to consider with our client a range of different elements, including that we will expect to see all relevant documents, we will expect to understand all relevant documents--

PRESIDENT FERNÁNDEZ ARMESTO: That's fine.

MR. HAMILTON: --so on and so forth.

PRESIDENT FERNÁNDEZ ARMESTO: Let's finish with the Witness.

ARBITRATOR DRYMER: I think that was a yes for the moment.

MR. HAMILTON: Yes.

ARBITRATOR DRYMER: All right.

MR. HAMILTON: It's a "I'm not sure." I'm working on it.

ARBITRATOR DRYMER: I understand. So, then I will the Witness this one question on that subject.

You've said, in response to a number of questions from Mr. Hamilton regarding the 2017 purchase of the Peruvian Agrarian Bonds--you effectively said "I don't know" or "I don't recall." That's fair.

In your view, do you think either Mr. Lanava or Mr. Joannou might have answers to those questions?

THE WITNESS: Certainly on the settlement questions that Mr. Hamilton asked, I think that Mr. Lanava will indeed.

ARBITRATOR DRYMER: All right. Thank you.

BY MR. HAMILTON:

Q. Mr. Koenigsberger, you've explained that you chose not to mention Gramercy's acquisition of additional Land Bonds to this Tribunal because you decided it was not relevant.

Did you provide information about these Land Bond acquisitions, to, for example, your Quantum Expert, Mr. Edwards?

A. I don't know. I don't believe so.

Q. So, your Quantum Expert, Mr. Edwards, is not aware that Gramercy made Land Bond acquisitions in 2017?

A. I don't know.

Q. You also mentioned that the money used to acquire Peruvian Land Bonds in 2017 came from various sources/investors in the [redacted]; is that correct?

PRESIDENT FERNÁNDEZ ARMESTO: That is what he said.

MR. HAMILTON: Okay.

BY MR. HAMILTON:

Q. Now, when you raise funds, for example, you go to investors, you make pitches--they're in the record. You go to a state pension fund or other potential investor, you make a pitch.

Did you specifically discuss with them Peruvian Land Bonds as a target acquisition for the [redacted]?

A. I do not think that we did.

Q. So, if you went on a pitch to raise money for the [redacted], you never told those potential investors "we are going to target Peruvian Land Bonds"?

A. We wouldn't have known in 2015 what we were going to target. It's a five-year investment period. So, there would have been no reason to talk about a Peruvian Land Bond purchase to the extent that that wasn't contemplated or known at the time, just like the other 50 investments that we've done.

Q. So, in [redacted] when you raised funds for [redacted] you did not anticipate an acquisition of additional Land Bonds; is that correct?

A. The fund's called [redacted]

[redacted].

Q. Sorry about that.

A. The whole idea is opportunities as they become available. That's what we were talking to clients about.

We don't know ex ante what's going to come forward in the next five years, so I don't believe that we--as I said before, I don't believe that we were speaking about Peruvian Land Bonds in [redacted] with investors in [redacted].

Q. And at the time of the acquisition of Peruvian Land Bonds in 2006 to 2008, was that disclosed as part of raising funds for your existing vehicle at that time?

A. That vehicle raised its initial capital in 1999. So, 2006 to 2008 purchases, I imagine were not discussed.

Q. Were not mentioned.

So, effectively, when you were using funds, because you used $33 million--Gramercy used $33 million of funds raised from clients to acquire the Land Bonds. In fact, those clients were never

told "now we're going to use $33 million for the Land Bonds"; is that correct?

A. The way that investment management agreements work is you don't go and consult with clients on every individual trade that you do. We certainly reported on all the positions in the Fund to clients over time, but we typically--as part of, again, maybe 30 to 50 investments you're running at one time, you don't go and talk to all your clients about those 30 to 50 investments because we're given full discretion via the investment management agreement to make those investments on behalf of the Fund.

Q. So, just to confirm, you're given full discretion, and you make a broad disclaimer with respect to the outcome; is that correct?

A. We are given full discretion. And as I said before, we give the typical disclaimers that go with Fund documents, correct.

Q. Okay. Now, you would agree, wouldn't you, Mr. Koenigsberger, that the Peruvian State never went to United States pension funds or American workers and marketed Agrarian Land Bonds to them; is that correct?

A. That's probably correct.

Q. Okay. And what you're saying is that, in fact, Gramercy did not disclose, before using $33 million of client funds to acquire Land Bonds in 2006 to 2008? That was not disclosed to investors in that Fund, such as state pension funds; is that correct?

PRESIDENT FERNÁNDEZ ARMESTO: He has already said that, Mr. Hamilton. He has already confirmed that he has a discretionary authorization from his clients and that he takes the decision--that as an investment manager, he takes the decision, and that at the end of the year or quarterly he informs the clients. I mean, he has said that.

MR. HAMILTON: Well, Mr. President, if I might--and I'm responding to your comment in question here--for years the Gramercy propaganda campaign has stated publicly and to the United States Government that Perú is trying to harm American workers. So, I think that these are relevant questions.

PRESIDENT FERNÁNDEZ ARMESTO: They're absolutely relevant, but he has already answered.

My only point is that the Tribunal is very alert.

MR. HAMILTON: Okay. Good.

PRESIDENT FERNÁNDEZ ARMESTO: And once you have made one question, I remember it. Believe me. I remember your question. I remember the answer. And I keep it in my mind. You don't have to do the same question twice.

MR. HAMILTON: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: That was my only point. If you want, you are welcome. I'm trying to give you more time for further questions. It is just to help you.

MR. HAMILTON: Okay.

BY MR. HAMILTON:

Q. Now, you mentioned that--so, we've clarified that you don't go to these investors in these funds. You have discretion. So, they are not necessarily told that you are using their money to acquire Peruvian Land Bonds. So, that's been established, as the President has confirmed.

Now, you also mentioned ongoing reporting to

clients about what's been done with their money; right?

So, how is that ongoing reporting carried out?

A. It can be update calls that we do with clients, like a quarterly update call or ad hoc update calls. There's typically reports that are sent out, the financial statements that are sent out, some sort of summary of Fund activity.

Q. Okay. So after you take a position in connection with a potential target, such as Land Bonds, do you timely disclose that to your investors?

A. We disclose the material positions of the Fund when we're required to. It all gets picked up in the financial statements at the end of the year.

If you're asking me if our clients are aware of the investments in the funds, they are. There is transparency. There's a fund advisory committee. We go through all the positions in the Fund with the advisory committee.

Q. So the investors in [redacted] are aware now that Gramercy has acquired Land Bonds?

A. Yes.

Q. And there are written disclosures that have been made to your clients with respect to those acquisitions of additional Land Bonds?

A. I imagine that to be the case, at least in the financial statements.

Q. And, historically, did Gramercy make written disclosures or updates to its clients in the initial fund--I think you called it the Emerging Markets Fund--with respect to the status of its holdings in the Land Bonds?

A. Yes, I'm sure we did that and other positions in the Fund as well.

Q. Okay. And so, Mr. Koenigsberger, let's take a look at a document. Let's go to Tab 51 in your binder.

A. Okay. One minute.

Q. Tab 51 in your binder, which is document R-1047.

This document is confidential. We have to black it out.

(End of open session. Attorneys' Eyes Only

information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

BY MR. HAMILTON

Q. Mr. Koenigsberger, can you please turn to Tab 64. Tab 64 is Exhibit R-1124.

PRESIDENT FERNÁNDEZ ARMESTO: 1124.

MR. HAMILTON: Correct.

BY MR. HAMILTON:

Q. This document is in the record. It's a publication by the National Legal and Policy Center promoting ethics in public life. Do you see that document?

A. Yes, I do.

Q. And this document is dated--or posted on the internet September 20, 2013. And this article is titled "State Pension Funds and Big Investment Firms: What Could Possibly Go Wrong?"

Has the relationship of Gramercy with state pension funds been controversial in any way?

A. No.

Q. Okay. Now, if we go to Page 3 of this document, it refers to a due diligence questionnaire of the New Mexico Educational Requirement Board. And according to this document, a due diligence questionnaire submitted to Gramercy asked whether Gramercy had ever been subject of any regulatory action or warning, and the Gramercy response was "neither Gramercy nor any of its staff has ever been subject to any regulatory action or warning."

Is that correct, that Gramercy, nor any of its staff, have never been subject to any regulatory action or warning?

A. Yes, it is.

Q. That's correct.

Okay. Now, you don't consider that Gramercy, either in the U.S. or elsewhere, has been subject to any sort of regulatory action; is that correct?

A. I don't believe so.

Q. And that includes, for example, with respect to the Brazilian equivalent of the Securities and Exchange Commission; is that correct?

A. I believe what that was about was that was an

inquiry. That was an inquiry from the Brazilians as it related to one of the entities we had in Brazil that was collecting on nonperforming loans and returning capital to the U.S.

Q. Okay.

MR. HAMILTON: Now, let me check the time, Mr. President. It is 1:00 p.m. We've had an intervention of information that changed the path of the testimony.

So, the question that I have is, number one, how long do you want to go until we break for lunch under the circumstances, because we will not finish before lunch.

PRESIDENT FERNÁNDEZ ARMESTO: We will finish with the Witness before lunch. We must. We must.

MR. HAMILTON: Okay. Give me just a moment to reorganize.

PRESIDENT FERNÁNDEZ ARMESTO: I normally never have lunch before 3:00, so you have a lot of time.

MR. HAMILTON: Okay. Give me 60 seconds to parse, given that we've had a bit of a surprising

detour.

(Pause.)

BY MR. HAMILTON:

Q. Mr. Koenigsberger, you would agree that the Land Bonds that are directly a part of the claim before this Tribunal include approximately 9600-plus Land Bonds that had been presented to this Tribunal; correct?

A. Correct.

Q. Now, those Land Bonds were initially not provided to this Tribunal; correct?

A. I believe copies of the Land Bonds were provided to the Tribunal.

Q. Well, are you aware that your initial Request for Arbitration did not include copies of the Land Bonds?

A. I'm not aware.

Q. Okay. And so at this time, what is before the Tribunal are copies of Land Bonds, but obviously not the original Land Bonds that you have in a secret undisclosed location in Lima; correct?

A. Sorry. What's the question?

Q. The Tribunal does not have before it the actual original Land Bonds which are at an undisclosed location in Lima; correct?

A. As I mentioned before, transportation of the actual Bonds would be pretty risky and unwarranted, so that's why I thought copies would be sufficient.

As the Republic knows, we've offered multiple times to actually--nothing would make us happier than to be able to give the Bonds to Perú and get receipt for it so that we don't have to pay for custody, but the Tribunal has copies as of today.

Q. Okay. And, Mr. Koenigsberger, you chose not to provide your Bonds to the Peruvian State as part of the duly established Bondholder procedure; correct?

A. We did, because if we were to produce it for verification, we were giving up all of our rights and agreeing to the conditions of that tender.

Q. So, you have not tendered them for authentication, but you have provided a document, and it's at Tab 34. And this is a report from Deloitte. It's in the record as CE-224A.

Now, this document, sir--if you can turn to

Page 4 of this document. Now, what this document states is that Deloitte confirms that it has photographed the Land Bonds of Gramercy, but Deloitte has not undertaken an authentication process; is that correct?

A. I'd have to read the document to look at that.

Q. And this document goes on to say on Page 7 that in any event, this advisor, Deloitte, does not express any certification attestation or opinion of any kind, other than as explicitly set forth herein.

So you did not obtain an expert report authenticating the original Land Bonds in a system that would comport with the methodology utilized under Peruvian law; is that correct?

A. We went through the steps that were necessary in order to authenticate and transfer the Bonds back in the '06 to '08 period. If you recall the memorandum, the due diligence memorandum, the very first item on that was authentication.

I notice on the back of the Bond that's provided here that one of the things that we learned

is that it had to be duly endorsed to Gramercy Perú Holdings. That's been done here.

So, we did everything we were supposed to do to legally transfer title to Gramercy Perú Holdings.

Q. Okay. That was your own purchase process. If we go to the very next tab, Tab 35, Exhibit R-649.

A. Sorry, which one?

Q. Let me ask you one other question. Excuse me one moment.

Isn't it the case that your purchase of Peruvian Land Bonds through a purchase contract was intended to establish a valid transfer, and did that include attestation of authenticity?

A. I believe that there was authentication, there was review by local counsel, there was the notaries. So, again, all the steps that we were advised by the Experts in Perú on transferability--because, again, transferability is permitted under Peruvian law--that we followed those steps.

Q. Okay. Tab 35, sir.

Tab 35 is Exhibit R-649. This is an expert graphotechnical report by the National Police of Perú

that is in the record as an example of the authentication process undertaken as part of the Peruvian Bondholder proceeding managed by the Ministry of Economy and Finance.

Just to confirm, you have not obtained any type of authentication document like this; is that correct?

A. I don't believe so.

Q. Okay. Thank you.

Now, let's go next to Tab 39. Now, this is Exhibit R-1145 from July 8, 2016, and it refers to Gramercy and emphasizes Gramercy is the lone fund that amassed Peruvian Land Bonds.

And you've emphasized that many times. Why do you think Gramercy is the only fund that chose to amass Peruvian Land Bonds, Mr. Koenigsberger?

A. Well, I think Gramercy specifically focuses on sovereign distressed, defaulted securities. There were certainly large institutions in Perú that we were aware of, as well, that also amassed large positions. I believe one bank has a position that's nearly the size of ours. So, this is--specifically what we--a

main strategy of our firm was to do sovereign investing.

Q. So, I'll put aside whether that bank holds Bonds because it opportunistically or speculatively sought them. I think they are differently positioned from Gramercy, but we won't go there.

Now, this article also emphasized Gramercy would not disclose publicly how much it paid for each Bond.

Why did Gramercy withhold the information for so long about how much it paid for the Bonds?

A. That we wouldn't tell a reporter what we paid for the Bonds? That's confidential information. Most reporters wouldn't even ask it.

Q. Well, you also withheld the purchase contracts from this Tribunal. You mentioned purchase contracts in your Witness Statements but did not produce them until late into this proceeding.

Why did you choose not to provide the purchase contracts to this Tribunal?

A. I believe that we provided everything that the Tribunal has asked us to provide.

MR. FRIEDMAN: And we've provided all the purchase contracts. They're in the record.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I mean, in any case, this is--

MR. FRIEDMAN: And they were provided to Perú in 2011.

MR. HAMILTON: You're far out of line right now. I'm sorry.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Let's go on. I don't think he is responsible for the document production. It is a question for Counsel.

MR. HAMILTON: The reason, sir, that I consider it relevant, if I might, is that Mr. Koenigsberger has provided five Witness Statements, including his first three Witness Statements, which are evolving documents with changes.

He has emphasized his personal investment. He has emphasized his personal responsibility. And those statements are the ones that did not disclose the purchase contracts but explained that they purchased the Bonds, as well as the other issues we've been discussing. That's why I consider it relevant to

ask this Witness, because he is the Witness through which Gramercy introduced or did not introduce these various documents.

BY MR. HAMILTON:

Q. Now, Tab 40, if I might, Mr. Koenigsberger. Tab 40 is a document. It's an email from José Cerritelli.

PRESIDENT FERNÁNDEZ ARMESTO: We need reference.

MR. HAMILTON: Oh, yes. CE-731.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

BY MR. HAMILTON:

Q. All right. This is an internal Gramercy email from May 23, 2008. And what you see in this email is it includes an email within the chain copied to you.

Do you see that on the first page there, sir?

A. Yeah, in the lower part, yes, I do.

Q. Okay. And it says--José Cerritelli says, "I prepared this for your call today at 10:00 a.m. with Hermès."

Do you see that?

A. Yes. This is Hermès, a fund of fund, I believe, a French fund of fund that has nothing to do with the Germany export credit agency that we talked about before.

Q. That's okay. But can you tell me who was Hermès? You're saying it's a French fund.

A. It was a French fund. I believe it was a French--Paris-based fund that was a fund of fund that had invested in the Gramercy Emerging Markets Fund.

Q. Okay. And so--

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: The fund also produces some very nice clothes, which Professor Stern is one of the best clients of, of the shop they have in Avenue Montaigne.

BY MR. HAMILTON:

Q. So, Mr. Koenigsberger, this would have been an update to a client of Gramercy in the Emerging Markets Fund with respect to the status of the Agrarian Bonds; is that correct? Mr. Koenigsberger?

A. I'm reading what it is, so just give me one moment.

Q. Ah, okay.

A. Okay. I'm sorry. What's the question--

Q. These were notes to be used for an update to a client of the Gramercy Emerging Market Fund regarding the status of the Agrarian Land Bonds situation; is that right?

A. That's correct.

Q. So, at this time, Gramercy was continuing to acquire Peruvian Land Bonds--correct?--because you were continuing to acquire them into the middle of 2008; is that correct?

A. Yeah, I think we were substantially complete at this point.

Q. Okay.

Okay. Now, under Item 10, this is Page 4 of the document--Item 10, sourcing cost and pass-through certificate prices.

A. Okay.

Q. And it says small blocks can often be found at relatively low prices in the range of 20 percent of the claims' current face value, particularly on those blocks that require fairly large amounts of legal work

to bring the documentation supporting these claims up to date; is that correct?

A. That's what it says, yes.

Q. Okay. So, this would have been an example of updating a client of Gramercy about the status of acquiring these claims; is that correct?

A. Correct.

Q. Okay. And as you see under Item 12, steps towards the restructuring, of course, this is the restructuring that Gramercy hoped would occur but had not yet occurred at that time; is that correct?

A. I'm sorry. What's the question?

Q. This refers steps towards the restructuring but obviously there was no clarity as that time as to whether there would be a restructuring as of May 2008; is that correct?

A. There was no clarity, but shortly after we actually did present a restructuring proposal to the Government.

Q. And that never went forward; is that correct?

A. That's correct.

Q. Okay. So, as of May 2008, while you were in

the process of acquiring the Bonds, that was your contemporaneous update to a client.

MR. HAMILTON: Now, the President of the Tribunal asked a question about the certain documents, and I will take a moment for a confidential question here, if I might. I'll wait for the magic red light to come on.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

BY MR. HAMILTON:

Q. Now, Mr. Koenigsberger, we were in discussion about anticipating the 2013 court ruling, and you indicated that your optimism increased because of what you have thought that ruling was going to be.

Now, who is Carlos Anderson?

A. Carlos Anderson is a Peruvian individual.

Q. And what is his relationship with Gramercy now and in the past?

A. I don't believe that Carlos has any relationship with us today. In the past, he has worked with us on various projects, one being a Private Equity Fund that we were considering, some private lending funds that we've done, and he has also advised us on Land Bonds.

Q. And he was at least for a period of time an employee of Gramercy; correct?

A. Yeah. For a short period of time, we were trying to launch a private equity fund for Latin America, and I believe in that period of time he was an employee.

Q. Okay. And he continues to be involved with Land Bond issues on the ground in Perú; is that correct?

A. I don't know.

Q. You don't know.

And who is Mario Seoane?

A. Mario Seoane, I believe, was counsel to the engineers. He was a lawyer for us, and I understand one of the most, I guess, seasoned and utmost Experts on Land Bonds in Perú.

Q. Okay. So, Mario Seoane, is he currently Gramercy's lawyer?

A. I don't know for certain.

Q. In the past, he has been Gramercy's lawyer?

A. Yes, he has.

Q. For an extended period of time?

A. Yes.

Q. Okay. Now, I want to take your attention to the 16 July 2016 court ruling. Well, I'm not going to go straight to the ruling itself. I have a broader question.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

BY MR. HAMILTON:

Q. Now, Mr. Koenigsberger, you're aware that when Gramercy first filed its case, it indicated to the Peruvian State that it had to file by a certain deadline due to prescription or statute of limitation-type issues related to the July 16, 2013, court ruling.

Were you aware of that at the time?

A. Was I aware of the court ruling? Yes.

Q. Yes. Okay.

No. Are you aware that when you filed this Treaty claim before the Tribunal, Gramercy represented to the Peruvian State that it needed to file in advance of the three-year anniversary the July 16 court ruling?

Were you aware of that?

A. I'm not aware of that.

Q. You didn't know that.

A. I don't know that.

Q. Now, Mr. Koenigsberger, in your--you've put in, of course, multiple versions of your initial Witness Statement. You initially emphasized the dire

consequences of the July 16 court ruling, but in later Witness Statements, you said you really weren't sure whether the court ruling was bad or good; is that correct?

A. We had no idea what to make of the July 2013 ruling. There was more unknowns than knowns.

Q. Okay. So, let me take you to Tab 72. Tab 72 indicates Gramercy's statements to Perú and to its forthcoming Tribunal contemporaneously in 2016 regarding the July 2000--the July 16, 2013, ruling.

(Comments off microphone.)

MR. HAMILTON: It's not an R document. It's their actual pleadings. So, let's go to Claimants' Notice of Arbitration and Statement of Claim dated June 2, 2016. Paragraph--we are going to put it on the screen, Paragraph 233.

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you go on with the question, whatever it is.

BY MR. HAMILTON:

Q. Yes. So, Gramercy stated in its Notice of Arbitration and Statement of Claim that Gramercy first acquired constructive or actual knowledge of Perú's

breaches on or after July 16, 2013.

Do you remember that?

A. Do I remember making this statement?

Q. Well, that's what Gramercy said to the world.

PRESIDENT FERNÁNDEZ ARMESTO: But the question is what--he's here as a witness.

MR. HAMILTON: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And what is the question to the Witness? I mean, he's here to explain to us the facts.

MR. HAMILTON: That's right.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, and that is a statement which was in the submissions of counsel to Gramercy. What is the question to the Witness?

BY MR. HAMILTON:

Q. I'll go to the heart of it.

Mr. Koenigsberger, are you aware that Gramercy changed its position regarding the 2013--July 16, 2013, Court Order before this Tribunal? It first said that that was the date on which it had acquired constructive or actual knowledge of breaches.

It later said, no, it wasn't until later.

Were you aware that Gramercy made that switch during this case?

MR. FRIEDMAN: I object. He's really a witness of fact. Also, it says on or after. At the time that pleading was filed, as you know, that that was to say so, no matter what, we are in compliance.

MR. HAMILTON: I'm sorry. I'm sorry.

(Overlapping speakers.)

MR. FRIEDMAN: When it was later filed, we clarified when the date became irrelevant.

PRESIDENT FERNÁNDEZ ARMESTO: Please. Mr. Hamilton, we are all old hands, and we know why you are making that question, and it is not really--not a question which their Witness can answer.

MR. HAMILTON: Well, this is the--

PRESIDENT FERNÁNDEZ ARMESTO: Let me finish, please. Mr. Hamilton.

MR. HAMILTON: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: It's "el mundo del revés." We know why you are making the question and he can--the Tribunal was perfectly aware of the

fact. I mean, it has been--you brought it up in your initial presentation. It has been discussed. We know exactly what has happened. He cannot help us. And we are aware of the fact.

MR. HAMILTON: Thank you. I do have a specific question, Mr. President. And the reason that I raise this question is because his testimony actually changed over the course of his Witness Statement.

So, let's go to Tab 75, Mr. Koenigsberger.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

BY MR. HAMILTON:

Q. Tab 75 is Exhibit CE-546. This is an email from José Cerritelli to you, Robert Koenigsberger.

Do you see that document?

A. I do. It seems as if he has forwarded me a document that he'd sent to others.

Q. Well, it says "Bob:" You're Bob; right?

A. No. See, it says "to Bob Joannou."

Q. Oh, to Bob Joannou. I see. He's sending you a message that was otherwise sent to Bob Joannou.

A. That's what appears to be the case.

Q. Did they call you Robert in the Company?

A. R.K., Robert. I'm definitely not a Bob. We have a lot of Bobs, Roberts.

Q. Okay. Fair enough.

A. You'll meet a couple of them today.

Q. Okay. So, I have a question regarding the penultimate paragraph of this email that was forwarded to you. It said: "We are discussing the above issues with the President of the Tribunal, Oscar Urviola."

Do you see that?

PRESIDENT FERNÁNDEZ ARMESTO: At the end of the email?

MR. HAMILTON: Well, at the end of the email, Mr. President, there's an extra email.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Yeah.

MR. HAMILTON: So, this is on Page 2--Page 2 in the middle of the page. It says: "However."

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

BY MR. HAMILTON:

Q. It says here, "José advises, we are discussing the above issues with the President of the Tribunal, Oscar Urviola." Do you see that?

A. I do.

Q. So, where is Gramercy or Gramercy representatives engaged in discussions with Peruvian judges during the course of ongoing litigation that led to or followed the July 16, 2013 ruling?

A. I don't believe that Gramercy individuals were directly speaking to members of the Court. You had mentioned Mario Seoane before, who was our counsel and counsel to other Bondholders. In fact, he was counsel to the Party in the case which was the engineers.

Q. So he, in fact, simultaneously was counsel to those Parties and counsel to Gramercy; is that right?

A. I believe that to be the case.

Q. Okay. So, now do you believe that in Perú it is unusual for Parties to meet with judges?

A. I believe it's a bit different than the United States, that there's some ex parte that--communications that go on. I'm not sure exactly what that means, but I think it is different than here.

Q. Okay. And given that this email says "we are

discussing issues with the President of the Tribunal, Oscar Urviola," do you agree that Gramercy or Gramercy representatives engaged with discussions with Peruvian judges on the Tribunal, Constitutional Tribunal?

A. I think when he says "we," I think he means Bondholders, in general. Again, we were coalesced with Bondholders, and, you know, I think counsel for the Bondholders could very well have been doing it on behalf--again, Mario was part of the case.

Q. So, he was your lawyer at the same time.

A. I don't believe--

Q. And you were part--

A. I believe that Mario represented many Bondholders in Perú, in fact, I believe that Mario wrote a book on the secret--the secret Bonds of Perú. He is the Expert in Perú on this for 30, 40 years.

Q. Okay. I'm going to distribute a document. It's not in the binder, but just for your reference, this is a document, R-467. Constitutional Tribunal visitor registry. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: What is this?

MR. HAMILTON: Constitutional Tribunal

visitor registry from 2013. It is in the file as Exhibit R-467.

MR. FRIEDMAN: Object.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry?

MR. FRIEDMAN: I just object. I mean, this goes--we have a--supposed to limit the scope of cross to issues that the Witness has testified about.

PRESIDENT FERNÁNDEZ ARMESTO: What do you want to ask the Witness? I mean, I would be surprised--

(Overlapping speakers.)

BY MR. HAMILTON:

MR. HAMILTON: Mr. Koenigsberger, were you aware--

PRESIDENT FERNÁNDEZ ARMESTO: Can I finish?

MR. HAMILTON: Yes. Oh, sorry.

PRESIDENT FERNÁNDEZ ARMESTO: I would be surprised if he has ever had access.

Have you ever been to the Constitutional Court of Perú?

THE WITNESS: I have not. I have not.

PRESIDENT FERNÁNDEZ ARMESTO: He has never

been there.

Have you ever seen the record of visitors to the Constitutional Court of--

THE WITNESS: No, I have not.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. If you are going to prove or want to make an allegation that some lawyer for Claimant visited the Constitutional Court or someone visited the Constitutional Court, Mr. Koenigsberger is not--is not the person who can confirm that.

MR. HAMILTON: He's the closest we have to someone on Gramercy that we could ask, so I will simply ask.

PRESIDENT FERNÁNDEZ ARMESTO: Ask him.

BY MR. HAMILTON:

Q. Were you aware that Mr. Seoane, who was Gramercy's lawyer, made multiple visits to the Constitutional Tribunal in 2013?

MR. FRIEDMAN: Objection.

PRESIDENT FERNÁNDEZ ARMESTO: No. That's the proper question.

MR. FRIEDMAN: The characterization that he

was Gramercy's lawyer. Mr. Koenigsberger has testified that he was lawyer to the Bondholders in the case.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Okay. Let's--why don't you repeat the question, just with the name, without saying exactly who he is. And let's get--if he knows. Let's start asking him whether he knows him.

MR. HAMILTON: Yes.

BY MR. HAMILTON:

Q. Do you know Mario Seoane?

A. I think I may have met him one time.

Q. Okay. Were you aware that Mr. Seoane visited the Constitutional Tribunal multiple times during 2013?

A. I can't say that, specifically. I'm looking at the document here. I can see--

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no. It's just--either you know or you don't.

THE WITNESS: I wasn't aware.

PRESIDENT FERNÁNDEZ ARMESTO: You were not aware. He never told you that he was visiting the

Supreme Court, the Constitutional Court.

THE WITNESS: Again, the information that I would get would be typically through José and David and others that were on the ground. This is one of--again, remember, this is one of 30 to 50 investments that we were managing. So, I'm not in the weeds on every detail.

BY MR. HAMILTON:

Q. Now, Mr. Koenigsberger, let me ask a question.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Of course.

ARBITRATOR DRYMER: Mr. Hamilton, are you moving off this topic of--

MR. HAMILTON: Yes.

ARBITRATOR DRYMER: All right. Before you do, this is a question for you, not the Witness. So, that I understand, are you--is the suggestion that these visits took place before--may have taken place before or after the issuance of the July 2013--

MR. HAMILTON: Both.

ARBITRATOR DRYMER: Both. Order. All right.

Thank you.

BY MR. HAMILTON:

Q. Mr. Koenigsberger, is it your view that the Peruvian legal framework, as it stands today, provides a sufficient framework for satisfactory resolution related to the Peruvian Land Bonds?

A. Sorry, could you repeat that?

Q. Is it your view that the existing Peruvian legal framework, under the Supreme Decrees, the last one--the Supreme Decrees related to the Peruvian Bondholder Process is a feasible framework for resolving the Land Bonds?

A. I think it's premature. As the Court ruled in April of 2014, when ABDA went to appeal the July 2013. The Court said that it was premature, that Bondholders couldn't be prejudiced, and that the Court itself in April 2014 said we have to wait for the calculations. And my read of that is that Bondholders are asked at the appropriate time when they know what is being offered by the Ministry, the opportunity to go back to the Tribunal, but the Tribunal made it very clear to me that the last word hasn't been said.

Q. And is it your view that after the Supreme Decree of August 2017--you're familiar with the Supreme Decree of August 2017; correct?

A. Sorry, the--I thought you meant from the Court. The Supreme--

Q. No. I'm moving forward in the interest of time.

A. Sorry.

Q. The Supreme Decree of August 2017 with the "texto único actualizado," is it your position that that was a sufficient legal framework for resolution of the Peruvian Land Bonds?

A. It's not. I believe that all the Supreme Decrees that follow the July 2013 are just part of the same scam coverup, what have you, and, again, I'll go back to the April 2014. I think the Tribunal made it very clear that we have to wait and see what the Government provides. I mean, look how many times the Government has issued Supreme Decrees.

If Supreme Decrees were supreme, then the January of '14 would have stood on its own. But we were right. The final word wasn't known. I think

there has been at least five or six Supreme Decrees since, so I don't believe--I don't agree.

Q. Well, let's take a look at your Third Statement, which is your Second Amended Statement, at Paragraph 60. And we will put that up on the screen, please. Do you have it? Paragraph 60, please.

Now, Mr. Koenigsberger, you wrote in your Witness Declaration in April that, as of April 2014, "there was nothing that prevented the development of a fair and efficient administrative process, one which could resolve the Land Reform Bond situation amicably and in a way that pays the Bondholders substantially what they are due while enhancing Perú's standing in the international community." You are quoting your own letter, actually. Next page.

A. I see it.

Q. Next page, guys.

Okay. "There is nothing that prevents."

Do you see that? Thank you.

So, that was your contemporaneous statement to the Ministry of Economy and Finance about the state of affairs at that time. In other words, what I'm

asking you is, do you still agree with that? That the legal framework, as it stands right now, is a sufficient basis upon which, in your view, a resolution of the Land Bonds could be achieved?

A. Yeah. I think in one of three ways. One, I think that the Ministry could offer another Decree and figure out how to come up with something that looks like current value under CPI with--there is an infinite number of ways to do that. They picked a finite number so far.

I mentioned the--we talk about a legal framework, I still think there's a legal framework that the TC said, you know, we have to wait and see what's being offered here, so I think that is still open. And, of course, the local courts, you know, what rights do we have under the local courts that we had back in 2006 to 2008 when we bought the Bonds.

Q. Your view is that in the existing regime following August 2017 Supreme Decree, there is sufficient room to resolve the Land Bonds in a reasonable manner; is that right?

A. Look, I think if there is goodwill on the

part of the Republic of Perú, there is definitely a way to resolve the differences.

Q. Now, one other element, just to confirm my understanding, you also agree and you undertook yourself a verification process, so there's no dispute that a reasonable authentication process would be necessary in relation to old physical Bonds. You, of course, prefer such process to go as quickly as possible, but you agree that some kind of authentication process is necessary; correct?

A. Well, I'm glad you use the word "reasonable," because a reasonable authentication process would be you can submit your Bonds for authentication, and then you can take them out of that authentication process. What we were told when we were invited to authenticate our Bonds is tender your Bonds and give up all your rights relative to those Bonds. So, I wouldn't call that a reasonable authentication process.

Q. You're aware that Perú has authenticated more Bonds than the number of Bonds Gramercy holds; correct?

A. I'm aware of the fact they have authenticated

Bonds. I'm not sure of the exact number.

Q. And you also agree that receiving contemporary sovereign Bonds is one form of payment that is acceptable to Gramercy; correct? We talked about that earlier.

PRESIDENT FERNÁNDEZ ARMESTO: We talked about it. You specifically asked, and I made a note that he said yes.

MR. HAMILTON: Okay.

MR. FRIEDMAN: Mr. President--

MR. HAMILTON: So--

PRESIDENT FERNÁNDEZ ARMESTO: We will have to break. I know.

MR. FRIEDMAN: Yeah, I think it is getting to be a little unfair.

PRESIDENT FERNÁNDEZ ARMESTO: I know. I know. I know. We will--at 2:00, we will break.

BY MR. HAMILTON:

Q. Okay. So, Mr. Koenigsberger, basically what that leaves is a number. In other words, if the legal framework after the last Decree could be a sufficient basis for a Resolution and there can be a need for a

reasonable authentication process, and payment with Peruvian Bonds, contemporary Bonds would be sufficient, that basically leaves us with a valuation issue.

That's what I think Gramercy has been after all along here, and you're alert that Gramercy has taken a position in this case that it could obtain approximately almost $34 million through the Peruvian Bondholder procedure if it had participated.

Are you aware of that number?

A. The number has moved around quite a bit over time, but I'm aware of that number.

Q. Okay. And so, do you consider $34 million a reasonable recovery for Bonds that you initially acquired for $33 million?

A. I do not.

Q. Okay. Now, you have requested from this Tribunal an amount that exceeds 5,500 percent more than the amount that was paid for those Bonds through purchase Contracts. What in your view would be a reasonable number?

A. I think a reasonable number is to determine

what the current value of the Bonds is as of the current date. Again, we're talking about--it is equivalent not paying your credit card for four years, so, of course, the numbers are large, I understand that, but there is a process that Gramercy went under for a very long period of time to try and get a consensual outcome where we were more than happy to give up some of our full legal rights, that's what happens in a restructuring, some sort of quid pro quo.

But now that we are, unfortunately, here, this is a notion of what are we entitled to. And, unfortunately, we are here talking about what we are entitled to instead of what we could have achieved in good faith, and, you know, I feel good about the fact for the better part of 14 years, that's all we have done, is try to resolve this in good faith. I wish I could say that for Perú.

Q. Well, Mr. Koenigsberger, in other words, you once told me Gramercy has a number.

What is your number?

PRESIDENT FERNÁNDEZ ARMESTO: I mean, we are getting very close to some sort of settlement

discussions. Is that--I'm slightly worried about where we are going to.

MR. HAMILTON: Have no fear, sir. We are going to lunch very soon.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Hopefully.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: You say whatever you want.

MR. FRIEDMAN: Yes, and I will object.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, it is slightly--it is not a factual question. It is really a discussion of a settlement, what is--if you ask him what is a reasonable number to you, which I think was the question, no? The question was--what is your number?

BY MR. HAMILTON:

Q. Well, the question of what is your number derives from a discussion that was held at a meeting that was unfortunately not a without prejudice meeting in September of 2017, where we reviewed the exact same issues that I just reviewed with Mr. Koenigsberger

now. That was the basis. It's your choice. What's your number? If you say you're unable to answer here, I'll respect that.

A. I'm happy to discuss a number in regards to--

PRESIDENT FERNÁNDEZ ARMESTO: I have some--I would rather prefer that you do not answer, because--I think it is not proper for you to answer that at this stage. You have made a claim. We will look at your claim, and we will look at your defenses, and we encourage you, like always, and the Republic, of course, to find a settlement. Nothing would make this Tribunal more content than that there is a settlement, but I don't think that we should be aware of a number given by you.

MR. HAMILTON: Just to confirm, there is no settlement discussion happening here. Perú is bound by the applicable legal framework, and that binds its conduct.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sure.

MR. HAMILTON: That has always bound its conduct, and that binds any discussions. So, any discussions with Bondholders of any type are bound by

applicable law and not written on a napkin.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

MR. HAMILTON: So, that is the reality.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. It is now 2:00, and I said that at 2:00 we would have to break.

Do you have many more questions, Mr. Hamilton?

MR. HAMILTON: Not many more. I will try to conclude immediately after the break, but I will get organized because the process was a little different than anticipated for various reasons.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. HAMILTON: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Do you have a lot of redirect?

MR. FRIEDMAN: Yes. I have some redirect. It was a long cross-examination, so I do have some redirect.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

We are off the record.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: We will be back at punctually at 3:00 p.m.

(Whereupon, at 2:01 p.m., the Hearing was adjourned until 3:00 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing and we continue with the examination of Mr. Koenigsberger.

Mr. Hamilton, do you have any other questions for the Witness?

MR. HAMILTON: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Let us--before you put that question, let us try to organize the afternoon.

It is now 3:00. We should not go on further than 6:30, 7:00 at the utmost. 6:30 should be our limit. Afterwards we start--you know, the theory of the potato sacks, that three arbitrators become three potato sacks sitting here and appearing to be listening. But there is--well, except for Professor Stern, who is, of course, not. She is an Hermes potato sack.

No, but there is an element you cannot absorb any more information, and it becomes meaningless. So, 6:30, 7:00, a little bit more, but not much more than 6:30 is what is feasible, because we had originally

scheduled until 6:00. So, half an hour additional time, but we don't have more time than that.

So, yeah, let's try to be efficient in the use of time.

Very good, Mr. Hamilton.

MR. HAMILTON: Thank you, Mr. President, Members of the Tribunal, my counterparts as well.

BY MR. HAMILTON:

Q. Mr. Koenigsberger, I have some additional questions for you. And thank you again for your patience and participation with this process.

A. Sure thing.

Q. Gramercy has a group of Land Bonds that are--form the basis for its Claim before this Tribunal; correct? These are the 9500, 9600 Land Bonds that are the subject of this Treaty claim; correct? That's one group. We will call it Tranche 1.

A. That's correct.

Q. Okay. And then as you mentioned earlier today, Gramercy has other Land Bonds that it acquired in early 2017; is that correct?

MR. FRIEDMAN: Objection. That isn't quite what he testified.

PRESIDENT FERNÁNDEZ ARMESTO: Do you have other Land Bonds? Let's make a general question. You do have another tranche of Land Bonds, and let's call them Tranche 2 of Land Bonds. Okay.

Mr. Hamilton, we now have Tranche 1 and Tranche 2. What is the question for the Witness?

MR. HAMILTON: Well, Tranche 2, Mr. Koenigsberger testified they acquired in early 2017.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

MR. HAMILTON: That was my question.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

MR. HAMILTON: I mean, that's what we were discussing.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I think he said--I seem to remember it was in the first quarter of 2017, and he also said "I don't know exactly how much they are valued, but it's approximately 50 million U.S. Dollars."

MR. HAMILTON: Thank you. He has done our

work for us.

PRESIDENT FERNÁNDEZ ARMESTO: Any other question?

MR. HAMILTON: Well, that's my question.

BY MR. HAMILTON

Q. Are there any other Land Bonds? There is Tranche 1. There is Tranche 2. Are there any other Land Bonds that we have not had the opportunity to discuss yet that Gramercy or its affiliates control or own or have purchased?

A. No.

Q. So there is only Tranche 1 that is the basis for the Claims before this Tribunal, and Tranche 2 that was acquired around early 2017; correct?

A. Sometime in 2017, correct.

Q. Sometime in 2017.

Now, are the Land Bonds that Gramercy acquired in 2017 submitted to the local Bondholder proceeding?

A. No, they are not. I do not believe so.

Q. They are not submitted to the local Bondholder proceeding.

A. I do not believe so.
Q. And they are not part of this Treaty proceeding, we've confirmed.
PRESIDENT FERNÁNDEZ ARMESTO: Yes. They are not part of this Treaty proceeding.
BY MR. HAMILTON:
Q. So, are they part of any court proceeding?
A. I can't tell you for certainty whether they came with court proceedings already in place or not. I don't recall.
Q. We're in a strange situation because half the room knows the truth and the other half of the room has just learned about this for the first time today.
This Tranche 2, Mr. Koenigsberger, they are not in the local Bondholder proceeding, they are not in Treaty proceeding. Are they in local court proceedings?
PRESIDENT FERNÁNDEZ ARMESTO: The answer is he does not know whether they came or not with a local court proceeding. I mean, the Witness has answered. Mr. Hamilton, you may like or not his answers, but it is his answer.

BY MR. HAMILTON:
Q. You don't know whether they are in the local court proceeding?
A. I do not know.
Q. Then what do you intend to do with these other Land Bonds? If they are not in this Treaty proceeding, they are not in the local Bondholder proceeding, what do you intend to do with these Bonds?
A. As I said before, I believe when the Tribunal ruled on the appeal in 2015, they said that the last word wasn't out, that they were still waiting for--that it was premature and that there was enough calculations that still had to be done, and that Bondholders can be prejudiced by what the Supreme Decrees might do, so we'll wait and see what plays out in that situation.
Q. So, Gramercy spent--you mentioned a figure of $50 million with no plan of what it might do with these Bonds.
A. We'd like to be able to--what we've tried to do with all our Bonds, which is to be able to sit down with the Republic of Perú and have a consensual

resolution.
Q. And you don't know how many Bonds are part of Tranche 2?
A. I don't know how many Bonds are part of Tranche 2.
Q. So, the bottom line is you bought Bonds, and you don't know what you're going to do with them; is that correct?
A. At this moment, there is--I don't know with certainty what we are going to do with those Bonds.
Q. Do you have the intention of bringing other Treaty-based claims, for example?
MR. FRIEDMAN: Objection.
PRESIDENT FERNÁNDEZ ARMESTO: Yeah.
BY MR. HAMILTON:
Q. Now, Mr. Koenigsberger, you mentioned that the Tranche 2 Bonds were purchased in 2017. I'm going to show you one document here. This will be Exhibit R-173.
PRESIDENT FERNÁNDEZ ARMESTO: 173.
MR. HAMILTON: Correct.
PRESIDENT FERNÁNDEZ ARMESTO: Very good.

BY MR. HAMILTON:
Q. Mr. Koenigsberger, R-173 is a press statement issued, as usual, through PR News Wire on April 24, 2017, by the Peruvian American Bondholders for Justice, which, as we have established, was established in 2015.
And this document says: "Mobile billboards in Washington, D.C. haunt Perú over Agrarian Land Bond default," and you see a picture here of a billboard in front of the United States Congress, and this document says: "Perú defaults. Rating agencies ignore it. American workers pay the bill."
Do you see that picture?
A. Yes. I was trying to find the previous--sorry, it's in the title.
Q. Yeah. You see the picture; right?
A. I see the picture.
Q. Okay. This was April of 2017. So, at or around the time of this billboard, Gramercy was purchasing additional Land Bonds; is that correct?
A. Somewhere in that time period.
Q. Okay. Okay. So, just to confirm, that time

period when Gramercy was acquiring--Tranche 2, the additional Land Bonds, that was after the 2013 and subsequent Court rulings and after certain Supreme Decrees; correct?

A. It was after the Court ruling of 2013 and after which Decrees?

Q. Well, you're not giving a precise date when you acquired these Bonds.

A. So after some Supreme Decrees. I believe there were Supreme Decrees after.

Q. Okay. So after the Court rulings, after Supreme Decrees, Gramercy bought more Land Bonds; correct?

A. Gramercy bought what we're now calling Tranche 2 somewhere in 2017.

Q. Did Gramercy buy Tranche 2 Bonds after February 28, 2017?

A. I don't recall the date. Again, I testified that it was sometime in early 2017. I don't recall the date.

Q. Okay.

MR. HAMILTON: Mr. President, the Republic of

Perú has no further questions at this time. We do, however, have a procedural observation, which we can save for the end of the testimony. Thank you.

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

And we now give the floor to Mr. Friedman.

MR. FRIEDMAN: Thank you very much.

REDIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. Good afternoon, Mr. Koenigsberger.

A. Good afternoon.

Q. I want to take your mind back to the origins of Gramercy's investment into the Land Bonds that are at issue in this Arbitration.

A. Okay.

Q. I want you to cast your mind back to what we talked about, questions that you were asked this morning by Mr. Hamilton. Okay?

A. Yes.

Q. Now, you remember that you were asked some questions about what was on your mind and how--you told me during our direct examination that you took

both a top-down and bottom-up approach to underwriting the investment; is that right?

A. That's correct.

Q. So you were asked some questions by Mr. Hamilton about Peruvian Global Bond issuances in the 2005 range. Do you remember that?

A. Yes, I do.

Q. Without taking you to the details of the prospectuses or language in there, can you just tell us how that and other information about what was going on in Perú influenced your thinking about why this Land Bonds investment was a good idea?

A. Related to the global Bonds?

Q. Yeah.

A. What the significance of the global Bonds was?

Q. Sure.

A. The significance of the global Bonds was that Perú re-access the capital markets, and I had said in my Witness Statements that I was there in the very beginning when Fujimori came in, and the whole objective was how does this country move from out of

default, not only with banks and Bondholders, but with the IMF and the World Bank and what have you, and what's the reward for that--the reward for that, and what's the motivation as oftentimes for the countries to re-access the capital markets.

And so that's an observation that--along the path that they now have access to the capital markets, which not only is about creditworthiness, but also the ability to raise additional funds in the capital markets.

Q. And what did that signal to you, if anything, that was relevant to the acquisition of the Land Bonds?

A. To me, it was confirmation of the top-down thesis that this was an upwardly mobile credit. It was a reform story that was being--one of the rewards of that reform story was going from default on bank loans as late as 1997 to re-accessing the capital markets in the 2000s.

Q. Okay. And how did the method that you used to conduct diligence in Perú compare with methods you used in other investment circumstances?

A. Very similar. I mean, we did similar investments--Land Bond investments in other countries in emerging markets, Nicaragua being one of those, Bulgaria being one of those, as well as the Russian Federation.

So, the same idea, which is top down on credit analysis for the country. Is there--is there a reform story in place? Is there an upwardly mobile story in place? And then also where did the underlying instruments--and bottoms up, as I talked about before, is kind of the idiosyncratic nature of the underlying investment.

Q. In terms of some of those other situations you've been in, you were asked some questions and taken to an article about Argentina. Remember being asked questions about the article by Gretchen Morgenson about Argentina?

A. Yes, I do.

Q. And can you tell us what was your approach in the Argentina situation?

A. Well, we've had multiple successes in Argentina working consensual with Republic of

Argentina on the resolution of claims that seemed otherwise unable to be resolved.

So, one example, as of 2005, Argentina had only resolved with 76 percent of their creditors. Gramercy led, conceived, and anchored a reverse inquiry, getting Bondholders on the same page to give Argentina certainty of execution, despite the fact that Argentina was saying that they would never pay any of the other Bondholders. We were able to do that.

I see here--we're at CIADI. We certainly helped resolve several CIADI claims in Argentina in 2013. We resolved the only five that were outstanding, so we owned five of those, and we coalesced with the other two.

Again, reverse inquiry process where consensually we worked with the Ministry of Finance in Argentina to settle the claims.

Q. Okay. And you also were taken to an article before that said that you were involved in the war about Argentina. What did you understand that to be?

A. I understood it to be that, unfortunately,

this gentleman has been pulled into somebody else's war, and that war was a holdout battle in Argentina between those that didn't participate in--once we were successful with the 2010 exchange, there was still 8 percent that was outstanding, the holdouts.

And so the war that I described before was between the holdouts and the Republic of Argentina. We and other Bondholders, unfortunately, got drawn into it is because the 92 percent who had participated in the exchange were at risk of not being paid, even though we had legally and lawfully gone through an exchange with Argentina.

Q. Right. And how, if at all, did the approach that you took there compared to the holdouts relate to the approach that you wanted to take with Perú?

A. It's very different. I mean--sorry, could you repeat the question?

Q. How did the approach that you took there of brokering a solution reflect, if at all, on the approach you were looking to take with Perú?

A. Sorry. Very similar, which is the idea, which is understand why this transaction isn't

happening, understand the element of distress, and introduce a catalyst to change the element of distress.

And in the case of Argentina, we felt that it was a lack of advocacy and lack of representation and lack of certainty, and we felt that oftentimes obligors won't move forward with the transaction, not because they're unwilling, because they can't figure out how to do it.

And so in Argentina, we did a reverse inquiry in 2009 to resolve that $12 billion worth of debt.

Q. What is a reverse inquiry?

A. Sorry. So, reverse inquiry was we went out and got $12 billion of Bondholders to pre-commit, via a memorandum of understanding, with a bank. We brought an outside bank in to--what I mean by reverse inquiry is most transactions that happen in the capital markets, the country goes to bank, bank goes to market. A reverse inquiry is market goes to bank, bank goes to country.

So, in the case of Argentina, we use a reverse inquiry. I mentioned earlier today--

(Interruption.)

A. I'm sorry.

So, what I mean by "reverse inquiry" is the typical transaction is a country or an issuer will hire a bank, and then the bank will go to the market.

A reverse inquiry is just the opposite, which is the market will go to the bank at signal, or sometimes on a firm basis, commit to a certain transaction to the extent that the bank--pardon me, that the country wants to move forward on it.

Q. Okay. All right. And so what did you think the path was to resolution with Perú after you bought into the Land Bonds?

A. We always thought that the route would be a consensual transaction, very similar to what we had done in Argentina. In fact, that was the--I believe it was in 2009 at exactly the same time we were doing this in Argentina that we actually did make a reverse inquiry proposal to the Republic of Perú.

I think we made at least three overtures via intermediaries to try and resolve on a reverse inquiry basis.

Q. Okay. Now, do you remember Mr. Hamilton asked you a few questions about Mr. Herzberg's memo?

Do you remember that?

A. Yes, I do.

Q. Okay. If you could turn to that, it's Tab 10 in the binder that's in front of you, and it's CE-114.

A. Okay. I have it.

Q. Do you see it? Okay.

Now, the Herzberg memo--and he took you--in particular, he pointed out that on Page 5, I guess, of the memo, there are different valuations shown in there.

Do you remember being asked those questions about that?

A. I remember confirming some tables were on here.

Q. Yes. And he asked you about whether the fact that different valuations appeared on this page indicated a lack of certainty, and I think you said a lack of certainty but high probability of what to expect.

Do you remember giving that testimony?

A. I do.

Q. Can you explain to us what you meant by that? What do you mean a "high probability of what to expect"?

A. Well, looking at information at the time and seeing the different--the highest probability was that all three of these are current value. They are with interest and CPI. So, that's high probability of those three notions.

The difference may be the ADAEPRA one, which was the way that the market looked at it and the way that the market transacted, so I would say that's probably the highest probability. And then looking at the PPKs with the asterisk, I believe the middle one was some--shall we call it alternative method for calculating CPI? And I believe the other one was PPK speculating on what Bondholders might take in a consensual deal.

Q. And who is he? Who is PPK?

A. Sorry, PPK at that time was Perú's Prime Minister. More recently he was the President of Perú from 2016 forward.

Q. Okay. And when you said that you meant that there was a high--you thought there was a high probability of what to expect, what did you mean by that?

A. Again, at the highest level, what's to be expected and what is being confirmed is that Bondholders are entitled to current value with CPI and interest, and that's--as I go through the David Herzberg memo and he goes through how he concludes that, it is both in terms of what's happened at the highest courts, what's happened at the lowest courts, and the due diligence that he did with the Bondholder associations and what have you.

Q. Okay. Do you have your Reply Witness Statement in front of you, the one dated May 21, 2019?

A. Give me one minute. I do.

Q. Okay. I'd like to ask you to turn to Page 1, Paragraph 2.

Do you see that?

A. Yes, I do.

Q. Yes. You testified that you decided to invest in the Land Bonds. "We did expect the Land

Bonds had genuine value to be calculated using CPI plus interest."

Do you see that?

A. Yes, I do.

Q. You explain, then, that your diligence had revealed what we consider to be very firm qualitative and quantitative bases for that expectation.

Can you describe how it is that you had those firm bases and, yet, you saw these different range of values representative in the Herzberg memo?

A. Sure. I think the expectation comes from the legal entitlement, first, verification of where that legal entitlement comes from, which we talked about the TC 2001, and then also kind of understanding and factoring in or triaging what these other factors may be.

So, the middle PPK one is merely, again, him not disputing whether it's owed, him not disputing whether it's current value, him not disputing whether it's interest. It's him just saying, "perhaps we should use a CPI that's different than the official CPI."

Q. Umm-hmm.

A. And then the other one--again, both of these are the obligor. The third one--or the second PPK is simply the obligor speculating that if they came forward with some sort of consensual offer, that that's what they would get. Unfortunately, we will never know.

Q. You mentioned legal entitlement as a part of it. How did you underwrite the legal entitlement?

A. Sure. David and José spent quite a bit of time looking at the laws, the governing laws at the time. David writes about it in the memo here. Talks about what I consider to be the most--the highest law, which is the TC in 2001 confirming that one must be paid in current value, not nominal value.

Q. Umm-hmm.

A. But then seeing the same application in the local courts. Of course, we did quite a bit of due diligence with local counsel. We would never do this on our own. We would spend a lot of time and money with local counsel understanding the governance around the instruments.

Q. Okay. I'd like to take you--you were shown also Tab 40, which is CE-731.

This is Mr. Cerritelli's May 23, 2008 email.

Do you remember seeing this and being asked questions about it by Mr. Hamilton?

A. From earlier today, yes.

Q. Okay. And in here, he took you to part of this--can I take you to paragraph--I think he took you to Paragraph 11, Timetable for Execution of our Restructuring Strategy.

Do you see that?

A. I do.

Q. Okay. You've "been in regular contact with the Government of Perú since we started investing in these claims, and the Government is aware of our investment activities."

Can you just describe to us why you were trying to be in touch with the Government even from this time?

A. Of course. And our goal all along was to try and catalyze a consensual resolution, and we felt that if could provide a service by aggregating Bondholders

toward--all that was outstanding at this time was how are these Bonds going to be paid. With all due respect, I've dealt with a lot of Finance Ministers who have never been through debt restructurings.

Q. Yeah.

A. So, we thought that the reason we would reach out is to say, hey, look, we've done this before. It's not as complicated as it seems. Perhaps we could use some sort of reverse inquiry, what have you. This is consistent with the underwriting, which is we hope and expect to get a consensual resolution.

Q. It says, then, in the next paragraph that haven't presented a formal proposal yet, but "our strategy calls for continuing to source in Perú to build a large enough position that the Government can use as an anchor block to negotiate a restructuring solution."

Can you explain what that means, what the thinking is there about being able to accumulate an anchor block to be able to develop a solution?

A. Sure. As I was explaining earlier, one of the very typical kind of factors, or what I call

element of distress as to why an obligor may not move forward, is you're typically dealing with an interim decision-maker. So, in this case, perhaps a Finance Minister, what have you.

And they tend to be very political and careful, and in order for them to advocate to go upstairs to the president to do a transaction, we think it's really important that they have certainty of execution.

So, the best way to give them certainty of execution is to have a large enough critical mass of Bondholders that gives that person confidence that if they stick their neck out politically and advocate for settlement, that they'll be successful with that settlement.

Q. And we saw that in this Paragraph 11 also, it refers to the paragraph we looked at before, that this language "since we started investing in these claims."

Do you see that?

A. In Paragraph 11?

Q. Yep.

A. Sorry. Yes.

Q. What were the claims that you had in mind? I mean, how did you think of that word at that time?

A. Bonds. That we invested in the underlying Bonds.

Q. Okay. And with the anchor group, what did you--what did you think of as being--why did you think that it was realistic that the Government would want to come and talk to you after you had accumulated this anchor position?

A. Well, I guess one would be experience elsewhere, experience in Perú. I mean, seeing Perú's behavior in the past when they had a critical mass of banks that were willing to move forward with the transaction that they did.

And, elsewhere, we talked about Argentina a moment ago, but this notion of if you have certainty of execution, perhaps they'll change what seemed to be a position of unwillingness to move forward.

Q. And how were you going to solve the certainty of execution problem?

A. The way that you solve that is kind of by going first. That's the whole notion of the reverse

inquiry, which is to try and organize and discuss with as many Bondholders as possible what resolution can look like and then get them all organized, either formally or informally, around that solution, so that the obligor would be more willing to move forward because it's been de-risked for them.

Q. Yeah, but why would they want to? Why would the Government of Perú want to settle this debt? What's in it for them?

A. Creditworthiness, continuation, the end of the era of default for Perú, to get better ratings than they might have had otherwise, to attract Foreign Direct Investment into the country.

And one thing is for certain--I've been doing this 32 years--I can tell you in each one of these debt restructurings that we've been involved in, it's virtuous in nature. That when they resolve a liability that's outstanding, that there is a benefit that comes to them for doing that.

Q. Okay. Now, you were asked some questions about the Gramercy model. You were shown some Gramercy-level documents that talked about assumption

of risk.

Do you remember looking at those with Mr. Hamilton?

A. Yes, I do.

Q. I have a simple question for you. Do you believe that Gramercy assumed risk by investing in the Land Bonds?

A. We do, indeed.

Q. Okay. You were also asked questions about whether other parties have economic interests in the Land Bonds. I think you said they do.

Whose investment do you think you are managing? Is this Gramercy's investment?

A. Predominantly, the investment is for the underlying investors and funds that have economic interest in the Bonds.

Q. So, in light of that, can I take you, please, to your Witness Statement, which is--sorry, your Rebuttal Witness Statement, please.

(Comments off microphone.)

MR. FRIEDMAN: No, I think it is actually the one dated November 13, 2019.

BY MR. FRIEDMAN:

Q. Okay.

A. I have it.

Q. Okay. If you could turn to Page 9, Paragraph 24, please.

A. I see it.

Q. Okay. The fact that--you say that "the fact that other entities have a beneficial interest in the economic performance of Gramercy's investment in Land Bonds does not change the fact that Gramercy actually owns and controls that investment."

Do you see that?

A. I do.

Q. Okay. Well, can you explain that to us, please? What's your understanding of why Gramercy owns and controls?

A. Well, Gramercy is the only entity that owns and controls. The beneficial owners above don't have title. They don't have management. They can't move the Bonds. They can't extinguish the Bonds. They can't swap the Bonds. They can't insure the Bonds. All they can do is get a beneficial interest.

So, it's Gramercy, through the investment manager GFM, is the only one that can make all the decisions relative to the Bonds, and it's a Gramercy vehicle that owns the Bonds and has the title, and, therefore, it's the only owner and the only one that can make ownership decisions, if you will.

Q. Okay. And what--how is it possible that Gramercy is the only one that can make those management decisions about the investment in the Land Bonds?

A. That governance typically comes through an investment management agreement, whereby, as we talked before, we raise capital for pools of vehicles, pools of capital. Those investors have an economic interest in the Fund, and part of the establishment of the Fund is an investment management agreement that gives sole management of the underlying vehicle to Gramercy.

Q. Okay. Now, immediately--you were asked some questions, then, about the July 16, 2013, CT Decision.

Do you remember that?

A. Yes.

Q. Okay. And I think you were asked some

questions about kind of what the state of your mind was at that point about what was going on about what effect it might have had on your investment.

Do you remember being asked some questions? You were shown some pieces of paper.

A. Yes, I do.

Q. Yeah. What did you understand at that point in time? I think it would be helpful for the Tribunal just to hear like your state of mind, Gramercy's state of mind--

A. Sure.

Q. --in the period immediately after July 16, 2013, when you found out about this Constitutional Tribunal Decision.

A. I guess I'd have to discuss our state of mind prior to it.

Q. Okay.

A. So the state of mind prior to it was, it was undeniable that in 2001 that Bondholders had a right to current value with CPI and interest, and that our understanding of what 2011 was limited to was a simple enforcement of a previous ruling.

So, that was our state of mind, in terms of what was expected, and simply enforcement of a previous Court ruling.

Q. Umm-hmm.

A. What was different is it was, perhaps, different than what we expected that came out of it, but we still didn't really know what to expect. So, as I--

Q. What do you mean by that? How can it be different, but you didn't know what to expect?

A. Well, what we expected going into it was enforcement of current value with CPI plus interest. What came out of it was dollarization with all sorts of unknowns, and, as I said earlier today, there were more, I think, unknowns than knowns, so it wasn't clear what it meant at the time.

Q. Umm-hmm. What do you need to get that further clarity about it?

A. All sorts of factors in terms of exchange rates, parity exchange rates, interest rates, coupon rates, also away from that, how that might compare to what you're able to do in the local courts because,

still, you know, 2001, it's very clear that we have the right to look at all these voluntary things that come forward, but we also have a right to legal proceedings within Perú.

Q. Did you have any sense of what the value difference was at that point, if any, between what you had thought prior to July 16, 2013, and afterwards?

A. No, we did not.

Q. Okay. And you then subsequently, of course, received the decision--the Supreme Decrees, and they came out in January 2014.

Do you remember those?

A. Yes.

Q. Okay. And how long did it take you even once they came out to analyze what the economic consequences were?

A. Weeks, if not at least a month.

Q. Umm-hmm.

A. At first when we saw it, we actually thought that, well, we suspected that dollarization that they were coming up with was substantially the same as kind of current value with CPI.

Q. Can you explain that? What do you mean at first you thought it was what they came out with was the same as CPI?

A. So, one of my colleagues, when he first looked at the Supreme Decrees in 2014, said I believe that the way that they are calculating this is consistent with what we were expecting vis-à-vis current value with CPI.

Q. Umm-hmm. And what happened after--what steps did you take after that to further sort of dig into the formulas and the numbers?

A. I believe we took it to an outside accounting firm to interpret it and objectively calculate for it.

Q. Umm-hmm. And what was the conclusion--

MR. HAMILTON: Mr. President, I didn't ask these details, but I'm being patient, given the length of the cross-examination. Thank you.

BY MR. FRIEDMAN:

Q. What was the conclusion of that analysis?

A. The conclusion of that analysis is that the value was substantially lower than we had expected prior to the Supreme Decrees.

Q. Now, you were asked some questions, then, about the valuation and the changes in valuation over time; right?

A. Yes, I was.

Q. Okay. And I think we probably need to go back into confidential session now because I would like to show you again this document that was handed out, which was representative of Appendix 5 to the Quantum Expert Number 2.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

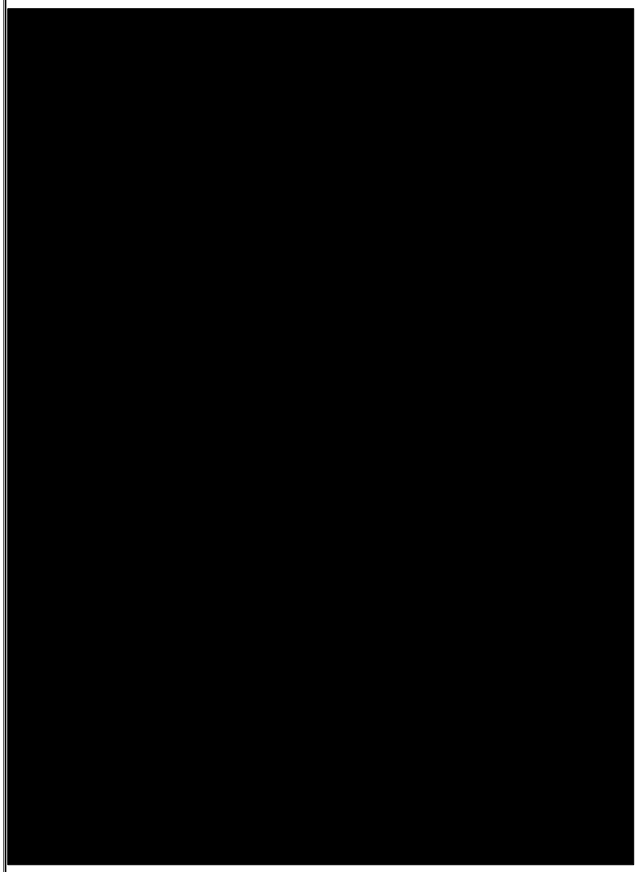
[redacted]

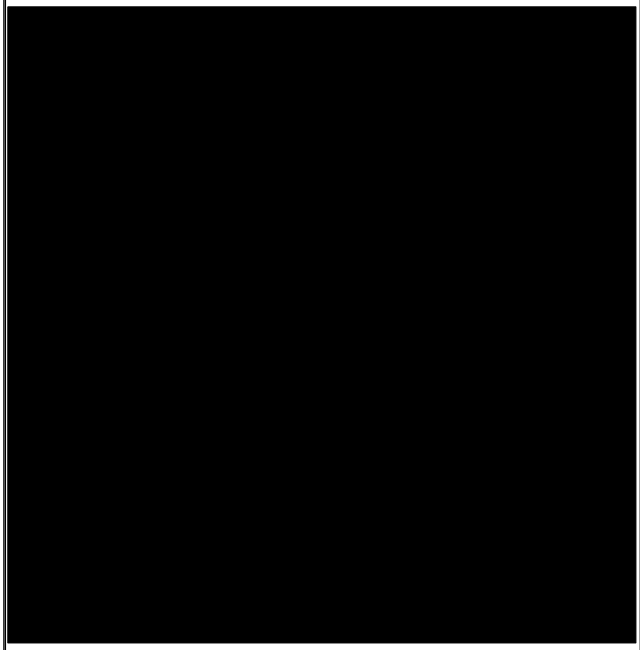
[redacted]

[redacted]

[redacted]

[redacted]





(End of Attorneys' Eyes Only session.)

OPEN SESSION

THE WITNESS: We approached them to ask them how to interpret it. We were asking for clarification because it still wasn't clear to us, and so we figured that, if there is something forward, that it should be simple enough to just tell us what it is. And, again, if I go back to debt restructurings I've been involved in before, typically the obligor tells you and clarifies what it is that they're offering you before they ask you to consider it, and if you don't understand it, you ask for clarification.

BY MR. FRIEDMAN:

Q. Okay. And why when--

MR. HAMILTON: I persist with my objection, Mr. President, because all we've done is open a wormhole with a document that should never have been presented and then continue to meander further down this path. I consider it prejudicial. We had no time to ask about this period of time in detail specifically because of the surprise explosive announcement that they were buying other Bonds at this time.

It is prejudicial for them now to be able to put new direct testimony or summaries that we did not raise during the cross-examination. There are a lot of issues that might be raised from this time period, and we had insufficient time due to the new information that came out for the first time today. I object.

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

What is your question? What was your question because with the interruption, I really don't know what you were asking.

MR. FRIEDMAN: Yes, I think we have to go back and look.

BY MR. FRIEDMAN:

Q. So, the question was, what steps did you take--

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you tell me--

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: --and I ask the Witness in an as objective manner as possible. What

do you want to know from the Witness? What is the information which we need from him?

MR. FRIEDMAN: Well, I want to know at this period--he's already testified about some things. I would like to know at this period what steps they were trying to try to understand the potential value that the February 2017 Supreme Decree provided.

PRESIDENT FERNÁNDEZ ARMESTO: Which steps?

MR. FRIEDMAN: Let me put it a different way, if I may.

BY MR. FRIEDMAN:

Q. Mr. Koenigsberger, during this period, at--immediately after the February 2017 Decree, what was Gramercy's understanding about what was going on and what value might be offered?

A. Our understanding was that they were issuing a new Decree relative to the one that had been issued back in 2017. It was kind of the first Decree or Official Communication of the new PPK Administration, and we quite simply were just trying to figure out what it was that was being offered to us, and, again, to clarify what that number was and how to get to it.

Q. Let me ask you, during this period, did you have any reasons for optimism that Perú might be ready to actually sit down and have a conversation and try to work on a Resolution?

MR. HAMILTON: I persist in my objection, Mr. President. We continue to go further down a path that we had no opportunity on cross-examination to ask, and he is simply doing what he wants, Mr. President. I'm sorry.

PRESIDENT FERNÁNDEZ ARMESTO: We have discussed the Supreme Decree. We have discussed these are some follow-up questions. I'm worried about the time, but let's finish this line of questions and then let's move on. So, let me--because I was not aware of it. Let me ask the questions, and so that maybe it is easier.

So, there was this new PPK administration. They brought up this new Decree. It had new formula. And so, you wrote to them to ask for clarification.

What came out of that? Did you get an answer? Did you--what came out of that?

THE WITNESS: What we were trying to figure

out is this new Administration, Finance Minister for the new Administration had said, despite the earlier Decree, it is time for us to lift the rug and no longer keep this under the rug. So, we simply asked for clarification and never got clarification. We just got--being told "submit your Bonds to the process."

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, you never got a clarification, and you then did not submit the Bonds to the certificate?

THE WITNESS: And I don't see how one can submit to a process when you don't know what to expect from that process.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Is there any further redirect?

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. And you mentioned PPK; right? So, during this period, did you directly or indirectly have any contact with PPK about this issue?

MR. HAMILTON: Mr. President, I object in as strongly as terms possible. He is far afield. This

is highly prejudicial to Respondent.

(Overlapping speakers.)

MR. HAMILTON: I'm sorry. It is far out of line, Mr. President. I apologize.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I don't think I was interested--I was not aware the 2017 Decree was from a new Administration. But evidently the PPK--or President Kuczynski never, to give the proper name to him, never was mentioned in the cross-examination. So, I think this--we should not bring this up.

MR. FRIEDMAN: Mr. President, if I may--Mr. Hamilton had great latitude to basically take a deposition about some additional Bond purchases, and I think they occur in a particular time period when there's a particular sort of sequence of events that happens, and we're not allowed to--it doesn't seem balanced. We're not allowed to ask questions.

PRESIDENT FERNÁNDEZ ARMESTO: The question which counsel is going to put to you, I think, is the following: The additional purchase of Tranche 2, was it somehow related to a new optimism once the new

Kuczynski Administration had come into power?

THE WITNESS: Yes, it was.

PRESIDENT FERNÁNDEZ ARMESTO: Was that your question?

MR. FRIEDMAN: Thank you. You did a great job with that question, I really appreciate it, Mr. President.

MR. HAMILTON: Mr. President, I'm sorry. But I'm sorry, Mr. President, but for Claimant to claim some kind of procedural victimhood about not being able to do what they want, they have hid from this Tribunal the existence of other Land Bonds. They have intentionally and knowingly excluded it. Mr. Koenigsberger has excluded it from three Witness Statements.

The entire other side of the room has been in knowledge of this and not disclosed it to us until we happen to stumble upon it today. And so, this entire situation is grossly prejudicial to the Sovereign. We will be coming back procedurally on this issue, but to continue to give latitude where they are the ones who hid information is inappropriate and highly

prejudicial and I must object. Thank you for your patience.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, I will hear your arguments about that and whatever procedural steps you want us to take. But that is not the question. The question is, you put the question, it came out, and what--that there is a second tranche, and what I think counsel to Claimant was trying to put into context is that this purchase took place when a new Administration had come into power.

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. And I think, Mr. Koenigsberger, if we could continue, you explained--I think in response to the President's question--that there was sort of newfound optimism. Can you tell us a little bit about what--why there was a newfound optimism at that time?

A. Sure. I mean, the most obvious recollection was PPK's incoming Finance Minister. I believe it was Mr. Thorne. Despite all the rulings and all--

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Thorne.

THE WITNESS: Thorne.

MR. HAMILTON: Mr. President, I must object. I apologize, Mr. President, but this entire testimony is coming out now specifically because they hid it from their Witness Declarations.

(Overlapping speakers.)

MR. FRIEDMAN: I absolutely resent that.

PRESIDENT FERNÁNDEZ ARMESTO: No. No. No.

MR. HAMILTON: I apologize.

PRESIDENT FERNÁNDEZ ARMESTO: I know, Mr. Hamilton, but I have already taken a Decision. You hit upon a new idea, which was not in his Witness Statement. Mr. Koenigsberger deposed on that. You made all the questions you wanted to on this issue, and now there is a redirect and there are a few questions putting into some context this additional purchase of Bonds. In my opinion, this is proper, and can I kindly ask you to please do not interrupt any more, and let's go on and let's finalize. Please.

Because otherwise we will not finalize with Mr. Koenigsberger. You will have to stay with us until tomorrow. Please, Mr. Hamilton. It is a Decision. You may like it or not, but it's my

Decision, and please, now finalize it.

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. So, can you please describe to us just what this period of optimism was and what the basis was for it?

A. Yes. As I was saying before, the signal that we heard loud and clear from the Finance Minister, I believe his name was Alfredo Thorne, at the time said, despite all the rulings that we've talked about, the TC 2016 and Supreme Decrees, that the problem had a solution and that it was time for Perú to quit sweeping this under the rug, pull the rug up and solve the problem. That was a big signal.

Q. Okay. And what steps did you take then during this period to try to follow up on that?

A. Of course we tried to engage with the Republic in conversations that would lead to a consensual resolution. Again, I have a Finance Minister saying, I want to solve the problem, and we have creditors who are saying, we want to solve the problem, and we know how to do this, so let's meet and

let's figure out how to solve this problem.

Q. We saw before in the memo that Mr. Hamilton had brought you to back from 2008. You remember we looked at that, and it talked about aggregating a position to be able to anchor a settlement?

A. Yes.

Q. Yet did that factor at all into this additional Bond purchase in 2017?

A. Indeed.

Q. Can you explain?

A. The idea is that the larger the critical mass, the higher probability of being able to convince the obligor that they would be successful in moving ahead.

Q. Now, there were some questions that Mr. Hamilton put to you towards the end of the cross-examination. He asked you some questions about whether you believe the existing legal framework is sufficient to resolve this matter.

Do you remember being asked questions along those lines by Mr. Hamilton?

A. Yes, I do.

Q. Okay. And at the same time, in one of your answers, you called the existing process, I think, "a scam." Do you remember giving that testimony?

A. Yes, I do.

Q. Can you explain to us what you meant by that when you said that what's--what the process is, what it offers right now is a scam?

A. Well, it's how we got to where we are, and then what its valued at, but more importantly, what I was referring to is there's been so much discussion about a ruling from 2013 and follow-up Supreme Decrees, without a discussion about the irregularities around that 2013 Order from the Court. The fact that there is criminal charges in Perú, vis-à-vis the doctoring of the document.

It seems really strange to me that the obligor would continue to create a process that was done with forgery and then continue to tell us to go back to that process. There seems to be a circular in place.

Q. Okay. I want to ask you about in your Rebuttal Witness Statement, which is dated

November 13, 2019. So, it's dated November 2019; right?

A. Okay.

Q. And on Page 18, Paragraph 48.

A. Yes.

Q. You say at the end: "No matter how difficult the problem, always found a solution." And then at the very end you say you "still hope Perú will do the right thing and work with its creditors to fairly resolve this last remaining obligation."

I mean, Mr. Koenigsberger, how can it be that, after everything that you've seen, that you--well, first, let me ask, is this still your view, that you still hope that there will be a solution?

A. Yes, it is.

Q. Well, how can you think that in light of everything that you've seen and all the difficulty that has occurred until now?

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton was very close to proposing a solution, so maybe we are almost there.

MR. HAMILTON: Mr. President--Mr. President,

I'm sorry. I know we are having some lightheartedness, but there was no such discussion here, just to be clear. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: I know. I know. It was lighthearted comment.

MR. HAMILTON: I appreciate it.

PRESIDENT FERNÁNDEZ ARMESTO: When you were asking him to give a number.

MR. HAMILTON: We are still far afield, and I'm sitting mute about it because I understand that you don't want to hear the objections, and I'm respecting that. Please. Objection stands.

PRESIDENT FERNÁNDEZ ARMESTO: I give you--I'll give you the floor to make any further questions you want. Please.

BY MR. FRIEDMAN:

Q. Yes. So, the question is how can you still--based on all your experience and everything that has happened in this case, how you can you still hope that there will be this solution?

A. Well, it's clear to me that the problem is still outstanding that, despite this fabulous

Bondholder Process that was established in Perú, I think somewhere around 8 percent, have--only 8 percent have even entered it, and even less have been resolved. So, still 92 percent of the Land Bond debt is still outstanding and it's my hope we could sit down and figure out a way to consensually resolve that. It's been my hope all along.

And that is not just based upon my experience in Perú, but it is based on my experience in other countries, where I mentioned in Argentina in 2009, they had passed a law that said, we will never pay a penny, "un centavo." And they paid. They rescinded that law after having sat down with Bondholders and negotiated a consent to restructuring. So, we have experience and that's what led to the expectations and the hope that I still have today.

Q. And is it--do you have any understanding about whether the existing legal framework in Perú would allow such a discussion to take place?

A. You know, my understanding from hearing it even here today is that Perú is bound by the laws that have been passed.

Q. And in the case--you mentioned that, in the case of Perú, that you have--well, you mentioned that in other cases you've solved through consensual negotiations with other--with obligors where there were problems. What steps were you able take and how do you think they might apply to this situation?

A. Again, I think if there can be certainty of execution, and there can be a meeting of the minds, it is absolutely possible that there could be resolution.

Q. Okay. And if that doesn't happen, do you still believe you have your legal rights?

A. Well, I believe that those rights were stripped from us.

Q. Okay.

MR. FRIEDMAN: Thank you. No further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

Mr. Hamilton, do you have any further questions? I promised to give you the floor. Put any question you want.

MR. HAMILTON: Mr. President, thank you. I appreciate that you face difficult circumstances in

managing testimony at all times and certainly with some of the types of issues that have arisen today, and we are doing our utmost to respect that under the circumstances.

The Republic of Perú, indeed, has many questions arising from the surprise testimony here about another tranche of Land Bonds. It would, of course, be prejudicial to try to formulate those questions right now. And so, I will be brief, but, of course, must reserve future requests for relief, given the circumstances.

RECROSS-EXAMINATION

BY MR. HAMILTON:

Q. Mr. Koenigsberger, if I understand the testimony you were led to a few minutes ago, you were suggesting or it was being suggested that you acquired Bonds, you purchased Land Bonds in 2017 because of optimism related to the Kuczynski Administration; is that correct?

A. Yes, that's correct.

Q. Okay. And the Kuczynski Administration took office on July 28, 2016; correct?

A. I believe so.

Q. Because they transitioned on the national Independence Day; correct?

A. Typically, unless there is other issues.

Q. Okay. So, you may have noticed that Gramercy has complained that, in August of 2016, President Kuczynski made comments in the press stating that he did not consider that Perú owed Gramercy anything, because by that time Gramercy had started a Treaty proceeding.

Do you recall that?

A. Well, I recall him saying that he thought that he didn't--that he didn't have to pay anything. I don't think it was because there was a Treaty.

Q. You had just filed a Treaty proceeding. There's an ample written record of Perú stating in the Treaty proceeding that it doesn't owe you anything in this context.

A. You asked me what Pedro Pablo Kuczynski said I believe in August of 2018. And I don't--

Q. '16?

A. '16, excuse me. And I don't recall it being

related to the Treaty. It was just him saying that I don't think that they deserve anything. I think it was zero.

Q. Well, you agree that Gramercy chose not to recover through the local Bondholder procedure; correct?

A. We chose not to enter into a procedure that was very uncertain what it was that we would get out of it, if we would ever get out of it, whether we would be the last ones to get anything out of it.

Q. I'm sorry, but it's a yes-or-no question. Gramercy chose not to participate in the local Bondholder proceeding for whatever reason?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. If it is a yes-or-no question, we know it, they--that Gramercy decided not to participate. Yeah.

BY MR. HAMILTON:

Q. And Gramercy had already made that Decision by the time that President Kuczynski had come into office and announced that to the world; correct?

A. The process that was then available, but the early Supreme Decrees from PPK, we thought perhaps we

would be able to participate.

Q. Okay.

MR. HAMILTON: Mr. President, we reserve all rights. You'll be hearing further from us. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Drymer, any question for the Witness, for Mr. Koenigsberger?

ARBITRATOR DRYMER: Maybe just one, and I'm afraid I'm going to refer to a document that was confidential.

QUESTIONS FROM THE TRIBUNAL

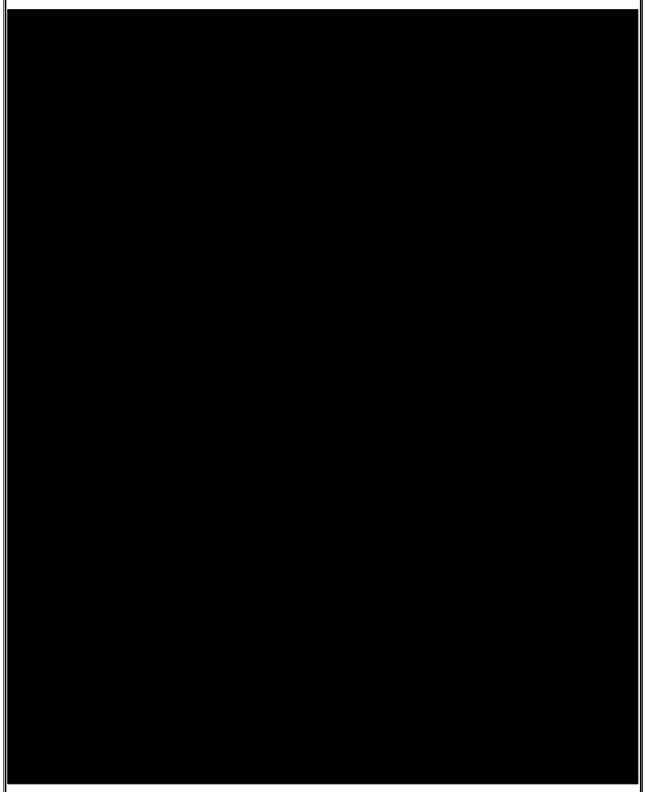
ARBITRATOR DRYMER: So, red light, please, but it will be brief.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]



(End of Attorneys' Eyes Only session.)

(Brief recess.)

OPEN SESSION

ROBERT LAVANA, CLAIMANTS' WITNESS, CALLED

MS. LAUVAD: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: We are ready to start, but we must first say, good afternoon, Mr. Lanava. Thank you very much for being here with us.

You are here as a Witness. As a Witness, you have a duty to say the truth, and I will kindly ask you that you take your oath. You have it in front of you.

Can you please stand up? Can we all stand up, and can you please, you have the formula in front of you.

THE WITNESS: Witness Declaration.

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

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much, Mr. Lanava.

On your left, you have counsel to the investor, to Gramercy. You have on the right counsel

to the Republic of Perú. There will be some questions to you. Can I kindly ask you--most questions can be answered with a "yes", "no" or "I don't know." Can I kindly ask you that you first say "yes", "no," or "I don't know, "I don't remember," and then you are welcome to add any clarification you want.

THE WITNESS: Okay. I'll do my best.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sure it will go very smoothly.

Please.

MS. LAVAUD: Thank you, Mr. President.

DIRECT EXAMINATION

BY MS. LAVAUD:

Q. Good afternoon, Mr. Lanava.

A. Good afternoon.

Q. I believe you have two documents in front of you. The first one is titled Witness Statement of Robert Lanava dated May 21, 2019, and I believe there's your signature at the end; is that right?

A. It actually doesn't have my signature on it, but it has my signature block.

Q. You recognize that document as being your

Witness Statement.

A. I do.

Q. Thank you.

(Comments off microphone.)

BY MS. LAVAUD:

Q. And then the second document is entitled "Reply Witness Statement of Robert Lanava" and is dated November 13, 2019.

Do you see that?

A. I do.

Q. Do you have any corrections or amendments to make to those Witness Statements?

A. No, I don't.

Q. Are you content for the Tribunal to rely on those statements for purposes of this Arbitration?

A. I am.

Q. Thank you, Mr. Lanava.

MS. LAVAUD: I have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you also for being brief.

Who is--please.

MR. ULRICH: Good afternoon, Mr. President,

Members of the Tribunal. Mr. Lanava, good afternoon.

THE WITNESS: Good afternoon.

MR. ULRICH: I'm Jonathan Ulrich. Thank you for being here.

CROSS-EXAMINATION

BY MR. ULRICH:

Q. You have in front of you your two Witness Statements; yes?

A. That's correct.

Q. We're going to hand out a binder with a few other documents. We'll be taking a look at both. We will pull up images of the document on the screen. We'll blow up the part that we're focusing on, so look at the binder, look at the screen, whatever works best for you. All right?

A. Sure.

Q. All right. Let's start, Mr. Lanava, with a few quick questions on your background.

Now, your professional experience is in investment operations; right?

A. That's correct.

Q. And you have a Bachelor of Arts degree in

economics from St. Anselm College?

A. That is correct.

Q. You don't have a business degree; right?

A. You mean an M.B.A.?

Q. Right. No M.B.A.?

A. I do not.

Q. And you do not have a law degree?

A. No, I do not.

Q. You're not here as an expert of any kind; right? You're here as a fact witness?

A. I believe that's correct.

Q. Mr. Lanava, you're the Chief Compliance Officer for Gramercy Management--Funds Management, LLC; yes?

A. That's correct. I currently am.

Q. And you've referred to Gramercy Funds Management as "GFM"; right?

A. That's correct.

Q. GFM is just one of many Gramercy entities; right?

A. Gramercy Funds Management is our SEC-registered investment advisor.

Q. But there are a number of other Gramercy entities in addition to GFM that you have described as the Gramercy family of companies; right?

A. There are other affiliated Gramercy entities.

Q. And some members of that Gramercy family are U.S. entities; correct?

A. That's correct.

Q. And some members of that Gramercy family are non-U.S. entities; correct?

A. Could you be more specific in which entities you're referring to?

Q. Well, I'm just speaking generally about the Gramercy family, which you refer to, very generally, as a family in your Statement.

So, of those entities that affiliate themselves with Gramercy, the Gramercy family companies, we have some that are in the U.S., we have some that are out of the U.S., including in the Cayman Islands; correct?

A. There are some Gramercy funds that were in the Cayman Islands, incorporated in the Cayman Islands.

Q. Gramercy Perú Holdings, LLC, you call "GPH," also part of the Gramercy family; right?

A. GPH is an affiliate, correct.

Q. And GFM and GPH are the two Claimants in this Arbitration; right?

A. I believe that is correct.

Q. Okay. We're going to get into their respective roles. I think everyone here would like some clarity on that, but first, let's talk a little bit about the Bonds. Okay?

Now, the other side of the room tends to call them Land Bonds, this side of the room tends to call them Agrarian Reform Bonds. When I talk to you today about the Bonds, it's Bonds with a capital B. All right?

A. Meaning either Land Bonds or Agrarian Land Bonds, or Land Bonds and Agrarian Reform Bonds.

Q. That's it.

A. So Bonds are Bonds. They're the same thing. They are the Bonds that GPH purchased and then has direct ownership and title to.

Q. There you go.

A. Gotcha.
Q. Your involvement with the Bonds dates back to sometime in 2006; correct?
A. That's correct. I first got involved after Gramercy had decided to make an investment sometime around February or March when I got involved of 2006.
Q. And you were involved in designing a process to acquire the Bonds; right?
A. I was involved in a process to help create a custody and what I would call "acquisition of the Bonds" once they were acquired.
Q. The Bonds presented what you have described as logistical challenges; right?
A. That's correct.
Q. So, for example, the Bonds are physical paper documents; yes?
A. That's right.
Q. The Bonds are old paper documents dating back several decades; right?
A. That is correct.
Q. They were held by a number of different individuals; right?

A. I believe so, yes.
Q. And some Bonds had clipped coupons, some had unclipped coupons; right?
A. That is correct.
Q. All right. Now, one of the challenges you've said was how to authenticate these old pieces of paper; right?
A. I believe so. Can you refer back to my Witness Statement on what paragraph that was?
Q. Well, it appears in several paragraphs in your First Witness Statement, but if I can just ask you, do you recall generally that one of the challenges you faced was how to authenticate the Bonds; right?
A. Well, I wasn't part of that authentication process. Again, my involvement in the acquisition of the Land Bonds was from an operational perspective in Connecticut with establishing a bank account for GPH, establishing a custody account with Citibank for GPH, but I didn't have any sort of role in authenticating the Land Bonds directly from any sellers.
Q. Okay. Well, setting aside involvement,

direct or indirect, in authentication, authentication is part of the process that you describe in your Witness Statement; yes?
A. Okay.
Q. Gramercy couldn't expect to get paid if it acquired invalid pieces of paper; right?
A. That's right. We obviously wanted to make sure that we were acquiring valid Bonds, real Bonds, right.
Q. Right. So Bond authentication then is important. It's necessary.
A. Correct.
Q. Gramercy hired a Peruvian law firm, Estudio Muñiz, you've said, to help validate the Bonds in these purchase transactions; right?
A. Correct. Estudio Muñiz was our local Peruvian counsel.
Q. And that firm came up with an extensive list of requirements for each transaction; correct?
A. That's right.
Q. Your statements don't mention what's on this extensive list of requirements, do they?

A. No, they do not.
Q. Okay. Well, let's take a look at how Gramercy internally describes some of these requirements. All right?
If you could please turn in your binder to the first tab.
MR. ULRICH: This is Exhibit R-1095, Mr. President.
This is the document, we addressed it earlier today. It has "confidential" in the footer, but counsel for Gramercy represented that it's not actually subject to the confidentiality restrictions. So we will stay in open session.
BY MR. ULRICH:
Q. All right. Mr. Lanava, if you look at the first paragraph here--well, let's look at the title. This is a "Checklist of Items to Consider in our Due Diligence"; right?
A. That's what the title says, yes.
Q. The first paragraph on this list, the first item is authentication; correct?
A. Correct.

MR. ULRICH: Mr. President, in the interest of time, and given your instruction earlier, I'm not going to read documents into the record.

BY MR. ULRICH:

Q. But, Mr. Lanava, if you want to take a quick look at this authentication paragraph, and then I'll ask a question.

A. Just the first paragraph?

Q. Just the first paragraph about the first sentence there, authentication. You can see that?

A. I'll be honest with you, if I can make a statement. I'm blind in my right eye completely, so I do have a hard time seeing half of you guys over here, and I certainly can't read that. So, I'm going to take my time and spend it closely reading this.

Q. Absolutely.

A. Thank you very much. I'll be doing this quite a bit today.

PRESIDENT FERNÁNDEZ ARMESTO: We are sorry for that.

THE WITNESS: No worries.

MR. ULRICH: If it might be easier, then, for

me to read, perhaps, to facilitate the process?

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Ulrich is proposing that he read it to you. Would that be helpful?

THE WITNESS: If I can follow along, that would be great.

BY MR. ULRICH:

Q. Okay. In this first paragraph under heading Authentication, the document says: "We need to have the best procedure in place to make sure we purchase claims that are authentic, which the Government will recognize as valid and authentic and that will get paid."

A. I see that.

Q. Okay. So, Gramercy wanted to make sure that it bought authentic claims; right?

A. Correct.

Q. And had to be sure they were authentic so that they could recover at some point down the road. That was the plan; yes?

A. That would make sense.

Q. Okay. The second item on this diligence

checklist is "sales documentation." And we see here the Gramercy checklist reads: "When we buy claims, we need to make sure the seller is legitimate, that the sales agreement transfers all the rights of ownership of the claims. This will involve having a lawyer draft a purchase agreement that covers all the bases under Peruvian law and to have the strongest documentation to register the sale."

Okay?

A. Yeah. I mean, as I said earlier, I wasn't involved in any of this process. You know, I can see by the bottom of this document that it was probably drafted pre my involvement in this Land Bond acquisition, so maybe this was something that was drafted by David Herzberg, one of our employees, or maybe by José Cerritelli.

I don't know. I wasn't involved in this document, so to speak to it would be, you know, very difficult.

Q. Okay. Sure. Well, this makes reference to getting the strongest documentation to buy claims. So why don't we flip away from this document, turn to

Tab 2, please. Let's get a sense of what the documentation is here that Gramercy was assessing. Okay?

ARBITRATOR DRYMER: May I ask just a quick question, Mr. Lanava?

You say in your Witness Statement that Estudio Muñiz computed a diligence checklist, which I received. Is this the checklist that you received?

THE WITNESS: No, it is not.

ARBITRATOR DRYMER: Okay. Thank you.

BY MR. ULRICH:

Q. Okay. Mr. Lanava, Tab 2. This is Exhibit CE-114, Gramercy Memorandum of January 2006.

If you'd turn to the second page, please. Under the heading of "Transferability," we see the Gramercy memo reads: "The process of transferring title and Bonds is a bit complex. In order for transferability to occur, there must be an exchange of three documents. One, the physical Bonds; two, the property title; three, the sentencia judicial."

I don't speak Spanish, but hopefully you'll accept my pronunciation.

A. I don't either.
Q. Perfect. Perfect.
So, these were the three documents: Physical Bond, property title, and the sentencia that were required for each acquisition; right?
A. According to this document, but, again, I didn't draft this document.
Q. Okay. Well, we're just digging here to get a little more detail that was omitted from your Witness Statement, because your Statement does refer to the acquisition process and the diligence checklist that Peruvian counsel was providing. Okay?
A. Sure. I'm happy to explain what that checklist referred to. As I stated, I wasn't involved in any of the due diligence process to--regarding the acquisition of the Land Bonds, you know.
My involvement started after there was a decision by Gramercy to make the investment. And, as an operations person, my role was to set up bank accounts and brokerage accounts and wire money once my senior investment professionals authorized a transfer.
So, my role was very limited in scope. It

had nothing to do with the due diligence or the investment process or the legal process in order to acquire those Land Bonds.
So, again, I didn't draft this memo. It was, again, done before my involvement, and as an operations person, I wasn't on the Investment Committee, so I wouldn't have been privy to any of the information on what information they used to draft the memo or make a decision to invest in the Land Bonds.
Q. Understood.
If we could take a look at just a little bit lower in the page here under "transferability." At the paragraph at the bottom of the page, first sentence reads "as buyer of the Bonds, we would need to first review the physical Bonds"; right?
A. That's what it says, correct.
Q. Further down in that paragraph, "upon satisfaction that all three documents are authentic, we'd enter into a relatively straightforward contract"; right?
A. I see that.
Q. Okay. So Gramercy was required to review the

documents, including the physical Bonds; right?
A. When you say "Gramercy," I don't know if it was our counsel, if it was David, if it was José, if it was Robert. I really don't know.
Q. Okay. Well, some member of the Gramercy family or someone affiliated with them in Perú was involved in this acquisition process; yes?
PRESIDENT FERNÁNDEZ ARMESTO: The family were the companies, not the employees.
MR. ULRICH: Mr. President, you may say that in some companies people consider themselves members of the family, but I won't speak to Gramercy in particular.
THE WITNESS: No comment.
BY MR. ULRICH:
Q. Can we agree, Mr. Lanava, that a photocopy or a scan or a photograph wasn't going to be good enough for Bond authentication?
A. For who?
Q. Well, according to Gramercy's own assessment in this memo that we were just looking at. It required three documents, the certificate, the title,

the sentencia. It required physical review, and it required satisfaction that all of those documents were authentic; right?
A. Correct. And then I believe that Estudio Muñiz did that on behalf of Gramercy when bonds were acquired. And, again, from my perspective, when we were ready to acquire a package of Bonds, I would get approval from Robert Koenigsberger, and there was a memo from Estudio Muñiz to Mr. Koenigsberger that documented certain items, which I would refer to as a checklist, that then Robert had the authority, or he gave me the authority, to then wire the funds.
Again, I didn't make any decisions about if the documents were authentic or if Estudio Muñiz actually validated and authenticated the Bonds under Peruvian law. I believe that's what they did, but, again, I had no role in that.
Q. Understood, Mr. Lanava. And you are actually anticipating some of my questions, so maybe it might make sense here if, as we indicated earlier, I'll ask questions, and if you can try to limit yourself to "yes," "no," and we can probably get through these

issues pretty quickly. All right?
A. I'll do my best.
Q. Okay. Thanks.
So you said in your Statement you just mentioned for each Bond acquisition Gramercy assembled what you called a document package; right?
A. That's right.
Q. So, within that package it included these three documents: The Bond, the property title, the sentencia judicial; right?
A. There could have been other documents as well. I don't have the Bond--
Q. The sales contract, for example. Those three, sales contract, maybe some other documents?
A. I believe there was the assignment of rights. There were some testimonies. There was the Bond itself. There was the--I believe there was the Notary that stamped the back of the Bonds in GPH's name.
But I haven't looked at those documents for a long time. It was over 14 years ago. So, there could have been other documents as well.
Q. Okay. But local counsel, Estudio Muñiz, they

looked at those documents at the time of the acquisition; right? They pulled together these packages and reviewed them; correct?
A. I believe they reviewed the packages. They helped with the documentation, with the transfer of the Bonds from the seller to GPH. And then, again, they authenticated and verified that the Bonds were valid under Peruvian law. That's what I know.
Q. And they prepared a diligence checklist, you said, and they sent those checklists along, and you were among the recipients of the diligence checklist; right?
A. I received a memo, and, again, when I refer to a checklist, it wasn't a physical checklist that was one, two, three, four. It was really--what I referred to in my Witness Statement was a package of documents that Estudio Muñiz, as Peruvian counsel, reviewed and that they validated and authenticated that the seller had the right to sell, GPH had the right to buy, and that the documents that would authenticate or validate that transfer were part of that checklist, that package.

Again, I got that checklist/package as part of my approval from Robert to then release the funds from GPH to acquire the Bonds.
Q. Okay. And you received that package and that checklist for each Bond transaction; right?
A. I believe that's correct. I mean, there were a lot of Bond packages, and it was 14 years ago, so to say that I received every single one, I would say yes, but I didn't count. I didn't go back and look at every single Bond package, but I believe that we did that for every package that we bought.
Q. Okay. Let's please turn to your First Witness Statement. I'm guessing it's the larger of the spiral-bound volumes I have there. I'm at Page 3, Paragraph 10 in your First Statement.
A. Okay.
Q. Here you're describing steps taken by Gramercy colleagues. You've mentioned them in your testimony here today as well, Dave Herzberg and José Cerritelli. And in the final three lines of Paragraph 10, you state that they "in collaboration with Estudio Muñiz took all the steps necessary to

validate the Land Bonds and prepare the necessary documentation to acquire them."
That's what you've reaffirmed here today; right?
A. That is correct.
Q. Okay. So, then, if you turn to the next page of your Witness Statement in Paragraph 12, you say here, last sentence in Paragraph 12: "Based on all their efforts, we firmly believe and have never had any reason to doubt that all of the Land Bonds that Gramercy acquired are valid and authentic."
Do you see that?
A. I do.
Q. And that's your testimony?
A. Correct.
Q. Okay. But Gramercy unilaterally withdrew over 100 Bonds from this case; right?
A. You know, it's my understanding that in reviewing Mr. Koenigsberger's Witness Statement, that there were some Bonds that were either coupon only or they were unclipped coupons, and that in an effort to make the authentication process easier, that we remove

them just so that we wouldn't have a difficult time authenticating them.

So, I don't know how many it was. But I believe that we had over 9600 Bonds, and I believe we turned over 21,000 pages of documents related to the Bond packages, but I don't know how many Bonds were pulled out of the package of the Bonds, but I believe there was still over 9600.

Q. Okay. So Gramercy removed those Bonds in order to head off a dispute over authenticity; right?

A. I don't know.

Q. Okay. Some of the discrepancies that they found in these Bonds, you just mentioned, as an example, where there was--you said as an example, where there were coupons only. So, that means that there was no Bond Certificate; right?

A. Again, I remember reading that in Mr. Koenigsberger's Witness Statement, but I wasn't part of the process of pulling out specific Bonds and why those specific Bonds were pulled out and what they didn't have or they did have. So, I really apologize that I can't answer that question.

Q. Okay. Let's turn to another document. Okay? Tab 3 in the binder before you. This is correspondence C-12. It's a Gramercy letter dated April 13, 2018. This is what we've been discussing, Mr. Lanava, where Gramercy wrote to the Tribunal and said that it was going to remove some Bonds.

And if we look at the third paragraph on this page, it says: "After"--

PRESIDENT FERNÁNDEZ ARMESTO: This is C-12.

MR. ULRICH: C-12.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry.

BY MR. ULRICH:

Q. So, it reads: "After careful assessment of the Land Bonds, Gramercy has removed a small number of Bonds containing minor discrepancies." Right?

A. I see that.

Q. Okay. So April 2018, the date of this letter, that's 10 years after Gramercy's last acquisition of Bonds in 2008; right?

A. I believe the last purchase was June of 2008.

Q. Okay. So, this is long after Gramercy supposedly authenticated all the Bonds at the time of

acquisition; right?

A. It would be.

Q. And now this example of Bonds missing coupons, the physical Bond itself, the certificate, that was one of the key documents required for authentication; right?

A. I believe we wanted to make sure that we had valid documents and valid Bonds.

Q. Okay. So with this later assessment some years later, Gramercy removed from the case all Bonds where it was missing this Bond Certificate; right?

A. Again, you know, my involvement in this--I'm sorry--was between June of 2006--or, I guess, February of 2006 and June of 2008.

Q. I understand what you're saying, Mr. Lanava--

(Overlapping speakers.)

A. --role in this proceeding for some time, so what I said earlier was that there were some Bonds that were removed based on my review of Mr. Koenigsberger's Witness Statement. But I don't know why they were removed or if they were difficult to authenticate or if they were impossible to

authenticate. So, I really don't know why.

Q. Okay. We're going to move on from this topic shortly, but you did represent expressly in your Statement, Mr. Lanava, that all the Bonds were valid and authentic. You do have that statement in your Witness Statement; correct?

A. I do.

Q. Okay.

A. But, again, I can't say for certain whether those Bonds that were removed were not authentic or if it would have just been more difficult for the Tribunal or for this particular proceeding to authenticate those.

So, I really don't want to mix that all the Bonds were authentic with the fact that some Bonds were pulled out for reasons that I don't know why, but I can't say that it was because they weren't authentic.

Q. Okay. So, when you say in your statement that you firmly believe that all the Bonds are valid and authentic, you're saying now you can't actually speak to that issue. Is that it?

A. No, no. When I said that, and I say that, I believe that all the Bonds are valid and authentic. There were certain Bonds that you state that were removed, but I don't know why they were removed.

Q. Okay. You know what these Bond certificates look like; right? You've had some exposure to them with the document packages over time?

A. I have seen the photocopies that we provided to the Tribunal.

Q. Okay. Let's take a look, please, at what's behind Tab 5 in your binder.

MR. ULRICH: This is part of Exhibit CE-224-A, Mr. President. It would be exceedingly difficult for you to find it right now because it's one of thousands of documents--document images.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. But you will put it on the screen?

MR. ULRICH: We will put it on the screen, yes.

BY MR. ULRICH:

Q. Sorry, just a moment while we pull that one

up.

This is what Gramercy submitted for Bond Number 023679 from Bond Package Number 76. So, it's part of the inventory of photos of Bonds that they submitted.

Okay. Mr. Lanava, we all in the room know what these Bond Certificates look like. That's not a Bond Certificate; right?

A. It looks like the Bond coupons, but no Certificate.

Q. Okay. It looks kind of like a computer printout of some kind, right, with the coupons detached and below further in the image?

PRESIDENT FERNÁNDEZ ARMESTO: Wait. I cannot read--

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: I just say that I cannot read it at this distance. These are the coupons. These are evidently--

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: And can we get that big? Yeah, thank you.

MR. ULRICH: So, this is what we have where the Bond Certificate is supposed to be, Mr. President, for this particular Bond.

BY MR. ULRICH:

Q. Now, based on what Gramercy has told us--

ARBITRATOR DRYMER: I'm sorry to be pedantic. Even if not at the moment, perhaps you could just give me the page number and the PDF that we can have at least to look at later as well. It doesn't need to be while you're conducting your examination, Counsel. I'm happy if your friends give it to me after.

PRESIDENT FERNÁNDEZ ARMESTO: And what is the question now to the Witness?

THE WITNESS: Thank you. It was uncertain.

MR. ULRICH: Sure. To clarify where this document is in the record, it's part of the compilation of images submitted at CE-224--I believe it's CE-224A, Appendix B. And if you look at the bottom of the page, there's a Bates Number that reads GMCY-0004634.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So what is the question for the Witness?

BY MR. ULRICH:

Q. Well, the question is, that's not a Bond Certificate, is it?

A. Well, again, I wasn't part of the document process that Gramercy went through in order to provide all this information to the Tribunal, so I wasn't part of pulling these documents together, so I don't know what this is.

Q. Okay. Well, Gramercy has told us this is a Bond Certificate from February 1972.

PRESIDENT FERNÁNDEZ ARMESTO: Do you speak Spanish?

THE WITNESS: I do not speak Spanish.

PRESIDENT FERNÁNDEZ ARMESTO: To be fair to you, this is a judicial document signed by a judge and the secretary of the court which orders the endorsement of certain Bonds, and there are some numbers and classes and monies, so that you know what you are looking at.

THE WITNESS: Thank you very much. I've never seen this document before.

BY MR. ULRICH:

Q. If we look in the middle of the page, Mr. Lanava--I don't speak Spanish, you're not a Spanish speaker--it looks to me like it is dated 1 September of 2006.

Would you agree with me on that?

A. Yes.

Q. Okay. And Gramercy has told us that this Bond is dated February 1972. So, this document is not that Bond. It can't be; right?

A. Again, Counsel, I didn't produce this document, so I really can't speak to it.

Q. Okay. Gramercy hasn't removed this one from the case, has it?

A. I don't know.

Q. Okay. I think we can move on.

Let's turn to Tab 9, please. This is Exhibit R-372, Tab 9 of your binder.

A. Umm-hmm.

PRESIDENT FERNÁNDEZ ARMESTO: 3?

MR. ULRICH: R-372, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: 372. Thank you.

BY MR. ULRICH:

Q. This is from Perú's Ministry of Finance website. We see at the top a picture of Forensic Experts from the national police who authenticate each Bond submitted into Perú's Bondholders Process.

Okay?

A. I have no idea if that's correct or not.

Q. Okay. Well, do you know--Gramercy didn't hire these guys to authenticate the Bonds, did it?

A. I don't know.

Q. Okay. Gramercy didn't hire any Forensic Experts to authenticate the Bonds, did it?

A. I don't know.

Q. At some point, Gramercy did hire Deloitte; right?

A. To do what?

Q. To look at the Bonds; right?

A. We did engage Deloitte at some point.

Q. And Gramercy has relied on Deloitte's work as evidence of its bond holdings in this proceeding; right?

A. Can you point to that document, please?

PRESIDENT FERNÁNDEZ ARMESTO: Well, I think this is undisputed. You have presented a certificate or a report from Deloitte from which we took this--the photographs were made by Deloitte, and it has a certain declaration in it. Let's not say more.

Are you aware of that?

THE WITNESS: I believe I am, but I would like to see the Doc. before I comment on it.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

BY MR. ULRICH:

Q. Okay. Let's take a quick look. It is Tab 4 in your binder. This Exhibit CE-224A.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

BY MR. ULRICH:

Q. This is the Deloitte Report, along with the inventory of the Bonds. Now, I just want to draw your attention, Mr. Lanava, to Page 7. And we see under the big header here, "Use limitations and disclaimers"; right?

A. Correct.

Q. Okay. And I'll just read here quickly. It reads: "In connection with this Report, the advisor

does not express any certification, attestation, or opinion of any kind other than as explicitly set forth herein. This includes attestations on the authenticity of the Bonds inspected, validity of signatories or notaries present on the Bonds, or present valuation of Bonds."

Do you see that?

A. I do.

Q. Okay. So, Deloitte didn't authenticate the Bonds either; right?

A. I don't believe we asked them to do that in this Report.

Q. Okay. It wasn't within the scope of what you hired them to do.

A. I believe we hired them, and I can read it "to take copies of"--"digitally capture the very images of the Bonds set forth in the inventory schedules," but I did--I have reviewed this, and I don't believe we asked Deloitte to authenticate the Bonds at all, and, as I stated earlier, it is my belief that Estudio Muñiz, through their process in GPH acquiring the Land Bonds, authenticated and

validated the Bonds under Peruvian law. That is to my knowledge.

Q. Okay. So, we see here consistent, it sounds like, with the scope of what Gramercy hired Deloitte to do. They are--expressly disclaimed any certification as to authenticity of the Bonds; right? They didn't do it?

A. They weren't asked.

Q. There you go.

Okay. So, then at the end of the day, as far as authentication goes, we are only left with whatever Gramercy says it did; right?

A. I believe we're--I'm not a lawyer, so what I can say is that we've relied on the Estudio Muñiz, who is our Peruvian counsel, who created a document checklist of what I explained earlier, of validly taking assignment from the seller to GPH and that those Bonds were then notarized over to Gramercy Perú Holdings. That's what I know, Mr. Ulrich.

Q. Okay. Thank you, Mr. Lanava.

So, with the totality of that process, then, we are left with whatever Gramercy has provided, which

includes documents dated September 2006, which are supposedly bond certificates of February of 1972?

A. I mean, it's all my understanding that Gramercy has asked Perú on several occasions to take in our Bonds and do a verification and a reconciliation, and that we haven't--they haven't taken us up on that. And I believe in some of my preparation that the documents that were presented in the case were deemed to be authentic, unless objected. And I believe that the Tribunal, under Procedural Order 1, stated that.

So, again, I'm not a lawyer, and I was an investment professional, but under Peruvian law, according to our counsel, the Bonds were authentic and validated and assigned to GPH. That's what I know.

Q. Okay. Before we move on, you've referred a few times to these document packages assembled at the time of Bond acquisition; right?

A. Right, I do.

Q. You got these packages, you saw the due diligence checklists.

A. Was that a question?

Q. I just want to confirm, with these document packages, Gramercy kept those in its files; right?

A. Gramercy had electronic copies of those documents.

Q. Okay. And they were assembled and packaged at the time of each acquisition; right?

A. That's right, and what would happen is once they were completed and approved and Mr. Koenigsberger had approved the transfer, Estudio Muñiz, along with David Herzberg, would then coordinate to transfer the original documents and bonds to Citibank Lima, our custodian.

Q. And the documents in this packages, they show all the documents of these transaction, like the transfer date and the seller and the purchase price; right?

A. I believe that would be part of the document package.

Q. Okay. And you can't get all that information just by looking at a bond certificate; right?

A. I believe that the transfer of assignment of rights probably has different language, but, again,

I'm not a lawyer, so I can't state for a fact that you can't get that on the Bond package--or the Bond, but I'm assuming that the entire Bond package would be able to help you take assignment of the Bond. And, again, it was a bond package, and the Bond itself was the document that was notarized over to GPH. I think that was the only change on the Bond itself.

Q. Okay. So, these document packages that Gramercy had in its files that were organized by each transaction, Gramercy didn't put those into the record of this proceeding until May 2019; right?--three years into the case?

A. Again, I wasn't part of the document production process, so I can't comment on that.

Q. Okay. Well, I did want to ask you those authentication questions, Mr. Lanava, because you had that express representation in your statement that at all of the Bonds were valid and authentic. But for now I want to move into some other areas that, perhaps, you're more comfortable with. And let's talk about the Gramercy corporate structure; okay?

A. Okay.

Q. After the first round of briefing in this case, Gramercy submitted dozens of documents regarding the structure used to acquire and hold the Bonds; right?

A. Correct.

Q. And to sell interests in the Bonds to third parties; right?

A. It was economic interest or beneficial ownership in the economics of the underlying Bonds.

Q. Okay. We're going to get into all that, but I just, as a preliminary matter, wanted to cover Gramercy asked that all these documents receive a confidentiality designation; right?

A. I'm not sure if they did or not.

Q. Okay. Well, they did, and that designation prevents us from addressing them in open session, so let's please cut the feed.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MR. ULRICH: All right. With that I think we can go to the green light, Open Session.

BY MR. ULRICH:

MR. ULRICH: I'd like to direct you, Mr. Lanava, to Tab Number 12 in your binder. This is Exhibit CE-454. This is GPH's April 2006 Operating Agreement. Not confidential. It is actually one--I think the only corporate document that Gramercy submitted with its Statement of Claim. Okay, so--

A. Do I need to answer that question?

Q. No. Here is my question. Looking at this Agreement, 17 April 2006, that's the date that GPH established; right?

A. That's correct.

Q. And the Operating Agreement, that's a foundational document that sets out how GPH is to be operated, managed, things of that nature; right?

A. I believe so.

Q. Okay. If we turn to Page 2, please. I'm looking at Article 2. And, in particular, Article 2.2, heading "Capital." And we see in 2.2(b)

that "the Company's profits and losses shall be allocated to the members in accordance with their respective membership interests;" right?

A. I can see that.

Q. Okay. And Article 2.3, just below it, "tax allocation," it says basically the same thing, but it specifies that for each fiscal year of the Company, items of income gain, loss, deduction or credit, they are to be allocated for income tax purposes among the members; right?

A. I can see that, but I'm not an accountant and I stated earlier that I'm not a lawyer. So, I didn't draft this document, so anything that I would be giving you in regards to this document would be speculation.

Q. Okay. At the time of this Agreement--this is 2006--GEMF was the sole member--right?--the 100 percent owner of GPH? It is actually--your instincts are good. It's the last page of the Agreement there, Page 9, specifies "membership interests?"

A. So, that's correct. And, as we said earlier,

that GEMF owned 100 percent of GPH.

Q. Okay. So, any profits or losses of GPH repassed directly to GEMF as its sole member, its 100 percent owner; right?

A. Again, I'm not an accountant, but I assume so.

Q. Okay. So, at the end of the day, GPH doesn't stand to gain or lose any money by holding the Bonds. Any profits or losses are going to be passed directly on to its owner, GEMF; right?

A. I can't answer that question.

Q. I was planning to show GPH's 2011 Amended Operating Agreement, but maybe in the interest of time, we can just quickly confirm a few points together. Okay?

A. Okay.

Q. The Amended Agreement that was concluded as part of some of the changes over time that Gramercy made to its structure; right? It is something you covered in your Witness Statement.

A. You're referring to Tab 14?

Q. Tab 13 is the Amended Agreement.

A. Oh, I'm sorry. Sorry, you're right. The one-eye issue.

Q. And this also was covered in the structure chart. So, under these different changes to the structure over time, GEMF was removed from the structure as the sole owner of GPH. And at some point, Perú Agrarian Reform Bond Company, you refer to as "PARB," became the sole member, sole owner of GPH; right?

A. That's right. I believe that was in 2007, PARB was established and inserted as an intermediate holding Company, which wholly owned GPH. And GEMF wholly owned PARB.

Q. And under the amended Agreement, the terms remain the same. Any profits or losses were going to be passed directly from GPH to its owner, and as of 2011 until today, that's PARB; right?

A. Again--

MS. LAVAUD: Excuse me. For the record, it says "allocated," I believe, not "passed on," as you just said. Paragraph 2.2(b).

MR. ULRICH: Thank you for the clarification.

Let's take a look at the document. I was trying to save some time here.

BY MR. ULRICH:

Q. But Tab 13, Article 2. This is the Amended and Restated Agreement from 2011?

A. Umm-hmm.

Q. Is that Page 3? Okay.

Page 3, Article 2.2, "Capital." We see same language as under the original Agreement, the "Company's profits and losses shall be allocated to the member;" right?

A. I see that.

Q. Okay. And then just underneath it, 2.3, on tax allocation, same thing, hasn't changed.

A. I didn't compare them, but I'll take your word for it.

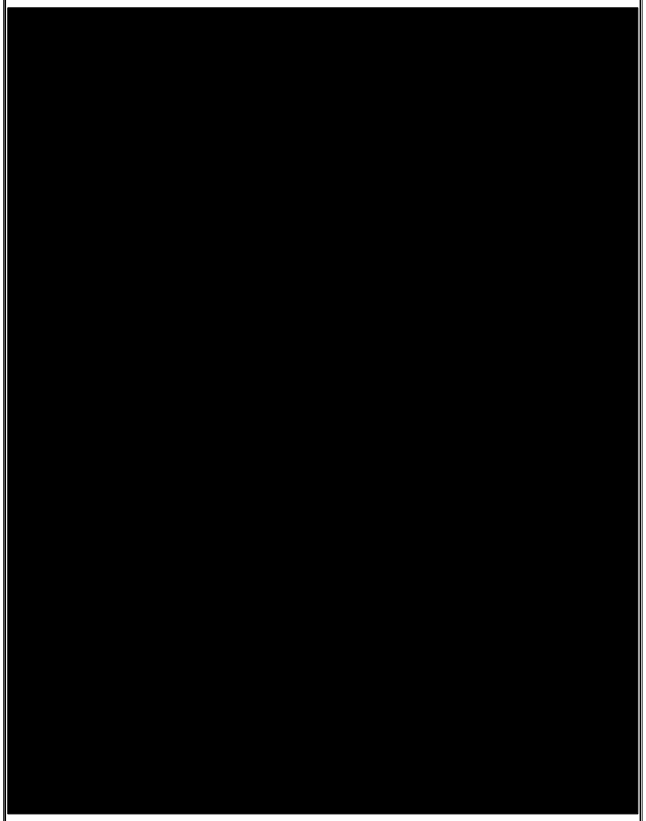
Q. Okay. Thank you for doing that.

So, in fact, for accounting purposes, maybe you know this, Gramercy reports the assets of GPH on the balance sheets of PARB; right?

A. I'm not sure. Again, I'm not an accountant. My involvement was--yeah. Was related.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION



[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

PRESIDENT FERNÁNDEZ ARMESTO: You were asking what would happen if the monetization happens. So, let's assume that the Bonds are actually monetized. What would happen to the Funds?

THE WITNESS: I mean, I would be speculating, but I would think that, after 14 years, that the investors that have a beneficial interest in the underlying economics of the Land Bonds would want to have that, those monies distributed.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. No, no. The question is how would the corporate flow occur?

MR. ULRICH: If I may, Mr. President, just to take it a piece at a time.

PRESIDENT FERNÁNDEZ ARMESTO: I was trying to speed up.

MR. ULRICH: I do appreciate that.

PRESIDENT FERNÁNDEZ ARMESTO: But, Mr. Ulrich, do it your way.

BY MR. ULRICH:

Q. But just to be sure we don't miss any steps, because it is important to clarify for the record what

is going on here. If Gramercy were to monetize the Bonds with--as the first step, any proceeds would be passed--allocated under the terms of the Agreement, GPH to its sole member PARB; right? As 100 percent owner. It goes to PARB.

MS. LAVAUD: Excuse me, Mr. Ulrich, "distribution" is different than "allocation." There's another provision in the Operating Agreement that refers to "distribution." So, if you'd like to ask the Witness about that, you may do so, but you should point to the right provision.

PRESIDENT FERNÁNDEZ ARMESTO: Let's make it very simple question. This is not for you. This is for counsel. An important point here is whether there is a--in companies, normally there is no automatic allocation of profits to your Shareholder. There is a corporate Resolution and sometimes you allocate and sometimes you don't. You pay a dividend, or you retain.

And I think that the important question here is whether--or the one Mr. Ulrich was trying to cover was whether there is an automatic system that all

funds automatically, all profits automatically must go 100 percent to the parent without any possibility that they are retained at the level of the subsidiary. That was, I think, the thrust of your question.

And maybe we leave this for redirect, but up to now, I have understood that these are special type of--"special purpose vehicles," where profits necessarily flow 100 percent from the subsidiary to the parent. That's where I stand to now as to my understanding of the corporate structure.

Mr. Ulrich, is that--that is where we stand?

MR. ULRICH: That is where we stand, and I think we can move on.

PRESIDENT FERNÁNDEZ ARMESTO: Move on. If it is wrong, please show it to us in the redirect.

MS. LAVAUD: I will. Thank you, Mr. President.

BY MR. ULRICH:

Q. Let's move to GFM, the other Claimants. Okay?

GFM doesn't hold title to any of the Bonds; right?

A. No.

PRESIDENT FERNÁNDEZ ARMESTO: Evidently no. Evidently no. Because all the Bonds are in the name of--you have said so, but let's double-check. You are right. Let's double-check that.

Is any Bond in the name of GFM?

THE WITNESS: No. So, Gramercy Perú Holdings has title, direct title to all the Bonds, and Gramercy Funds Management has its investment manager--controls GPH. So, it has all the rights, titles, the authority to manage GPH, but GPH owns the Bonds.

MR. ULRICH: Thank you, Mr. President, and I am just trying to confirm for clarity of the record, while we have Mr. Lanava here, some of these points, taking into account, among other things, the fact that, for years in this arbitration, Gramercy said GPH holds, GFM controls, look no further.

And it was not until the second round of submissions that we received documents and were able to start commenting on these issues in any way. The documents were incomplete. A lot of them were redacted, and so we're doing our best to piece

together the puzzle here.

PRESIDENT FERNÁNDEZ ARMESTO: I know.

MR. ULRICH: And if it's becoming clear for you, then we are moving in the right direction.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But it was a good question from you, because there could--there could be some exception to the general principle. So, we have now that--clarify that absolutely all Bonds are held through this structure, and that the only role of GFM is to manage GPH.

THE WITNESS: What I would say is that in--when it was originally--when GPH was originally set up, Gramercy Investment Advisors, which was an affiliate and was the investment manager, and over time as the Gramercy corporate structure, the management company corporate structure changed, GIA assigned its Investment Management Agreement to GFM, and that's how GFM became the investment manager, so later on, after our initial purchase in 2006, then we said earlier that GFM was established in 2009.

PRESIDENT FERNÁNDEZ ARMESTO: And GFM is the entity which is supervised by the SEC? At the SEC.

THE WITNESS: Yes, sir. So, Gramercy Funds Management is our registered investment advisor, and we first became a registered investment advisor back in 2000 with Gramercy Advisors. So, we take great pride in having transparency and oversight for our investors.

MR. ULRICH: May I proceed, Mr. President?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course.

MR. ULRICH: Thank you.

BY MR. ULRICH:

Q. Okay. Picking up with the GFM, Mr. Lanava, that was inserted--substituted into this structure in 2011; right? I just--to clarify the timing. Around the time of this 2011 Amended Operating Agreement, this is when GFM assumed its role in the structure controlling GPH, yes?

A. I believe the date was in December of 2011. I'm not 100 percent sure, but there was an assignment and an assumption Agreement between GIA and GFM that assigned the Investment Management Agreement to GFM.

Q. You referred earlier in testimony to a "symbiotic relationship," you called it, between GFM

and GPH. Let's take a look at the Amended Operating Agreement. This is Tab 13, Exhibit CE-165.

Turn to Page 3, please. Article 3, Management and Control. It specifies here in 3.1, "Management Authority, Gramercy Funds Management LLC, the Sole Manager, acting in its capacity as Sole Manager, has the exclusive power to."

A. I'm sorry. Can you please repeat that tab?

Q. Sure.

A. I'm in the wrong tab. I do. I'm sorry.

Q. No problem at all. We're in Tab 13.

A. That's the one-eye issue. Sorry.

Q. No problem. We also--if it's any easier, it is on the screen there with the particular paragraph.

A. I can't see that.

Q. Understood.

A. Okay. Sorry.

Q. I'm on Page 3 of Tab 13. This is Exhibit CE-165. Article 3, "Management Authority" and it says: "Gramercy Funds Management LLC, the Sole Manager, acting in its capacity as Sole Manager, has the exclusive power to."

And then there's a list of things that it has the power to do; right?

A. Correct.

Q. So, you said "symbiotic" earlier, but, essentially, GFM has sole control over GPH and does--GFM controls GPH?

A. GFM controls GPH, and what I was referring to is that GPH owns the Bonds and GFM controls GPH, that's what I was referring to.

Q. Okay. And I think we've adequately covered that GFM receives--is allocated no profits or losses from GPH. How about Page 4, though. Article 3.3. It is titled "Liability for Certain Acts."

And in the second sentence it says, "that to the fullest extent permitted by law, the Sole Manager or any agent of the Sole Manager shall not be liable to the Company or the member for any mistake of fact or judgment, or for the doing of any Act, or the failure to do any Act in conducting the business operations and affairs of the Company that may cause or result in any loss or damage to the Company or its member."

So, what this provision does is it shields GFM from liability in its management of GPH; right?

A. Again, I'm not a lawyer.

Q. If we look further down in that paragraph, last sentence, is almost identically worded. It reiterates, again, "to the fullest extent permitted by law, neither Sole Manager or any agent of the Sole Manager shall be liable to the Company." Same point?

A. Okay. Again, not a lawyer.

Q. Okay. Thank you.

Okay. Mr. Lanava, in addition to the Operating Agreement, GFM entered into Investment Management Agreements with various Gramercy entities; right?

A. I believe so.

Q. Okay. Did that include an Investment Management Agreement between GPH and GFM?

A. I'm not certain.

Q. Okay. Neither are we, because it doesn't look like Gramercy has produced that document.

A. But it wouldn't be unusual for there just to be an Operating Agreement which clearly gives GFM

control over GPH.

ARBITRATOR DRYMER: Excuse me, remind me, did you ask that question of the previous Witness? I don't recall that you did. I mean, you might have got an answer from the CEO. In any event.

MR. ULRICH: I do not believe that we did.

PRESIDENT FERNÁNDEZ ARMESTO: I am now lost. There is an Operating Agreement, and then there are Investment Management Agreements, you said.

What is the difference between an Operating Agreement and Investment Management Agreement?

THE WITNESS: I will speculate, again, because I wouldn't have drafted either one of those documents, but I believe the Operating Agreement is the controlling document for the Company and is binding, and there is an IMA that designates an investment manager that also would--again, I'm speculating--outline certain rights and authorities for that investment manager to do on behalf of the Company, but, again, I believe that the Operating Agreement is the controlling document.

And I don't know if there is an IMA between

GFM and GPH. I don't believe there is, but, again, I can't confirm that. But I believe that the Operating Agreement clearly states that GFM has the authority to do what is necessary on behalf of the Company.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

THE WITNESS: Thank you.

BY MR. ULRICH:

Q. Okay. Let's move along. And we are going to head back into confidential territory.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

BY MR. ULRICH:

Q. Just to be clear, we've gotten into the details of the corporate structure. We've talked about these beneficial owners. These entities and individuals up the structure, these beneficial holders, they have this economic exposure to the Bonds because they invested in Gramercy; right?

A. The investors subscribed to the Gramercy Emerging Markets Fund, which then equitized GPH and then purchased the Land Bonds. So, they have an economic interest in the Land Bonds, correct.

Q. Okay. But Perú didn't sell them Bonds.

A. I'm sorry?

Q. Perú didn't sell these individuals and entities Bonds.

A. You know, I don't know how they obtained them. It is my understanding that Perú expropriated land, but I'm no expert on that. So it's my understanding that they did acquire--the sellers acquired the Bonds, and my role, as Head of Ops back in 2006, was to help acquire those Land Bonds for GPH.

Q. So, just with respect to the Gramercy structure, we're talking about these thousands of entities and individuals that now have an interest in the Bonds. They have that interest because they invested in Gramercy; correct? This is a structure set up by Gramercy. They invested in Gramercy. That's how these beneficial owners have an interest in the Bonds.

A. That's correct. But the fact that GPH owns the Bonds and GFM controls GPH is really--you know, at heart, the fact that there's an economic interest or structure above, you know, that doesn't change anything. GPH owns the Bonds and GFM controls the entity.

Q. Thank you, Mr. Lanava.

MR. ULRICH: Mr. President, no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you, Mr. Ulrich.

Let's go to redirect.

MS. LAVAUD: Thank you, Mr. President, and I will be very brief.

PRESIDENT FERNÁNDEZ ARMESTO: Take the time you need.

MS. LAVAUD: Thank you.

REDIRECT EXAMINATION

BY MS. LAVAUD:

Q. Mr. Lanava, you were taken to the Operating Agreement earlier between GPH and GFM.

Do you remember that?

A. I do.

MS. LAUVAD: And for the record, that is CE-165.

ARBITRATOR DRYMER: That's the Amended Agreement; right?

MS. LAVAUD: Yes, absolutely. Amended and Restated, yes.

PRESIDENT FERNÁNDEZ ARMESTO: CE-165.

BY MS. LAUVAD:

Q. Dated December 31, 2011. And that's Tab 13 in your binder.

THE WITNESS: I have it.

(Comments off microphone.)

BY MS. LAVAUD:

Q. Do you have it?

MS. LAVAUD: Can you release the monitor so we can put the slide up? Great. Thank you very much.

BY MS. LAVAUD:

Q. You were asked questions in this document, what would happen if any money were to be received by GPH.

Do you remember that?

A. I do.

Q. And you said, I believe, that it would be distributed.

Do you remember that?

A. I do.

Q. And I'd like to point your attention to Paragraph 8 of this Amended and Restated Operating Agreement, Article 8, and that's on Page 5.

A. Okay.

Q. Do you see that it says "the Company may make distributions to the member from time to time in such a manner as the Sole Manager shall determine"?

A. I see that.

Q. Is that consistent with your understanding,

Mr. Lanava?

A. It is.

Q. Now, you were also asked questions about the interest that GFM has, and do you remember that by Mr. Ulrich?

A. I do.

Q. And what kind of interest does GFM--for example, does it have any carried interest?

A. It could. It could have a carried interest if there was performance on the underlying securities, which would then obviously be towards GFM.

Q. Thank you.

MS. LAVAUD: I have no further questions. Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Is there any follow-up question from you, Mr. Ulrich?

MR. ULRICH: Sure, just a very quick follow-up based on that line of questioning.

RECROSS-EXAMINATION

BY MR. ULRICH:

Q. So, GFM earns a management fee; right?

A. I'm sorry. Could you say that again?

Q. So, GFM--we're setting aside the question of beneficial ownership and who has what percentage. As the manager--investment manager of GPH, GFM earns a management fee; right?

A. It's common that GFM would earn a management fee from its investment vehicles.

Q. Okay. And it earns also, you just testified, a performance-based fee, a carried interest; right?

A. It can.

Q. Okay. So essentially GFM has exposure to all upside. It makes money if the investment performs well or not, and then if the investment performs well, it makes even more money; right?

A. Possibly.

ARBITRATOR DRYMER: You said it can have a carried interest. Do you know whether it does have a carried interest?

THE WITNESS: I don't know. Again, that's an accounting question. I apologize. I'm definitely not an accountant.

BY MR. ULRICH:

Q. Let me ask one question on that then.

Gramercy has produced a number of Investment Management Agreements--GFM Investment Management Agreements. Are you aware of the fact that Gramercy has redacted any fee provisions in any of those agreements so that Perú and the Tribunal cannot see what this carried interest is and the management fee in this case?

A. No. I think I stated earlier that I wasn't involved in any of the document production in this Arbitration panel, so I didn't see what went out. I didn't look at any documentation that was produced. So, I apologize, I can't answer that question.

PRESIDENT FERNÁNDEZ ARMESTO: Because your fee structure depends--is different for each fund--you do not apply the same fee structure for all investors. Each investor negotiates and has a separate fee structure for the services provided by Gramercy. Is that so?

THE WITNESS: That is correct. In some cases, a separately managed account can negotiate its own fees, and in some cases in regards to a Gramercy Fund, it will have a different fee structure. So

you're correct, Mr. President.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

PRESIDENT FERNÁNDEZ ARMESTO: So coming back to my question, significant investors tend to have lower fee structures than smaller investors, as a general rule.

THE WITNESS: Without speculating, and without knowing exactly what the fee structures are for this particular vehicle and for all of our clients, that could be the case, in general.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

ARBITRATOR DRYMER: No, nothing for me. Counsel have covered all the questions I would otherwise ask. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much for being here on a Saturday, on a Saturday afternoon, and helping us to understand the complexities of your business. Thank you very much.

THE WITNESS: Thank you for your time.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good. So we are now off the record.

(Brief recess.)

ROBERT JOANNOU, CLAIMANTS' WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Good afternoon.

We had some discussion about the correct pronunciation of your name.

What would it be?

THE WITNESS: Joannou (pronouncing).

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Mr. Joannou, thank you very much for being here with us. Thank you very much for having waited. We are slightly behind schedule, and we apologize--

THE WITNESS: No problem at all.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: You must leave it on, Mr. Joannou. That's perfect.

Mr. Joannou, you are here as a Witness, and the first thing we have to do is we have to take your oath of saying the truth.

So, can I kindly ask you, can you stand up, please. You have the formula for the oath in front of you. Can you please take your oath.

THE WITNESS: I solemnly declare, upon my honor and my conscience, that I shall speak the truth,

the whole truth, and nothing but the truth.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. You have counsel on both sides. They will put some questions to you. Especially counsel for the Republic of Perú will put the questions in a form that you can answer with a "yes" or "no" or "I don't know."

I kindly ask you that you first state for the record, so that it's clear, what your position is, "yes," "no," or "I don't know," and then add whatever clarification you would like.

THE WITNESS: Understood.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Closed session, please.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

BY MR. JIJÓN:

Q. Mr. Joannou--sorry, I apologize. I also have a hard-to-pronounce last name, with a J.

A. No problem.

Q. Can you repeat that just one more time for me?

A. Joannou (pronouncing).

Q. Joannou. Thank you.

A. No problem.

Q. Mr. Joannou, you are Gramercy Funds Management's Chief Financial Officer; correct?

A. I am.

Q. You joined Gramercy in 2007.

A. I did.

Q. At that time, it was Gramercy Advisors.

A. It was.

Q. And at what point did you transition to Gramercy Funds Management?

A. This is my best guess: 2012, maybe.

Q. Thank you.

You became CFO of Gramercy Funds Management

in 2015; correct?

A. Correct.

Q. And you have worked on the Land Bond Initiative at Gramercy since when?

A. So I would say it's a bit complicated. I worked on the management company side of the business from 2007 to 2010. I assisted on the year-end audits starting in 2009 and then took a very, very active role from 2010 forward, which obviously included work on the Land Bond project.

Q. Thank you.

Now, in preparing this statement, you say you've reviewed various documents to refresh your memory; is that correct?

A. Correct.

Q. And those are the documents that are cited in your statement?

A. Yes.

Q. Did you review any documents that were not cited in your Statement?

A. Some of the other Witness documents, I reviewed those.

Q. Thank you.

Do you speak Spanish?

A. I do not.

Q. Thank you very much.

Let's talk very quickly about Gramercy's expenses.

A. Yes.

Q. You were not involved in GPH's acquisition of the Land Bonds; correct?

A. Correct.

Q. And that was in 2006, 2006 through 2008?

A. I believe that's correct. I wasn't involved with that, but I believe that's correct.

Q. So, during your time in the management company starting in 2007, you were not involved in the acquisitions between 2007 and 2008?

A. I wouldn't be involved anyway on the support side. The investment team worked on it, but it's correct to say I was not involved in the acquisition.

Q. Thank you.

And you have verified that Gramercy paid $33 million for those Land Bonds.

A. Correct.

Q. And in your statement, you say that in order to confirm that, you've reviewed various Bond packages?

A. Correct. Can you show me where?

Q. Absolutely. It is Paragraph 7 in your Statement. It's on Page 2.

A. Yeah.

Q. If you look a little further down, you say--you are citing there to a document CE-711, Schedule of Bond Purchases.

That is Tab 1 in your binder, if you want to take a look.

A. Yes. Yes. I'm familiar with that document.

Q. This document, for the record, is titled "Perú Agrarian Reform Bond Acquisition Costs," CE-711 in the record.

Now, Mr. Joannou, this document is not dated; correct?

A. It is not.

Q. Did you prepare this document?

A. I did not prepare that document.

Q. This is the internal--internal record that you reviewed.
A. Yes.
Q. Do you know when this was prepared?
A. I don't know.
Q. Do you know who prepared it?
A. I do not.
Q. Do you know on the basis of what it was prepared?
A. The basis it was prepared on were internal accounting systems, a system called Advent Geneva that had the purchases.
Q. And just to be clear, right now we're not talking about the Land Bond purchases. Right now we're talking about other acquisition costs. If you look, there's a first block that says Muniz Ramírez Pérez-legal.
A. So my tab one is the schedule.
Q. Sorry. I'm looking at the wrong document.
Sorry, 711--I guess, since you're there, 711 is the Schedule of Bond Purchases, just to correct the record. This is what happens when one moves so

quickly.
If we move now to Schedule 7--or to Tab 2.
A. Yes.
Q. That is Exhibit CE-712. That is the document, Perú Agrarian Reform Bond Acquisition Costs; correct?
A. That's correct.
Q. And just to reconfirm, did you prepare this document?
A. I may have prepared this document. I don't recall if I did. I know I reviewed it.
Q. And on the basis of what did you prepare this document, if you prepared this document?
A. Yeah. So, this document was created using accounting records as well. Advent Axys is the accounting system that we used that we book all the expenses in.
So we had--in particular, the top half where you have the legal expenses, that came directly from Advent Axys. The acquisition costs were sourced from--where you have "José Cerritelli" down to "ADAEPRA," that came from other supporting schedules

that we were able to source. And then finally the bottom expenses, the other expenses, I'm very familiar with. They are also booked in our accounting--it's Advent Geneva, an updated system, but they're directly out of that. Those I'm very, very comfortable with as well.
Q. Thank you.
You did not attach any of those documents to your Report; correct?
A. I did not.
Q. And what is the date of this Report, this document?
A. I couldn't say. I don't recall.
Q. Was it prepared for the Arbitration?
A. This particular document, I believe it was. I believe I prepared it. I sourced a few different sources to kind of aggregate all the information into one file.
Q. Now, just looking very quickly at this, the first category that you referred to, Muniz Ramírez Pérez, that refers to legal costs incurred by Gramercy?

A. Yes.
Q. And those are costs that occurred between 2006 and 2009.
A. Correct.
Q. Was Gramercy still acquiring Bonds in 2009?
A. I wouldn't--I don't think so, but I wouldn't be the right person to ask. I wasn't involved in the acquisition. It doesn't mean we wouldn't have costs though.
Q. The second category says "estimated Bond acquisition costs."
A. Yes.
Q. It refers first to Mr. José Cerritelli. Do you know who Mr. Cerritelli is?
A. I do.
Q. Cerritelli was Gramercy's man in Perú. He was the man on the ground.
A. He was--at least from my knowledge, he was, yeah.
Q. And this was at a time when he was not a part of Gramercy?
A. I believe he was affiliated with Gramercy

going back--predating me, but that's a question that I would ask Robert. He had the relationship with José early.

Q. And Gramercy paid him approximately $422,000.

A. Yes.

Q. And there is no indication of what years these payments were in?

A. There is not.

Q. This was his commission for sourcing Bonds?

A. I'd be speculating. I think so, but I don't know for sure. I wasn't part of paying José at that time. I wasn't involved in that.

Q. There is also a reference to Carlos Roca. Do you know who that is?

A. I do not.

Q. There is also a reference to ADAEPRA. Do you know who that is?

A. I'm familiar with the name. I don't know exactly what service they provided for Gramercy.

Q. It's a bondholder organization. Does that sound right?

A. It could be, yeah.

Q. Do you have an underlying document that shows why Gramercy was paying ADAEPRA?

A. I do not.

Q. Where did you get that number?

A. Again, from--there was a sourcing schedule that just had these fees, and I simply summed them up.

Q. Thank you.

This also refers to other expenses, insurance premiums, security, and custody?

A. Yes.

Q. These are not--I put it to you--the transaction costs that you mentioned in Paragraph 2 of your Report. In Paragraph 2, you mention a $2.2 million figure?

A. Paragraph 2 is my position.

Q. Sorry. It's the bottom of Paragraph 7.

A. Okay.

Q. You reference a cost of 2.244872.

Do you see that?

A. That's correct, yeah.

Q. That is the number that you get if you add the legal and the estimated Bond acquisition cost

categories; correct?

A. That is correct.

Q. So, this 3.111 is additional.

A. Correct.

Q. And the first category there is insurance premiums.

A. Yes.

Q. And were these the insurance premiums that you discussed--was this before the insurance policy that you were discussing on your direct?

A. It was.

Q. Thank you.

And that amounts to $1.58 million; correct?

A. Yes.

Q. And this was incurred during the acquisition?

A. The insurance premiums?

Q. Yes.

A. No. They have all occurred from 2016 forward. I was moving our Bonds out of our Citi custody account in Lima to another location, and then insuring them thereafter on an annual basis.

Q. So, it's fair to say that this document

includes more than acquisition costs?

A. Yes, it is.

Q. Your Statement--sorry, one more question on insurance.

Just to understand, has Gramercy ever had a claim under the insurance policy?

A. We have not.

Q. Has there ever been a subrogation under the insurance policy?

A. I don't exactly know what subrogation is, so you'd have to tell me.

Q. Okay. Let's move on.

Your Statement also refers to additional costs, a wide variety of out-of-pocket costs. I'm in Paragraph 8 on Page 3.

A. Yep.

Q. This includes Peruvian counsel.

A. Correct.

Q. Do you know that that Peruvian counsel included Mario Seoane?

A. Yes.

Q. Did it include any other Peruvian counsel?

A. Estudio Rodrigo.
Q. And Estudio Rodrigo, just to be clear, was that engaged for the purpose of this dispute or previously?
A. I don't engage counsel, so I don't know.
Q. And it also, I understand, includes international counsel for this proceeding.
A. Yeah. I would assume so, yes. But, again, I don't engage counsel.
Q. Do you know how much these amounts are?
A. No, not offhand, I don't.
Q. It also references Experts here. Do you know the identity of the Experts?
A. I know quite a few of them. I don't know if I could rattle off all of them, but Experts would include Deloitte, for example, other Valuation Experts, things like that for certain.
Q. Professor Coffee, for instance?
A. Yes, I'm aware of him as well.
Q. Professor Porzecanski?
A. Doesn't ring a bell. I don't know that one.
Q. Does this include money spent on lobbyists?

A. Not in Experts, no.
Q. Not Experts, but out-of-pocket costs?
A. Out-of-pocket costs would be more--when I think of out-of-pocket costs would be travel, particularly to and from for Gramercy employees to Perú and things like that. I don't know that it was meaning out-of-pocket costs to mean Experts or anything like that.
Q. It was an additional cost.
A. An additional cost?
Q. This paragraph says Gramercy has incurred and continues to incur significant additional costs.
A. Additional costs, I would agree. You were asking specifically about out-of-pocket costs. But if you mean additional costs, I would say yes. There was a wide range of expenses at Gramercy's pace.
Q. And that includes lobbyists.
A. It does.
Q. It continues to include lobbyists.
A. I believe it does.
Q. Thank you.
Let's move on. In your Statement, you

discuss the valuation of Land Bonds; that's correct?
A. Correct.
Q. And you said that you weren't involved in the acquisition of Land Bonds, but you understand how they were valued at that time.
A. Correct.
Q. You say that during the initial acquisition period, Gramercy valued the Land Bonds at cost.
A. Are you in a specific section in my statement?
Q. You can look at Paragraph 6, for instance.
A. Okay. Okay.
Q. It says "initial acquisition period."
Just to confirm, that means 2006 to 2008?
A. I think that's a fair statement, yes.
Q. Did Gramercy at that time value the Land Bonds differently in any other documents?
A. Differently, meaning year to year on the Financial Statements?
Q. No, "differently" meaning not at cost.
A. It valued at cost, like at true cost in 2006.
Q. Yes. Did it have a separate valuation of the

Land Bonds?
A. In 2006?
Q. Yes.
A. No.
Q. What about in 2007?
A. So 2007, the valuation I referred to would be the valuation in the financial statements. That's the valuation.
Q. And is that at cost?
A. It's not at cost. It is what we call like a cost, plus a mark-to-market. So you have--basically there's a note in the financial statement that refers to a broker quote. That was the last price that Gramercy purchased.
So, the cost of the last purchase was marked--it implied the mark for the entire portfolio. So it was marked to the cost of the last purchase, but I think more accurately I would call that a mark-to-market.
Q. You're aware of a Bondholder group's calculation method for determining the value of Land Bonds?

A. I'm not.
Q. You're not?
Can you please refer to Paragraph 5 of your Statement. It says: "I understand that we were able to purchase the Land Bonds at a substantial discount to a Peruvian Bondholder group's calculation of their value."
A. Okay. So you're talking about our purchase Bonds, not--
Q. Correct.
A. There's no contemporaneous mark with Gramercy, is what I wanted to be clear about.
Q. What I'm asking is, you're aware that a Bondholder group calculated value of Land Bonds.
A. On our purchase, yes.
Q. Yes.
And Gramercy did not value the Bonds at that time, according to the Bondholder group's calculation of their value.
A. No. We--Gramercy will mark its position based on accounting standards because we report out under GAAP.

Q. And the Land Bonds, those are illiquid positions; correct?
A. They are.
Q. In fact, you would say they are highly illiquid.
A. I would say they are very illiquid, yes.
Q. Highly illiquid?
A. I would say they're highly illiquid because they were liquid.
Q. And highly illiquid assets, you agree, are hard to value?
A. I would agree that Level 3 assets are not hard to value. They just require judgment and modeling. It's certainly easier to value a Level 1 or a Level 2 because inputs are readily available. But it's harder to value. I wouldn't say it's hard. You build a model.
Q. Just to confirm, for the record again, would you or would you not say that they are hard to value?
A. I would say they are--when you say about building a model, it's not hard to build a model. There's just judgment involved in creating a Valuation

Model.
Q. So, yes, they are hard to value.
A. I would say they're more difficult to value than Level 1 or Level 2 securities because of the lack of significant unobservable input.
Q. Can you please turn to Paragraph 9 of your Statement.
Second sentence says: "When assets are either hard to value or will require restructuring, until we make progress toward monetizing the position, the acquisition costs and our estimate of Fair Market Value will tend to track one another closely."
What I would like to know is does this describe the Gramercy Land Bonds?
A. Only to the extent that when you purchased them, you keep them at cost. This paragraph is meant to say the reason you track closely the cost is because as you're acquiring an illiquid position, you typically--it's very, very common to keep them close to cost while you build a position ahead of building out a formal model. Building a model in and of itself is not hard.

Q. Building a model is not hard. You didn't do that in 2006, however.
A. We did not in 2006.
Q. You didn't do that in 2008 either?
A. In 2008, there was no model built. Rather, an independent Valuation Expert was used to price the portfolio, and then Gramercy took a discount off of that independent valuation agent's price.
Q. That independent valuation, that's not in the record?
A. It's not.
Q. Let's talk about that model from 2009, please. This was a model in 2009 that you built to calculate the value of your positions in the Land Bonds; correct?
A. We did.
Q. And that was for the purpose of the financial statements?
A. It was part--we don't ever just do something for the financial statements. What we were doing was building a model to come up with the Fair Market Value. That Fair Market Value was then used in the

Financial Statements.

Q. The amounts reported on the financial statements, in other words, are an indication of what Gramercy believed the value of the Land Bonds was.

A. The Fair Market Value in the financial statements is meant to represent what--at a point in time, at 12/31 of that year end, of 2009, it's a reference point of what we could exchange that for at that exact point in time in an ordinary transaction and an arm's-length transaction, not a fire sale.

Q. Okay. And the model that you developed used CPI to update the principal amount?

A. That's correct.

Q. And interest?

A. Accounted for interest, yes.

Q. And that interest was simple interest in 2009?

A. It was.

Q. And in 2011, you changed the model.

A. We did.

Q. And you added--you made the interest compounded; correct?

A. We did.

Q. And the compounded interest rate was the rate on the face of the Bonds?

A. Yes.

Q. And, again, you didn't attach that model to your Statement either?

A. We did not.

Q. Have you changed the model since then?

A. We have.

Q. And you mentioned earlier, I believe, that your model is not the same as Professor Edwards' model.

A. That's correct.

Q. Because he uses a real return--Rate of Return in Perú rather than the stated interest rate.

A. That's correct.

Q. Okay. Just one quick question going back to something I might have skipped. When you added the compound interest, were you compounding annually?

A. We were compounding monthly.

Q. Compounding monthly?

A. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, you used 5 percent compounded monthly?

THE WITNESS: No. I'm sorry. I should correct that. We were compounding annually but updating monthly, yeah. Sorry.

BY MR. JIJÓN:

Q. Thank you.

Now, one of the things that you mention in your Statement is that you saw progress through the efforts to monetize and add value to the Land Bond positions.

Do you remember that?

A. Can you just point me to where?

Q. Sure. Look at Paragraph 17, last line.

A. Yeah, I see it. Yep.

Q. Okay. And so I understand this to mean that you or someone on your team was tracking developments in Perú.

A. Correct.

Q. And you would take observable inputs and adjust the model accordingly.

A. We would.

Q. And would you agree that Gramercy had the right to go to Peruvian Court?

A. That's outside of my expertise.

Q. Did you, in observing the developments during this period, see anything that suggested that Gramercy had gained the right or lost the right to go to Peruvian Courts?

A. I wouldn't want to speculate on--I'm not a lawyer. I don't know.

Q. Just to be clear, I'm not asking you if it actually happened. I'm just asking if you remember seeing something of that nature.

A. I do know that there were Gramercy Bond positions. The Pomalca case is one that comes to mind where Gramercy did go through the Peruvian lower courts, but I'm--

Q. I'm not asking if Gramercy went to Court. I'm just saying, was there a change--do you remember seeing a change in Gramercy's right to go to Court to make good on any legal rights it might have had?

A. I don't know anything about rights to go to Court. I don't recall seeing anything about that, but

it wouldn't be weird for me not to have that information.

Q. You did see other signs of what you call progress; right?

A. We did.

Q. And one of those is the 2011 debate in Congress?

A. Yes.

Q. And this was a bill that was being debated in Congress on how to pay the Land Bonds; correct?

A. Correct.

Q. And you would say this was a significant development.

A. I would.

Q. And the reason it was a significant development was it made it more likely that you were going to be able to monetize your position in the Land Bonds.

A. It showed a willingness, first off, to use compounding of interest. It was contemporaneous with our valuation work, so it showed that both sides, the Peruvians and the Bondholders, had worked together to

come up with a methodology to pay the Bonds that included compounding of interest. And it did seem like a positive result that it got through Congress, although it never got executed by the President.

But the other thing I would say about 2011 was the associate--College of Engineers, the Association of Engineers, petitioning the TC--and we knew that at the end of the 2011, going into 2012--that was also a positive sign for us.

Q. Thank you.

Let's try to stick to my question. I haven't asked about the College of Engineers yet.

You mentioned that the bill was never executed. The bill never became law; correct?

A. Correct.

Q. And, nevertheless, you saw that as a positive indicator.

A. We did, based on the fact that the two sides had essentially come to terms at least, although it never became law in terms of--with CPI plus compounding of interest.

Q. In your Statement, you refer to it as a

consensus?

A. Yes.

Q. Okay. And just to be clear, this was a positive result that led you to increase your valuation?

A. It was one of the results.

Q. One of the--

A. Yes.

Q. Thank you.

Now, have you read the draft bill?

A. I have not.

Q. It is cited in your Statement. Can we go to Paragraph 21?

A. Okay.

Q. You'll see the first bolded citation is document CE-160.

A. Yes.

Q. Now, earlier you told us that you had reviewed the documents that were cited in your Statement?

A. Yeah.

Q. Just I want to make sure. Did you review

this document?

A. I reviewed everything in my Witness Statement. I'm assuming that the bill itself was much larger. I'm not sure if that's the entirety of the bill.

Q. Well, you're getting ahead of me. Let's look at that.

It's Tab 3 in the binder. This--I am going to show you first the part that is before the blue sheet, and for the record, this is CE-160T. 160T. It is a translation.

Mr. Joannou, the translation is important, again, because you do not speak Spanish; correct?

A. Correct.

Q. Okay. And I'm just looking at this, and I think you are undoubtedly right. This is only three double-sided pieces of paper. This is not the complete bill.

A. I take your word for it, yes.

Q. But you did read this.

A. I read what was in my Statement.

Q. And this refers on Page 10 to comments by

Gramercy Advisors.

Do you see that?

A. I do.

Q. And Gramercy Advisors had commented at the time that it was important to issue new Bonds; correct?

A. It appears so. I wouldn't have written that statement, but it appears if that's accurate, then yes.

Q. And right underneath at 11, it refers to attorney Mario Seoane, whom you've confirmed today was Gramercy's lawyer. Mr. Seoane "points out the importance of its approval"--that's the bill's approval--"which will grant Bondholders the possibility of claiming payment from the State"; correct?

A. Yes.

Q. So Mr. Seoane was saying it is necessary for the Bondholders to be able to claim payment.

A. It's his words. This was not my words. I don't know.

Q. Now, if you go down to the next page, there

is a summary, and the fourth part of the summary--this is the summary of the bill in Congress. The fourth point refers to "legal mechanisms must be issued for the purpose of supplementing the obligations assumed by the Peruvian Government."

MS. LAVAUD: Mr. President, excuse me. I just wanted to just correct one thing.

The document says that Mr. Seoane pointed out the importance of its approval. It didn't point out that it was necessary, as Mr. Jijón mischaracterized. Thank you.

MR. JIJÓN: The text speaks for itself.

PRESIDENT FERNÁNDEZ ARMESTO: What is the question? Let's try to get--

MR. JIJÓN: I think we're looking at a lot of different things. And if you look at Paragraph 4, you will also see similar language. I won't read it again.

BY MR. JIJÓN:

Q. The question is, did you know about these comments, about the importance of the bill, the necessity of the bill, at the time that this was going

through Congress?

A. I certainly did not. But it wouldn't be odd for me not to know. The asset managers who were responsible for this position would assist the valuation team in coming up with a valuation. So, some of the inputs we would receive, and some of the progress updates, in particular, would have come from the asset managers, not from me. So, I would not be as in the weeds on the specifics like this.

Q. In the weeds.

So, just to be clear, this was not a document--you were not reviewing this document itself. It was the fact of the bill, not the content of the bill that you were relying on.

A. Me personally?

Q. Yes.

A. So I'm part of a valuation team, not the only person on the valuation team.

Q. Okay.

A. So, presumably Robert, Jose Cerritelli, one of those gentlemen would have known about this, but I can't speak for them. I don't know.

Q. Just to be clear, Gramercy relied on this bill to increase its valuation; correct?

A. One part of it, yes. There were other factors.

Q. And I presume that you have not read the translation--sorry, the Spanish version?

PRESIDENT FERNÁNDEZ ARMESTO: He doesn't speak Spanish.

MR. JIJÓN: I am not going to take him to it.

BY MR. JIJÓN:

Q. Would it surprise you, or did you have any knowledge, that the original language version in parts that are not included in the translation says what the objective of that law was?

A. Can you repeat that?

Q. Sorry.

PRESIDENT FERNÁNDEZ ARMESTO: Do you know anything about other parts of the law which have not been translated from Spanish into English?

THE WITNESS: No.

PRESIDENT FERNÁNDEZ ARMESTO: No.

BY MR. JIJÓN:

Q. And the--so you don't know that that law said that it was--that it had the purpose of making possible the compliance with the obligations.

PRESIDENT FERNÁNDEZ ARMESTO: He doesn't know. He does not know.

MR. JIJÓN: He does not know.

PRESIDENT FERNÁNDEZ ARMESTO: I think his statement is that he read the English translation and relied on his colleagues.

BY MR. JIJÓN:

Q. Did anyone at Gramercy know?

A. I wouldn't know.

Q. You wouldn't know.

A. No.

Q. There was no discussion in Gramercy about the fact that this law was necessary to make possible the compliance with the State's pending obligations.

A. So, the only significance, in my perspective, for this law is the fact that compounding was included in the calculation to update the value of the Bonds. That is the most significant thing that I took out of that Congressional--the draft Congressional bill.

Q. That, and the fact that there was a consensus, you said.

A. A consensus in terms of compounding and how to update the value of the Bonds and come to a formal mechanism to update the value.

Q. And you say there's a consensus, but would it surprise you to know that there's another document that you've cited in your Statement that shows that there was not a consensus?

A. Can you take me to it?

Q. Absolutely.

Let's turn to Tab 4. This is document CE-162, Debate Journal. You have provided Pages 1 and 61 in translation.

Do you see that?

A. Now, in my Statement we're at, or are we in yours?

Q. No. This is Tab 4 of the big binder.

A. Yep.

Q. I believe yours does not have tabs.

A. Okay.

Q. Are you there?

A. I am.

Q. Okay.

MR. JIJÓN: And for the record, we are looking at CE-162T.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

BY MR. JIJÓN:

Q. It is titled "Debate Journal"?

A. Yeah.

Q. Okay. And there is Page 1 and Page 61; correct?

A. Yes.

Q. So, 59 pages of this are missing.

A. That's correct.

Q. At least. At least 59 pages are missing.

A. I would agree.

Q. So, you don't really know what is happening in those 59 pages.

A. I do not.

Q. So, it's possible that there is evidence in those 59 pages of a lack of consensus.

A. It is entirely possible. When I say consensus, though, it was a consensus around the

calculation of updating the value of the Bonds. That was what was most critical to me in terms of coming up with the valuation in 2009.

ARBITRATOR DRYMER: Just quickly on that point, you said what was particularly relevant to you was the compounding--compounded interest feature.

THE WITNESS: Correct.

ARBITRATOR DRYMER: Not the reference to CPI?

THE WITNESS: No, both. CPI plus the compounding of interest. The fact that--Gramercy had always been using CPI since we started updating.

ARBITRATOR DRYMER: Right.

THE WITNESS: But the consensus around the methodology of updating the value of the Bonds to have compounding of interest and CPI both in that same document was very, very powerful for us.

In 2011, that was the first year that we included the compounding of interest in our valuation. It was one of the inputs that we used that year for the operation.

BY MR. JIJÓN:

Q. Thank you.

In the interest of time, I'm going to move on, but you, again, know that this did not become law.

A. I do.

Q. The idea--and you would agree--is that the Congress or the Government was kicking the can down the road.

A. I can't speak for the Government. I don't know what they were doing.

Q. Did anyone in Gramercy know what they were doing?

A. I have--I certainly don't.

Q. So, nobody at Gramercy could say that.

A. Knew what the Government was doing? I don't know.

Q. Thank you very much.

MR. JIJÓN: For this part, confidentiality.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MR. JIJÓN: Not at all.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

BY MR. JIJÓN:

Q. Mr. Joannou, I appreciate your patience tonight. I have one final area that I wanted to cover with you.

We referred earlier to "an initial acquisition period."

Do you remember that?

A. We did.

Q. And was there a subsequent acquisition period?

A. No.

Q. You're not aware of Gramercy purchasing Land Bonds other than the ones in this case?

MS. LAVAUD: Objection. I will raise the same objection that I raised earlier: Not within the scope of this Witness Statement.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, but--

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: I think it is

reasonable that you put these questions.

Maybe let me explain this to Mr. Koenigsberger, disclose that there had been a second tranche of Land Bonds which had been purchased in 2017 in the first quarter, and he did not remember a number of details, and I'm sure that counsel will now ask whether you know these details.

MR. JIJÓN: Thank you. Thank you, Mr. President for clarifying that.

BY MR. JIJÓN:

Q. Just in light of what the President has said, would you like to correct your answer about knowing whether Gramercy acquired other Land Bonds?

A. I'm sorry? Say that again.

Q. Would you like to correct your prior answer?

A. What was my prior answer?

Q. You said you did not know that Gramercy had acquired other Land Bonds.

A. I was being specific to this position that we're talking about today, and I was being specific to purchases after 2009 to build this position, for what I was reporting on.

Q. I'm not sure where you got that. That wasn't my question.

But, to clarify, are you aware that Gramercy acquired Land Bonds in 2017?

A. Yes.

Q. What the President referred to as a second tranche?

A. Yes.

Q. Yes. Do you know when in 2017 Gramercy acquired those Land Bonds?

A. I would say--it's a guesstimate. Maybe Q2.

Q. Q2?

A. Yeah.

Q. Month, more or less?

A. I'm going to guess June.

Q. July?

A. Okay. I was going to say June.

Q. Okay. June? July?

A. Yeah.

Q. And as Gramercy's CFO, were you involved in the Investment Committee?

A. No.

Q. Were you involved in looking at the Bond values?

A. Valuation?

Q. Yes.

A. Yes.

Q. Do you know how much Gramercy paid for those Bonds in 2017?

A. It's actually a complicated answer. Cash out--it's my best guess here. Cash out maybe $6 million or $7 million.

Q. You said it's complicated. Can you explain a little what you mean by that?

A. Yeah, because there's a tail if there's monetization.

Q. How does that work?

A. There has to be an event that occurs where we're able to sell the assets, redeem the assets, what have you, but monetize them.

Q. So, the seller still has an interest?

A. Correct.

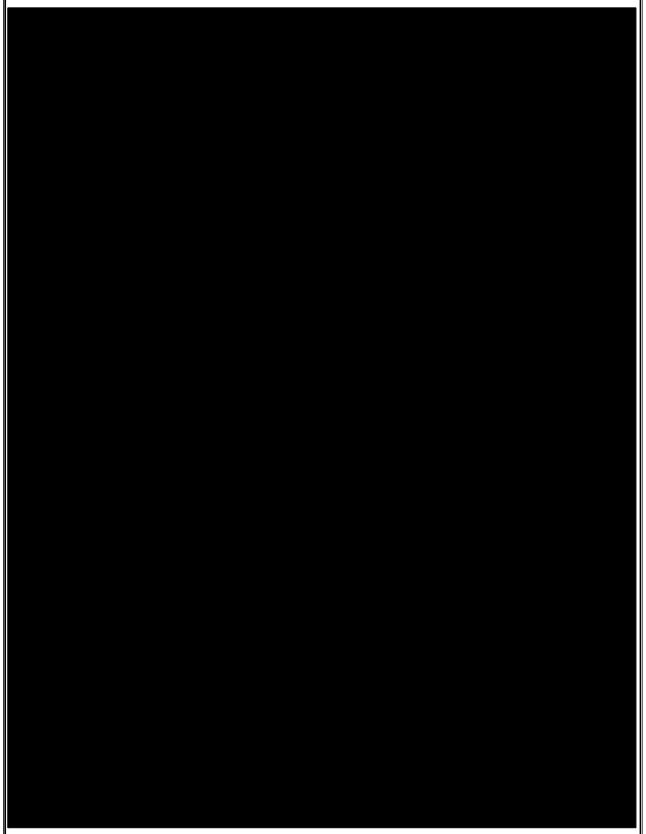
Q. Okay. And Mr. Koenigsberger was involved in that transaction?

A. Yes, for sure.
Q. And he would know how much the Bonds were acquired for?
A. He may not know how much the Bonds were acquired for, but he would have obviously approved the transaction.
Q. And do you know how many Land Bonds were acquired at the time?
A. I don't.
Q. Do you know who the seller was?
A. I don't.
Q. Was the seller an individual or a company?
A. I'm not entirely sure. I'd be guessing.
Q. Okay. Do you know if the seller was American?
A. I do not.
Q. Do you know if the seller was Peruvian?
A. Again, I don't.
Q. Okay. Were those--was that second tranche valued at cost?
A. It was valued at cost initially and then mark, mark-to-market.

Q. And so, what were those initial valuations?
A. The initial valuation was, again, somewhere cost at like 5 million or $6 million is what I remember the cost being.
Q. For what year was that?
A. '17.
Q. And in '18?
A. There was a mark-to-market in '18 to 55 million. That's my best guess on an estimate. It is probably pretty close.
Q. When was the last time you talked to anybody about those Bonds?
A. Outside of Gramercy?
Q. Outside of this room today.
A. I mean, we talk internal about the Bonds. We're going through year-end audits right now, so they are part of our year-end audit.
Q. Did you talk about those Bonds yesterday?
A. No.
Q. Have you heard anybody mention those Land Bonds in the last week?
A. Certainly members of my staff because we are

working on the valuations, but I don't recall specific references outside of my staff, no.
Q. Is Tranche 2 considered an illiquid position?
A. Yes.
Q. Is the value of those Land Bonds indicated on the PARBCO Financial Statements?
A. No.
Q. On another's Financial Statements?
A. Yes.
Q. Whose Financial Statements?
A. It is held by a few different accounts.
(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION



[redacted]

[redacted]

[redacted]

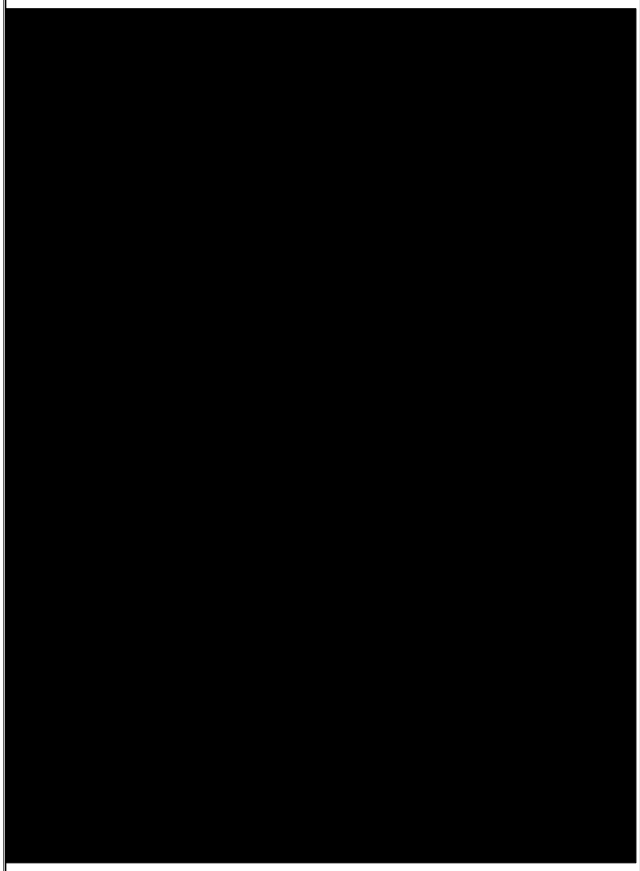
[redacted]

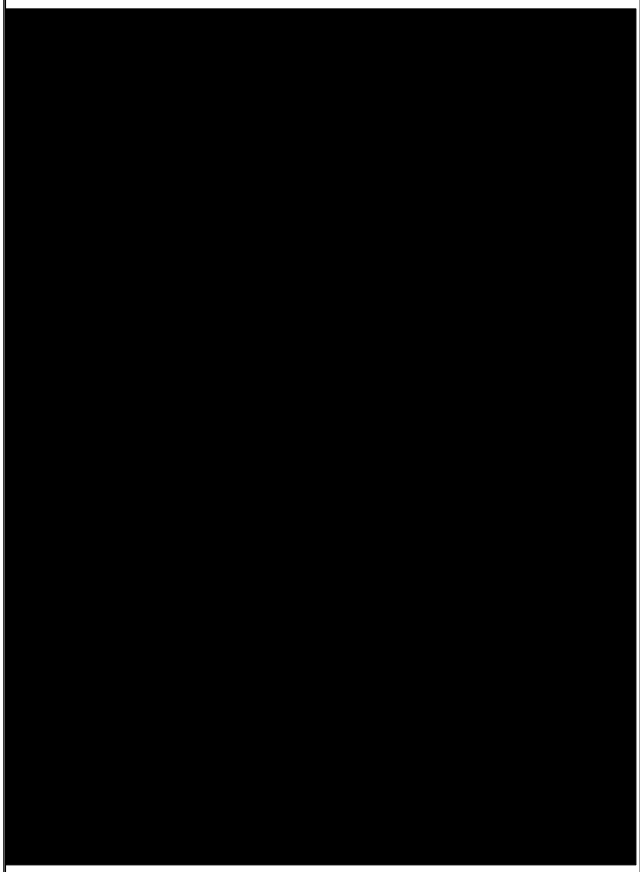
[redacted]

[redacted]

[redacted]

[redacted]





PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much for your patience, for coming on a Saturday and working until these hours.

THE WITNESS: No problem.

PRESIDENT FERNÁNDEZ ARMESTO: And thank you for your answers. You can stay with us, or you can leave, as you wish.

THE WITNESS: Thank you.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Now, I expect on Monday a huge chocolate box for our Interpreter and--or we can have meringue pies for our--we are off the record.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: We will start Monday, not tomorrow, at 9:30.

(Whereupon, at 8:36 p.m., the Hearing was adjourned until 9:30 a.m., on February 10, 2019.)

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

Dawn K. Larson

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the matter of Arbitration between:	:	
GRAMERCY FUNDS MANAGEMENT LLC AND GRAMERCY PERU HOLDINGS LLC,	:	
Claimants,	:	
and	:	ICSID Case No. UNCT/18/2
REPUBLIC OF PERÚ,	:	
Respondent.	:	
		Volume 3

HEARING ON JURISDICTION, MERITS AND QUANTUM

Monday, February 10, 2020

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

The hearing in the above-entitled matter came on at 9:30 a.m. 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:

On behalf of ICSID:

MS. MARISA PLANELLS-VALERO
Secretary of the Tribunal

MS. KRYSTLE M. BAPTISTA
Assistant to the President of the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
info@wwreporting.com

MR. PAUL PELISSIER
MR. DIONISIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

MR. CHARLES ROBERTS

APPEARANCES:

On behalf of the Claimant:

MR. MARK W. FRIEDMAN
MS. INA C. POPOVA
MR. CARL RIEHL
MS. FLORIANE LAVAUD
MS. BERGLIND HALLDORSDOTTIR BIRKLAND
MR. GUILHERME RECENA COSTA
MS. SARAH LEE
MR. DUNCAN PICKARD
MR. JULIO RIVERA RIOS
MS. MARY GRACE McEVOY
MR. THOMAS G. McINTYRE
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
United States of America

MR. LUIS BEDOYA
MR. FRANCISCO CARDENAS PANTOJA
Rodrigo, Elias & Medrano
Av. San Felipe 758
Jesús María
Lima 15072
Perú

Representing Gramercy Funds Management LLC:

MR. JAMES TAYLOR

MR. JOSHUA M. O'MELIA

MR. NICK PAOLAZZI

MR. THOMAS NORGAARD

APPEARANCES: (Continued)

On behalf of the Respondent:

AMBASSADOR HUGO DE ZELA
Republic of Perú

MR. RICARDO AMPUERO
Republic of Perú

MS. MONICA GUERRERO
Republic of Perú

MS. GIOVANNA ZANELLI

Republic of Perú
MR. ALBERTO HART
Republic of Perú

MR. JONATHAN C. HAMILTON
MS. ANDREA MENAKER
MR. RAFAEL LLANO
MR. FRANCISCO JIJÓN
MR. JONATHAN ULRICH
MR. FRANK PANOPOLOUS
MR. JOHN DALEBROUX
MR. ALEJANDRO MARTINEZ DE HOZ

White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005-3807
United States of America

For the United States of America:
MS. LISA GROSH
MS. NICOLE THORNTON
MS. MARGARET SEDGEWICK
MR. JOHN DALEY
Attorney-Advisers
Office of International Claims and
Investment Disputes
Office of the Legal Adviser
U.S. Department of State
Suite 203, South Building
2430 E Street, N.W.
Washington, D.C. 20037-2800
United States of America

MS. AMY COLLINS
U.S. Department of Treasury

C O N T E N T S

PAGE

WITNESSES:

BETTY ARMIDA SOTELO BAZÁN

Direct examination by Mr. Jijón.....896
Cross-examination by Mr. Friedman.....903
Questions from the Tribunal.....1057

CARLOS HERRERA PERRET (via videoconference)

Direct examination by Mr. Hamilton.....1076
Cross-examination by Ms. Popova.....1082
Redirect examination by Mr. Hamilton.....1132

LUIS MIGUEL CASTILLA RUBIO (via videoconference)

Direct examination by Mr. Hamilton.....1148

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ ARMESTO: Good morning, everyone.

We are beginning the Hearing, the third day of this Hearing, in arbitration between Gramercy Funds Management LLC and Gramercy Perú Holdings LLC v. the Republic of Perú.

First, I would like to ask the Parties if there is any point of order that you'd like to raise at this time.

MR. FRIEDMAN: No, we are ready to proceed. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: And Mr. Hamilton?

MR. HAMILTON: The same.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent.

So, we will call the Vice Minister, Betty Armida Sotelo Bazán.

BETTY ARMIDA SOTELO BAZÁN,

RESPONDENT'S WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Good morning, Vice Minister. How are you?

THE INTERPRETER: No microphone.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much for being here.

Thank you, Vice Minister, for being here with us. You are here as a witness, and as a witness, you have the duty to state the truth. So, I'm going to ask you to please stand, and we will take your declaration to speak the truth. You have the statement to your right, please. It's in Spanish on the other side.

THE WITNESS: I solemnly declare, upon my honor and conscience, that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, Vice Minister.

To your left, you have the counsel for Claimants of the Gramercy Group, and to your right, you have counsel for the Republic of Perú. They are going to ask you a number of questions. First, you will be asked questions by the Republic of Perú, and then you will be asked questions by the Claimants.

So, I will ask you two things. Most of the

questions, Vice Minister, shall be formulated in such a way that you can answer "yes," "no," or "I have no personal knowledge" or "I do not know." So, I would ask you please--I know it's contrary to the natural form of speaking, but for clarity of the Transcript, I would ask you to please first state your position, "yes," "no," or "I have no personal knowledge of it." And we would then be delighted to hear any other further clarification from you.

THE WITNESS: I would just like to note at this time I am not Vice Minister, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Fine. Thank you very much. But this is like the priesthood--it leaves you with certain a character, so if it's okay with you, I will continue calling you "Vice Minister."

Counsel for the Republic of Perú has the floor.

MR. HAMILTON: Mr. Jijón is going to handle the examination.

PRESIDENT FERNÁNDEZ ARMESTO: Very well.

MR. JIJÓN: Good morning, Mr. President.

Members of the Tribunal.

DIRECT EXAMINATION

BY MR. JIJÓN:

Q. Good morning, Ms. Sotelo.

A. Good morning.

Q. Ms. Sotelo, you have before you a binder that has two documents. Could you please confirm that these are your Statements?

A. Yes, indeed, they are my Statements.

Q. Thank you very much.

Ms. Sotelo, could you very briefly summarize your experience in the Ministry of Economy?

A. Well, I have been working in the Ministry of Economy for a bit over 40 years. I have had my entire career in that institution, and most of the time, about 80 percent of the time, I have been in charge of the office that handles the public debt. I've held several positions in that office, and then I have occupied other positions up until the time I made this Statement. I was Vice Minister of Treasury, even though today I am in charge of an office that handles investments at the Ministry of

Economy and Finance.

PRESIDENT FERNÁNDEZ ARMESTO: Do you prefer that you be called "Vice Ministro" or "Vice Ministra," because in Spanish, as you know, I would like to fall into line with whatever you prefer.

THE WITNESS: It is the same to me, sir, as you wish.

PRESIDENT FERNÁNDEZ ARMESTO: I generally say Vice Ministro, la Vice Ministro, but if you prefer la Vice Ministra, I'd like to fall into line with whatever you prefer.

THE WITNESS: Whatever comes out easiest for you, sir.

PRESIDENT FERNÁNDEZ ARMESTO: No problem.

MR. JIJÓN: Thank you very much.

BY MR. JIJÓN:

Q. Ms. Sotelo, could you please explain to us how the public debt is managed at the Ministry?

A. The public debt is one of the relevant components in managing economic policy and public finances, and the Government of Perú has been acting in a very responsible manner in handling its fiscal

accounts and, therefore, in handling the public debt, and in that context, the obligation in respect of the Agrarian foreign bonds represent a minimal part of it.

Q. How does the Agrarian debt compare?

A. The Agrarian debt compared to--now, you're saying compared to other Bonds or all of the debt of the Peruvian State?

Q. Well, in your Statement, you refer to the "public debt" and the "Agrarian debt." How do they compare?

A. The Agrarian debt, compared to the Bonds that the State in modern times has placed, is a physical instrument. It is not registered in the stock market, it is not an electronic instrument. It was placed directly to pay for the expropriation of the lands. It was not auctioned in the New York market. It is not governed by the laws of New York. It is a domestic debt, and the legal regime that underlies it has to do with internal debt. It's Peruvian legislation. There is no secondary market, and those are the differences, as compared to the

modern sovereign bonds that are issued by the Peruvian State.

Q. Thank you very much.

And in your Statement, you also refer to the history of the Agrarian debt. Could you please tell us what happened to the Agrarian Bonds after they were delivered?

A. Well, there have been many decades of uncertainty since the Agrarian Bonds were issued, in the 1980s, as a result of the international financial crisis that affected not only Perú, but the region. There were two changes in currency. The Agrarian foreign bonds were paid, in part, and the other part that was not paid was reduced by the nine zeroes that had been struck from the currency with the currency change, and for several decades there was uncertainty as to how to proceed with respect to the nominal--finally, in the 2000s, the 2001 to 2013, the way in which those Bonds would be valued was changed.

(Interruption.)

Q. Sorry for the interruption, Ms. Sotelo.

So, you just told us, and in your Statement

as well, you referred to the Resolution of this period of uncertainty that you mentioned. Could you tell us, what happened after 2013?

A. After the Resolution of the Constitutional Tribunal, in the process of enforcing its judgment, the Peruvian State issued the legal rules, the Supreme Decrees, to regulate the administrative procedure with respect to the valuation, registration, and payment of the Agrarian Reform Bonds.

Q. And what is the current situation?

A. At this time, the stage when the Bondholders could come in to request the confirmation of the veracity of the Bonds--about 2,000 Bonds have entered into that process--and according to the last cut at early January, approximately 191 Bonds were paid for about 4.5 million soles. This administrative process is continuing, and it has been organized pursuant to the order of the Court.

Q. Thank you very much. One last question.

PRESIDENT FERNÁNDEZ ARMESTO: When you speak of Bonds, are you referring to the coupon or the

totality of the Bond? You're familiar with the Bonds.

THE WITNESS: Yes, of course.

PRESIDENT FERNÁNDEZ ARMESTO: And you know that they have coupons.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, when you say 191, are those 191 coupons, or the coupons that correspond to 121 overall Bonds?

THE WITNESS: It's 191 of the overall Bond.

BY MR. JIJÓN:

Q. Ms. Sotelo, why has the State not paid Gramercy what it is claiming?

A. The Peruvian State, in all of its Administrative Acts, bases itself on the principle of legitimacy, let us say the principle of legality, and it cannot act as a matter of its own will or because claims are put to it by the different Bondholders or creditors.

As in the case of Gramercy, the State has to act on the basis of what the law or what the order, in this case, of the Constitutional Court tells it,

and Gramercy has not entered into the administrative process, and, therefore, it cannot be paid under any other model or in any other form of valuation beyond what is set out in the regulated administrative procedure.

Q. Thank you very much.

PRESIDENT FERNÁNDEZ ARMESTO: So, I understand properly, Vice Minister, that having concluded the process without further legal change, it would no longer be a possible to collect on the Bonds?

THE WITNESS: It is the Constitutional Court that establishes the terms, the five years for stepping into the administrative procedure. That is what has been set out by the Court. I'm not an attorney, Mr. President. I don't know what the next changes or terms would be. I don't know if a new pronouncement is required from the Court. That, I don't know, but this first provision of the Constitutional Court, what it first ordered, has been carried out and concluded.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very

much.

With that, we give the floor to counsel for Claimant.

MR. HAMILTON: Excuse me, there is still a sound coming from that side of the room, where maybe somebody's earphones are at an elevated volume. And I don't know if it's possible to reduce the volume a little bit because it's a little bit distracting. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: To be very frank, I don't hear much. Maybe I'm slightly deaf.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good. I give the floor to counsel for the Claimant.

MR. FRIEDMAN: Thank you very much, Mr. President.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q. Good morning, Ms. Sotelo.

My name is Mark Friedman. I'll be asking you some questions today on behalf of the Claimant, Gramercy.

Am I right that when Perú issued the Land Bonds, it guaranteed without reservation that it would pay them?

A. According to the legal framework, what was established by the Agrarian Reform Law, as well as the Supreme Decrees that allowed for or that authorized the issuance of the Bonds, in effect, the mere fact that the sovereign would say that it is issuing it, such an obligation, they imply that it's going to pay them. There is no explicit word that says, "I guarantee in one or another manner to proceed to payment."

Q. The law that--the Decree-Law 17716, are you familiar with that, the law that authorized the issuance of the Land Bonds?

A. Yes. The law that regulates the whole process of the Agrarian Reform. I don't remember the exact number of that law, but if you're referring to the law that regulates the entire Agrarian Reform process, yes.

Q. And am I right that that law said that the Bonds would be guaranteed by the State without

reservations whatsoever?

A. Well, I think that's the language that was used at that time, but the guarantee--well, the mere word of the sovereign is a sufficient guarantee in all issuance of debt.

Q. Right. And the Land Bonds, you would agree with me, are public debt of Perú; correct?

A. It has been internal domestic public debt. It is still registered as internal public debt in the accounting of the debt.

Q. Right. Now, in March 2001, the Constitutional Tribunal of Perú held that Perú had to pay the Land Bonds at current value; is that right?

A. That is what the Judgment or the ruling of the Constitutional Court says, that it should be paid under the current value principle.

Q. And am I right that all State institutions had to comply with that ruling?

A. The Judgments of the Constitutional Court are abided by and must be abided by by all, and if the Peruvian State and, in particular, The Ministry of Economy, did not apply the updating set

out-therein, it is because the formula wasn't established.

PRESIDENT FERNÁNDEZ ARMESTO: The first part of the question is sufficient. That is what you were asked. And if you stick within what the counsel asked you, it will be much more efficient. It is most efficient if we do it in this manner, with which I believe the answer was the first part of what you answered.

MR. FRIEDMAN: Thank you, Mr. President.

BY MR. FRIEDMAN:

Q. So, just to be clear, the Ministry of Economy and Finance, along with all other institutions in Perú, had to comply with the 2001 sentence of the Constitutional Tribunal; correct?

A. It had to abide by it, but it wasn't clear just what the methodology would be in connection with that ruling by the Court. It didn't indicate the way in which the valuation would take place or how the current value principle would be applied.

Q. Now, am I right that interpreting that obligation to carry out the updating fell principally

on the Ministry of Economy and Finance?

A. The registry of the public debt for the Agrarian Reform Bonds are in the accounting of the debt, and, in effect, it is the Ministry of Economy and Finance that has to do the updating, but there was no legal formula to establish how the Bonds of the Agrarian Reform would be brought up to current value.

Q. There was no--as you call it--legal framework because the Ministry of Economy and Finance didn't create one; right?

A. It has to be issued with a provision of the rank of a law or statute, and there was no such legal framework until 2013, which is when the Court set out the formula and the methodology for the updating.

Q. Well, there was--am I right that there actually was at least one--let me start again. Forgive me.

Within Perú's legal framework, am I right that there was always at least one method of updating and getting paid on the Bonds?

PRESIDENT FERNÁNDEZ ARMESTO: I don't think

the question is clear.

BY MR. FRIEDMAN:

Q. Let me--am I right that Bondholders could always go to Peruvian Court to get updating and payment on the Bonds?

A. For the controllership of the debt, the only way to update what was 10 cents of a sol to pay, well, another legal norm was required to say how to do the updating. So, what the Bondholders could do is, they could go to the Courts--to Peruvian justice system--to ask for a process of valuing, and then the Peruvian State would pay as per the order of the judge.

Q. So, within the Peruvian legal framework, the option of going to courts was available to Bondholders; correct?

A. They have always had the right to go to the Courts, sir.

Q. And the Courts in Perú applied the current value principle in updating the Land Bond debt; right?

A. The judges have applied different criteria.

There is not a single way that has been used by the judges, not a single--there has not been a single procedure.

Q. But the judges applied the current value principle and updated the debt; correct?

A. I have not seen specific rulings by the judges. The only thing I am familiar with is by reference that they did order that they be updated and paid.

Q. So, if you haven't seen specific rulings, you don't actually know what the basis was of those courts updating the debt; correct?

A. No, I am not familiar with precisely what the judges have done.

Q. Okay. Now, do you remember that in June of 2009, Gramercy wrote to the Ministry of Economy and Finance with a proposal for a debt swap?

A. Yes. Yes, I do recall that you wrote such a communication.

Q. And in that communication, Gramercy proposed to swap the Land Bonds for new Bonds, as well as creating productive investment in Perú as a part of

the exchange; correct?

MR. JIJÓN: Mr. President, it might be worthwhile showing the document that is being referred to.

PRESIDENT FERNÁNDEZ ARMESTO: To help the Witness. Remember, it might not be possible to remember something from 2009.

MR. FRIEDMAN: Yes. We're happy, of course, to show the documents.

PRESIDENT FERNÁNDEZ ARMESTO: Vice Minister, they are going to show you the document.

Can we have the reference?

MR. FRIEDMAN: Yes. Let's pass out books. Yes, and for you the reference to the 2009 proposal is--

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Let us do two things, can your colleague stay--would you mind taking a seat close?

I don't think it will bother you to have an attorney seated by you to help you out, Vice Minister?

MR. JIJÓN: Mr. President, are you

suggesting one of Perú's lawyers?

PRESIDENT FERNÁNDEZ ARMESTO: Perú or someone who could help her because if the poor Vice Minister has to be looking for documents in all of those binders, we are going to waste a lot of time.

It is already on the screen. That's helpful.

Vice Minister, you see that there is a screen in front of you.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: They are going to put the document up there.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And then the attorney will help you find it in hard copy in case you want to see it in hard copy. Is that all right?

THE WITNESS: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: So, I don't know if you could enlarge this so that we can read it?

MR. FRIEDMAN: Yes. So, let me start.

Do you have your--

MR. JIJÓN: Mr. President, just a moment, Mr. President, until my colleague gets there.

MR. FRIEDMAN: I was going to take her to her Witness Statement first, which we can do while we're getting set up.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Absolutely.

BY MR. FRIEDMAN:

Q. Ms. Sotelo, if you could look at your First Witness Statement, please. And turn, please, to Page 5, Paragraph 27. And there, do you see that you testify about this Bond swap proposal from Gramercy; right?

A. Yes, that is right, sir.

Q. All right. Now, if you will look at your first bundle, Binder 1, Tab 30, which is Document R-261?

MR. JIJÓN: To confirm, that's Binder 1, Document 30, Tab 30.

MR. FRIEDMAN: Yes.

MR. JIJÓN: Thank you.

THE WITNESS: It's correct.

BY MR. FRIEDMAN:

Q. Okay. And you recognize that the proposal that Gramercy made in 2009 to do a bond swap with a reinvestment in Perú component; is that right?

A. That is what the document says, yes, sir.

Q. Okay. And then if you could turn with me to Page 12 of the presentation, it describes--do you see on the "Benefits of the Exchange for the Country"?

A. That's what it says here on the slide.

Q. Okay. Now, if you could turn to Tab 31 in the binder, I think we'll see the Ministry's treatment of this issue. That is Document R-62.

A. Excuse me, I don't know what R-62 means.

Q. So, we have two--at least two ways of referring to documents in this case. One is by the tab references in the binder that you have, and the other is by exhibit numbers that I don't think you need to be particularly concerned with, but they are common references for the lawyers and the Tribunal.

A. Correct.

Q. You see that document. Okay.

A. I do.

Q. Yes.

And this is the Ministry's internal preparation of a response to Gramercy's proposal; correct?

A. That is right, sir.

Q. Okay. And in Paragraph 3, it says: "It must be specified that, in accordance with the legal framework in effect, adjustment of the value of the Land Reform Bonds is only possible via the judiciary, and that once there's a judgment that establishes the updated value of the Bonds that acquires the status of res judicata, the State is complying with making payment for that amount."

Do you see that?

A. I do.

Q. Okay. So, would you agree with me that, in accordance with the legal framework of Perú, Gramercy was free to go to court and have the updating done by the Court? Correct?

A. It had to go to the courts, and this is the right that all Bondholders had, to claim whatever they deem they have as a right.

Q. Right. So, there was a legal framework for paying the updated value of the Bonds, even prior to 2013; correct?

A. As I indicated, I am not a lawyer, and I'm not able to say whether the fact that there is a legal way of asking for rights so that Claims may be staked by citizens and citizens can go to the Courts, well, I don't know if that means there is an existing legal framework.

I don't have the ability to accept that assertion made by you. Everyone has the right to go to the Court, such--or the judiciary, rather, to claim whatever they deem is the right. The Court will decide whether that right is recognized or not.

Now, to assert that there is a legal framework to update, well, that entails saying that the Court is going to accept everything that the Bondholders put to it. I am not a lawyer and I don't think that assertion is correct, but, again, I'm not a lawyer and I cannot say that that assertion is correct.

Q. I appreciate that you're not a lawyer, but

you were working at the Ministry during a time when Bondholders were routinely suing and getting judgments against the Ministry for updated payment of the Land Reform debt; right?

A. Yes, that's right, but what I'm saying is that I don't dare say that going to the judiciary is a legal framework to update the Bonds. What I am questioning is whether it is correct to state it that way. I know that everyone has the right to go to the judiciary, not only in connection with Land Reform Bonds, but because any legal or natural person can go to the courts when they feel that their rights have been violated.

Q. Are courts not a part of the legal framework of Perú?

A. That's the portion of this thing that I cannot assert because I'm not a lawyer. I know that there's a judiciary, the judiciary is independent, and it administers justice in Perú.

PRESIDENT FERNÁNDEZ ARMESTO: That is quite clear.

MR. FRIEDMAN: Yes, I agree.

BY MR. FRIEDMAN:

Q. Now, am I right that by 2011, there were more than 230 judicial proceedings against the Ministry relating to updating the Land Bond debts?

A. I do not have any information in connection with the number of judicial proceedings that had been brought under the Land Reform Bonds.

Q. Okay. Maybe we could turn to Binder 2, Tab 48. And I'll be looking at Document R-298. Just for some context, this is the internal draft of a bill by the Ministry of Economy and Finance that was never presented to Congress.

Vice Minister Sotelo, do you recognize this document?

A. Yes. This is a document from the DGETP.

Q. Okay. If you could turn with me to Paragraph 15--well, in Paragraph 14, right before it, it says: "According to the current legal framework, the value of these Bonds may only be recognized and updated by resorting to the Courts."

And then if we look at Paragraph 15, it says: "There are more than 230 court proceedings

initiated against the Government demanding updated payment of these Bonds. In addition, there are 17 court proceedings at the Enforcement of Judgment stage, in two of which the Executive Branch has been making payments for the updated value of the Land Reform Bonds applying the CPI."

Do you see that?

A. I do see that.

Q. That was accurate at the time; right?

A. Presumably, yes, because that's what they've written.

Q. Now, the Ministry is responsible for the responsible management of its public debt; correct?

A. That's right.

Q. And Gramercy wrote a proposal to the Ministry saying, "Perhaps we could sit down and discuss alternatives that could even provide benefits to Perú," and am I right that the Ministry's response was essentially, "Go sue us"?

A. You are saying that saying in a very straight manner as if we had said, "Go to the judiciary and sue us." The answer was along the

lines of this language here: The Peruvian State makes its Decisions on the basis of the principle of legality. For the registration of the public debt and for the accounting of the public debt, there was no obligation beyond of that cent of a sol that is now included in the accounting of the debt.

So, from the legal framework and the management of the public debt, it was not viable to sit down or accept any scheduling program with Gramercy because, for the accounting of the debt, that obligation did not exist. First, we needed to have a ruling from the Constitutional Tribunal or a law to state provisions for the updating.

Now, the only way for those obligations to be paid, we told them, was whatever it is that the courts would rule.

Q. The Ministry, we saw, was working on a draft law; correct?

A. That is what the report states.

Q. In the context of doing that work, there was nothing in Peruvian law that prevented the Ministry from meeting and discussing with Bondholders a

solution that might be acceptable to everybody; right?

A. Well, the thing is that that issue did not have to do with a meeting with the shareholders. It had to do with a legal provision that had to state, first, how a debt was to be updated, a debt that had been extinguished. This is very different from a situation in the '90s, where the Peruvian State, on the basis of the face value of the debt and other obligations, met with the creditors to renegotiate the nominal value of the debt.

I talked about the Land Bonds, and the face value was 1 cent. Now, the updating--the updating is only based on a law that states how the updating is going to take place.

MR. FRIEDMAN: Mr. President, with respect, I don't think there was an answer to my question.

BY MR. FRIEDMAN:

Q. My question, Vice Minister, was: There was nothing in Peruvian law that prevented the Ministry from meeting and discussing with Bondholders a solution that might be acceptable to everybody; is

that correct?

There was no legal bar to the Minister or the Vice Minister or other people within the Ministry, in the context of preparing the draft bill, even, that might create the whole legal framework you're describing from sitting down and discussing with the Bondholders a common solution; correct?

MR. JIJÓN: Mr. President, the question has been answered.

PRESIDENT FERNÁNDEZ ARMESTO: Well, I think the question was quite innocuous. Well, nothing in the legal framework of Perú prevents a Bondholder to meet with the Government and discuss. That's my assumption.

I don't know the legislation of Perú very well, but I don't think there is any impediment for this.

THE WITNESS: There is no impediment to discuss. The law does not prevent you from discussing, but what were we going to talk about? Because what we needed was a law that mandated the updating formula.

BY MR. FRIEDMAN:

Q. Which the Ministry was drafting; correct?

A. Yes, it was drafting it.

Q. Okay. In 2010, Gramercy submitted conciliation proceeding requests--right?--to the Ministry?

A. There were some of them, yes.

Q. And as part of these proceedings, Gramercy provided Perú with the assignment contracts and Bond package contracts that it had entered into with Bondholders when it acquired its Land Bonds; correct?

A. Yes, sir.

Q. So, since 2010, the Ministry of Economy and Finance has had all of those Bond contracts in its possession; correct?

A. Well, some. All of the ones that were submitted by Gramercy in a formal manner to the Ministry.

Q. Okay. Would you agree that in--well, you attached those as Annexes 30 to 59 of your First Witness Statement; right?

A. Yes. I don't remember the annex numbers,

but I did attach those to my First Witness Statement.

Q. And they were quite extensive; correct?

A. That's right.

Q. So, the minute--it's fair to say that, prior to July 2013, the Ministry of Economy and Finance had not fulfilled its obligation to find a way to update the Land Bond debt consistent with the Constitutional Tribunal's 2001 Decision; correct?

A. The Decision by the Tribunal was not complete. It didn't say how the updating was to be done. That is why the Ministry was not able to establish the administrative procedure. It did so in 2013, though.

Q. Yes. And so, am I right--just to understand this, am I right that the Ministry--the Ministry of Economy and Finance was responsible for the operations of the Agrarian Bank, the original paying agent for the Bonds; correct?

A. I didn't really understand your question. Could you please clarify it for me?

Q. Yes. You know that the original paying agent on the Bonds were the Agrarian Bank; right?

A. Yes. It was called in the past the Bank for Agricultural Development.

Q. Okay. Am I right that the Ministry of Economy and Finance was responsible for allocating funds that the bank was supposed to use to pay the Bondholders? Correct?

A. Indeed. That was its obligation, to transfer the resources, the financial resources, to the bank, and at all times it conducted the transfers for the money to be paid to the Bondholders.

Q. The Agrarian Bank was dissolved in 1992; correct?

A. I don't remember the exact date, but it was in the '90s when structural reforms took place. And when there was a policy for fiscal balance implemented by Perú, one of the measures was to dissolve the development banks.

Q. And within the Peruvian legal system, the Ministry of Economy and Finance was still responsible for funding the budget to pay that debt; correct?

A. At the time, the obligations related to the Bonds was equal to 1 cent of nuevos soles. So, we

never had the will to not pay. So, to pay 1 cent to thousands of Bondholders, how are you going to distribute that? 1 cent is 1 cent. How were you going to distribute this amongst all of the Bondholders that were still waiting for their payment, or pending payment?

Q. I think you missed my question. My question was about institutional responsibility.

Am I right that the Ministry of Economy and Finance was the institution responsible for finding a budget to pay the Land Bonds debt?

PRESIDENT FERNÁNDEZ ARMESTO: I think she has answered it. The answer is: The whole Agrarian Bond was 1 cent, and it was impossible to pay 1 cent--to distribute the 1 cent among the thousands of Bondholders. It became impossible to pay them. That's, I think, the position of the Witness.

BY MR. FRIEDMAN:

Q. Okay. Now, you said that the Ministry was happy to pay except for that. So, you noted--am I right that--you already acknowledged, I think, before that the current value principle applied to the

Ministry of Economy and Finance, as well as to all other institutions, since 2001; right?

A. I have not said that it's applied since 2001. What I said: That the Constitutional Court in the 2001 Decision declared that the Land Bonds were going to be updated using the current value principle. It clarified the methodology in 2013 and other variables as well.

Q. But the current value principle, I think you acknowledged, applied generally, including to the Ministry, even prior to 2013; correct?

A. I didn't really understand your question. Where does it say that the Ministry applied the current value principle? The accounting at nominal value started when the new currency came in, the new sol, and it went to 1 cent, and it is 1 cent what it owes for the Land Reform Bonds. So, the Ministry has never applied the current value principle. There was no legal framework to apply the current value principle until 2013.

Q. So, from 2001 until 2013, did you understand that the Land Bond debt had to be paid according to

current value, or not?

A. It had to be paid once the mechanism was established, the variables, the how to do the update, and that didn't take place until 2013.

Q. But did you accept the principle that applied to the Ministry of Economy and Finance was the current value principle, even if the details of that had not been worked out?

MR. JIJÓN: Mr. President, the Witness has already answered the question.

THE WITNESS: Again, what the Constitutional Court says is unquestionable. It's a ruling that is unquestionable. In 2001, it says that the current value principle has to be applied, but then, in 2013, it says how. And the MEF, after getting the how, in good faith, it has implemented the whole procedure. And now we are at the stage where we are paying the Land Bonds--well, the ones that have been included in the administrative process.

ARBITRATOR DRYMER: Excuse me, but just to clarify--and hopefully shorten this--I understood, Señora, your testimony earlier to be

uncontroversially that as a State Ministry, the MEF was bound by the 2001 Constitutional Court ruling; correct?

THE WITNESS: Yes, sir. What I've said is that all of the public center entities or agencies--and, I understand, also private persons--have the duty to abide by the ruling of the Constitutional Tribunal. In 2001, the Court said the current value principle has to be applied. Okay; it has to be applied. But how was it going to be applied? The how only came about in 2013.

ARBITRATOR DRYMER: I understand. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Could this have been resolved with a law? Not with a Supreme Decree, but with a law? I understand that between 2001 and 2013, a law was missing.

THE WITNESS: Yes. Yes, sir. A law was necessary.

PRESIDENT FERNÁNDEZ ARMESTO: And there was no law?

THE WITNESS: No, there was no law.

PRESIDENT FERNÁNDEZ ARMESTO: There were some attempts--we've seen that--but the Parliament never passed a law?

THE WITNESS: That's right, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. There were some drafts, but the law was never passed.

THE WITNESS: That's right, sir.

PRESIDENT FERNÁNDEZ ARMESTO: And, in 2013, the CT issued a Decision to enforce its initial Decision?

THE WITNESS: Yes, that's right, and the Court said the MEF, through the DGETP, has to approve this procedure. No law is necessary, but we need now a Supreme Decree, and this is what the Constitutional Court said.

BY MR. FRIEDMAN:

Q. Yes. Can you tell me, then, during this period between 2001 and 2013, why was the Ministry of Economy and Finance arguing in Peruvian courts that these Bonds remain subject to the nominal value principle rather than current value?

MR. JIJÓN: Mr. President, what portion of

the Statement is he making reference to?

PRESIDENT FERNÁNDEZ ARMESTO: It is a legitimate question. We're going to see whether the Vice Minister knows or does not know this, but it is a legitimate question.

You may wish to repeat the question.

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. Are you aware that, between 2001 and 2013, and even subsequently, lawyers on behalf of the Ministry of Economy and Finance have argued in Bondholder lawsuits in Peruvian court that the debt only has to be paid at nominal value?

A. I would understand that this has to do with the principle of legality. Again, in Perú, no one is going to act in a manner different from what the law provides. There was no law that established the manner in which the Land Reform debt was to be updated.

So, in abiding by the existing laws, well, at the time there was no legal framework that indicated how the updating was going to be done, and

in 2013, the Constitutional Court in its ruling said that all of the court cases have to apply this mechanism of updating put forth by the Court.

Q. That did not answer my question.

My question was: Were you aware that, between 2001 and 2013, and even subsequently, that lawyers on behalf of the Ministry of Economy and Finance have argued in Peruvian Court that the Bonds only need to be paid at nominal value?

A. I think that my answer does answer your question. The lawyers of the Ministry of Economy and Finance, the lawyers of the Ministry of Agriculture, and also the Ministry of the Economy that were involved in the court cases answered on the basis of the existing law. There was no existing law that indicated how the debt had to be updated. I think they have fulfilled their duty.

PRESIDENT FERNÁNDEZ ARMESTO: Lawyers always hold extreme positions.

MR. FRIEDMAN: Okay.

BY MR. FRIEDMAN:

Q. So, am I right that the 2013 Constitutional

Tribunal was highly critical of the Ministry's treatment of the Land Bond debt since 2001?

A. Yes. It made a number of comments, but you are saying that they were critical, but it also recognized that it didn't set the "how," and that is why they were going to indicate the mechanism. The Court recognized that it had not finished regulating the valuation process for the Bonds.

Q. Am I right that they called the Ministry's conduct during the period 2001 to 2013 "manifestly unconstitutional"?

MR. JIJÓN: Mr. President, could you please indicate to us, where are you reading?

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Let's go step by step.

Ma'am, do you remember this, or would you like for us to have you shown a document? Would you like to see the Decision of 2013 by the Constitutional Court?

THE WITNESS: I don't remember it, Mr. President, the exact language, but I remember that there was some criticism. But it also

recognized that not all of the mechanisms had been put forth, and that is why it felt it had the obligation to establish that mechanism.

BY MR. FRIEDMAN:

Q. But it also considered that it had been the Ministry's responsibility to come up with those mechanisms in the meantime; correct?

A. I would like to see exactly where that is stated. That is beyond the general reading that I've done. I have not memorized the language.

Q. Okay. Why don't we move on to something else, then, that you were personally involved in, which is the hiring of Professor Seminario?

Do you remember in 2011 that you were involved in hiring Professor Seminario?

A. Yes, sir.

Q. And he was hired under the authority of Emergency Decree Number 012-2011, dated March 31, 2011; correct?

A. Would you please tell me where in my Statement I indicated that part of the Emergency Decree?

PRESIDENT FERNÁNDEZ ARMESTO: Is it important that it is under the "decreto de urgencia"?

MR. FRIEDMAN: It is, if you'll bear with me for just a moment.

Do you have Minister Castilla's Witness Statement? Is that in the binder?

MR. JIJÓN: Excuse me, Mr. Friedman. Did you just say to look in Minister Castilla's Witness Statement, or in hers?

MR. FRIEDMAN: Correct. Correct, Minister Castilla's Witness Statement.

MR. JIJÓN: And where is this in her Statement?

PRESIDENT FERNÁNDEZ ARMESTO: What did Minister Castilla say?

BY MR. FRIEDMAN:

Q. At Paragraph 17 of his First Witness Statement, Minister Castilla describes the background of this, and he says: "On March 31, 2011, the President issued Emergency Decree Number 012/2011, ordering extraordinary measures to strengthen the Fiscal Stabilization Fund and generate greater public

savings."

Do you see that?

PRESIDENT FERNÁNDEZ ARMESTO: This is the Statement presented by Minister Castilla. Minister Castilla was the Minister when you were the Vice Minister?

THE WITNESS: No, sir.

PRESIDENT FERNÁNDEZ ARMESTO: So, you were not in office at the same time?

THE WITNESS: Yes, we were in office at the same time, but when he was the Minister--I don't remember the period, but as Vice Minister of Finance, I was general director, and when--I think that when he became Minister, I was Executive Director. I don't recall the specific time.

PRESIDENT FERNÁNDEZ ARMESTO: But you reported to him; right?

THE WITNESS: Yes, I reported to him.

PRESIDENT FERNÁNDEZ ARMESTO: And you know him; right?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And you have

worked with him; right?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And so, the Minister is telling us that on March 31, the President issued an Emergency Decree with this number, and that is the one that allowed to hire Professor Seminario. Does it sound right to you?

THE WITNESS: The Decree, the law Decree--

PRESIDENT FERNÁNDEZ ARMESTO: Well, this was an Emergency Decree.

THE WITNESS: Even though I did not include it in my statement, I have seen it, and indeed, this is a rule that establishes how to regulate the fund, and one of the last Articles includes a legal framework to be able to hire Expert counsel, practitioners, legal practitioners and administrative practitioners or financial practitioners who could recommend a strategy to the Peruvian State in connection with the contingent liability. And, yes, that was used as a background for the hiring of Mr. Seminario.

BY MR. FRIEDMAN:

Q. All right. So, that background was to generate greater public savings, to increase the State's capacity to respond to emergencies or a global recession; correct?

PRESIDENT FERNÁNDEZ ARMESTO: That's what--let's move on.

BY MR. FRIEDMAN:

Q. Okay. Then--you then, are the one who actually engaged Mr. Seminario; correct?

A. The Company, the office that I directed, hired Mr. Seminario, and the working team within the Office was the one that coordinated by providing him information that he may have requested.

Q. Okay. And you personally signed his consulting Contract; correct? In your official capacity, of course.

A. Yes.

Q. And let's look at his Contract, which is Tab 44 in Book 2. And--sorry. Document R-549.

ARBITRATOR DRYMER: Señora, do you have that document in front of you? Perhaps--yes. Is that a yes? Thank you.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: What is the importance of this document?

BY MR. FRIEDMAN:

Q. Yes. I'd like to look at Clause 2, which describes the purpose of the Contract. So, he was hired to perform an analysis of the methodology proposed by the Commission created by Supreme Decree Number 148/2001 for updating the Bonds, and to verify, if applicable, the conclusions issued with respect to the methodology in accordance with the valuation principle established by the Constitutional Court and the Judgment dated March 15, 2001, and with fiscal sustainability.

PRESIDENT FERNÁNDEZ ARMESTO: That is what it says, yes.

MR. FRIEDMAN: Okay. Good.

PRESIDENT FERNÁNDEZ ARMESTO: What is the question?

BY MR. FRIEDMAN:

Q. And so, is that what you expected Professor Seminario to do?

A. You have not read 2.2 that continues after what you mentioned, where it says "and, if needed" to suggest also other options for the updating of the land debt that should be coherent with the Decision by the Tribunal and also fiscal sustainability.

That is what we were looking for. That is for him to analyze the proposal of the--presented by the Commission created under 048 and also based on the knowledge and, if necessary, and if there was any question or--any question regarding the recommendation by the Commission, he had to present another option.

Q. What did you mean by "fiscal sustainability?"

A. The ability the Peruvian State had to pay, given all of the obligations vis-à-vis the population.

Q. So, you expected Professor Seminario to study that question, namely the State's ability to pay?

A. I think that the Experts in the economic area understand what fiscal sustainability is, and I

am not here to define what it is, and what Professor Seminario could or could not do or examine or posit as part of this fiscal sustainability.

Q. Sorry. Did you or did you not expect Professor Seminario to study the question of what level of debt would be fiscally sustainable for the State of Perú?

A. We had requested what is stated in the Contract, and I have already read it.

Q. But it does say in the Contract that you wanted him to look at the question of complying with the Land Bond judgment of 2001 and consider fiscal sustainability. So, what was he supposed to do to analyze fiscal sustainability?

A. I am going to indicate what the Constitutional Tribunal indicated in 2013 when they analyzed the proposal presented by the Commission under Supreme Decree 248/2001. The Constitution Tribunal included some comments.

PRESIDENT FERNÁNDEZ ARMESTO: No, I think that what the attorney is asking you is whether you were expecting Professor Seminario to estimate the

total impact for the budget of paying the land debt and also to put this in context given the total, the fiscal obligations Perú had, and to analyze whether by applying the formula that he had developed, the result was such that the fiscal sustainability principle was not guaranteed. Were you expecting him to carry out macroeconomic estimates based on the proposal?

THE WITNESS: No, it was not up to that macroeconomic level. No, that was not our expectation.

PRESIDENT FERNÁNDEZ ARMESTO: Well then, the question is whether you're asking him to take into account fiscal sustainability, and he develops just a formula, a financial formula, the result of that formula may be that the total is not sustainable from the fiscal point of view for Perú, and that's why he had it.

THE WITNESS: Well, but as part of the comments, that's what he indicated.

PRESIDENT FERNÁNDEZ ARMESTO: What did he indicate?

THE WITNESS: He indicated that the formula, the one that he was recommending was the one to be applied to obligations that had been due during hyperinflation periods.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, but did he study whether the impact of his formula was going to guarantee fiscal sustainability? Fiscal sustainability means that the State has the ability to pay; correct? Just to understand this in lay terms, that means that it can pay.

THE WITNESS: Yes, that it can pay.

PRESIDENT FERNÁNDEZ ARMESTO: So, that means that the State will not go bankrupt.

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: So, I don't know whether Professor Seminario included an estimate, calculation as to see the global impact of his formula.

THE WITNESS: No. Because there was no database on the number of Bondholders that had outstanding payments.

BY MR. FRIEDMAN:

Q. Did you provide Professor Seminario--you meaning the Ministry, of course--did the Ministry provide Professor Seminario with information about what level of debt would be fiscally sustainable?

A. He was given the information on the Land Reform Law, also the Bonds that were issued, the statistics on the Peruvian debt are public. They are on the website. I don't even think that he requested that information. Any person has free access to all of the information on the debt.

Q. Was the reference to fiscal sustainability in his Contract simply a way of asking him to find a--updating formula that required the State to pay less money?

A. That was not the intent. That is not the implicit or explicit intent.

Q. But what else could it mean if you didn't actually ask him to study the fiscal--level of fiscal sustainability?

A. The President of the Tribunal just indicated it, that the State would not end up with a huge debt that would have an impact on the other obligations

that the State has with the rest of the population.

Q. Right. But we need to know what level that then is sustainable, don't we?

A. I already said it. I don't know how to answer this again.

Q. Let me ask this question. Now--

(Comments off the microphone.)

MR. FRIEDMAN: Yes, I'm told that there was a--there was something in the translation that didn't come through to the English. Immense and "impagable."

MS. POPOVA: "Impagable."

PRESIDENT FERNÁNDEZ ARMESTO: "Impagable."

MS. POPOVA: The word "impagable" was not included in the Transcript and apparently was not translated.

PRESIDENT FERNÁNDEZ ARMESTO: The Vice Minister said that it was something that was impossible to pay--that is to say, something that would have an impact on the other citizens of the Peruvian nation.

BY MR. FRIEDMAN:

Q. Now, the Contract says that Professor Seminario was compensated with 33,333 soles for his consultancy services. Was that--were those the only payments made to Professor Seminario?

A. Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Do you recall? Do you know?

THE WITNESS: Well, I have reviewed, I reviewed the amount of the Contract. So, I assume that you are asking me without lying or trying to make up the value. I assume that this is good-faith information that you are giving me, the exact amount of the Contract, that is that you were paid--that he was paid what the Contract says.

PRESIDENT FERNÁNDEZ ARMESTO: So, he was paid what the Contract says?

THE WITNESS: Yes, what the Contract said.

BY MR. FRIEDMAN:

Q. And no other payments than what is in the Contract; correct?

A. No.

PRESIDENT FERNÁNDEZ ARMESTO: That is what

she just said.

THE WITNESS: No.

BY MR. FRIEDMAN:

Q. Perfect. And Professor Seminario completed his work in 18 days, am I correct?

A. I don't recall. I don't recall exactly the number of days for him to conclude, I think that the Contract provided for 45 days.

Q. Right. And according to the Contract that we have, he was retained on April 13, 2011, and then he submitted his final Report on May 1, 2011.

Does that sound about right?

PRESIDENT FERNÁNDEZ ARMESTO: If you recall.

THE WITNESS: It doesn't say April 13. I don't remember the date. I think it was April 18, but the Contract does provide for 45 days.

PRESIDENT FERNÁNDEZ ARMESTO: About 45 days.

BY MR. FRIEDMAN:

Q. Then, am I right that very shortly after that, on May 9, the Ministry incorporated Professor Seminario's formula into that draft law that we looked at earlier?

A. I don't recall that detail, but if that's what you say, it may have been that way. I don't recall.

Q. Okay. We could look at Tab 48, which I think is in the second volume. You may have that. We looked at this document before. It's the draft law.

PRESIDENT FERNÁNDEZ ARMESTO: And it is--

MR. FRIEDMAN: Yes. It is Document R-298.

BY MR. FRIEDMAN:

MR. FRIEDMAN: And if we look at Page--well, after--I think the easiest way to do it is after Paragraph 22, and before Paragraph 23 you see a formula expressed. Do you know whether that's Professor Seminario--we believe that it is.

Do you know whether that is Professor Seminario's formula?

A. I cannot assert that 100 percent. I have not compared that, but by looking at the formula, it would seem to be the same formula as recommended by Professor Seminario.

Q. Now, the Ministry of Economy and Finance, I

assume, has economists working there; correct?

A. Yes, sir.

Q. Okay. And did any of the Ministry of Economy and Finance's own economists review--

PRESIDENT FERNÁNDEZ ARMESTO: You are an economist; right, Vice Minister?

THE WITNESS: Yes.

BY MR. FRIEDMAN:

Q. Yes. Did anybody in the Ministry of Economy and Finance critically review Professor Seminario's work?

A. I would say no, because we had hired an Expert to conduct this macroeconomic econometric study or--with the heavy burden of statistics, and even though we may have economists, they do not all have specific expertise, and no one within the Ministry questioned the formula. And we had hired him to get--to see what his Opinion was and also to accept what he had concluded in his document.

Q. Okay. And did you meet with and speak with Professor Seminario as well or just receive his written Report?

A. I personally do not recall meeting with Professor Seminario.

Q. Okay. Now, if we could take a look at the Report that he provided. It's at Tab 47 in the binder, and it's Document R-297 or CE-751.

And he calculated--do you recognize that Report, Vice Minister?

A. Yes, sir.

Q. Okay. And in that Report, Professor Seminario calculated some aggregate numbers of what the different updating methods might cost; correct?

A. Yes. There is an exercise based on the total authorization of the 15 billion Bonds.

Q. Right. So, his calculations were based on 15 billion soles de oro face value; correct?

A. Soles.

Q. Correct?

A. Soles oro, sí.

Q. Yes.

A. Yes.

Q. And so, he was valuing the entire original principal that had been authorized by law; correct?

A. Yes. He was using that as a reference.

Q. Okay. In fact, of course, many Bondholders had redeemed many of the coupons over the years; correct?

A. Yes. Some have redeemed.

Q. And the total outstanding principal amount of the Land Bonds must be less than 15 billion soles de oro; correct?

A. Based on the accounting of the bill, 1 cent.

PRESIDENT FERNÁNDEZ ARMESTO: No. This is just a question. That is, if 15 billion were issued with 15 billion principal, you can only have right now in the market a lower amount; correct?

THE WITNESS: Yes.

(Comments off microphone.)

BY MR. FRIEDMAN:

Q. At this time in 2011, did the Ministry of Economy and Finance have an estimate of what the outstanding principal was in soles de oro of the Land Bonds?

A. I didn't understand your question fully. Would you please repeat it?

Q. Yes. In 2011, did the Ministry of Economy and Finance have an estimate of the total outstanding amount of the principal of the Land Bond debt?

A. No. Only what was in the accounting that is equivalent to 1 cent of the sol.

PRESIDENT FERNÁNDEZ ARMESTO: So, what you are saying is there was no record. There must be a record with the Bank for the Agrarian Development. Wasn't there a record of what had already been paid?

THE WITNESS: But when that Bank ceased to exist, all of the documents, well, we need to go and look tirelessly for all of those documents to rebuild the story.

BY MR. FRIEDMAN:

Q. You're familiar with what's been called sometimes the "148 Commission?" Am I correct?

A. No, sir.

Q. Do you remember that in 2004, the Ministry set up a Commission to try to study updating the value of the Land Bonds?

Do you remember that?

A. We were just talking about that Commission a

couple of minutes ago, the one resulting from Supreme Decree 148.

Q. Correct. That's why I think at least we call it sometimes the "148 Commission" because it was authorized by Decree 148. Okay.

And that Commission was established in 2004; correct?

A. I don't recall the date of the issuance of that Decree. I think I need to look at the exhibit.

(Comments off microphone.)

BY MR. FRIEDMAN:

Q. Maybe we could turn to Tab 24 in the first binder. Yes, R-257.

I'll take you there in a minute, but do you recall that one of the Projects that that Commission undertook was trying to estimate the total outstanding amount of principal for the Land Bonds?

A. Yes. That was their mandate.

Q. Okay. And that Commission included two representatives from the Ministry of Economy and Finance, two representatives from the Ministry of Agriculture, and a representative from ADAEPRA, a

bondholder group; correct?

A. Yes, those were the members.

Q. And they did their work very diligently; correct?

A. I cannot qualify the way they did their work. I only know that they did their work.

Q. Okay. They came up with some estimates of the outstanding principal of the Land Bond debt; correct?

A. They did their exercises and, based on some simulation, I understand they reach the conclusions that are part of their document.

Q. Okay. If you could turn with me to--I think it is Page 7, although I don't see page numbers on the copy that I have. Page 7 on the PDF. Yes.

(Comments off the microphone.)

Q. Yeah. There's a section of the Report. Don't put that up on the screen yet. I want to walk through the text, please, that gets to that.

There's a section of cost benefit analysis on Page 6, and there's a subsection approximating the value of the Land Reform debt. And do you see that

on this page they try to make some estimates about the total outstanding principal amount of the debt. So, what they say, that the DGCP originally actually issued 14.557 million soles de oro, and then 1.272 million soles de oro was canceled, which left a net placement of 13.285 million soles de oro.

And then in the next paragraph, they described some other DGCP information, saying that the DGCP had paid 16,000,000,397 soles de oro, which was comprised of 10.763 million corresponding to the amortization of principal and the rest in interest, leaving a net outstanding amount of principal of 2.521 billion soles de oro.

Do you see that?

A. Yes, I am reading it.

Q. Okay. And then they take another approach, which is looking at the number of Bonds that had not been personally taken into custody by people at the Bank of the Nation; correct?

A. Yes.

Q. Now, according--and then in the table that appears, they publish that 2.5 billion outstanding

face value that were issued under Decree-Law 17718, and they add to it some other Bonds that were issued under another law to come up with a total under that approach; correct?

A. It is what the Report says.

Q. Okay. Now, this information, this data about how much had been paid down already came from the DGCP; correct?

A. That is what the Report indicates. In effect, they should have officially reported the sum of economic Resources that they had transferred to the Agrarian Development Bank and, thus, the--reflecting the amount as debt paid.

Q. And so, I take it from your answer before, that the Ministry of Economy and Finance has not made any other calculation about the total outstanding principal of the Land Bonds debt; correct?

A. No, sir. It is just what I said before, which is how much appears in the accounting of the debt.

PRESIDENT FERNÁNDEZ ARMESTO: So, about one sixth is outstanding. So, if I understand,

13 billion soles de oro were issued and it appears that it is more or less between 1,800, 1,600 with margin of error, about 3 billion. So, it would be that, about one sixth. Does that sound reasonable to you? Do these figures sound reasonable to you, or do you think that they reflect any error?

THE WITNESS: No, I'm not able to either say that it's reasonable or to say that there's a mistake. If they wrote that, they must have the documents that support it. I cannot speak either in favor or against.

PRESIDENT FERNÁNDEZ ARMESTO: For the national accounting it is 1 cent.

THE WITNESS: 1 cent.

PRESIDENT FERNÁNDEZ ARMESTO: It says Agrarian debt, "1 cent."

THE WITNESS: It is in the items "other" of the internal debt, and when you go in, put in the key, the Code, in the system, Agrarian Reform Bonds, 1 cent.

PRESIDENT FERNÁNDEZ ARMESTO: And there's no number of Bonds, just a line item.

THE WITNESS: Yes, a line item.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent. Thank you.

BY MR. FRIEDMAN:

Q. I'm about to turn to another topic, but I'm conscious of the time. We've been going for an hour and a half, and I'm in your hands.

PRESIDENT FERNÁNDEZ ARMESTO: Vice Minister, would you like to have some coffee?

THE WITNESS: Excuse me?

PRESIDENT FERNÁNDEZ ARMESTO: Would you like to have a cup of coffee?

THE WITNESS: I think so. I would be grateful for a short rest.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. I think you might need one. Let us do as follows: It is 11:05, so we will be back at 11:20.

Vice Minister, there is coffee outside.

THE WITNESS: Thank you very much.

PRESIDENT FERNÁNDEZ ARMESTO: There is yogurt, fruit. I will ask you to please not speak of anything related to this matter with counsel for the

Republic of Perú.

THE WITNESS: Don't worry about it.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We now resume the Hearing, and we give the floor to counsel for Gramercy.

MR. FRIEDMAN: Thank you.

BY MR. FRIEDMAN:

Q. So, now, Vice Minister, am I correct that you were essentially away from the Land Bond issues for a period from May 2013?

A. In effect, as of May of 2013, I took on other responsibilities. Nonetheless, my Statement and the annexes that I've submitted have been from the time when I was Vice Minister of Treasury, and, as such, it is clear that the organizational structure--from the organizational structure of the Ministry that the Office on Public Debt belongs to or corresponds to--well, it comes directly under the Vice Ministry of Treasury. So, I have reviewed the

official records that are in the archives, and it's on that basis that I have stated what I have in my Statement.

Q. Okay. But from May 2013 to June 2016, you were focused on other responsibilities and not on matters of public debt, including the Land Bond debt; correct?

A. Yes. I had other positions.

Q. Did you have any personal involvement in meeting with or advocating to the Constitutional Tribunal in or around July 2013 with respect to the Land Bond debt?

PRESIDENT FERNÁNDEZ ARMESTO: It has been translated as "passion." Did you have a passion with the Constitutional Court. And I'm sure--

MR. FRIEDMAN: That is a more interesting question, but not relevant and not fair, I agree.

PRESIDENT FERNÁNDEZ ARMESTO: Did you have any meeting with or did you meet with members of the Constitutional Court at the time around July of 2013?

Mr. Friedman, July 2013 was the date.

MR. FRIEDMAN: Yes. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Did you have any meeting or phone call?

THE WITNESS: No, with no official of the Constitutional Court.

BY MR. FRIEDMAN:

Q. And did you assist in the preparations for or consult with any of your colleagues in the Ministry about a meeting with the Constitutional Court around July 2013?

A. No, sir.

Q. Okay. And did you have any personal involvement in creating the January 2014 Supreme Decrees?

A. No direct participation because I was in charge at that time of other functions, but, as I said sometime ago, my account in my Statement answers to my review of the document so as to be able to tell you what happened at that stage.

Q. Okay. So, you're aware that in January 2014, the Ministry published two Supreme Decrees that had updating formulas for the Land Bonds; correct?

A. Yes, sir.

Q. And the Constitutional Tribunal had given the Ministry six months to develop those formulas; correct?

A. Yes, sir.

Q. And those Decrees embodied the work of Professor Seminario as the valuation formula; correct?

A. Indeed. What is in Mr. Seminario's document did appear in those Decrees.

Q. Okay. Now, you returned to the--well, you left the responsibilities you were doing at the World Bank Group in June 20--with respect to the World Bank at June 2016. And am I right that by that time there were already a number of complaints about the January 2014 Decrees on the basis that they were providing value that was much too low?

A. I understand that precisely because of the different interpretations that one might have of the variables contained in the Supreme Decrees 17 and 19 that an additional consultation was put to Mr. Seminario because apparently the formulas of his

analysis were not properly carried over to the conclusion. And then they contracted another international expert, Mr. Lapuerta, and with the opinion of both Experts, they processed the Decree 034, which indicated what had--took into account what Seminario had said.

Q. So, this would be--progress more smoothly if we can just focus on answering the questions. So, I'd be grateful for that.

Am I right that by mid-2006, many people were complaining that the formulas would produce value that was much too low--2016.

A. I don't know how many complaints. And at any rate, I learned about that by reference, but basically what I understand is that there were different interpretations of the existing formula, and so the consultation was put to Mr. Seminario, as I'm saying.

Q. Yes. But the complaints--the complaints were that the formula was producing values that couldn't be right; correct?

A. That is likely. I have no personal

knowledge of that, sir.

Q. Okay. Am I right that the formulas that the MEF published in January 2014 were essentially providing nominalistic values?

A. I wouldn't dare to say that because I don't have the calculations that were made to be able to say that they were yielding very low values. What I do know is that there were different interpretations as to how they were applied or where the data came from in order to apply the full formula, and that is why we got into this review with Mr. Seminario.

Q. The Ministry itself recognized that the values were much too low; is that correct?

A. In what document does the Ministry recognize that they were too low?

Q. Well, if you could turn with me to Tab 123, which is in Volume 3 and, forgive me, is CE-589.

This was a document produced by Perú in this arbitration. Are you familiar with this document?

A. This is the database that I have been handling in connection with all these proceedings for administrative updating.

Q. Right. So, what it appears to be is attempting to estimate the updated value of the Land Reform Bonds; right?

A. Of the Bonds that had been included in the authentication process. That's the exercise that this relates to.

Q. Umm-hmm. And there are 280--if you turn to the bottom columns, there are 282 Bonds that are being analyzed here; correct?

A. That is what the table states.

PRESIDENT FERNÁNDEZ ARMESTO: Excuse me, Vice Minister. This was prepared by the Ministry; right, Vice Minister? I don't know if you know.

THE WITNESS: Well, I couldn't really tell because it's not signed. It doesn't have any seal from the Ministry, but I have seen similar databases, so I can presume that, perhaps, that's one of the tables that has been taken from the database.

PRESIDENT FERNÁNDEZ ARMESTO: Please go ahead, sir.

MR. FRIEDMAN: Thank you.

BY MR. FRIEDMAN:

Q. On the right column, it says "valor actualizado," which is updated value, and two columns. One seems to be--the first column there seems to be under the original 2014 Supreme Decrees, and then there's an--under 2016, "DS Precisado."

Do you see that?

A. I do.

Q. Okay. And then we see the face value, to the left column, well, kind of in the number of the page, "valor nominal del bono soles oro," where you can see the face amount of the soles oro.

A. Yes.

Q. And in " saldo original," there is "Saldo Total of the Bonds in soles oro," which is the total face amount; correct? So, if you go to the bottom of the page, the tab.

THE INTERPRETER: There was no answer to the question.

BY MR. FRIEDMAN:

Q. Well, if we go to the bottom of the page, you can see that there's an updating on about 14.7 million soles oro of face value under the two

methods; correct?

A. Well, I cannot dare to say whether this is correct or not because I have not worked directly on this table. You are reading the total amount and nominal value for these soles oro, and you are making reference to this 14,657 in soles oro. You make a reference to that amount, correct.

Q. Right? So, you see that. That's a total face--according to this document, it seems to be the total face amount of soles de oro, and the value under the original Supreme Decrees that was to be accorded to that was about 47,000 soles nuevos; correct?

A. That appears to be what the table states.

Q. Okay. And under the updated, the precisions that are in the last column, the value for those same Bonds would be 2.8 million soles nuevos; correct?

A. That is what the table states.

Q. So, it seems from this that the analysis within the MEF were based on the MEF's data would have showed that there was a very serious problem with the original Decrees.

Would you agree with that?

A. It seems to indicate that it seems to be part of the analysis that they conducted when they noticed that the formula was not correctly stated, according to the conclusions of the Report by Mr. Seminario.

Q. And it's a pretty big error, would you agree with me?

A. I cannot qualify the nature of the error. It is an error simply.

Q. Well, if it's 2.8 million Nuevos Soles that is supposed to be paid in its yielding values of only 47,000 Nuevo Soles, that's--

PRESIDENT FERNÁNDEZ ARMESTO: What is the yielding value?

MR. FRIEDMAN: Their updating formula.

(Comments off microphone.)

MR. FRIEDMAN: Sorry.

PRESIDENT FERNÁNDEZ ARMESTO: I have a question.

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Ma'am, just a

question, excuse me. What is the difference between the updated value, according to Supreme Decree 19/2014 and updated value 2016 and that it says clarified?--if you know; right?

THE WITNESS: Mr. President, I can only answer with what I presume. What I presume out of this is that the updated value of the Decree 19 is the formula, and the clarified value is--what they are trying to say, okay, if we're correct, according to the formula, the correcting formula by Mr. Seminario, these would be the results. Probably this is what led to Supreme Decree 0034.

PRESIDENT FERNÁNDEZ ARMESTO: Of 2014 or 2016?

THE WITNESS: 2017. 2017. 34 is 2017.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. I understand that. If we eliminate this error, the correct amount would be 2.878858 soles.

THE WITNESS: According to this, apparently that is the figure, yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, this would mean that Land Bonds that historically had had

410,652,338 nominal value in soles, those would be converted to 2.878858 Nuevos Soles. Well, whatever soles are called now.

THE WITNESS: Yes, Nuevos Soles, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, Nuevos Soles then. That is what the table says.

THE WITNESS: That table seems to indicate that.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much.

BY MR. FRIEDMAN:

Q. Now, my question to you is, this seems like a rather substantial error. Would you agree with that?

A. Again, I'm not going to qualify the error. This is just an error.

Q. But the order of magnitude, you would agree with me, is quite large between the January 2014 implied values and the ones under this new method?

PRESIDENT FERNÁNDEZ ARMESTO: I think the Vice Minister has--

MR. FRIEDMAN: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: --the mistake is the mistake, and the Vice Minister has said that the right column is the correct one and that the left column was a mistake.

BY MR. FRIEDMAN:

Q. Now, during this time, mid-2016, am I right that the Ministry continued to defend the Bondholder process and encourage Bondholders to sign up to it, despite recognizing this flaw in the valuation formula?

A. What the Ministry did at all times and what it does, in particular, in connection with these proceedings is to act in good faith. It's always acted in good faith. It is implementing the administrative process that the Constitutional Tribunal has indicated, and if there are errors that need to be cured because there are better ways to clarify the formula so that people don't interpret it as A, B, or C, well, that is what has happened, and it is Supreme Decrees up until 242.

Q. But am I right that at this time the

Ministry was continuing to defend the Bondholder process and encourage Bondholders to submit to it?

ARBITRATOR DRYMER: To be clear, Mr. Friedman, the time frame you're looking at is at the date of the document.

MR. FRIEDMAN: Which is June 2016.

ARBITRATOR DRYMER: Well, let me ask you a question on that. It says "dot dot el," 20 February 2016 actualized or updated June 2016.

Do you have a date for this document itself, not of the calculations that it is reflecting?

MR. FRIEDMAN: It is Respondent's document that was produced.

ARBITRATOR DRYMER: Yes. Well, I was asking you if--

(Overlapping speakers.)

MR. FRIEDMAN: Yeah. No. I have assumed that since it's actualization up through June of 2016--

ARBITRATOR DRYMER: Right.

MR. FRIEDMAN: --but uses data from earlier, I think we have been--

ARBITRATOR DRYMER: Okay.

MR. FRIEDMAN: --assuming that it was reasonably--you know, the most current data at the time.

PRESIDENT FERNÁNDEZ ARMESTO: Madam, just to understand this better because there were two Supreme Decrees in 2014. This document is dated 2016. When the error was corrected, it was corrected in the Decrees that were issued in 2017; is that correct?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Perfect. Thank you.

BY MR. FRIEDMAN:

Q. Now, it was during this period in June 2017 that the Ministry further consulted with Professor Seminario; correct?

A. Yes. I don't remember the month exactly, but a consultation, a formal consultation was put to Mr. Seminario for him to review his Report, and he concluded that, indeed, some of the data was not transcribed correctly in his analysis and the conclusion, and then he told us where the

clarifications were in connection with this Report.

Q. And was that the first time that the Ministry had consulted with Professor Seminario about this subject since his work in 2011?

A. I don't have personal knowledge of that. What I can tell you, sir, is that the consultation was done formally in writing, and that's what happened then.

Q. Okay. But you're not aware of any contacts between the Ministry and Professor Seminario between his work in 2011 and this period in the middle of 2016 with respect to the Land Bonds; correct?

A. I don't know if there have been coordinations in that regard.

Q. Okay. And that's also when Mr. Lapuerta analyzed the formula; correct?

A. Precisely. When they realized all these details, they asked Mr. Seminario to review his Report, and for further certainty, they asked the Opinion of an international expert, Mr. Carlos Lapuerta. I think that's his name and last name, if I'm not mistaken.

Q. Mr. Seminario had provided corrections to his formula; correct?

A. That's right.

Q. Okay. And that led to the development of the February 2017 Supreme Decrees; right?

A. 034, yes. Supreme Decree 034.

Q. Okay. Now, am I right that, at the time that the Ministry had first issued the Supreme Decree in 2014, they had not contemplated changing the valuation formula; is that correct?

A. I don't really understand your question. What exactly are you asking?

Q. These changes to the formula that you were making in 2017 were not anticipated at the time of 2014; correct?

(Overlapping interpretation.)

MR. FRIEDMAN: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: I think you have to clarify. Mr. Friedman, I have difficulties understanding it.

BY MR. FRIEDMAN:

Q. One moment.

ARBITRATOR DRYMER: And maybe distinguish between the two 2014, please.

MR. FRIEDMAN: Okay.

THE WITNESS: Mr. President, if you'll allow me.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course.

THE WITNESS: Let's see if I understand what counsel is asking. Normally, when documents and legal norms are issued, you don't anticipate changes to the future, so you're not anticipating what's going to happen in the future. What it was anticipated in 2014 is that the payment mechanism was lacking, and that was anticipated and regulated in 034, but the Peruvian State and the MEF, as a prestigious institution, cannot anticipate that the formula is going to be corrected. That cannot happen.

BY MR. FRIEDMAN:

Q. Right. So, if you can turn to your Second Witness Statement, please, at Paragraph 12. At the end of that paragraph, it says that the original

Supreme Decree from 2014 anticipated there would be a future Supreme Decree regulating the final steps of the administrative process. But really it was just the methods of payment, not changes to the valuation formula; correct?

A. Indeed. I said that there was no way for one to anticipate changes in the valuation formula, but if along the way you notice that there are things to be improved, things to be corrected, well, it is always possible to go one step ahead and to make the changes that one considers are going to improve the whole administrative process system.

Q. Okay. I want to now look at the February 2017 Supreme Decree and the justifications for it. And that is in our books at Volume 5, I think; right?--Tab 155, Document 698, R-698. R-698.

(Comments off microphone.)

MR. FRIEDMAN: It's the Statement of Reasons for the supreme decree.

Q. Now, the Statement of Reasons is prepared because Peruvian Administrative Law requires the Ministry to act within certain parameters; correct?

A. Again, I'd like to state that I am not a lawyer by profession, so I don't know exactly where this is provided for, but because of general uses and customs, I know that all laws have a Statement of Reasons that precede them.

Q. Yes. Very good. If you could turn to Page 2 of this document, there's a cost-benefit analysis. And it says the bill has the aim of standardizing compliance with an obligation of the Peruvian State for those persons who are expropriated of their lands, delivering payment to them for the Agrarian Reform Bonds.

And then it says: "In this sense, there is no additional cost that the Agrarian Reform Bonds would represent that their updated value, which would be addressed based on payment alternatives that are agreeable to the fiscal balance of the nation."

Do you see that?

A. I do.

Q. So, I'm just puzzled by this because the Ministry is changing the formula in a way that could provide 30 times more value than its original set of

calculations, and, yet, its cost-benefit analysis says that there is no additional cost.

Am I right that that's the situation?

A. The Statement of Reasons says what it says there. And in connection with this cost-benefit analysis, well, you have to go by the literal value of it. There is no additional cost and then--and it talks about that would represent at their outdated value. It is not talking about statistical value. It says, well, the figure will be that coming out of the update. We don't know how many of the ones that have come into the Ministry to process, how many of them are going to want to get to the payment stage. We could not set a number to that. We could not set an amount to that, so, basically, what it is saying here that the Cost is whatever it's going to be after the updating process ends and the payment stage begins.

Q. And so, I suppose you could have used exactly the same logic, no matter what the formula was; right?

A. Sir, perhaps. Well, perhaps we could have

gotten 100,000 ways of abiding by the law. The language is the language of the Statement of Purpose, and, you know, decisions made by the State are made by the State.

PRESIDENT FERNÁNDEZ ARMESTO: So, State practice didn't ask you to do a quantitative analysis of the cost of the matter?

THE WITNESS: Of course not. There are many, many Supreme Decrees that have two or three paragraphs that relate to cost-benefit analysis.

PRESIDENT FERNÁNDEZ ARMESTO: This a global movement; right? I think in the next few years you're going to have to do a very accurate calculation, because there is a custom now of asking for very precise calculations.

BY MR. FRIEDMAN:

Q. Am I right that in none of the Supreme Decrees has the Ministry has indicated what the cost to the nation would be of this Bondholder Process? Correct?

A. Not even in the Technical Reports that the Supreme Decree relies on, the one that you have in

your possession, well, it didn't say how much it was going to cost if we didn't know how many of those Bonds were going to come to the final payment stage.

PRESIDENT FERNÁNDEZ ARMESTO: Do you recall that we saw in one of the Reports by one of these Commissions that there was something that said that one-sixth of the historical ones were there. There were 13 billion, but then only a few remain, but wasn't there someone in your department doing some projections?

For example, if we had 1,000 nominal value Bonds, the Cost will be X. 2,000, X; 3,000, 4,000. You didn't ask anyone to conduct an approximate calculation of the Cost that these Decrees would entail for the Republic?

THE WITNESS: It would be difficult to do, and it would not have been productive to do it at the time, because we needed to do the Supreme Decrees and abide by them. We didn't know how many coupons would be in circulation. We didn't know the date of the nonpayment to recognize the obligation. Many Bonds have as the latest date of payment 1985 or '87, so

there were many assumptions that one had to take into account to conduct this exercise. So, to abide by the procedure mandated by the Constitutional Court, well, we didn't really have to know exactly how much these obligations were going to cost.

PRESIDENT FERNÁNDEZ ARMESTO: I understand, ma'am, but an approximate estimation--why didn't you do an approximate estimation of--well, was this going to cost 2 billion, 3 billion new soles?

THE WITNESS: I have no personal knowledge of that, Mr. President. Perhaps an exercise was conducted--I don't have any idea--but in the files that I've reviewed, there is no formal document that you can use to say, okay, a quantitative analysis has been taken into account on the basis of a number of variables.

PRESIDENT FERNÁNDEZ ARMESTO: And Professor Seminario did not do that, either?

THE WITNESS: He did not.

BY MR. FRIEDMAN:

Q. But we did see that, in Professor Seminario's original Report, he had quantified the

amounts based on 15 billion soles de oro, the total authorized amount, and we saw that the Ministry itself did calculations on the Bonds then in the Bondholder process as of mid-2006. So, surely it would have been possible to at least analyze the financial or monetary impact of the change that was being proposed by the February 2017 Decrees in some ways; correct?

PRESIDENT FERNÁNDEZ ARMESTO: I think the Minister has--the Vice Minister has answered that she's not aware.

MR. FRIEDMAN: She has no personal knowledge.

PRESIDENT FERNÁNDEZ ARMESTO: Ma'am, you told me that you were not aware that that calculation was conducted.

THE WITNESS: I don't have personal knowledge of that, Mr. President.

BY MR. FRIEDMAN:

Q. Okay. Are you aware that the Ministry of Justice criticized this Draft Supreme Decree based on this particular description of the cost-benefit

analysis?

A. Those comments usually take place during the approval process that takes place. When a Supreme Decree is to be approved, well, it has to be reviewed by the Council of Ministers. At that stage, all the Ministries, according to their purviews, make comments. Now, if the doubts are not cured that the Ministries have, then it doesn't go further.

So, the Ministry cured these doubts, and it went to the approval of the Ministers, and it went to the President to be signed.

PRESIDENT FERNÁNDEZ ARMESTO: You were the Vice Minister at the time; right?

THE WITNESS: I was not.

PRESIDENT FERNÁNDEZ ARMESTO: In 2017?

THE WITNESS: No, I wasn't there.

PRESIDENT FERNÁNDEZ ARMESTO: That's what is in the file.

THE WITNESS: Oh, okay. You've seen it in the file.

And this is what usually happens in the approval processes for Supreme Decrees.

PRESIDENT FERNÁNDEZ ARMESTO: Now, to understand this better, the file went to the Committee of Ministers and then to the Council of Ministers; right?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Now, no calculation of the economic impact was conducted there?

THE WITNESS: It was not.

BY MR. FRIEDMAN:

Q. I'd like to look at Minister of Justice's comments. They are in Tab 149, which is Exhibit R-698--sorry, Tab 155, R-698, and that is found in Volume 5. Volume 5, Tab 155.

No. Sorry.

Forgive me. Let me start again. It is Tab 149, which is in Binder 4, so we need Binder 4, and it is document R-690.

PRESIDENT FERNÁNDEZ ARMESTO: 690.

BY MR. FRIEDMAN:

Q. If you are there with me, can you see a matrix on the third page of the document, and it

indicates the sector making the observation is the Justice Ministry, and then if you go Page 6 of the PDF, it talks about the Statement of Reasons, and it says: "With respect to the Statement of Reasons, it is observed that under the heading 'cost-benefit analysis,' indication is made there is no cost additional to that which the Agrarian Reform Bonds represent that updated value, despite the fact that the administrative procedure for the determination of payment method is being implemented. In this sense, the scope, implications, and consequence of the proposed change were not analyzed, this being the net positive effects, benefits, cost of implementing the proposal, and opportunity cost."

Do you see those comments from the Justice Ministry?

A. I haven't been able to follow you when you were reading, but if you allow me just one second.

Q. Of course. They are also on the screen, if it's of assistance to you.

And then--so that was--those were the Justice Ministry's comments, saying that you haven't

really explained the cost of this, including the cost of the change; and the next column, I think, is the Ministry of Economy and Finance's answer to that, which says: "In objective terms, the cost of the procedure"--

PRESIDENT FERNÁNDEZ ARMESTO: Let's not get it--let's give the Vice Minister the opportunity to read it, and then to answer questions.

MR. FRIEDMAN: Oh, of course. Forgive me, Mr. President.

THE WITNESS: I am reading what I see on the screen.

PRESIDENT FERNÁNDEZ ARMESTO: You don't have it on paper?

THE WITNESS: No, I couldn't find it. Well, what I see on the screen--

PRESIDENT FERNÁNDEZ ARMESTO: This is Document--let me tell you where it is. It is important for you to find it--Document 690, and this is--and here you have the matrix, and then you have the observation and the clarification of that observation. So, we go to Page 6, I think you said.

And on top it says: "In connection with the Statement of Reasons." And to the right you have the answer. So, you can look at it, and then the attorney will ask you questions.

BY MR. FRIEDMAN:

Q. Their observation is factually correct, of course, that the economic consequences of the proposed changes were not analyzed, and there is no description of the positive effects or the cost?

PRESIDENT FERNÁNDEZ ARMESTO: Wait for her to read it.

MR. FRIEDMAN: Yes, of course.

THE WITNESS: I don't understand what the question is.

PRESIDENT FERNÁNDEZ ARMESTO: So, now we have the question. What is the question, counsel? You can now put the question to the Witness.

MR. FRIEDMAN: Thank you very much.

BY MR. FRIEDMAN:

Q. So, what the Justice Ministry has observed is that there is no description of the Actual Cost of the proposed change, no analysis of that, including

the positive effects of implementing the proposal and the opportunity costs. And that's factually accurate; correct?

I mean, the Supreme Decree doesn't contain that kind of analysis; right?

A. The record includes the documents that you are familiar with that have been presented, and clearly the Statement of Reasons is reflected in this text, and this is what we usually do with the Statement of Reasons. There are several ways to do it, and there is no analysis, no analysis of costs, in the Report that was presented, but these were simulations, and this is not something that can be sent when this is attached to the Supreme Decree, but there is a Technical Report that indicates why there will be an adjustment in the regulation.

Q. The Ministry of Economy and Finance's response to the Justice Ministry's comment is in the right column, and I understand that to say that, in objective terms, the Cost of the procedure for determining payment method of the Agrarian Reform Bonds constitutes the Cost incurred by the country to

service this obligation.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think we are getting much further. The Vice Minister has said that there was no projection of the Cost, that she has not seen any, that in the file which was submitted first to the Council of Vice Ministers and then to the Council of Ministers, that there was no projection of the impact; the Ministry of Justice made the comment, and it was answered in that form by the Ministry of Finance.

I think that is what we--that's the take of this.

BY MR. FRIEDMAN:

Q. So, let me then ask this question, based on that, because this is exactly what I was building up to, which is that: Am I right, then, that as of February 2017, the Ministry of Economy and Finance had no estimate of the--

PRESIDENT FERNÁNDEZ ARMESTO: We have gone through this a couple of times, Mr. Friedman. She has said that it is not in the file, and she does not remember having seen in any file a calculation.

MR. FRIEDMAN: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Okay? I mean, that's the Witness Statement.

BY MR. FRIEDMAN:

Q. The Ministry then published Professor Seminario's two clarifications in its February 2017 Supreme Decree; correct?

A. So, that was in Supreme Decree 034, and also the payment procedure that was reflected also in that Decree.

Q. And one of those corrections was that, in his formula for the Parity Exchange Rate, U.S. CPI was supposed to be expressed in soles de oro; correct?

A. Well, it was reflected what Mr. Seminario included as part of the clarification that was also ratified with Mr. Lapuerta's Report.

Q. Yes. Did anybody at the Ministry of Economy and Finance make an independent review of the proposed corrections or clarifications before publishing the Supreme Decree?

A. I do not know, sir, but what I saw in the

file is that, based on those two Reports, the Technical Report and the legal report were issued, and the Supreme Decree follows its path to approval.

Q. So, the technical basis for the change to the formula were Mr. Lapuerta and Mr. Seminario's corrections; right?

A. I would say so.

Q. One of those corrections was that U.S. CPI should be expressed in soles de oro; correct?

A. That is established, and that is what Mr. Seminario established in his additional document.

Q. Okay. Now, you're an economist; correct?

A. But I am not going to discuss the mathematical formula. To that end, we hired an Expert.

Q. I understand. But U.S. CPI is just a number. It's not expressed in a currency; correct?

A. I am not going to be able to discuss what the Expert said. I would have to be qualified as an Expert to be able to discuss what he said in his Report.

Q. Was there anybody within the Ministry of

Economy and Finance who was such an Expert and actually reviewed what Professor Seminario had proposed as the corrections?

A. I do not know, sir. This is not part of the documents in the official file, that there was another opinion by a different Expert.

Q. Okay. And were you aware of any other analysis being made within the Ministry of Economy and Finance besides simply taking the corrections that Professor Seminario--

PRESIDENT FERNÁNDEZ ARMESTO: I think she has answered. There is--in the official file, there is no other calculation.

BY MR. FRIEDMAN:

Q. Okay. And then you're aware--there was a second correction also relating to some terms in calculating the real exchange rate; right?

There were these two corrections; am I right?

A. If you're referring to the corrections under Decree 034, both corrections come from the Reports provided by Mr. Carlos Lapuerta and Professor

Seminario.

Q. Okay. Now, I don't know if you are aware of this: Are you aware of Professor Edwards' Report in this Arbitration?

A. No, sir.

Q. Okay. Are you aware that--well, then you wouldn't be aware, but let me point out to you that what he has indicated is that there were six--he came up with six different potential interpretations of these clarifications, with value for Gramercy's Bonds implied by them of between USD 5.5 million to as much as USD 2.6 billion.

Were you aware that he had calculated this enormous range of potential value deriving from those clarifications?

A. I am not aware of that document that you are referring to, and I am not aware of the estimates.

Q. Okay. So, as far as you know from looking at the official file, as I understand it, that nobody--there are no other technical or economic analyses about the implications--

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman,

it is the third time you asked the question.

MR. FRIEDMAN: Oh, okay.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sorry for that. It is just in the interest of time. I mean, there isn't.

BY MR. FRIEDMAN:

Q. After this Supreme Decree, am I right that Gramercy wrote several times to Perú seeking clarification of what this February 2017 Supreme Decree meant?

A. I have not reviewed those documents, and I am not in a position to make a comment on that.

Q. Okay. Let me show you just one of them. And if you have no comment on it, that's fine.

It is Tab 211 in the binders, which is in Volume 5, and it is Document R-161. This is a document dated March 8, 2017 from Gustavo Ferrero at Gramercy to Ricardo Ampuero at the Ministry of Economy and Finance with respect to Supreme Decree Number 034.

PRESIDENT FERNÁNDEZ ARMESTO: Have you seen this document, Vice Minister?

THE WITNESS: No. This is the first time I see it.

PRESIDENT FERNÁNDEZ ARMESTO: She has not seen the letter?

MR. FRIEDMAN: Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: I think--do you want her to read the whole letter?

MR. FRIEDMAN: No, no. I mean, I didn't know whether she had seen it or not prior to today. It is part of the record in the case. So, if she hasn't seen the letter--

BY MR. FRIEDMAN:

Q. So, were you--you then said that you were not aware of letters like this from Gramercy seeking clarification of simply what the Ministry had intended by its clarifications; correct?

A. No, I have not seen this letter, and I have not seen other letters that you may have referred to in connection with the formula.

Q. Okay. So, I assume you can also not tell us, then, why the Ministry never responded to these requests for clarification; is that right?

A. Yes, indeed. I do not know.

MR. HAMILTON: Point of order.

MR. FRIEDMAN: Yes?

MR. HAMILTON: It is factually inaccurate.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry?

MR. FRIEDMAN: What is?

PRESIDENT FERNÁNDEZ ARMESTO: What is factually inaccurate?

MR. HAMILTON: The allegation that there was never a response to Gramercy's letter submitted in this Arbitration to an official responsible for the dispute. The allegation that there was no response is inaccurate. And this is not addressed to Ms. Sotelo.

BY MR. FRIEDMAN:

Q. Okay. Let's then--in any event, at this time the Ministry realized that it, again, had a problem with the valuation formulas in the Supreme Decrees; correct?

A. I do not understand when you're referring to.

Q. In the middle of 2017; is that right?

A. I understand that, throughout those months in 2017, there were opinions as to the interpretation and how the data could be collected, the data that was included in the formula of Decree 034, and then Decree 242 was issued to specify the origin of some figures, in particular the Central Bank of the Reserve--that is the entity that executes the monetary policy in the country--and also, to avoid interpretations, they also specified that those will be data issued by the Central Bank of the Reserve.

Q. Okay. Now, obviously the Ministry issued another Supreme Decree in August 2017, which again changed the valuation formula; correct?

A. A new Supreme Decree was issued to specify some of the aspects in the formula and to avoid interpretations as to sources of information and where several of those variables came from.

Q. Right. And so, the Ministry recognized that the February 2017 Decree could be subject to many different interpretations; correct?

A. What I'm telling you is that Supreme Decree 242 was issued to improve, and if that means

to acknowledge or recognize that there are no misinterpretations, yes, so as to avoid various interpretations and so that only one interpretation is the one used to process the data.

Q. And in that August 2017 Decree, one of the changes that the Ministry made was to change the Parity--the calculation of the Parity Exchange Rate and, essentially, abandon the method of calculating that that Professor Seminario had proposed; correct?

A. Yes. They used the methodology that is used by the Central Bank of the Reserve--that is to say, by indicating that the Parity Exchange Rate will be the one used--will be the one issued by the Central Bank. Then they are adopting the issuing of the issuing entity in Perú.

PRESIDENT FERNÁNDEZ ARMESTO: I apologize for my ignorance, Madam Vice Minister, but the Central Bank is called the Central Bank of Reserve of Perú, so that is, I understand, an official bank, the central--the official Central Bank of Perú; correct?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And that is

the one that issues the rate; correct?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, this Central Bank, does it publish or does it historically publish an official exchange rate and a Parity Exchange Rate? And if I go onto their website, do I see Parity Exchange Rates that are historical?

THE WITNESS: I cannot speak about this. I have not personally seen their website, but they do officially publish this.

PRESIDENT FERNÁNDEZ ARMESTO: So, you are talking about the Parity Exchange Rate, not the official one?

THE WITNESS: Yes, I am talking about the Parity Exchange Rate.

PRESIDENT FERNÁNDEZ ARMESTO: So, there is an Official Exchange Rate and there is also an official Parity Exchange Rate.

THE WITNESS: There is an exchange rate, Parity Exchange Rate, that is published by the Central Bank of the Reserve.

MR. FRIEDMAN: We will go to that in more

detail in just a few minutes, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much. Sorry for that. I was just curious.

BY MR. FRIEDMAN:

Q. Now, Vice Minister Sotelo, in your Witness Statement, you provide what you say are the supporting documents for each of the Supreme Decrees including the August 2017 Supreme Decree; correct?

A. Yes, sir.

Q. Okay. And if you turn to Tab 162 of your binder, which is document R-359, this is what you describe as being the support for the August 2017 Supreme Decree; correct?

A. Yes, sir.

Q. And this is what you present as the--what you call "extensive documentation regarding the legal and technical support for the Supreme Decree"; correct?

A. These are the documents supporting the Supreme Decree issuance based on the procedures usually implemented by MEF when dealing with the Council of Ministers--to present this to the Council

of Ministers.

Q. I see. One of these five documents is obviously the Supreme Decree itself, so that's not a technical analysis supporting the new Supreme Decree; correct?

PRESIDENT FERNÁNDEZ ARMESTO: I mean, there are--it says what it says. There are two informes--there are two reports, a statement of reasons, and an aide-memoire.

THE WITNESS: Let me clarify something, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Please, go ahead.

THE WITNESS: When one reviews a file based on past facts, we see the Supreme Decree that was issued based on the documents that have supported this approval process. So, when I attach to my statement this, I am sending the two Reports that, during the approval process, supported this and also the Supreme Decree that was the end result of that step, and that's the reason why it is one of the five documents.

ARBITRATOR DRYMER: I don't believe any criticism was intended in that regard. That document should be included in this index, unless I'm wrong.

BY MR. FRIEDMAN:

Q. No. But I'm trying to get in to the analysis behind it, and so why don't we look at one of the documents that is referenced on there, which is the Statement of Reasons. And you can find that in your bundle at Tab 160, R-684.

And in the middle of this page, there is, again, a cost-benefit analysis. And you would agree with me that it's very similar and maybe even identical to the cost-benefit analyses of the prior Supreme Decrees on this subject; right?

A. In--where it indicates under the reasons that there is no additional cost, clearly it is the same argument that is used in the previous Supreme Decrees.

Q. So, again, still no calculations or economic analyses by the Ministry with respect to the Agrarian Reform Bonds debt; correct?

A. As I just mentioned a couple minutes before,

no simulation can be implemented since we were unaware of the number of Bonds, the type, the expiration, when they were redeemed, when they were no longer redeemed, and since this is a proceeding, we needed to be--we needed to speed up the approval of this.

Q. All right. Okay. So, no publication of any data or figures because no simulations had been conducted by the Ministry at that time?

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Yes. Mr. Friedman, yes.

MR. FRIEDMAN: Perfect.

BY MR. FRIEDMAN:

Q. Then, if we look up above at the Statement of Reasons, it says: "On another note, given the development of update methodology"--is the fourth paragraph--"on another note, given the development of the update methodology established in Annex 1 of the Regulation"--

PRESIDENT FERNÁNDEZ ARMESTO: Let's not read it into the record.

MR. FRIEDMAN: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Vice Minister, please read Statement of Reasons, Paragraph 4 and 5 to you, and then the counsel will be asking you questions.

BY MR. FRIEDMAN:

Q. Okay. And so, what we see there is that it "has been deemed pertinent to specify the source from which this data is obtained as the Central Reserve Bank."

Do you see that?

A. Yes, indeed.

Q. So, in these records that we have here, can we find any analysis of why the Ministry was changing the Valuation Approach of the Parity Exchange Rate and abandoning Professor Seminario and, instead, moving to the Central Bank?

A. What is--the Technical Reports indicate to resort to an official source that presents the data to avoid interpretations in its implementation.

Q. Okay. If we turn to the next tab, which is 161, there is also an aide-memoire, and this is document R-685.

This is also, obviously, part of the supporting file for the August 2017 Supreme Decree and in Item 5, it says: "It has been considered appropriate to make clarifications in the updating methodology."

And the second bullet point says: "The Parity Exchange Rate shall be obtained from the Central Bank instead of that calculated by the MEF."

And so, that was the Decision at that time, to support the August 2017 Decree; right?

A. It is stated there, it is to resort to an official source such as the Central Reserve Bank.

Q. Okay. Now, I'd like, if I could, to turn to the communications with the Central Bank regarding that. Can you please turn to Tab 213, in your bundle, which is document R-1072. And there's a particular page number in there, file name.

I'm looking at the file, ROP034625.

PRESIDENT FERNÁNDEZ ARMESTO: Wait. I don't have it. Okay.

(Comments off microphone.)

MR. FRIEDMAN: Do you have it,

Mr. President?

I'm going to be turning to Page ROP034610. I need to start at a different page. Forgive me. Yes, I need to start at Page ROP034625, 625.

Vice Minister, there are small numbers. I'm just trying to help her navigate in the book. There are small numbers down at the bottom right-hand corner of the pages. Okay.

Can we provide you with a hard copy? Oh, on the screen.

BY MR. FRIEDMAN:

Q. Okay. So--so, the document is R-1072. This is the PDF folder name--

MR. HAMILTON: Excuse me, could I get a copy of what was handed to the President?

MR. FRIEDMAN: It's in your binder.

PRESIDENT FERNÁNDEZ ARMESTO: I will just follow you here.

MR. FRIEDMAN: So, Mr. President--

PRESIDENT FERNÁNDEZ ARMESTO: We have some problems in getting the right page. In the--

ARBITRATOR DRYMER: We both seem not to have

it among the list of separate PDFs in the--

MR. FRIEDMAN: It may help that there are, within our 1072, there are file names. The file names sound similar to the page names. The file name, in which you will find this document, is ROP034625.

ARBITRATOR DRYMER: Yeah, we don't have it.

ARBITRATOR STERN: We have 46--we have 4649 and we have 4674, but nothing in between.

MR. FRIEDMAN: Oh, forgive me.

ARBITRATOR STERN: We're missing inside the document.

MR. FRIEDMAN: 34572 is the file name.

PRESIDENT FERNÁNDEZ ARMESTO: 572.

MR. FRIEDMAN: And then once you are in that, we are looking for Page 34625.

ARBITRATOR DRYMER: Thank you, sir.

ARBITRATOR STERN: That's not what is here.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good. What is this whole file?

ARBITRATOR DRYMER: And thank you for your

patience, Madam Vice Minister.

MR. FRIEDMAN: Yes, Perú submitted, as an exhibit, its entire production of documents.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

BY MR. FRIEDMAN:

Q. Okay. So, this is a letter from Minister of Economy and Finance, Alfredo Thorne, to the President of the Central Bank dated June 2, 2017. And in it, in the first paragraph, Minister Thorne requests that the Central Bank publish a data series of Parity Exchange Rate for the period starting in 1969.

Do you see that?

A. Yes, that's what it says in the letter.

Q. Okay. So, the Ministry requested the bank to publish a Parity Exchange Rate.

Am I right that prior to that time, the Bank--the Central Bank had not published any kind of Parity Exchange Rate?

A. That I don't know. I don't know whether they had or had not done that before.

Q. Okay. The Central Bank then wrote back, which you can find if you scroll up a little in this

same file to Page ROP034610. And this the 16th of June 2017 response.

And on the second page, they present data series. In Item 1, including in D, the real exchange rate indexed to 1969. And then further down they calculate the--they provide some--they don't have as a data series a Parity Exchange Rate.

Are you familiar with parity exchange rates, or is that not part of your expertise?

A. No, it's not part of my expertise.

Q. All right. In Item 2, they say: "To calculate the Parity Exchange Rate, it is subject to the base period chosen"; correct?

A. That is what this sheet of paper from the Central Bank says.

Q. All right. And we saw in the letter from Minister Thorne that the Ministry had specified 1969 as the anchor year for the Parity Exchange Rate. So, that was a decision by the Ministry, not by the Central Bank; correct?

A. It is what the letter indicates.

Q. And from your review of the files supporting

this Decree, am I right that we won't find any discussion of why 1969 is the right year to anchor a Parity Exchange Rate, even though there just been a coup shortly before that and the exchange rate with the U.S. dollar was fixed at the time and there had already been inflationary pressure in Perú, why you would anchor a Parity Exchange Rate to a single month in 1969. There is just no description or analysis of the thinking behind that decision in any of materials you reviewed about this Supreme Decree, August 2017; correct?

A. It is not in the record for the process of adopting Supreme Decree 242. I do not know whether there is an analysis about why they set the index for the real exchange rate of November of 1969. I can assume that they are referring to the year in which the Agrarian Reform Bonds were issued, but it's just what occurs to me. I don't actually have personal knowledge of that.

Q. Okay. And, of course, you already described that you don't--well, that's fine.

On the next page in the document, the

Central Bank provides the statistical series for what they call the real exchange rate between Peruvian sole and U.S. dollar.

And this is the data, am I right, that you could find on the Central Bank's website, that is a publication--even today, a publication of a series of data for what is called the real exchange rate from 1950 to 2017, but the Central Bank's website does not publish anything called a Parity Exchange Rate; is that correct?

A. I do not know, sir.

Q. Okay. And am I right that in the August 2017 Supreme Decree makes use of this data series that the Central Bank presented in calculating the Parity Exchange Rate for the Land Reform Bonds?

A. What it uses is the formula which is in the methodological note from the Central Bank, not the data. The formula.

Q. Well, the formula says that you would use the data series as part of it. Right? So, if you look at the formula in the middle of the prior page, it says: "This ITCRB is this real bilateral exchange

rate," which is what this data series is; right?

PRESIDENT FERNÁNDEZ ARMESTO: You must repeat it.

BY MR. FRIEDMAN:

Q. Yes. I mean, the formula incorporates this very information, doesn't it?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: That is the formula that the Central Bank states as the base of the calculation, and this is the formula that they use in Supreme Decree 242.

BY MR. FRIEDMAN:

Q. Yes. And that formula relies on, as one of its inputs, this data series about the--what's called the real exchange rate; right?

A. I don't have personal knowledge of that.

Q. Okay. But if you'll bear with me on the data table itself, the third column is IPC Lima Metropolitana.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

BY MR. FRIEDMAN:

Q. So, that is Metropolitan Lima CPI; correct?

A. That is what the table says.

Q. And isn't it true then that Supreme Decrees from August 2017 continue to use the Peruvian CPI as part of the updating methodology?

A. What Supreme Decree 242 of August 2017 uses is the formula that is in the methodological note presented by the Central Bank. Now, if that formula includes those variables, well, I can't question that. But that is what is in the formula.

Q. Is it the Ministry's position that during periods of hyperinflation, the consumer--

PRESIDENT FERNÁNDEZ ARMESTO: Let's get--well, let's see. The formula says: "Parity Exchange Rate of January '69," and then it uses a data series, the most important one is the ITCRB base 1969. It seems that this is the same that appears in the historical series. The historical series ends at something that they call Index of Real Exchange Rate, TUA.

It seems that that's the same that appears here; correct?

THE WITNESS: It appears that it is that

index.

PRESIDENT FERNÁNDEZ ARMESTO: And the TCN is the nominal exchange rate, sale of Peruvian currency with the dollar. So, that appears to be the real exchange rate, and the one below appears to be the one taking into account the differences in inflation as between the two countries.

ITCRB was in the methodological note from the Central Bank in terms of how that formula is.

PRESIDENT FERNÁNDEZ ARMESTO: Correct. And it is calculated for each month in the series.

THE WITNESS: In the series, yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, if I want to apply the formula, I understand that what I need to do for any month is take the TCNT, which is one at the end, which is the average exchange rate per sale, and I divide it by the column to the right, which is the index of the bilateral exchange rate.

Is that it? The thing is, I'm really getting lost.

THE WITNESS: Well, that is mathematics. And one would have to test the numbers. I have not

engaged in this exercise.

PRESIDENT FERNÁNDEZ ARMESTO: Well, then we will ask Mr. Kaczmarek and Professor Edwards to explain it to us.

THE WITNESS: Yes.

BY MR. FRIEDMAN:

Q. Yes. If you turn to tab briefly--we are going to stick with this document, but can you turn briefly to Tab 189, which is R-381. Maybe we can just put on the screen--

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, put it on the screen for now.

BY MR. FRIEDMAN:

Q. --for now? You don't need to flip--keep your screens at this document. But this is from a page that you produced along with your Witness Statement from the Ministry of Economy and Finance's website describing how Bondholders are supposed to understand the method for realizing, actualizing, the Bonds and the variables that go into it. And the third of them is this real bilateral exchange rate with the link to the Central Bank.

Have you ever looked at that link? Have you ever actually gone on and clicked through and looked at that link?

A. No.

Q. Would it surprise you to learn that it was exactly the same data series that we see in the document that is in front of us?

A. Probably, but I have not gone into the database.

Q. Okay. And I trust you have not.

So, the question I wanted to ask was a more general one because it was important in a lot of the thinking that had gone on for years, including in Mr. Seminario's Report. And that is does the Ministry believe that during periods of hyperinflation, the Consumer Price Index becomes disconnected from economic reality?

A. At this stage, now that the Constitutional Tribunal has issued a ruling, what the Ministry believes is no longer relevant. The Constitutional Court itself indicates that using the CPI, including the adjusted CPI, is not in keeping with the reality

during times of hyperinflation.

Q. And that was the Ministry's position for many years; correct?

A. As I say, at this point, having heard and read the position of the Constitutional Tribunal, the position of the Ministry of Economy and Finances is no longer relevant.

Q. But we saw back in that Commission created under Emergency Decree 148, back in the early 2000s, the proposal that came out of that Commission was for an adjusted CPI to correct for this supposed imbalance; correct?

A. And the Constitutional Tribunal in 2013 indicates that the adjusted CPI--well, that, its application is not correct in times of hyperinflation.

Q. Right. And so, the Ministry though--my point is that the Ministry of Economy and Finance has been making this point for many years about CPI, that it becomes disconnected during times of hyperinflation; correct?

A. Let me reiterate. At this stage of reality,

as an Administrative Procedure on the basis of what the Constitutional Tribunal has ruled, the position of Ministry of Economy and Finances is not relevant.

Q. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: But go on to the next question, which I know is coming.

BY MR. FRIEDMAN:

Q. Now, my question to you is, did the Ministry--did the Ministry at the time of promulgating any of these Supreme Decrees or of making any potential submissions to the Constitutional Tribunal or in any of its analyses actually consider the way that CPI updating is used and the fact that, if done correctly, you don't use CPI data from the period of hyperinflation?

A. Your question was so long, I didn't really understand it.

PRESIDENT FERNÁNDEZ ARMESTO: It was a bit long, and with the interpretation, it becomes impossible.

MR. FRIEDMAN: I understand. May I break that down?

PRESIDENT FERNÁNDEZ ARMESTO: Let's go here and look here.

MR. FRIEDMAN: May I break that down?

BY MR. FRIEDMAN:

Q. So, in this case, we have a report from Professor Edwards, that I know you don't have the benefit of, but one of the points that he makes in his Report about CPI updating is that when you update just using the CPI, you take CPI data from the period of original Bond issuance, so back prior to any hyperinflation, and then you take CPI data from well after the fact, from the time of updating, and so you skip over any CPI data from the time of hyperinflation.

I'm just wondering whether anybody at the Ministry ever considered that aspect of CPI updating?

MR. JIJÓN: Mr. President, first of all, it continues to be a very complicated question.

Second, we've allowed this to go on for a long time, far afield from the scope of her statement.

Third, the Witness has made it very clear

that she has not reviewed Professor Edwards' Report.

PRESIDENT FERNÁNDEZ ARMESTO: I don't know if she can--she's here as a fact witness. This is really something for Mr. Kaczmarek, to ask him.

MR. FRIEDMAN: No, no. That was a factual question about--my question was literally about whether the economists at the Ministry of Economy and Finance had ever actually studied that issue, about the proper way of conducting CPI update.

MR. JIJÓN: We would ask that Mr. Friedman please indicate where in Ms. Sotelo's Statement there is any reference to this matter?

MR. FRIEDMAN: She has offered, as the Witness, describing the basis for the August 2017 Supreme Decree, and it's still using--

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you go to the next question? I'm not sure that the question is really relevant. If we see that it is relevant, we'll come back. But I don't know where you are going to. All right. I thought I knew where you were going to, but now I'm confused.

BY MR. FRIEDMAN:

Q. Did the Ministry, at the time of publishing the August 2017 Supreme Decree, consider what effect incorporating Peruvian CPI would have in its updating formula?

PRESIDENT FERNÁNDEZ ARMESTO: I mean--are you going to the following point, which let me put a question to the Witness which comes--excuse me. Question: We've seen here that the calculation of parity, of the Parity Exchange Rate does take into account the series of CPI, CPI Lima.

THE WITNESS: Yes, it is included in the formula.

PRESIDENT FERNÁNDEZ ARMESTO: And so, the question--I think the question that the--that counsel wants to ask you is the following: Aren't we letting the devil in through the backdoor? In other words, you say we don't want to have a revaluation applying CPI, but when we look at Exchange Rate, the Parity Exchange Rate with--using this methodology, then we're incorporating Metropolitan Lima CPI, which is precisely the CPI which in times of hyperinflation would not or should not give a fair result.

THE WITNESS: This would imply a discussion involving much more mathematical knowledge. The only thing I can tell you is that, yes, it includes the CPI, but precisely the parity CPI, this does the relevant cleaning up when comparing with the Exchange Rate--the CPI currency with which it's being compared. That's why it's called "parity CPI."

Beyond what is described in the formula, the Constitutional Court itself, I reiterate, we base ourselves on what the Constitutional Tribunal says. And it says just apply the Exchange Rate CPI Perú with no adjustment, with no mathematical cleaning up.

That is what the Constitutional Tribunal itself has said would be the best way for updating the Agrarian Reform Bonds. But if the Tribunal itself, it does say that the Parity Exchange Rate must be used.

BY MR. FRIEDMAN:

Q. And the updating process, according to the Supreme Decree for clipped coupon Bonds, updates from the time of the last coupon; right?

A. That is what the administrative procedure

indicates.

Q. And there were people who stopped--there were obviously some number of people who stopped redeeming their coupons during the periods of bad inflation; correct?

A. That I don't know. I know that not all of them have redeemed, in part, but they have in part at what time they stopped doing, so that I don't know. I have not conducted such a detailed research, and that's not up to me of each Bond.

Q. Okay. So, I understand not of each Bond, but I mean, it's certainly in general, am I right, that there are many, many Bonds where coupons had been clipped?

PRESIDENT FERNÁNDEZ ARMESTO: I mean, you could not collect without clipping a coupon.

MR. FRIEDMAN: Exactly. There are some that are totally unclipped--

PRESIDENT FERNÁNDEZ ARMESTO: Because they never went for the first clipping.

MR. FRIEDMAN: Exactly.

PRESIDENT FERNÁNDEZ ARMESTO: Most of them

seem to be clipped to some extent or another.

MR. FRIEDMAN: Exactly.

PRESIDENT FERNÁNDEZ ARMESTO: But she doesn't know, I don't think she really can help us.

BY MR. FRIEDMAN:

Q. Okay. So, am I right that the Ministry has--to the best of your knowledge, the Ministry has made no analysis of the impact of using CPI in this way, that it is now using it, has on value for clipped coupon Bonds during periods of hyperinflation?

A. I cannot say yes or no. I've--don't know. I've not done the analysis. What I present in my statement is the procedure for approving the legal provisions that govern the procedure, and in the current situation as of the time of my Statement about the payment procedure.

Q. I understand. If you could turn with me now a few pages later in the same electronic file that we're looking at, to page--on the bottom, it is 74 of 77 in the PDF, but at the bottom right of Page, it is ROP034645.

ARBITRATOR DRYMER: 74 of 77 is easier here at this end.

MR. FRIEDMAN: Yeah.

ARBITRATOR DRYMER: Thank you.

MR. FRIEDMAN: Which one?

ARBITRATOR DRYMER: 74 of 77.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: Could you explain?

BY MR. FRIEDMAN:

Q. We're in the same tab.

(Comments off microphone.)

Q. Forgive me. This is Tab 205--213, sorry, Tab 213. And the page, once you're there, it's towards the--it's four pages from the end in the physical book. And it's ROP034645. Exactly.

So, this is an analysis, as far as we can tell, comparing the February Supreme Decree--

PRESIDENT FERNÁNDEZ ARMESTO: So, let's get this clear. This is a document which was disclosed by the Republic of Perú.

MR. FRIEDMAN: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: It's part of the same file, electronic file.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: With the other documents we've been looking at. So--

PRESIDENT FERNÁNDEZ ARMESTO: Fine. Let's ask first the Minister, this is a document that has been produced by the Republic of Perú in the document disclosure process in this Arbitration, so it is a document that comes from the Republic of Perú.

So, first question, have you ever seen this document or this type of document?

THE WITNESS: It's not anything that I Annexed to my Statement.

PRESIDENT FERNÁNDEZ ARMESTO: So, you are not familiar with it?

THE WITNESS: No, I've not reviewed it before.

PRESIDENT FERNÁNDEZ ARMESTO: Fine. Then let's see if you can help us out, and if you see that you can't, well, you will tell us.

Please, what is the question?

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. So, this document appears to compare updating methods and results under Supreme Decree from February 2017 to what it says is TUA, July 2017, and TUA, we've heard reference to, is the unified--the collected Supreme Decree--

PRESIDENT FERNÁNDEZ ARMESTO: "Unificado."

MR. FRIEDMAN: The "unificado" that was published in--eventually published the next month in August 2017; correct? In any event, we see in the second cell that there's an estimate of total debt.

Do you see that?

And there's a figure here of 8,461 billion soles de oro. Now, my question to you is, is that the number that the MEF has been using internally about the total outstanding face value in soles de oro of the Agrarian Reform Land Bonds?

A. I believe that I indicated in response to previous questions that the official figure is what is kept in the accounting, and the accounting shows 1 cent of a sole. This detail, of course, has been

worked on in the office, but I am not familiar with it.

PRESIDENT FERNÁNDEZ ARMESTO: Significantly more than what was calculated, based on the Report of the Commission. This gives us about twice as much.

THE WITNESS: Yes.

BY MR. FRIEDMAN:

Q. More than three times. This is 2.5 billion and this is .5 billion.

So, to the best--

A. But, once again, they are talking about assumptions. One has to know where have they estimated what is the assumption, what is the calculation. That is why engaging in an exercise on assumptions, if it's not clarified, what estimates are being made, well, for me the only thing that is tangible and real is what is reflected in the accounting, and the accounting reflects 1 cent of a sole.

Q. So, to the right of that, those soles, we see the value of the total debt under the February 2017 Decree and under the TUA, and we see a

lower value for the TUA.

Do you see that? It was 911 million new soles, and it's now 817 new soles.

Do you see that?

A. That's what it says on the table.

Q. Okay. And if we look to the right side, we see the variations that have been calculated, and we see a net reduction in value of about 10 percent, which has two pieces: A 32 percent reduction because of the change in the Parity Exchange Rate, and a 22 percent increase from changing the actualization date from 2013 to the time of payment; correct?

A. I cannot tell you whether this is correct or not. I'm looking at the figures, and that's what it says there.

Q. Well, so--and the correction, the second correction, which was about the updating date, that is that the updating would run not until 2013 but until the end of the period when people were to be paid. That just made sense to do; right? Because 2013 was an arbitrary date; right?

A. Arbitrary for what? I don't understand.

Q. Wasn't this the kind of economic analysis about the change in method that really should be disclosed in a cost-benefit analysis section of a Supreme Decree showing the--there were studies about the economic impact; correct?

A. I don't have knowledge of this document, and to the extent that this document doesn't have a signature or an authorization, and I don't know what the assumptions are included here, I cannot make any additional comment in this regard. There are too many assumptions that, for starters, are very different from the other chart that the President had put to us before.

PRESIDENT FERNÁNDEZ ARMESTO: It appears--and we don't know. We're going to have to see the source of this document, who prepared it and who took responsibility for it. But it appears to say that there are 8 billion historical soles oro. This, under the methodology of 2013 or '14, well, the State has to pay 910 million soles, and under 2017 less, 816 million soles. Is that your understanding or am I completely lost here?

THE WITNESS: This is what the chart appears to say.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. 116 million nuevo soles, 2 dollars, what's the exchange rate?

THE WITNESS: 3.4, approximately.

PRESIDENT FERNÁNDEZ ARMESTO: So $300 million?

THE WITNESS: Yes, around that, sir.

MR. FRIEDMAN: We calculated it at, by 2017, USD 250 million.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

BY MR. FRIEDMAN:

Q. But if we go to the next cell down, it's the estimate of the debt presented in the Bondholder process. And it says "BN 316 cases." So, this is July 2017. I assume that that sounds right to you, that there were about 316 cases already submitted to the Bondholder process at that point; right?

A. I have no personal knowledge of that.

PRESIDENT FERNÁNDEZ ARMESTO: 322; right?

MR. FRIEDMAN: I don't know, sir, what the

date is. It was July 2017.

PRESIDENT FERNÁNDEZ ARMESTO: Ma'am, you provide a number of how many Bonds had been submitted at the beginning, do you remember that?

THE WITNESS: What I recall is that early in January this year we had--

PRESIDENT FERNÁNDEZ ARMESTO: Exactly.

THE WITNESS: 414 or 440.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. 440. So, could that figure match up this date?

What is the date of this document?

THE WITNESS: 19 June 2017.

BY MR. FRIEDMAN:

Q. Exactly. Again, we see that for all the cases, the 316 cases at that time in the Bondholder process, the net amounts anticipated to be paid to all those Bondholders declines and becomes 35,614,961 Nuevos Soles, which is about USD 11 million; correct?

A. That's your calculation. I cannot assert that. I'm not doing the calculations myself directly.

Q. Vice Minister Sotelo, who was actually

responsible for preparing the August 2017 Supreme Decree?

A. The DGETP.

Q. And that is the same group that is administering the Bondholder process; correct?

A. Yes. It's the same general Directorate.

Q. Yes. And they are responsible for considering what the fiscal impact is of changes to the Decree, or total amount of payments made to Bondholders; correct?

A. It is responsible for implementing the procedure approved, and if there are some that have come to a payment stage, it has to pay the Bondholders that are within this process.

Q. Now, am I right that the total face value of soles de oro that has been submitted to the Bondholder process is 205 million soles?

A. I don't have that registered as a function of the nominal value of soles oro. I remember about 414 cases and 12,000 Bonds. That's the number of Bonds that I remember. I don't have in the Reports what the equivalent was for that amount of Bonds.

Q. Okay. Maybe I could help you with that. If we turn to Tab 196, which is R-1062. You may recognize this as one of the schedules that you prepared.

A. What is your question, sir?

Q. There's spreadsheets here, and if you turn to six pages in, there's a column called "Monto Total soles oro." It's the second column from the right. We see down at the bottom the total figure--so, this is the total in soles oro, as I understand it, that the total figure in the process is 220,055,084 soles oro.

Do you see that?

A. I do.

Q. Okay. So, if the estimate that we saw in the prior document, that the total outstanding debt to be updated is 8.461 billion, then am I right that less than 3 percent of outstanding principal has actually been submitted to this Bondholder process?

PRESIDENT FERNÁNDEZ ARMESTO: If you do the maths, it is--it looks approximate, but you will have to represent that to the Witness.

BY MR. FRIEDMAN:

Q. Yes. Well, I represent to you that there is that math, that math holds, and subject, of course, to checking.

Would it be right to conclude that the Bondholder process has actually attracted only a very small percentage of outstanding Agrarian Reform Bonds?

A. It would be important to define first what those 8 billion soles oro are that you're taking as a reference and to get to this percentage. I assume that in that figure you have the Bonds that have not been delivered to the Bondholders, and that they are under the custody of the Banco de la Nación. So, those are never going to come in into the administrative process.

PRESIDENT FERNÁNDEZ ARMESTO: Excuse me. I don't know about that. That's the first time that I hear about that. There are Bonds that are deposited in the Banco de la Nación?

THE WITNESS: Yes, under the custody of the Banco de la Nación.

PRESIDENT FERNÁNDEZ ARMESTO: What does that mean, Vice Minister?

THE WITNESS: They were never delivered or they were never picked up by the individuals that had those pieces of land.

PRESIDENT FERNÁNDEZ ARMESTO: They are nominal; right?

THE WITNESS: Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: They are all nominal?

THE WITNESS: Yes, they are all nominal.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. They are all nominal. And some people left those at the bank, and they never picked them up?

THE WITNESS: That's right. They never picked them up.

PRESIDENT FERNÁNDEZ ARMESTO: So, those 8 billion, we have to know what they are, what they comprise.

THE WITNESS: They don't ring a bell.

PRESIDENT FERNÁNDEZ ARMESTO: Excuse me, you think that the--really think that the Banco de la

Nación would know how many Bonds it has?

THE WITNESS: Yes, I saw something that he showed me that it said Bonds under the custody of the Banco de la Nación, it is more than 1 billion.

PRESIDENT FERNÁNDEZ ARMESTO: That is why I'm asking.

THE WITNESS: What's inside this figure, 8 billion? If I don't know what the 8 billion entails, I cannot do this simple arithmetical calculation. So, when it says here total amount of soles oro, if I understand correctly, it says Format A.

This is what we need to authenticate to make sure that--whether it is an original Bond and it's not forged, well, my understanding is that when they go to the Banco de la Nación, the information they take is not the nominal value of the title but the principal of the debt. I don't know if this has to do with the principal of the debt or the nominal value of the coupon that has all the interest.

PRESIDENT FERNÁNDEZ ARMESTO: The difference is very small because the interest was based on the

nominal value.

THE WITNESS: So, it is 4, 5 percent is de minimis, really.

PRESIDENT FERNÁNDEZ ARMESTO: So, the difference between the principal and the principal plus interest is a very small difference.

THE WITNESS: I wouldn't dare say that this is a mathematically correct calculation because I don't know under which this calculation was made and how and what I'm comparing this against.

(Overlapping interpretation and speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: About the information we have regarding the total amounts--the total amounts which were authorized were 15 billion. That there is a law, but then there is a gross amount which was issued, a net amount which was issued, then there seemed to be some Bonds which are deposited with the Central Bank and then there are various estimates of how many Bonds are outstanding.

I think it would be important that we get a better understanding exactly of how many Bonds is the best estimate are still to be paid.

BY MR. FRIEDMAN:

Q. Okay. Has the MEF--Vice Minister Sotelo--

PRESIDENT FERNÁNDEZ ARMESTO: Let me ask you one question. How long do you have to go. We'll get a time check.

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: First, I will get a time check from the Secretary.

SECRETARY PLANELLS-VALERO: Claimants have spent--

(Interruption.)

SECRETARY PLANELLS-VALERO: 2 hours and 36 minutes.

PRESIDENT FERNÁNDEZ ARMESTO: Today or in total?

SECRETARY PLANELLS-VALERO: Today, with this cross-examination.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Do you have the--

SECRETARY PLANELLS-VALERO: In total, they have left 12 hours and 44 minutes.

MR. FRIEDMAN: Okay. May I propose,

respectfully, that we break now, and that I will endeavor to cut this down and be no more than probably 10 minutes with Ms. Sotelo when we come back. But it would help to achieve that, if we can break.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sure you have quite some redirect for Ms. Sotelo. I have some questions to her. So, I don't think it is possible to do it before lunch.

MR. HAMILTON: We're a little unclear how it's possible that we've been going for four hours and only two hours and 36 minutes have been allocated to Claimant.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: It is now 1:16, so we are going to return at 2:20. Vice Minister, there is food out.

(Whereupon, at 1:17 p.m., the Hearing was adjourned until 2:20 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT FERNÁNDEZ ARMESTO: We are going to resume the Hearing.

We are going to give the floor to Claimant to continue Claimant's cross-examination.

BY MR. FRIEDMAN:

Q. Good afternoon.

I'd like to ask you now about the progress of the Bondholder Process, and I would like to go to some spreadsheets that you attached to your September 13, 2019 Second Witness Statement, which are in Tab 196 of the binder. They are Document R-1062.

It may be easier to follow along on the screen.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: I mean, if you have the electronic versions, you can follow along, but it's a spreadsheet with tabs, and so for Vice Minister Sotelo, it may be easier to follow along on the screen.

(Comments off microphone.)

BY MR. FRIEDMAN:

Q. I just want to go to Form A.

Now, these are spreadsheets that you submitted with your Witness Statement; correct?

A. That's right, sir.

Q. Okay. And in Form A, Form A represents the Bonds that have essentially been submitted to the process; is that right?

A. Yes, indeed.

Q. Okay. So, we're now in the Form A tab at the bottom. And I assume this data is current as of August 2019; is that right?

A. Yes, indeed.

Q. And what we learn from this is that there were a total of 433 cases submitted with 12,902 Bonds, with a soles de oro face value of 237 billion--I'm sorry, 237 million face value; right?

And then, below that, it takes out some. It says 12 cases have been withdrawn; 10 actually are Bonds under a different law, so they are outside of this program, and two cases were duplicates. So, we

get down to a net number--well, and then there's some more taken out because of that other law, and so we get down to a net number in the process of 11,708 Bonds and 220 million face value of soles de oro.

Is that how we should understand these figures?

A. Yes, indeed. The date, that cutoff date that was--the system, those are the Bonds that had been submitted to the administrative process.

Q. Right. And the numbers are not materially different today; right?

A. Well, a small number must have been included. Well, Format A has to do with recognizing the legitimacy of the Bond, and I think that is, in general terms, the totality of the ones that have been included in the system.

Q. Okay. And then the next tab, "Pericia," those are the ones for which an Expert Report has been received authenticating Bonds; correct?

A. Yes.

Q. Okay. And if we go down to the bottom, we see that 11,551 Bonds have been authenticated; is

that right?

A. 11,551 Bonds, yes.

Q. And those have been authenticated; correct?

A. Yes.

Q. Okay. When I do the math on that, that suggests to me that 98.65 percent of the Bonds in the process have been authenticated. Does that number sound about right to you?

A. If I am not mistaken, 98 percent has to do with the comparison in connection with all the Bonds that enter the system. But if you look at the Net Value, I think it's 99 percent and then some.

Q. Okay. So, what we have now of authentic Bonds in the system is 11,551 Bonds with a soles de oro face value of about 205 million; correct?

A. That's correct, sir.

Q. Okay. You told us--in your direct testimony, you told us some information, kind of a further progress update as of end of January, I think; right? Was that the information you gave us? You said there were 191 Bonds that had been paid, and the total value was 4.5 million soles de oro.

Was that end of January 2020?

PRESIDENT FERNÁNDEZ ARMESTO: Could not have been soles de oro. It must have been Nuevo Sol.

MR. FRIEDMAN: Nuevo Sol. Thank you.

THE WITNESS: That's information that I gathered during the first week of January, but I'd say 10 January.

BY MR. FRIEDMAN:

Q. 10 January. And the Bondholder process has now closed; correct?

A. I'm sorry, sir, ask your question again. There was an overlap.

Q. The Bondholder process has now closed for new registrations; correct?

A. Yes. If I'm not mistaken, the process ended January 19 to enter the system, but those that are within the administrative process, they are still being valued, recorded, paid, and authenticated.

Q. Okay. So, as of the beginning of January, then, or early in January, 191 Bonds had been paid out of the total population of authentic Bonds of 11,551, which, again, just doing the math, that means

that, after five years of this process running, only 1.7 percent of the Bonds submitted to it have been paid; is that correct?

A. That's not correct. It's not correct to do that mathematical comparison. I'm sure the calculation, mathematically speaking, is correct, the one made by you, but not all of those that were recognized as an authenticated document have moved on to the next stage. But all of those that requested registration have been updated, and not all of those that have been updated have requested payment.

So, no simple comparison can be drawn in connection with the ones that have been paid and those that have started the document authentication stage. So, this is voluntary, and the Bondholders, whatever they want to do to move to the next stage, well, that's voluntary as well.

Q. So, it's your experience that people are dropping out of the process in between stages; is that right?

A. I wouldn't say that they are dropping out. They are not moving on to the next stage. A lot of

speculation can be drawn from this. Perhaps one of the reasons is the outcome of this Arbitration, and that's why they are wanting to wait.

Q. Well, hold on. Why would anybody not--first step is authentication, and then you have to fill out another form and register the Bonds; right?

A. That's right, to be able to be recognized as the legitimate holder of those Bonds and to start the valuation stage.

Q. And why would anybody not do that? Why would anybody--once they are in the process, they have waived all their rights do anything else, why would they not then go forward with registration?

A. I do not know the considerations that each individual has to make a decision.

Q. So, you believe that this process may actually--if people don't go all the way through the process, then their Bonds will never be paid through this process; correct? It stands to reason.

A. Well, indeed, if you don't get up to the last stage, we cannot value the Bonds, and one may understand that the intention to continue with the

process is not there.

Q. Which means that this process may not even resolve the claims of all the Bondholders who are in the process; is that right?

A. I cannot call into question the process. The Bondholders are the ones who make a decision. We are acting in good faith, and we are implementing the process that the Constitutional Tribunal has asked us to implement.

Q. Let me ask you this: How many Bondholders have now been paid? You told us the number of Bonds, but how many Bondholders have been paid?

A. I don't recall exactly. I remember that there have been about 22 cases. This does not mean 22 individuals; these are 22 cases. If I remember correctly, 22 cases have received payment, for 4.6 million, approximately.

Q. 22 cases? So, 22 Bondholder have now been paid after five years?

PRESIDENT FERNÁNDEZ ARMESTO: 22 cases.

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. And that means 22 Bondholders; right? Does that mean 22 Bondholders?

A. 22 files, sir. Not necessarily Bondholders.

PRESIDENT FERNÁNDEZ ARMESTO: A bond may belong to a number of bondholders; is that right?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: A bond can belong to various bondholders.

BY MR. FRIEDMAN:

Q. Oh. Okay. So, 22 cases have been solved. Total value paid so far is 4.5 million soles, which is about USD 1.36 million; correct?

A. Yes.

Q. So, in August 31, 2019, you said 152 Bonds have been paid according to the data that you provided there, and now it's 191. So, about 40 Bonds have been paid in four months. So, it's taken four months to pay 40 Bonds. Does that sound about the right pace?

A. I need to look at each of the cases, but it does not refer to the pace of the administrative part, and behind each case there must be additional

documents that are requested and also additional Powers of Attorney. I'm not completely aware, but it is not always the responsibility of the office processing this. This is also related to the Response by the Bondholder whenever there is a specific request for something.

Q. Yes. I understand. I'm just trying to get some sense of the pace. I mean, if you just do math of 10 Bonds per month, with the number of Bonds left, it's, like, over 100 years to get through this process, which, of course, is crazy.

Do you have any sense, does the Ministry have any sense, of when it will actually have paid all the Bondholders through this process?

A. There is no way to take 100 years, because the mandate of the Tribunal is that this has to conclude in two years after the authentication. How did you get to 100 years?

PRESIDENT FERNÁNDEZ ARMESTO: 10 Bonds a month. The explanation is--your question is how do you get to 100? Well, 10 Bonds a month.

THE WITNESS: Well, but you need to go

beyond month. Each case is specific. Some months, we may process many more.

BY MR. FRIEDMAN:

Q. We've seen in this case--and I know you have seen in this case--some testimony of some individual Bondholders who were paid--for example, Ms. L, we're referring to her as, after four years was paid 222 soles, or about $67, for 15 Bonds. And we've seen another one, Mr. S, a Bondholder who was in the process for three years and eight months, and he got 791 soles, around $240, for his 10 Bonds.

You're familiar with outcomes like those, where people, after going through years of this process and jumping over all the hurdles at each stage, are ending up with very, very small values; correct?

A. Those are two cases that I attached to my Statement. At the end--at the end of the day what I can tell you is that the principle of legality, that it is with the Peruvian State, with the Ministry, and we cannot act in a way beyond what is provided for in the administrative processes, provided for under the

Supreme Decrees. These individuals have questioned the value, have also tried to take the value of the Bond to the current value, but the MEF cannot act based on the request of each Bondholder, based on their own judgments. MEF will continue to apply the legality principle and will continue to follow the rule, the Regulations, and we have no other way of doing this updating. And whatever has been paid is dependent on the time, and, for example, I think it was 15 coupons that were no longer paid in '87, and they were updated as stated--and that is the amount--whatever amount you have.

PRESIDENT FERNÁNDEZ ARMESTO: A question, Vice Minister. What is the formula applied to this Bondholder? Is that the one of '14 or '17?

THE WITNESS: Only the last formula that is in the text, updated text, that was approved by Decree 242.

PRESIDENT FERNÁNDEZ ARMESTO: So, no Bondholder has received--up to '17, no Bondholder had been paid?

THE WITNESS: No, sir. The other formulas

were not applied to any Bondholder before the one provided for under 242.

BY MR. FRIEDMAN:

Q. I understand you say you're paying according to the legal rules that you have. But those are the legal rules that the Ministry itself established in the Supreme Decrees; correct?

A. Yes, indeed. It is the Regulatory Framework used by the Administration to recognize and pay the debt. There is no other way. It cannot act in any other way. The principle of legality has to be followed and also to take into account the last Decree, that is the Decree 242, that has the process in force.

Q. But, Vice Minister Sotelo, we have seen already that the Ministry itself changed the formula at least three times--at least four times, actually. It has changed the formula for updating the Bonds, and each time the changes that it made had potentially significant consequences for value, and each time the Ministry said that those changes were within the parameters given by the Constitutional

Tribunal.

So, you would agree with me that, within the scope of the regulatory discretion that the Ministry has and that the mandate it's been given by the Constitutional Tribunal, that it has considerable range to determine exactly how these formulas will work; correct?

A. The Ministry has made progress with the adjustments in Supreme Decrees, and the intent is always to apply legality--the principle of legality, good faith, and also trying to avoid any erroneous interpretation, trying to obtain data from the wrong sources. So, they were always guided by the principle of good faith.

So, once that is established, I cannot give you my own comment. I will follow the facts and what the Supreme Decrees establish.

Q. In acting in good faith, has the Ministry made any analysis of whether what it's doing is fair and achieves the balance that the Constitutional Tribunal ordered in July 2019--sorry, in July 2013?

A. I think that we have visited the same issue

time and again.

And this is not about being fair or unfair. This is about applying a procedure based on the Decision by the Constitutional Tribunal.

Q. And has the Ministry made any study of whether or not it is actually achieving--in the specific formulas that it has chosen to implement, the 2013 Constitutional Tribunal mandate, that it's actually achieved the balance between trying to pay Bondholder's current value and making sure that the budget isn't broken and essential services are not lost?

MR. JIJÓN: Objection.

Mr. President, I think that we are going around in circles.

PRESIDENT FERNÁNDEZ ARMESTO: No, I think that it is a valid question.

Do you recall whether the CT determined in their resolution that they needed to find proportionality between paying the Bondholders and the other needs of the State? And that's the reason why they propose whatever formula they proposed. And

then we saw that the formula has been changing and we also saw or it could be that the various formula are not offering the same level of payment to the Bondholders. You would recall that we saw a table that would seem to indicate that, if the Decree of '14 was going to be applied, the payment was going to be higher than if the Decree of '17 was going to be applied.

So, the results were different based on one estimation or the other. And the question by counsel is whether there is any projection, scenario, conducted by the Ministry to see the impact of all of these payments incurred vis-à-vis the other budgetary obligations to be met by Perú?

THE WITNESS: Not that I know of, Mr. President. Based on what I reviewed and I presented with my Statement, the approval processes for the Supreme Decrees, and that's where we have the Reports underlying those--supporting those Decrees.

Now, whether there was any further analysis I do not know.

PRESIDENT FERNÁNDEZ ARMESTO: And how about

the Report? They do not address the subject matter; right?

THE WITNESS: No. They do not get to that level of detail.

MR. FRIEDMAN: No further questions. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón, do you have any questions?

Did you need five minutes? Would you like to have five minutes?

MR. JIJÓN: No, thank you, Mr. President. We have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Fantastic. Madam?

(Comments off microphone.)

ARBITRATOR DRYMER: Thank you, Mr. President. As I'm looking through my notes, I'd be happy if you were to begin. I know I have a few questions on a theme that we've discussed, and I would much prefer they came from you, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

QUESTIONS FROM THE TRIBUNAL

PRESIDENT FERNÁNDEZ ARMESTO: Vice Minister, may I ask counsel to give you the Resolution of 2013 by the CT. I don't know if someone can help us find it.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: I would like to review, to examine with you, what the Constitutional Tribunal said to see if I understood it properly because there are several elements that are important to see interpretation by the Ministry when they received this Resolution. I think that it would be a good idea to look at Paragraph 24.

Are you familiar with this? Have you read it recently? Have you read these Resolutions recently or would you like to reread it? I am going to ask you some questions. I am going to tell you what I think the CT intended to say, and you are going to tell me whether this is in agreement with what the Ministry understood, and this is the exercise I would like to do with you.

THE WITNESS: Agreed.

PRESIDENT FERNÁNDEZ ARMESTO: So, I am going

to let you know what I understand.

Paragraph 23, we have the two current value principles that are not applicable for the reasons stated here by the CT, and these are the principals, the Consumer Price Index and the adjusted CPI, and that was also asked by counsel. And that was the interpretation by the Ministry that they--that is that neither the CPI nor the adjusted the CPI were the proper formula to revalue the debt?

THE WITNESS: Yes, that's what it is.

PRESIDENT FERNÁNDEZ ARMESTO: Phenomenal. Now, let's look at 24. This is the formula to be applied by the Tribunal. And then--and that is to convert the debt into foreign currency.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, here it says that "this formula updates the obligation by converting the debt to U.S. dollars using the Parity Exchange Rate in between, parentheses, principal since the official price of the dollar did not express the Market Value."

So, clearly it says here that they need to

use a Parity Exchange Rate.

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And it adds this formula, allows for the value of the Bonds to be preserved for the economic agents and is the natural form in which they try to shelter their assets in a strong currency during times of crisis. However, it is different with regard to the interest and its treatment, a circumstance that must be analyzed by weighing the conflict in constitutional rights and values concerning the Resolution of this request.

So, they need to determine the interest rate applied because it cannot be the same whenever the debt is in soles or dollars, so there must be adjustments regarding the interest rate?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, 25 is the key paragraph. States: "Of the methods presented, this Tribunal finds it appropriate to opt for an update in criterion that implies conversion of the unpaid principal into United States dollars."

So, here my first question to you is,

"unpaid principal," what are we referring to? What is the CT referring to? How would you define the unpaid principal?

THE WITNESS: Each of the coupons from the land reform had principal plus interest, so here we see that out of those Bonds that have not been collected, the only addition would be for the unpaid principal, that's what it means, unpaid principal.

PRESIDENT FERNÁNDEZ ARMESTO: So, it is the unpaid principal. So, we add all of the coupons, but only unpaid principal?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Do you agree with me, Vice Minister, that interest, actual interest, was not 5 percent, rather, zero-point-something percent because 5 percent was estimated based on 25 or 20 years, over 20 or 25 years.

Do you agree on the methodology? The methodology of Bonds, if I understood it correctly, was that if the nominal value of the Bonds was 1,000, and the interest rate was 5 percent, that became

1,050. So, it was 5 percent over the principal. And this principal then--or the interest added to 1,050 were divided into 20 or 25 annual payments or yearly payments?

THE WITNESS: I have not done that exercise, but I have some doubt about it because in all of the financial estimates, we usually use an yearly interest rate. I do not know.

PRESIDENT FERNÁNDEZ ARMESTO: This is what the Expert for the Republic of Perú stated, and he said that the interest rate is 0.10 percent. And if you look at the Bond, it seems it is that way. So, 10,000 soles and every--each coupon.

THE WITNESS: Another Expert have to go over this, but here it says on any coupon, 5 percent annually, so that means yearly, but not at the end of 25 years, after 30 years that is not the mathematical calculation of the Cost of money. The Cost of money is determined by the interest rate that is calculated annually--that is to say, 5 percent annual interest rate.

PRESIDENT FERNÁNDEZ ARMESTO: At any rate,

we will discuss this with the Experts, because I also have some doubts now.

Now, your interpretation of the Order by the C.T., is that were you would be adding the amortization installments, that is 400 soles per coupon?

THE WITNESS: Yes. All of the coupons that have not been redeemed, so we add up 400 soles and that yields the unpaid debt.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. And here, we need to take this to the date when--for the first nonpayment of such Bond, that is, we need to take the date that is a year before the last Bond that is still here in existence.

THE WITNESS: I don't think the interpretation of a "year earlier" is correct.

PRESIDENT FERNÁNDEZ ARMESTO: Is it within the same year?

THE WITNESS: So, we need to look at when the last coupon was redeemed, and if I look, if I see that I have not paid the--the next coupon has not been paid, well that is the date when we start

counting that that has not been paid and the following.

PRESIDENT FERNÁNDEZ ARMESTO: So, that would be November 28, 1995? That is the last coupon that has not been clipped.

THE WITNESS: Yes. That was the expiry date, and that generated the unpaid debt on the principal of these Bonds.

PRESIDENT FERNÁNDEZ ARMESTO: So, in this case we need to add up all of the principal amounts, and as of November 28, 1985--

THE INTERPRETER: Interpreter corrects herself, it is 1985.

PRESIDENT FERNÁNDEZ ARMESTO: --we need to convert that to the Parity Exchange Rate on that date.

THE WITNESS: Yes, with the formula established.

PRESIDENT FERNÁNDEZ ARMESTO: So, your interpretation is that on November 28, 1985, the addition of all of the outstanding principal out of the 13 coupons we have here needs to be updated by

applying the Parity Exchange Rate. On that date for soles oros to dollar.

THE WITNESS: Let me be specific. Because of some daily problems with exchange--with the Parity Exchange Rate, I think that the formula is looking into the month.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. That makes sense. This is the way that the formula is usually done. That will be the one applied in November 1985.

THE WITNESS: Yes. That is reasonable.

PRESIDENT FERNÁNDEZ ARMESTO: And then it says plus the interest rate of the U.S. Treasury Bonds. So, the C.T. is telling you that you need to convert that into U.S. dollars. So, we have 4,200 soles oro, nominal value that will be converted by applying the Parity Exchange Rate, and I get to $184. So, I get to a U.S. dollar-dominated amount.

Do we agree, Vice Minister?

THE WITNESS: Let's say it's an X amount. Well, it is not just a simple exchange rate. It's the parity.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, but the Parity Exchange Rate converts soles into U.S. dollars.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And it is not the Official Exchange Rate, it may be higher or lower, and that will yield a U.S. dollar-dominated figure. Then I have that dollar figure that will be a figure for 1985, and now the C.T. tells me, you need to add interest to that. So, here I have several questions.

The first one is, the first one says plus the interest rate of United States Treasury Bonds. These were some Bonds, 20-year Bonds.

What kind of Bond do you think is the one to be applied?

THE WITNESS: In the formula under the Decree, it is a one-year expiry for these U.S. Treasury Bonds.

PRESIDENT FERNÁNDEZ ARMESTO: And do you think that this is more reasonable than a 10-year Bond or a Bond of the same duration as this Bond?

THE WITNESS: Let me--I don't want to share my own personal Opinion. I am going back to what the administrative process says.

PRESIDENT FERNÁNDEZ ARMESTO: And let's say that it is interest in a Bond for a year, 10-year of the U.S. Treasury, and they start to be accrued, as we said, on November 28, 1985, up to the date of payment.

So, we need to accrue interest up to the effective payment date; correct?

THE WITNESS: Until the debt is brought to current value and when it is determined how much it is worth in Nuevos Soles.

PRESIDENT FERNÁNDEZ ARMESTO: And then from there, depending what type of interest accrues?

THE WITNESS: No, interest is no longer contemplated as far as I understand it.

PRESIDENT FERNÁNDEZ ARMESTO: So, the Decree brings interest two days prior to the issuance of the ruling on updating, and then the payment is to happen within no longer than 30 days. Great then.

So, we are going to--well, I'd like to now

ask you to take a look at the justification that the Constitutional Court provides. And I would like to then take you to what the Constitutional Court orders regarding the system for updating.

So, the Constitutional Tribunal first sets a five-year period. It is not here, because then there are several clarifications of this ruling, and I don't want to waste too much time on that right now, but it sets forth five-year period for the Bondholders to register; is that correct?

THE WITNESS: It is in this Resolution.

PRESIDENT FERNÁNDEZ ARMESTO: I think that they then go back to it. So, let's look at the time periods. First, there is a six-month period for the Ministry to issue a Supreme Decree, to regulate the procedure through a Supreme Decree.

THE WITNESS: Fine, six months.

PRESIDENT FERNÁNDEZ ARMESTO: Then the Constitutional Tribunal says that there is a period of five years for the Bondholders to register.

THE WITNESS: Yes, that's right.

PRESIDENT FERNÁNDEZ ARMESTO: Then there is

a period for them to register and for the debt to be quantified and for it to be paid.

THE WITNESS: It is registered, it is quantified, and it is paid. Those are the three stages.

PRESIDENT FERNÁNDEZ ARMESTO: Correct, but for registration and quantification it is two years.

THE WITNESS: Two years.

PRESIDENT FERNÁNDEZ ARMESTO: And then let's go to the payment, which is what I wanted to examine with you. In terms of form of payment, I understand that one must pay--and correct me if I've misunderstood--one must pay in money, in a maximum period of eight years, unless the Bondholder accepts some other formula, which may be, being a given public debt or real property.

THE WITNESS: Yes, in effect. That is correct. So, the choice, what was important, for me, was that the choice depends on the Bondholder.

PRESIDENT FERNÁNDEZ ARMESTO: The Bondholder. Very well.

Then, what the Constitutional Tribunal says

is--and excuse me for asking you, but the Decrees also establish that it is the Bondholder who has the choice?

THE WITNESS: The Regulation sets out the options among which the Bondholder can choose, and if they wanted--91 that had been paid, the 4 million plus soles, if I'm not mistaken, most have chosen other Bonds that are freely negotiable in the market, that are issued by the sovereign. So, the money in cash must have been about 3.5 million, have been paid by other securities, and the difference, 1 million-some has been in cash.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much.

And so, afterwards, at the end, before it says has ruled, or has resolved, before the operative part, there is a paragraph that says in considering criteria of equity when establishing the timeline for payments, the State may bear in mind the criteria for privatization that include natural persons over legal, juridical persons and within that category, the original Bondholders and, among these, those who

are over 65 years of age, which I'm grateful for since I am over 65. I am in favor of any measure that favors older persons. Quite welcome.

Then the Decrees add an additional category about which I wanted to ask you, Vice Minister.

Which is persons or entities who have purchased the Bonds for speculative purposes. We can look for that, but that is practically exactly what the Decree says. So, my first question for you. This has not been stated by the Constitutional Tribunal. The Constitutional Tribunal does not speak of investors with speculative aims.

THE WITNESS: Only the--the one that you're speaking of speaks of priority for the original Bondholders and that is all.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, but among the non-originals, it doesn't distinguish a category of investors who have invested for speculative purposes. So, what I wanted to ask you is, first, why was this category introduced and, second, how is--how does one define an investor with speculative aims?

THE WITNESS: Well, I cannot give you an explanation beyond what is in the documents there because, as I said, I've reviewed the record. I made a copy, and I sent it to this Tribunal. But I was not there when that provision was designed, so as to know what the reasoning was, what the considerations were for having included that variable.

PRESIDENT FERNÁNDEZ ARMESTO: I was asking how is that defined. It's not a term that one sees much in legislation, "investor with speculative aims," so I would like to know how you would define it? How would you distinguish an--speculative investor from another investor who is not a speculative investor?

THE WITNESS: I might make a mistake if I were to offer a definition, and so I would rather not provide a definition of that sort, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: And do you believe that Gramercy, who is here, would fit within the definition of "speculative investor?"

THE WITNESS: I would also reserve my Opinion on that, if I may.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Any additional questions?

ARBITRATOR DRYMER: No. Thank you, sir.

ARBITRATOR STERN: No.

PRESIDENT FERNÁNDEZ ARMESTO: Is there any follow-up question?

MR. FRIEDMAN: No, thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón?

MR. JIJÓN: No, thank you very much, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Vice Minister, you've come from Lima to help us out.

THE WITNESS: That has been my intention.

PRESIDENT FERNÁNDEZ ARMESTO: Well, we thank you so much for the effort. The truth is, you've helped us a great deal. We thank you for your patience and for your assistance, and may you have a safe journey home.

THE WITNESS: Thank you very much.

PRESIDENT FERNÁNDEZ ARMESTO: We will now break. 10 minutes? No, we have to put up the video. The video. We will break for--it is now 8 past 3:00.

Shall we say 20 past 3:00. Madam Secretary, 20 past 3:00. 20 past 3:00.

(Brief recess.)

CARLOS HERRERA, RESPONDENT'S WITNESS, CALLED

(via videoconference)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing, and we do so to take the statement from Carlos Alberto Herrera Perret.

Mr. Carlos Herrera, can you hear me in Lima? Mr. Herrera? Can you hear us?

THE WITNESS: Yes.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Good afternoon, Carlos Alberto Herrera.

(Comments off the record.)

THE WITNESS: Good afternoon.

PRESIDENT FERNÁNDEZ ARMESTO: How are you? Good afternoon. Let's see if we are able to establish a phone line that is good, and if we're capable of conducting this examination. Very good afternoon to you in Lima. Thank you very much for being here as a witness. The first thing we need to

do as a witness, well, you know that you have to tell the truth, and what we need to do is to take the declaration from you. I'm going to ask that you stand. And do you have the declaration before you?

THE WITNESS: Yes, I do.

PRESIDENT FERNÁNDEZ ARMESTO: If you could please read it out.

THE WITNESS: I solemnly declare, upon my honor and conscience, that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much.

Mr. Herrera, we are continuing to have sound problems, so we will see if they get any better with time.

First, Mr. Jijón, who is to my left, will put some questions to you on behalf of the Republic of Perú, and then Ms. Popova will put a series of questions to you on behalf of Gramercy, who are the Claimants.

Now, the questions will be posed in such a way to allow you to answer "yes," "no," or "I don't

know," and please begin any answer with "yes," "no," or "I don't know." And then you could add anything you wish. Agreed?

THE WITNESS: Of course. Thank you very much.

PRESIDENT FERNÁNDEZ ARMESTO: Counsel for Claimant has the floor--I'm sorry, Respondent has the floor. Mr. Hamilton is going to ask you a few questions.

MR. HAMILTON: Mr. President, Members of the Tribunal, Mr. Herrera, good afternoon.

DIRECT EXAMINATION

BY MR. HAMILTON:

Q. Good afternoon, Mr. Herrera.

A. Good afternoon, Dr. Hamilton.

Q. Thank you. My understanding is that you submitted a Witness Statement to the Tribunal. I do have a few questions in connection with that Statement. At the outset, could you please summarize your professional background?

PRESIDENT FERNÁNDEZ ARMESTO: I am so sorry, sir, but we cannot hear you. Unfortunately,

technology is failing us, and it is not working.

THE WITNESS: Now, there's a lot of background noise.

PRESIDENT FERNÁNDEZ ARMESTO: The only thing we hear is background noise. Your voice is quite distorted here, and we cannot hear you well. Let us see whether we're able to solve this issue.

MR. HAMILTON: Mr. Herrera, just one moment, please.

(Pause.)

PRESIDENT FERNÁNDEZ ARMESTO: I'm going to give the floor to Mr. Hamilton. He's going to ask you a few questions.

MR. HAMILTON: It is important for the other individuals in the room not to speak so we can interact with the Witness.

THE WITNESS: There's a lot of noise.

BY MR. HAMILTON:

Q. Mr. Herrera, can you hear me?

A. I can hear you.

PRESIDENT FERNÁNDEZ ARMESTO: Let us try, and if we see that this is not working, then we can

try something else.

Mr. Hamilton, you have the floor.

MR. HAMILTON: Very well.

BY MR. HAMILTON:

Q. I think it's important to have everyone sitting down, and we are going to try to have Mr. Herrera speak with the phone in his hand. If the technician could please be sitting down as well in one of the chairs, I think it is going to be better.

Mr. Marchesa, perhaps the technician can sit on the chair instead of being on top of the Witness. Can you hear me?

MR. MARCHESA: We can hear you, but sometimes there is a very upsetting noise.

MR. HAMILTON: I hope I am not the one upsetting things.

BY MR. HAMILTON:

Q. Mr. Herrera, how are you?

A. Hello?

Q. Mr. Herrera?

A. Mr. Hamilton, yes.

Q. Yes, this is Mr. Hamilton.

A. Okay. Good afternoon, Mr. Hamilton.
Q. Good afternoon. How are you?
A. I am fine, but I'm trying to overcome all these technical issues.
Q. All right. Let's try.
Mr. Herrera, I have a few questions related to your testimony to the Tribunal. Could you please summarize your professional background, if you please?
A. Thank you very much.
In connection with my professional background, it is basically related to investment policy in Perú. For more than 40 years, I worked in different positions at the National Commission for Investments and Foreign Technology, this until 2002.
Thereupon, I worked for the Agency for the Promotion of Private Investment called PROINVERSIÓN, this until 2017. During that time, I served as the President of the Commission that was in charge of negotiating investment agreements. Specifically, I led the negotiation team in connection with the investment chapter of the agreement in the

negotiations we held with the U.S. for the Trade Agreement, and also in connection with other free trade agreements.
And now, starting in mid-2017, I work in the private sector. I am a consultant, and I work independently.
Q. Thank you very much, Mr. Herrera.
Sir, what was the purpose of the negotiation of the Treaty between the U.S. and Perú?
A. The Treaty with the United States had the purpose of consolidating our good relations, our good trade relations, with the U.S. with a view to consolidating trade and investment opening. Now, in connection with investments, we were seeking to ensure a stable and foreseeable environment that would allow us to attract the necessary investment flows for economic growth and further development of the country.
Q. Thank you very much, Mr. Herrera.
In your Witness Statement, you make reference to the definition of the word "investment" in the Treaty between Perú and the United States.

What is your understanding of the definition of the word "investment"?--this on the basis of your experience as a negotiator of the investment chapter of the Treaty?
A. After the negotiations, the Agreement provides for a definition of "investment," which is broad, based on the concept of the assets, whereby in each case, the analysis as to whether each investment has the characteristics of an investment--that's the important part--and where all of the relevant facts need to be taken into account. The definition of "investment" includes a list of elements that may be considered an investment.
However, the fact that a specific type is included in that list does not imply that a specific case is considered an investment. There is a need to analyze whether the characteristics of an investment are met and all of the relevant facts need to be weighed in.
Q. Thank you very much, Mr. Herrera.
In your Witness Statement, you refer to the Land Bonds. What was the role of the Land Reform

within the context of the negotiations for the investment chapter of this Treaty?
A. The Land Bonds, as the topic was not discussed at the negotiation table.
Q. Thank you very much, Mr. Herrera.
MR. HAMILTON: Mr. President, I have no further questions for now. Thank you.
PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you, Mr. Hamilton.
Ms. Popova, will be asking you some questions on behalf of Gramercy.
MS. POPOVA: Thank you, Mr. President.

CROSS-EXAMINATION

BY MS. POPOVA:
Q. Good afternoon, Mr. Herrera.
A. Good afternoon.
Q. I appreciate your time and patience. As you know, we are in the hands of technology this afternoon. Therefore, I will be asking you for further patience and cooperation to move forward as efficiently as possible, if you agree.
A. Of course.

Q. Very well. You told us, Mr. Herrera, that you spent most of your professional life--that is, 40 years--as an official of the Peruvian Government; is this correct?

A. Yes, indeed.

Q. And you have always worked in the area of economy and finance for the Republic of Perú; is that correct?

A. Yes, that is correct.

Q. And you told us that you started in 1976; is that true?

A. 1973, I think.

Q. Very well. But immediately after graduation; correct?

A. Yes. I was finishing my studies.

Q. And you told us about your position with PROINVERSIÓN, and my question is: Was PROINVERSIÓN the body in charge of promoting investments in Perú?

A. Yes, but--yes, PROINVERSIÓN was created as the entity to promote private investment.

Q. And you also represented PROINVERSIÓN before the special Commission in charge of representing the

Peruvian State in international investment disputes; correct?

A. Yes. For some time, I represented PROINVERSIÓN in this Commission.

Q. And this was about 10 years; right?

A. It could be. I do not recall accurately. That was from the beginning--from the creation of the Commission up to 2013.

Q. Very well.

I read in the Annex to your Witness Statement that it was up to 2015.

Do you think that is correct?

A. It could be. I do not recall exactly.

Q. But you understand that you are here as a fact witness to refer about your recollection of what happened during the negotiations of the Free Trade Agreement with the U.S. is that correct?

A. Yes, indeed.

Q. When you started to work at MEF, Perú had a military Government; is that correct?

A. In the '70s, the answer is yes.

Q. And one of the greatest legacies of this

Government was the Agrarian Reform; correct?

A. You're referring to the facts of this Government, yes.

Q. And that was an important moment in the history of Perú, wasn't it?

A. Yes. It was an important moment.

Q. The Government thought that this reform was important for the socioeconomic development of the Republic; is that right?

I understand that that was the intent of this Government, and they thought that these reforms would help social justice on the field.

A. Yes. I understand that that was part of the political discourse at that time.

Q. And it would also help create a broad market; correct?

A. That is not very clear.

Q. Very well. At any rate, the Government was able to pay this reform with the Bonds of the Agrarian Reform debt?

A. Well, yes, the Government paid specifically with the funds from the debt.

Q. So, I will be referring to these Bonds as the Land Bonds, do you agree?

A. Yes.

Q. Now, foreigners were not excluded from the Agrarian Reform; right?

MR. HAMILTON: I have an objection. The Statement had to do with the negotiation of the Treaty, does not refer to the history of the Agrarian Reform, and I am asking indication as to where he refers to that in his statement.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton, you perfectly know where Ms. Popova is going to end, and I know where she's going to end.

So, please go ahead.

MS. POPOVA: In paragraph--if you don't recall, Mr. Hamilton, Paragraph 33 refers to this.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, it is directly related to the negotiation.

BY MS. POPOVA:

Q. Mr. Herrera, I was asking you, if, based on your understanding--and if you don't recall, please let me know--whether, based on your understanding,

foreigners were not excluded from this expropriation in Agrarian Reform process?

A. As far as I understand, they were not excluded.

Q. And the foreign owners could also receive Agrarian or Land Bonds; correct?

A. I understand that that was the case. The truth is that I was never close to that process.

Q. That's okay.

Do you recall that at some point those Land Bonds were declared freely transferable?

A. Yes. I understand that they were declared transferable.

Q. And do you know if, when they were declared fairly transferable, whether it was possible to transfer to foreigners?

MR. HAMILTON: I apologize, Mr. President, but this is far from his Statement. His Statement has nothing to do with the fact--

PRESIDENT FERNÁNDEZ ARMESTO: Let her turn around. Clearly, I think I do not want to predict what Ms. Popova is going to ask, but I think I follow

the line. Please, I'm begging you not to interrupt constantly; otherwise, we're not going to make any progress.

Ms. Popova, please go ahead.

MS. POPOVA: Thank you, Mr. President.

BY MS. POPOVA:

Q. Mr. Herrera, I don't know if you had the opportunity to answer my question.

A. Would you please repeat your question?

Q. Yes, I will be repeating it for you.

My question was whether you recall when the Bonds were declared freely transferable, whether you recall if they could also be transferred to foreigners.

A. Honestly, I don't recall. I do not recall if there were limitations or not.

Q. So, you're not aware of any limitation to that end.

A. As I just mentioned, I was not close to the Party--to the process, rather, that was a process that had nothing to do with the office where I was working at this point in time.

Q. Understood. Since you are referring to the setup of the Land Bonds at Paragraph 33, I just wanted to give you an opportunity to establish what you knew and didn't know before I started with my questions for you.

Is that okay?

A. Yes.

Q. Thank you.

In 2002, Mr. Herrera, do you recall that the U.S. established a system of trade preferences that could be used by Andean countries, among them Perú?

A. Yes, I do know that there was a system of trade preferences.

Q. And to be able to profit from this system or benefit from this system, the U.S. Government had to be satisfied that Perú was implementing measures to solve some expropriation disputes with U.S. citizens.

Is that correct?

A. Yes, I understand that that was one of the requirements.

Q. And the Government of Perú had committed to solving some of these disputes as a condition to be

able to benefit from these trade preferential treatment?

A. Would you please repeat?

Q. Yes.

The Peruvian Government had committed to solving some of these disputes as a condition to be able to benefit from these trade preferences granted by the U.S.; is that correct?

A. Yes, it is.

Q. And these disputes, the ones that we are mentioning, also included disputes with North American citizens that had been expropriated as a result of the land reform?

A. That, I'm not aware of.

Q. You're not aware of. Very well.

So, I am going to show you now a document. You will find it at Tab 33, and this is Document CE-456.

Are you there?

A. Yes, I do have that document. I'm looking at it.

Q. I don't know if you have seen this document,

so I am going to ask you whether you have already seen the document before today.

A. To be honest, I haven't seen it.

Q. That's fine. This is a document that we submitted, that Gramercy submitted, in May last year, and this is one of the documents cited, and I am going to represent to you that this is a document of the Embassy of the United States in Perú, and we can see on the first page that it is dated June 1, 2006.

A. That's correct.

Q. I am going to ask you to look at page--the page that shows Claimant K, Paragraph 11.

A. Paragraph 11.

Q. Can you read English?

A. Yes, I am examining it.

Q. Can you please see that at the bottom of the page, it says: "Claimant K was issued compensation bonds which have since become worthless as a result of hyperinflation, (in Spanish). According to Claimant K, in about 1970, Perú's military Government expropriated his farm as part of a general Land Reform Act that expropriated farms over

250 hectares."

Mr. Herrera, can you hear me?

A. Yes.

Q. Very well.

If you look at the last page of the document, you are going to see the last names and the names of Claimant K. If you look at the last page, you are going to see that there we see "Claimant K, Dr. Jaime Muro Crousillat," U.S. citizen, and then if you can look at the page above that, in the other page you will see Claimant T. Do you see? And now we are going to see Claimant G at Paragraph 7.

A. Yes.

Q. Here you see that: "Claimant G began developing 60,000 hectares, but a military Government expropriated the land in the 1960s." (in Spanish)

A. Agreed.

Q. I don't know if this helps you recall whether any of these expropriation disputes had anything to do with the Agrarian Reform, with the land reform?

A. Based on my understanding of the document,

in connection with Claimant G, that is the case of Mr. LeTourneau, and that is an outstanding issue that had nothing to do with the Land Reform Bonds because that was related to a road that was impacted. I do recall that a rule was enacted with an agreement after the Decision to pay $10 million, I think, for a road; therefore, that is not related to the Land Reform.

Q. You were referring to Claimant G, Ray LeTourneau. Now you are telling me that the expropriation suffered by Mr. LeTourneau had nothing to do with the Land Reform? I don't know if I understood you correctly.

A. What I am telling you is that I recall that when the negotiations were underway for the U.S. Treaty, some cases were outstanding, and the U.S. authorities requested information about them, and one of them was LeTourneau's case, which I recall was due to a road, and there was a need to compensate and determine the cost of that road. And I recall that the Government back then hired some experts to value the road and the investor was compensated because of

the road.

Q. Yes. We will get there. But before that, I have a very specific question for you. In addition to the road and what happened afterwards, do you agree with me that Mr. Ray LeTourneau was expropriated as part of the Land Reform?

Do we agree?

A. I do believe that there was a plot of land that was expropriated and for which he was compensated, and during the negotiations of the Agreement, the value of the road was still outstanding.

Q. Thank you.

Do you know--do you recall that LeTourneau had asked the U.S. Government for help to solve this dispute?

A. What I recall is that this, together with other cases, were cases in which a solution was requested.

Q. And you know that Mr. LeTourneau had requested the U.S. Government to withdraw the trade benefits to Perú because Perú had not solved this

dispute?

A. As I just mentioned, I knew that there was a group of cases.

Q. As you just mentioned, when you started to negotiate the Agreement with the U.S., this dispute was not completely solved. Do we agree? Can we agree on that?

A. It was not solved. It was--I think it was solved in 2004.

Q. Yes. Or the negotiations started in about May 2004; is that correct?

A. Yes, I think so.

Q. And this dispute with LeTourneau had not been solved completely?

A. No. It was not--it had not been solved.

Q. And you--briefly before this, you mentioned that this and other disputes were topics addressed or discussed in the negotiations with the U.S. Government; correct?

A. No. Those topics were not addressed at the negotiating table, but we did know that the Peruvian Government was trying to solve outstanding issues.

Q. Mr. Herrera, do you recall that this was addressed at the investment table in the sense that there were outstanding disputes with U.S. citizens?

A. The topic was never discussed because we couldn't negotiate or solve those issues during the negotiations.

Q. So, if I understood you correctly, the topic was discussed, and you, on behalf of the negotiators or Perú or Government of Perú, said that you could not solve it?

A. No, I don't think that we have understood each other. What I told you is that it was not proper to discuss that topic at the negotiating table for the Agreement. The negotiation had to do with the elements under the investment chapter as well as the nonconforming measures.

ARBITRATOR DRYMER: Counsel, excuse me. For my benefit, maybe in the course--perhaps you could ask him to explain Paragraph 14 in his Statement.

MS. POPOVA: Yes, that's where I was going.

BY MS. POPOVA:

Q. Mr. Herrera, at Paragraph 14 of your

Statement--I think you have it there--you explain that, before the negotiations, there were certain legal disputes pending in Perú that involved U.S. citizens, and then you say that the resolution of these disputes was not a precondition for negotiation of the Treaty, and then you add, "Perú also explained"--and this is the point--"in the course of the negotiations that the matters were being addressed in a binding form." So, what I wanted to note, Mr. Herrera, is that this issue was mentioned during negotiation of the Treaty.

Do you agree?

A. Yes, there were discussions--no, there were no discussions.

Q. The U.S. negotiators had indicated that, for example, investment treaties were a very sensitive issue for the United States precisely because these pending disputes were there, these disputes were still pending. Would you agree?

A. Yes. The U.S. negotiators indicated to us that the investment agreements were a very sensitive issue.

Q. Yes, and that they were especially concerned--that the U.S. investors were particularly concerned about the situation of these disputes and others with Perú; correct?

A. I don't recall that they had tied one to the other.

Q. Well, the United States, Mr. Herrera, did not begin the negotiations with Perú until Perú had resolved some disputes with U.S. investors, and until it had taken measures to resolve others.

Would you agree with that?

A. Yes, indeed.

Q. And during the negotiations the U.S. representatives, in various forums, continued to raise these matters with their Peruvian counterparts; correct?

A. As I say, we never discussed any of the cases that were pending.

Q. The last meeting of the investment roundtable took place in December of 2005; correct?

A. Yes, December.

Q. And at that time, the investment chapter was

almost concluded; correct?

A. Yes, that is right.

Q. But at this time, in December 2005, you recall that the dispute with LeTourneau was not resolved in a definitive manner?

A. I don't know when the matter with LeTourneau was resolved. What I can tell you is that I did not attend the last round of negotiation. At the previous round, we concluded the technical discussions with the U.S. and we initialed the text, and the only thing still outstanding was this matter of agreement on investment, if I'm not mistaken.

Q. Would you agree with me that the Treaty was signed on April 11, 2006?

A. Yes.

Q. That that sounds reasonable?

A. Yes.

Q. Do you know when LeTourneau accepted a Compromise Agreement with the Peruvian Government?

A. I think it was in early 2006.

Q. If I tell you that it was in late March 2006, does that sound right to you?

A. It could be. I don't remember exactly, but I do remember it was 2006.

Q. It was a short time before the Treaty was signed; correct?

A. If the date is what you say, then yes.

Q. Thank you.

Very well. Let us now talk about what was also happening during the negotiation sessions. Do you recall, Mr. Herrera, that in March 2001, the Constitutional Tribunal of Perú handed down a judgment related to the Agrarian Bonds?

A. Yes. A judgment on a mechanism--on a payment mechanism.

MR. HAMILTON: He doesn't testify about any of these issues about the Land Bonds in his declaration.

MS. POPOVA: I'm sorry, Mr. Hamilton. Are you objecting to my question or to his answer? Because I've told you now, I think, three times that he does mention the Land Bonds in Paragraph 33 of his Witness Statement.

MR. HAMILTON: I want to be clear,

Mr. President: I object to her questions, and I object in general to the approach of trying to abuse this Witness by asking him things that are plainly outside the scope of his testimony.

He doesn't discuss the history of the Land Bonds, court decisions related to the Land Bonds. He discusses a very specific issue, which is whether the Land Bonds were discussed in the negotiation of the investment chapter of this Treaty, and it is not open game to try to get random comments out of context and abuse this Witness. I object.

ARBITRATOR DRYMER: If I may, he also says that the Parties did not have the Land Bonds in mind--I don't know what that means--not just that they didn't discuss them explicitly.

MS. POPOVA: Mr. Drymer, thank you. And my--

ARBITRATOR DRYMER: I'm just commenting.

PRESIDENT FERNÁNDEZ ARMESTO: Can I take back the discussion?

So, what would you like to ask from the Witness?

MS. POPOVA: My only question is whether he remembered a Decision of the Constitutional Tribunal, and he answered that he did.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Where does that--I mean--

MS. POPOVA: Can I ask my next question?

PRESIDENT FERNÁNDEZ ARMESTO: Because here, I don't really see how the Witness can help us much further. What is your line of questions? What would you like him--where are you aiming at?

MS. POPOVA: If I can ask the next three questions, I think it will be clear where I'm aiming at, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. HAMILTON: Mr. President, I want to make sure the Witness understands my objection, that the Witness understands that I am, once again, raising an objection because my colleague from the other Party is posing questions related to Agrarian Reform Bond issues that are far afield from the Statement by Mr. Herrera, who has a particular focus on the conversations and whether or not the Agrarian Reform

Bonds were addressed in negotiating the investment chapter.

In his Statement, he does not get into the history of the Agrarian Reform Bonds, and it is not appropriate to continue with this line of questions.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton, I have heard what you say. We are going to put questions to the Witness on matters that he has direct personal experience and on which he can help us. And evidently, on the Agrarian Reform Bond, that is quite far from his responsibilities in the Government of Peru.

Now, since Ms. Popova knows that, let us see where she wants to go, what you want to ask the Witness, and how the Witness might be able to help us.

MS. POPOVA: Thank you. As Mr. Herrera explains in Paragraphs 33 and 34 of his Statement, he is talking about what he had in mind in 2004 and what he did not have in mind in 2004, and so, that's what I'm aiming at, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Very well.

BY MS. POPOVA:

Q. Now, Mr. Herrera, do you recall that in August of 2003, a few months before the negotiations began, the Supreme Court of Justice of Perú also handed down a Judgment related to the Agrarian Bonds?

MR. HAMILTON: I repeat my objection.

THE WITNESS: I don't recall.

PRESIDENT FERNÁNDEZ ARMESTO: Just a moment, please.

Let me conduct the debate, please.

Mr. Hamilton, I beg you, please. I have your objection in mind. Now let me apply it. Let me see where we're headed and if it makes sense for us to head down this line of questions, but please allow me to conduct the proceeding. I am well aware of your concern. But, for now, let us continue.

BY MS. POPOVA:

Q. The Judgment of 2003, August 2003, does that sound familiar to you?

A. The truth of the matter is that it does not.

Q. Well, now let us turn to February of 2004, also a few months before negotiations with the United

States began.

Do you recall that, in February of 2004, a Special Commission that included participation of members of the Ministry of Economy and Finance proposed a bill related to the Agrarian Bonds?

PRESIDENT FERNÁNDEZ ARMESTO: Does that sound familiar to you, Mr. Herrera?

THE WITNESS: No. The truth is that it is not a matter that I dealt with directly.

BY MS. POPOVA:

Q. I understand this, but perhaps it might have been a matter of public knowledge, and that's why I wanted to know whether you had heard about this matter or not. And if you had never heard about it, then you can certainly answer that.

A. The truth is, I don't recall.

Q. So, you did not know that the Ministry of Economy and Finance had proposed a bill that anticipated issuing updated Bonds, Agrarian Reform Bonds, or Bonds that would be updates of the Agrarian Reform Bonds?

A. I suppose that the Ministry of Economy had

to have done so. But the truth is that I don't have any recollection of what it did or any of the characteristics.

Q. Very well. Thank you.

Now, do you recall that in August of 2004, which would be during the negotiations of the Treaty, do you recall that Constitutional Tribunal handed down another Judgment related to the Agrarian Bonds?

A. I recall that there was a Judgment of the Constitutional Tribunal. I don't remember exactly when it was.

Q. But do you recall whether that was in 2004?

A. It may be. I'm not sure.

Q. Thank you.

Now, having seen this context, let's move on to the negotiations.

You headed up the negotiating team for Perú for the investment chapter of the Treaty; correct?

A. Yes, I was heading up that effort.

Q. Now, this might sound obvious to you, but a negotiation is typically a back-and-forth of priorities; correct?

A. That is right.
Q. And in the context of this negotiation, the Parties can yield on some points in order to get other points that they consider more important; correct?
A. Yes.
Q. But after all of this back and forth and exchanges, at the end of the process, a text is produced that is signed, and it represents the Agreement between the two Contracting Parties; correct?
A. That is right.
Q. And you mentioned earlier that the Treaty sought to ensure, I think you said, for a stable and foreseeable climate for investment in Perú; correct?
A. Yes.
Q. And, from what I understand, you have devoted the larger part of your career to this objective; right?
A. Yes. I have been involved in this process.
Q. One way of obtaining this objective was to have a broad notion of investments and investors who

would be encompassed by this Treaty; correct?
A. Yes. The result of the negotiation was that.
Q. And it might also seem obvious to you, but one of the objectives of this Treaty was for the investors to be able to take note of the text and, based on their reading of the text, make investments in Perú; correct?
A. The text set out protections for investors with very high standards. I believe up until now--and this applies to a specific ambit over time and it applies to a broad concept of investment where what matters is determining the characteristics of the investment.
Q. Do you recall my question, Mr. Herrera?
A. Yes.
Q. So, would you agree with me that when investors decide--when they make these decisions as to whether or not to invest in Perú, they take note of the text of the Agreement reached by the Parties; correct?
A. I think that the text of the Agreement has

to be read in its entirety, that is correct.
Q. And the investors who are not involved in the negotiation process and the back and forth cannot know what was discussed, what was not discussed, what was mentioned, what was yielded. What they can know is, well, they can read the text in an--in full, in an integrated manner as you said; correct?
A. Yes, indeed. And the text has to be analyzed in full, in an integral manner.
Q. And in doing so, the specific limits of this broad coverage are included in the text; correct?
A. The coverage is defined in the text.
Q. Yes, and it's subject to specific limits that are in the text of the Treaty; correct?
A. Not necessarily.
Q. Could you look at Paragraph 17 of your Statement please?
A. 17. Yes.
Q. You say here that: "In other words, the investment chapter was intended to cover a variety of areas but would be subject to specific limits in the text."

Do you see that?
A. That is what was sought.
Q. Now, if you could turn to Page 34 please, which is the last paragraph of your Statement.
A. Yes.
Q. The first sentence here says that: "Neither Perú nor the United States consider that the Agrarian Reform Bonds would be covered by the Treaty."
Do you see that?
A. Yes.
Q. And at the end of this paragraph, you add: "The Agrarian Reform Bonds simply are not the type of instrument that the Contracting Parties had in mind when negotiating Treaty provisions."
Do you see that?
A. Yes.
Q. Now, when you speak of the Contracting Parties, to be more precise, you speak of the negotiators who were negotiating at the group that was negotiating the chapter on investment?
A. Yes, clearly.
Q. Well, let me ask you, there were 12 or 14

different negotiating groups for the different chapters of the Treaty; correct?

A. That is right.

Q. And 13 rounds of negotiation of these chapters; correct?

A. That is right.

Q. And when you speak of what the Contracting Parties considered or what they had in mind, you're talking about the subjective understanding of these negotiators in each of these negotiating groups; is that correct?

A. I'm referring to the investment negotiating group.

Q. Only investment?

A. Yes.

Q. You do not participate in the other negotiations; correct?

A. There were different negotiating groups. We did coordinate internally.

Q. Yes, of course. But now here, in this paragraph, you speak of Perú but you also speak of the United States. So, you are claiming to describe

the understanding of the negotiators, at the investment negotiating group, including the U.S. negotiators.

A. It's what I perceived.

Q. Now, the reason you think this is, which you also say in Paragraph 34: "Neither Contracting Party ever mentioned the Agrarian Reform Bonds during the negotiations"; correct?

A. Yes, in part, because of that.

Q. You say, in part, it's because of that. This is the only thing you say in Paragraph 34; correct?

A. Well, this is a concrete fact that the matter was never discussed at the negotiating table.

Q. The matter was never discussed at the negotiating table as per your recollection.

A. That is right.

Q. And you also say that there is no reference to the issue in the minutes of the 13 rounds of negotiations; is that right?

A. Yes, there is no such reference.

Q. Now, when you speak of the minutes of the

rounds of negotiations, I suppose you are referring to the minutes prepared that you attached to your Statement?

A. Yes.

Q. And the MINCETUR is the Ministry of Foreign Trade and Tourism of Perú; correct?

A. Yes.

Q. And so, these minutes of the negotiations are internal documents that have been prepared by Perú; correct?

A. Yes, indeed.

Q. They were not reviewed or drafted by the United States; correct?

A. It is correct. There was no signed minutes.

Q. Very well. And according to you, nothing in these minutes of negotiation expressly states that the Agrarian Reform Bonds would be covered. They are simply not mentioned; correct?

A. They are not mentioned.

Q. And if they weren't mentioned, it was not mentioned either that they had been excluded from the Treaty; correct?

A. Well, let's see. There was clearly no need to exclude the specific assets, just as there was no understanding that the list of assets that are part of the definition of an investment--because I speak--excuse me. The U.S. negotiators repeated time and again--or they went time and again to analyzing that in each case one should analyze whether a given activity had the characteristics of an investment. One had to analyze all of the relevant facts. That is something that they repeated constantly because, well, what they would mention is that one had to be sufficiently broad so as to cover future investment. So, one had to undertake a case-by-case analysis.

Q. We agree, Mr. Herrera. And excuse me, what was explained--what you've explained in your previous comments and, no doubt, Mr. Hamilton, if he thinks that further clarification would be useful, he will ask you.

But my specific question is based on this Paragraph 34 of your Statement. What you are doing is drawing an inference regarding the subjective state of mind of two sovereign countries, Perú and

the United States, based on the silence of the minutes that were drawn up by Perú; correct?

A. Not just that. If one looks at the result and the process of whole negotiation also.

Q. Thank you for that clarification.

How many investment treaties have you negotiated, Mr. Herrera?

A. With United States, Japan, Korea, with México, and I have--also I was involved in the negotiations of the TPP and also in negotiations with Chile.

Q. So, several. We could agree on that.

A. Yes.

Q. Now, I know you're not an attorney, but, as you understand it, the coverage of the investment treaties that you've negotiated is that determined based on what was mentioned in the negotiations before coming up with the text?

A. I'm sorry, could you repeat the question?

Q. Yes. Well, we can move on.

Let us turn to your Witness Statement.

What struck me in your Statement,

Mr. Herrera, is that you don't mention a single time the Report by Peter Allgeier, Ambassador Allgeier, who, in due course, was Deputy U.S. Trade Representative with responsibility for these negotiations. And I simply wanted to ask you whether you've reviewed this Report that was submitted before your Witness Statement--or before preparing your Witness Statement?

A. Yes, I reviewed it.

Q. But did it not occur to you to mention in your Statement whether or not you agreed with Ambassador Allgeier?

A. I believe that Ambassador Allgeier makes reference to policies and procedures under which the United States negotiates. I don't think the purpose was to discuss those matters.

Q. But you have read it--reviewed it; correct?

A. Yes.

Q. So, you would agree with the Ambassador that this Treaty was negotiated using a negative list; correct?

A. Yes, indeed.

Q. And what this means is that the Treaty obligations apply horizontally in all sections of the economy except where it is expressly stipulated that there is a reservation?

A. Yes.

Q. Excuse me, Mr. Herrera, I don't know if you're looking at your phone or not, but please, if you could leave your phone aside?

A. Well, I was looking at some issue with the connection, but we can continue.

You were saying--well, you were asking me whether I agree with Ambassador Allgeier in the sense that the Treaty had been negotiated with a negative list view.

Q. Yes. And I think you said yes, but what I wanted to ask you, Mr. Herrera--

I don't know if you are receiving messages via your phone. So, as not to distract ourselves, could you please put the phone aside?

A. Yes, the battery was running low. That was the issue.

Q. Oh, okay. Fine. Thank you.

So, this idea of a negative list is the opposite of the idea of a positive list; is that right?

Do we agree?

A. Yes.

Q. A positive list is a list that specifically enumerates the things that are covered; correct?

A. Correct.

Q. Now, a negative list, the other kind of list, allows the Parties to have a broad coverage of things and to carve out issues that are sensitive or important for one of the Parties, and according to this principle, the things expressly excluded are included in list; is that correct?

A. Yes.

Q. In this Treaty, we have some examples of this principle; right?

A. Yes.

Q. According to your understanding, Mr. Herrera, is there exclusion of this type for Land Reform Bonds or for Land Reform?

A. No.

Q. Could you look at the definition of "investment" with me? In the Treaty, as you know, it is Article 1028.

A. The Treaty. Where is it?

Q. It's at 37, at the end of your binder.

PRESIDENT FERNÁNDEZ ARMESTO: You are not going to ask the Witness to interpret this; right?

MS. POPOVA: No, no, sir. No.

PRESIDENT FERNÁNDEZ ARMESTO: He is a fact witness, so any interpretation by him is irrelevant.

MS. POPOVA: Yes.

BY MS. POPOVA:

Q. I'm going to ask you to please look at the different types of investment and the list that we can find there.

Have you found it, sir?

A. Yes.

Q. You agree with me that this list is for illustration purposes only. It is not limiting?

A. Yes, it's a reference.

Q. Okay. It's a reference. I see.

So, a piece of property doesn't have to be

mentioned specifically in the Treaty to be covered; is that right?

A. That's right.

Q. Because what matters is that, in the specific case, we have to predict the characteristic of an investment.

A. Okay.

Q. Let us look for an example.

PRESIDENT FERNÁNDEZ ARMESTO: I'm not sure the Witness is going to be able to help us a lot with the interpretation of the Agreement. He was the negotiator of the Agreement, but its interpretation, well, it's interpretation. I am a bit concerned that we are getting into this arena that is different. He can tell us about how the Treaty was negotiated and discussed. How the Treaty is interpreted is a legal issue, and it's an issue for the Tribunal.

MS. POPOVA: Mr. President, I'm completely in agreement with you. My question had to do with the fact that he testified that this list is for illustration purposes only, and this at Page 21 of his Statement.

BY MS. POPOVA:

Q. I wanted to ask you to go to Footnote 17 in Spanish, and 13 in English. You see here that it says here that "the loans given by one party to the other party are not considered investments."

Do you see that?

A. Yes. Yes. This is Footnote 17. Yes. Right.

Q. Let us see why the Treaty includes this footnote. This explicit exclusion was included after a lot of negotiations between the U.S. and Perú; correct?

A. Yes. This was discussed in a number of rounds.

Q. This, because the coverage of the public debt was a very sensitive issue for Perú; correct?

A. What I know is that it was considered that these loans have their own mechanisms for dispute resolution. Basically that's what it is.

Q. And what I asked you is that the reason why this point of coverage of the public debt was negotiated was because this was a sensitive issue for

Perú; correct?

A. The issue of the public debt is an issue that was, yes, sensitive for Perú, and, in particular, it was sensitive because Perú was to come back to the international markets after many years, and we were in the process of restructuring things and there was a lot of concern by the MEF as to how dispute resolution mechanisms in the Treaty were going to impact the country in those negotiation processes in connection with the restructuring of the debt.

Q. Right. And that concern can be seen in the fact that this issue of the public debt, as you explained, was raised at the outset of the negotiations; right?

A. That's right--also. Excuse me. We do have to take into account two things in this connection.

Q. I'm not sure I understood you.

A. Let us recall that the negotiations started between the U.S. and three Andean countries.

Q. Yes, sir. Right.

A. The first thing that we had to do was to

consolidate a position, to have a single position. The position of Colombia was much more radical than Perú's position.

Q. Thank you. That is why this issue was negotiated from the very first negotiation round until Round 8. Does this sound right to you?

A. Perhaps, yes.

Q. I say this because, in your Statement, you mention at least nine negotiation rounds where this issue was discussed.

Do you think that's correct?

A. Yes. There were a number of negotiation rounds.

Q. I wanted to ask you something else. If you look at Paragraph 29, you explain here that the Andean countries anticipated in the seventh round of negotiation that they were going to be granted their proposal to exclude from the definition "State debt."

I'm sure your Spanish is much better than mine, but it seemed to me that the contrary was the case, that the Andean countries were going to grant a proposal to exclude the external debt to obtain an

annex on public debt. You mentioned this also here later on.

Do you think that's correct?

A. Let's see. The thing is that in the case of Perú, it was clear to us already that it was relevant to include the idea of public debt in the notion of investment. However, we were concerned with another issue, the bilateral debt. We wanted to carve this out. We wanted to have two different dispute resolution mechanisms that were different. If we're thinking, on the other hand, of the issuance of Global Bonds and the need for restructuring, we needed the annex--I think it was 10F--where we needed to evidence our concerns.

Q. There was this idea of exchange packages; is that correct?

A. Yes.

Q. And these packages are included in the minutes, and they describe the points that the Andean countries were ready to concede, on the one hand, and the other--and, on the other hand, what they wanted to get.

A. Yes.

Q. As you explained at the seventh or eighth round, Perú had already accepted that the public debt was going to be included, with the exception that we talked about before in connection with the footnote, the bilateral debt, which had to do with the loans of the Contracting Parties?

A. Yes, indeed. Also, Annex 10F indicated the application of a dispute resolution mechanism in the case of a debt.

Q. Okay. I'm going to ask you, sir, to look at the minutes of the eighth negotiation round that you attached to your Statement, and it is to be found at 23 in your binder, and it's CE-436.

Could you please look at Page 13?

A. Yes.

Q. I have it here. "Treatment of the public debt." Here, it says: "On the other hand, according to the negotiations maintained with the DGETP, Perú declined to insist on a list that enunciates all the items in connection with the operations that we covered under the definition of "debt restructuring."

And this is Annex F; right?

A. Yes.

Q. And then if we go to the next negotiation round, what happened? Let's see. It's CE-438. And this is behind tab--and it should be behind Tab 25 of your binder.

A. Okay. Very well.

Q. And as you explained in your Witness Statement, also at Paragraph 30, at the time of the ninth round of negotiations, it's at Page 26 of the document, where it says "treatment of the public debt."

A. Yes, I see it.

Q. Here it says, "thus, the proposal submitted by the U.S. meets the guidelines proposed by the DGETP of the MEF."

Do you see that?

A. Yes, I do.

Q. And this DGETP is the one in charge of the internal public debt; right?

A. I don't know.

Q. Well, of the public debt, in general, let's

assume.

A. I suppose so.

Q. So, at the beginning of negotiations, we had the U.S. that wanted to include the whole of the public debt and the Andean countries wanted to exclude all of the public debt. At the end of negotiations, this position evolved, and the whole of the public debt was included except for the bilateral debt. This was included in the footnote. And the other forms of public debt were regulated via the Annex, 10F.

Is that correct?

A. Yes. Well, Annex 10F, what it does is that it implements the dispute resolution mechanism. That's all it does. We can reread it, if you'd like.

Q. Let us go to your Statement at Paragraph 33.

A. Yes.

Q. Here, again, you say that the understanding in connection with the notion of debt, including Bonds as an investment, was not to obtain financing in international markets.

Do you see that?

A. Yes.

Q. Well, let me ask you--I'm sorry, it was aimed at obtaining financing in international markets.

THE INTERPRETER: The interpreter corrected himself.

BY MS. POPOVA:

Q. So, this is--these are the understanding of the negotiators of the group in Perú?

A. That was the understanding that we had with the conversations we held with the MEF.

Q. You negotiators had conversations with the MEF. That's what you said?

A. Yes, with the Ministry of Economy and Finance.

Q. Do you think that the only kind of public debt that was covered by the Treaty was these instruments that you have indicated were instruments aimed at obtaining financing in international markets?

A. That was our intention, but the important thing is that in accordance with the definition of

"investment" for each one of these cases, one must analyze the specific characteristics of each case and also the relevant facts.

Q. Yes, that is clear to me, Mr. Herrera.

You agree with me--well, let's see. Let us try to be more specific.

In your Statement, you mention the Global Bonds of Perú, Perú's Global Bonds; right?

A. Yes, that's right.

Q. In your understanding, these Global Bonds were covered in the definition of "investment" under the Treaty; correct?

A. Yes. We understand that they have the characteristics of an investment.

Q. You also mention the Brady Bonds in your Statement. Would these Bonds also be covered in the definition of "investment" under the Treaty?

A. Well, in connection with the Brady Bonds, a restructuring took place. New Bonds were issued.

Q. Yes, and you explained that it is because of this restructuring that Perú wanted to include Annex 10F; correct?

A. Indeed.

Q. My question, do you think that the Brady Bonds and that restructuring process would be covered under the Treaty?

A. The new Bonds issued are included in the Treaty.

Q. Would the Brady Bonds be covered under the Treaty as well?

A. The Brady Bonds were replaced.

(Comments off microphone.)

Q. And that's the reason why, in your understanding, they would not be covered under the Treaty?

A. What we are covering is the Global Bonds that were issued.

Q. You mentioned that they were exchanged.

Well, you said that there was a swap of Brady Bonds and Global Bonds?

A. Yes.

Q. Now, let's go back in time. The Brady Bonds were born of the Brady Plan; is that correct?

A. Yes.

Q. According to this plan, Perú took the bank loans that it had and it converted those into Brady Bonds, so-called; correct?

A. That's my understanding. That's how it was.

Q. In 2002, as you mentioned, the Brady Bonds were swapped for other Bonds; correct?

A. That is correct.

Q. This kind of a swap and restructuring is beneficial for the economy of Perú and for the development of the country; correct?

A. Yes.

Q. Now, the Global Bonds, Perú's Global Bonds and Perú's Brady Bonds are not mentioned nominatively in the Treaty. They are not mentioned in Annex 10F, and they are not mentioned in the negotiation notes either; correct?

A. They are not mentioned, no.

Q. But you'd agree with me that, in spite of the fact that they are not specifically mentioned, they are still covered; correct?

A. Yes. My understanding is that they are covered.

Q. Thank you, Mr. Herrera. I do not have further questions for you. Thank you very much for your patience, and thank you very much for your assistance.

A. Thank you, ma'am.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton, any questions in redirect?

REDIRECT EXAMINATION

BY MR. HAMILTON:

Q. Mr. Herrera, I have a few questions in redirect.

First, counsel for Claimant asked a few questions in connection with Annex 10F of the investment chapter. And you mentioned that that Annex clarifies the way in which the dispute resolution mechanism is to be applied. That's all it does.

What does that mean?

A. Let's see. Yes. We were seeking, via this Annex--was to build trust in the Peruvian authorities that no problems were going to be had with Bond issuance processes that had started the debt

restructuring systems. Consequently--well, let's see. What kind of questions--or, rather, what kind of problems could arise?

The problem would appear is an investor felt it was impaired in a restructuring process, for example, and the investor sought to bring a claim against the Peruvian State. What we were seeking was to leave things as clear as possible.

The first thing that it is stated there is that the Parties recognize that the purchase of the debt issued by one of the Parties entails a commercial risk--that is to say, the commercial risk exists. There can always exist the possibility of a debt not being paid. That risk exists. The investor that purchases securities must understood that.

So, then further on it says "no Award may be issued for Claimant--for a claim under such and such Article in connection with a noncompliance with the payment of a debt by one Party, unless the Claimant proves that that breach constitute an expropriation that was not compensated for purposes of Article 10.7, or any other violation of Section A."

So, first, no claim could be brought for the nonpayment of a debt, just like that. Evidence had to be given that the Agreements had been violated.

The second thing is that no claim in connection with the debt restructuring process by a Party different from the United States, well, this is in connection with Section A if the restructuring was negotiated at the time of the submission, or it becomes a negotiated one after the submission, unless it violates the Most-Favored-Nation Clause and the Equitable Treatment Clause.

So, this is the last point that we were able to incorporate here to this Annex. The term is extended, the term that a--investor has to wait until it can stake a claim. It is extended to 270 days. Why? Because we didn't want a claim to be brought while the restructuring of the debt was being negotiated.

That's the reason for my comment, that this Article was to prevent any sort of cases related to the dispute settlement concept under the law.

Q. And you mentioned your point of view as the

main negotiator for Perú of the chapter on investment and the scope of the application of Chapter 10F in connection with public debt.

What do we have on public debt as reflected on this Annex?

A. Mr. Hamilton, I wasn't able to hear your question.

Q. Yes, Mr. Herrera. Thank you very much. You referred several times to the scope of coverage under 10F and the idea of public debt at the time of negotiation of the Treaty.

What was your understanding, as the main negotiator, of this Treaty chapter?

A. As I mentioned before, the concern with the coordination of the MEF had to do with the issuance of Global Bonds, as part of a policy that the country had initiated, had implemented again after many years.

Q. Okay. And Mr. Herrera, you referred several times to the definition of "investment" under the Treaty, in particular, the requirement to see the characteristics, the relevant characteristics. So,

if there is a paper, a sheet of paper that is some sort of Bond, what do you suggest to be able to determine whether it is an investment or not under the Treaty?

PRESIDENT FERNÁNDEZ ARMESTO: You are also dangerously approaching the request for an interpretation to the Witness. Mr. Hamilton can tell us what he negotiated rather than the proper interpretation of the Treaty. I am willing to see what he answers, but how about not continuing down this path.

MR. HAMILTON: I understand the comment, Mr. President, and as we listened to questions that were not very relevant by the other Party, I believe--Mr. Herrera--

THE WITNESS: If you allow me, Mr. Hamilton, just a brief comment in connection with your question.

And I will answer that question along the same lines I answered the counsel for the other party. In every case we need to analyze the characteristics of the alleged investment, and we

also need to analyze all of the relevant facts. I would like to underscore that there was a concern among the U.S. representatives for this topic because it was not expected to have the Treaty be in use on a speculative or in a manner--in an undue manner.

I recall that at some point the counsel that was part of the U.S. negotiating team mentioned the example of the summer home of a company manager that could not be considered an investment. So, it is not the fact that there is just an asset, but we do need to analyze all of the characteristics and relevant factors.

BY MR. HAMILTON:

Q. Thank you very much, Mr. Herrera.

And you had several--you were asked several questions about various disputes before ICSID and other types that was addressed--they were addressed by the U.S. and Perú prior to the signing of the Free Trade Agreement among both countries, and you said the following: "I do not recall any relationship between--among those topics," and that was your comment in connection with the relevance or

irrelevance of these topics to the--for the negotiation or interpretation of the Agreement.

What do you suggest, that you don't recall any relationship among the topic?

MS. POPOVA: Just a correction. I never asked or I never intended to ask him about ICSID disputes. I see it on the Transcript, Mr. Hamilton saying that I had asked him several questions on ICSID Cases, and I don't think that that is proper.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think he asked about that.

MR. HAMILTON: I apologize. First of all, after seeing that the questions are so much beyond his Statement, but I also see the reference to several fora, and if you don't understand that there are references to investment disputes, we do not agree on the facts. There is a reference to several fora.

PRESIDENT FERNÁNDEZ ARMESTO: Please, ask your question to the Witness and we conclude.

BY MR. HAMILTON:

Q. Mr. Herrera, you were asked several

questions about disputes among the U.S. and Perú, and while Perú was negotiating this Treaty. You mentioned that you do not recall linking the topics.

What does this suggest?

A. As I explained to Ms. Popova, first of all, we never discussed any of the outstanding cases. At the negotiating table, the U.S. delegation never discussed any specific case. And I understand that they also knew that the investment table was not the right forum to address these pending issues.

Second, the existence of those pending issues--and that was my reference--the existence of those pending issues or cases did not guide the discussion on any of the basic elements of the Agreement, not even the dispute settlement mechanism.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Any other question?

BY MR. HAMILTON:

Q. Final question, Mr. Herrera, you were also asked in connection with Mr. Allgeier.

What was the role of Mr. Allgeier at those meetings that you attended for the negotiation of the

investment chapter?

A. As far as I recall, Mr. Allgeier did not attend any of the investment rounds.

Q. Thank you very much, Mr. Herrera.

MR. HAMILTON: I have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Great. Mr. Herrera, thank you very much for being with us, even over the phone in Lima. We really thank you for your effort, and we hereby conclude your examination.

THE WITNESS: I thank the Tribunal for allowing me to cooperate from Lima. As you know, this is due to a treatment I am receiving.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much. We wish you the very best for your health and recovery. Thank you, Mr. Carlos.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Now, we can close the Transcript.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: So, we resume. Thank you for waiting. Thank you.

So, we will resume the Hearing, and we will

do the following: We will start with the examination of Minister Castilla because I want to, first of all, start with him and give him an explanation of why we are running late and explain to him. We will then break for the cross-examination, and we will have the cross-examination of Minister Castilla tomorrow at 9:00 a.m. Washington time.

And as regards the future of our procedure, there are two elements in this week which, to us, are fundamental. One is that we need a full morning on Friday with Mr. Kaczmarek and Mrs. Kunsman. That is fundamental, and we need the same time on Wednesday with Professor Edwards. So, we will not go now into details, but you must now--and we can speak once we are finished with the Minister. We will have to--we will need a morning with Professor Edwards and we need a morning with Mr. Kaczmarek without any time pressure, because these are areas in which we have to get a very precise, exact view.

There are issues which the Tribunal does not cover well, which is the question of exchange rate and different types of exchange rates, and we need

time to understand and to discuss. So, that is fundamental.

The other Experts are less important. They are Legal Experts, and we will, of course, hear them, but we must limit our time so that we leave sufficient time for the Quantum Experts.

Very good. With that, we start the examination of Minister Castilla.

LUIS MIGUEL CASTILLA RUBIO,

RESPONDENT'S WITNESS, CALLED (via videoconference)

PRESIDENT FERNÁNDEZ ARMESTO: Minister? Minister, can you hear me?

THE WITNESS: Yes, I hear you. Good afternoon.

PRESIDENT FERNÁNDEZ ARMESTO: How are you, Minister? Very good afternoon.

First of all, I'd like to apologize, because you have been waiting for a long time, and this is always unpleasant. I say it's like going to the dentist and, at the same time, having to wait until it's your turn.

The reason is that the examination of a

person on the team that has worked with you, the Vice Minister, Vice Minister Sotelo, took much longer than we had anticipated, and, therefore, the day has become extremely complicated.

I don't know what time it is in Lima. Here it is now 6:10 p.m. Is it the same time in Lima as well?

THE WITNESS: (No interpretation.)

THE INTERPRETER: It was inaudible for the interpreter.

PRESIDENT FERNÁNDEZ ARMESTO: In addition, what should work technically well is not working technically well, sir, so unfortunately the communication is not easy between Washington and Lima.

So, we are going to do the following: Now, you know that first, there's a direct examination in which the attorneys for the Republic of Perú put questions to you. We are going to do that this evening, now. Then we need to take a break in your examination, and we will continue tomorrow morning at 9:00 a.m., if you agree, and I understand it's the

same time here as it is in Lima. So, that's the plan. I hope the technology works, and that we can hear you well and that we can make progress.

Minister, you are here as a witness, and as a witness, you have the duty to tell the truth. So, the first thing we need to do is to take your Statement, your declaration. So, I would ask that you please stand.

Excuse me, Mr. President.

Minister, please, if you would.

THE WITNESS: I solemnly declare, upon my honor and conscience, that I will speak the truth, the whole truth, and nothing but the truth.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you, Minister.

The truth is that the technical aspect of our communication is poor. I hope that you can hear us better than we can hear you, with which we give the floor to the Claimant for the direct examination.

MR. HAMILTON: One procedural question, Mr. President, please. Perhaps I did not understand the plan so well, but it was my understanding that

the Tribunal would like to begin with Mr. Castilla tomorrow.

PRESIDENT FERNÁNDEZ ARMESTO: Now.

MR. HAMILTON: Including the cross?

PRESIDENT FERNÁNDEZ ARMESTO: No. We would leave the cross for tomorrow.

MR. HAMILTON: So, we are going to spend about 10 minutes right now, and then he would be sequestered?

PRESIDENT FERNÁNDEZ ARMESTO: Well, the sequestration would not be all that important. He is in Lima. It's not such an issue that you can't call him tonight. He has been sequestered throughout the Hearing. I think that he'll be delighted to not receive any phone call from the lawyers; right? It's better not to receive phone calls from the lawyers.

Let me explain a procedural rule to you. If you begin your examination this evening, then the lawyers cannot speak with you during your examination; therefore, they will not be able to call you at any time tonight. But I think the Minister would prefer that he not receive any calls tonight.

MR. HAMILTON: No, I just want to confirm that the Minister understands what's happening.

So, Minister Castilla, what the Tribunal is asking is that right now, we are going to take your direct testimony, and then we're going to stop for today. And we're going to begin tomorrow at what time?

PRESIDENT FERNÁNDEZ ARMESTO: I would propose at 9:00 a.m.

MR. HAMILTON: 9:00 a.m. tomorrow morning for the questions from my colleague of the other Party.

So, having stated these procedural aspects, I would ask if you're available tomorrow at 9:00 a.m., and also, Mr. Friedman, if you could tell us approximately how long you plan to take?

How long is the testimony going to last tomorrow?

MR. FRIEDMAN: Yes. As I mentioned earlier, right now I'm anticipating about two hours, but it depends to some extent on the answers, and, of course, we have translation. So, I would say the

morning.

MR. HAMILTON: Okay. Minister Castilla, the idea is that we are going to take your direct testimony this evening and then continue with the questions from my colleague tomorrow beginning at 9:00 a.m., and that would probably last two to three hours, something like that.

So, I simply want to confirm that you understand this plan of the Tribunal.

THE WITNESS: I have changed my--so, to the extent possible, I think that we could start tomorrow, tomorrow morning.

PRESIDENT FERNÁNDEZ ARMESTO: So, I'm very, very sorry for this change in the agenda, Minister. I think that these are issues that sometimes take place because it is hard to predict how long a testimony will last, and Vice Minister Sotelo's testimony was quite long. We are not going to finish today. We have interpreters here--stenographers as well--and we started at 9:30 in the morning, so we have a certain time limit. So, this is what I call the potato-sack phenomenon. At the end, the Tribunal

becomes just three sacks of potatoes, and they cannot absorb any more information.

So, I am very, very sorry for this. I know this may be an inconvenience. I think by midday tomorrow, I'm sure we would have finished, but I just wanted to ask you a favor. I understand that you are a gentleman that has a very busy agenda, but tomorrow from 9:00 to 12:00, I'm going to ask you to please be with us.

THE WITNESS: It will be a pleasure, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, Mr. Minister.

But today we are going to try to move forward, and perhaps we can end by 11:00 instead of 12:00 tomorrow.

I'm going to give the floor to counsel for Perú, and counsel for Perú is going to ask you a few questions, Mr. Minister.

MR. HAMILTON: Thank you very much, Mr. President, Members of the Tribunal.

DIRECT EXAMINATION

BY MR. HAMILTON:

Q. Minister Castilla, good afternoon.

A. Good afternoon.

Q. Minister, you submitted two Witness Statements in this case, one in 2018 and the other in 2019, and my understanding is that you have copies of that Statement on the table in front of you.

A. That's correct.

Q. Very well. In your Witness Statements, you make reference to your professional background. Could you please tell the Distinguished Members of the Tribunal what your professional background is?

A. Thank you. I studied economy in the McGill University in Canada. I graduated in economy. I also have a Ph.D. in economy in Johns Hopkins University.

I have had over 20 years' experience in the World Bank. I also worked in the Development Bank for Latin America, and now I have a position at the IADB.

For seven years I have worked in the public sector in Perú. I had several positions in the MEF

between '09 and 2014. I was the Chief of Staff for about two years; then I was the Vice Minister of the Treasury; and then I was the Minister, and this until 2014. Then I had the honor of representing my country to the White House.

And I have conducted academic activities as well, and I have also held other academic positions during my professional career.

Q. Thank you very much, Minister.

MR. HAMILTON: Mr. President, I'm not sure you can hear the Minister well.

PRESIDENT FERNÁNDEZ ARMESTO: We are making an effort. We are being quite unsuccessful when it comes to technical matters today.

MR. HAMILTON: His direct is going to be 12 to 15 minutes. Do you understand him?

PRESIDENT FERNÁNDEZ ARMESTO: I understand him, but the quality of the sound is not very good.

THE INTERPRETER: The interpreter confesses that he has a very, very hard time to understand.

SPANISH STENOGRAPHER: Mr. President, I am not understanding.

PRESIDENT FERNÁNDEZ ARMESTO: You understand nothing?

SPANISH STENOGRAPHER: Well, I can understand a little bit, but--

PRESIDENT FERNÁNDEZ ARMESTO: This is the World Bank, Mr. Minister. My apologies, but sometimes it happens that things are not perfect from a technical viewpoint. Let me discuss with the Secretary.

The sound, truth be told, is very bad quality-wise.

PRESIDENT FERNÁNDEZ ARMESTO: Unfortunately, I don't think we can do much else. It appears that the problem is that the signal that we're getting from Perú is not good. I don't know.

MR. HAMILTON: Mr. President, so perhaps we are not going to use extra time for his direct, and perhaps we can fix the technical matters tonight and start tomorrow morning.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Minister, you have worked a lot for multilateral banks? And this is a little bit of a mess in here right now

sound-wise.

THE WITNESS: Yes, correct.

PRESIDENT FERNÁNDEZ ARMESTO: You know that these banks are quite bureaucratic. Things usually work really well, but sometimes things go askew. There is a bad fairy that comes over, and we don't know what happens, but--the connection had been good in the past, but the connection today, well, has not been good. And we have here a stenographer that is taking down your Statement, and the stenographer says that he is unable to transcribe your Statement in a reasonable manner because he fails to understand you.

Truth be told, it is difficult to understand you. So, what Mr. Hamilton is proposing--Mr. Hamilton represents the Republic of Perú, of course--he is saying that we should break the examination now and we can resume tomorrow, and hopefully we're going to have a line of communication that is going to enable us to hear you better. We hear you very, very poorly, truth be told. So, that's what we're going to do.

I am profoundly sorry, Mr. Minister. I know

that you've been waiting there all afternoon. I am sure this is quite disheartening, but Philip II said something the same when he lost the Armada. He said, "I have sent my ships to fight against the elements," and we are fighting against the elements here. The elements here are technical in nature, but unfortunately, we're going to have to interrupt this examination, and you're going to have to come back tomorrow and be with us tomorrow.

THE WITNESS: Of course, Mr. President. Not a problem. I confirm that I'll be here tomorrow, and I hope the technical issues will be resolved. And I hope things are resolved.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, Mr. Minister. As you know, your Statement is quite important. Thank you very much for your effort and for your patience. And we are going to talk tomorrow at 9:00 a.m. Lima time and Washington time.

THE WITNESS: Thank you, sir. Perfect. Good afternoon.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: So, we have finalized with the Minister, and we will start tomorrow. I apologize on behalf of ICSID that this has been such a disaster, but it happens. It's not the first time that these type of things just don't work. You remember when we started on the first day, I said, "Hopefully the technology works."

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: So, the point I just wanted to do, we must be more efficient in using the time. I understand that Minister Castilla is very important. But, then, you must bear in mind that what to ask is very important of the two Quantum Experts. We must leave sufficient time for them and that all the other Experts are Experts whose Expert Reports we have read, which are legal, basically, except for--I think for Ambassador Allgeier. They are legal analyses.

We understand that is our method. That is something which we understand. We are happy to hear the summary of their position, but not much--we are perfectly capable of analyzing the valid and the less

valid points of the Experts' cross-examination.

We all know that cross-examination of Legal Experts does not really lead to much more in-depth study or understanding of their Reports, so you must be very conscious of the time, and we must--on Wednesday, we must start with Professor Edwards, and we must devote the morning of Wednesday to Professor Edwards, and we must devote the morning of Friday to Professor Kaczmarek.

And I would kindly ask that you we start with the Quantum Experts in the morning when we are all fresh because you have seen how complex it is, and there are a couple of technical issues which really require a fresh mind, and it would not be good to have them at the end of the day.

Yes.

MR. HAMILTON: I was just going to say that that leaves us five people, between us and Sebastian. So, I wanted to get an idea how we might plan to allocate ourselves tomorrow. We have the Minister by videoconference. We had programmed Mr. Castillo by videoconference for tomorrow morning, but obviously

that will be shifted. And then there's a few other people. So, I just want to make sure, for everybody's humanity and benefit, that we have some idea. So, it sounds like we will begin at 9:00 instead of 9:30 tomorrow.

PRESIDENT FERNÁNDEZ ARMESTO: I would propose that.

MR. HAMILTON: We will begin with the Minister, and then we anticipate finishing with him by noon. We would, then, go ahead and start with the Gramercy Experts, hopefully before lunch. That would be Mr. Allgeier. I hope I'm pronouncing it correctly. Thank you.

And, then, in the afternoon we've got basically two Peruvian Legal Experts as well as Mr. Olivares-Caminal. So, I'm just trying to review and anticipate the day.

Obviously, after Minister Castilla, it will be our turn to ask questions, and so we will try to organize ourselves tonight to get as much accomplished as we can tomorrow to be ready for Mr. Edwards on Wednesday morning. But effectively,

it looks like we would be starting with the first of four Experts around noon tomorrow, and try to advance with as many of them as possible by the end of the day. And I guess that means that maybe one of them would get bumped until after Mr. Edwards given that you wish to start on the morning of Wednesday.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, because the Thursday looks--if we have the Wednesday morning devoted to Professor Edwards, we may--we can have, then, two or three Experts in the afternoon, maybe one of the Experts which was for Tuesday, we could put him on Wednesday, and then Thursday looks with three Experts: García-Godos, Wühler, Guidotti, looks a day where we could have four, four Experts: Two in the morning and two in the afternoon. So, we could maybe move one Expert to Thursday and have four Experts on Thursday and tomorrow have Castilla and three Experts--two Experts, and then have Edwards and three Experts then or two Experts on Wednesday, something like that.

MR. HAMILTON: Given the number of people that we will be crossing after you finish with

Minister Castilla, can you give me 20 seconds to consult and, perhaps, make a suggestion?

PRESIDENT FERNÁNDEZ ARMESTO: Can I make an even better suggestion?

MR. HAMILTON: Yes, please.

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you come together? It also depends on the traveling plans of Experts. I mean, let's try not to--if someone is traveling back on Wednesday, let's try to hear him on Tuesday; and if he's traveling back on Thursday, then we have a bit more leeway. I mean, let's try to--I mean, we have already destroyed a day in the life of Minister Castilla. Let's try not to destroy too many other days just out of respect for people.

MR. HAMILTON: Okay. Let's talk in a few minutes.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you confer--

MR. HAMILTON: I'll confer--

PRESIDENT FERNÁNDEZ ARMESTO: --tomorrow in

the morning? Tomorrow in the morning.

MR. HAMILTON: That's fine.

PRESIDENT FERNÁNDEZ ARMESTO: Is that okay?

MR. HAMILTON: Sure.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

So, it's--we really have to get the technology working because--I mean, do you think we can restore it in that office because the thought of moving to the other office, I don't know if it's close by or not.

SECRETARY PLANELLS-VALERO: Yeah. I need to speak to the technicians.

PRESIDENT FERNÁNDEZ ARMESTO: Because if Minister Castilla is to go to a different office and all the lawyers are to go to a different office, we would have to tell him tonight. We cannot tell him tomorrow in the morning.

MR. FRIEDMAN: We did check and make sure that the rooms are available from 9:00 a.m. or before that at Estudio Rodriguez tomorrow. I don't know whether it was a problem with the technology at the Ministry's office. I do know that we have had

videoconferences in our offices here with the Estudio Rodriguez and it has worked fine, I mean. But we just offer it. We are not trying to push. We don't want to make him uncomfortable, but it's available.

(Comments off microphone.)

MR. FRIEDMAN: Yes, with the work of Secretariat. I suspect it was a technology problem of some kind at the source in Perú. And so, I'm just suggesting maybe we could use some different technology that may match up better with what's here, but it's an offer. Not insisting.

In any event, the other Witness who will testify by video tomorrow, Professor Castillo, will be doing that from Estudio Rodriguez' offices any way. He was never going to go to the Ministry.

PRESIDENT FERNÁNDEZ ARMESTO: In any case, let's do the following. Let's meet tomorrow at quarter to 9:00, so punctually at 9:00 we start with the Minister. Let's not have him waiting any longer.

Is that okay with you? Mr. Friedman? At quarter to 9:00.

MR. FRIEDMAN: Yes, as long as the bank is

open. Is the bank open?

SECRETARY PLANELLS-VALERO: Yes, the bank is open.

PRESIDENT FERNÁNDEZ ARMESTO: Quarter to 9:00. And so, quarter to 9:00, you tell us, and, please you now liaise with the Parties to be sure that whatever technology at whichever place is working, and you please liaise, and so at quarter to 9:00, we meet, you tell us which technology is working, and punctually at 9:00, wherever he is, we start with the Minister. Fair enough. Thank you very much. It has been a long day.

Not as fruitful as that we all had hoped, but that's the way it is.

(Whereupon, at 6:31 p.m., the Hearing was adjourned until 8:45 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

Dawn K. Larson

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the matter of Arbitration between:	:	
GRAMERCY FUNDS MANAGEMENT LLC AND GRAMERCY PERU HOLDINGS LLC,	:	
Claimants,	:	
and	:	ICSID Case No. UNCT/18/2
REPUBLIC OF PERÚ,	:	
Respondent.	:	
		Volume 4

HEARING ON JURISDICTION, MERITS AND QUANTUM

Tuesday, February 11, 2020

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

The hearing in the above-entitled matter came on at 9:00 a.m. 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:

On behalf of ICSID:

MS. MARISA PLANELLS-VALERO
Secretary of the Tribunal

MS. KRYSTLE M. BAPTISTA
Assistant to the President of the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
info@wwreporting.com

MR. PAUL PELISSIER
MR. DIONISIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

MR. CHARLES ROBERTS

APPEARANCES:

On behalf of the Claimant:

MR. MARK W. FRIEDMAN
MS. INA C. POPOVA
MR. CARL RIEHL
MS. FLORIANE LAVAUD
MS. BERGLIND HALLDORSDOTTIR BIRKLAND
MR. GUILHERME RECENA COSTA
MS. SARAH LEE
MR. DUNCAN PICKARD
MR. JULIO RIVERA RIOS
MS. MARY GRACE McEVOY
MR. THOMAS G. McINTYRE
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
United States of America

MR. LUIS BEDOYA
MR. FRANCISCO CARDENAS PANTOJA
Rodrigo, Elias & Medrano
Av. San Felipe 758
Jesús María
Lima 15072
Perú

Representing Gramercy Funds Management LLC:

MR. JAMES TAYLOR

MR. JOSHUA M. O'MELIA

MR. NICK PAOLAZZI

MR. THOMAS NORGAARD

APPEARANCES: (Continued)

On behalf of the Respondent:

AMBASSADOR HUGO DE ZELA
Republic of Perú

MR. RICARDO AMPUERO
Republic of Perú

MS. MONICA GUERRERO
Republic of Perú

MS. GIOVANNA ZANELLI
Republic of Perú

MR. ALBERTO HART
Republic of Perú

MR. JONATHAN C. HAMILTON
MS. ANDREA MENAKER
MR. RAFAEL LLANO
MR. FRANCISCO JIJÓN
MR. JONATHAN ULRICH
MR. FRANK PANOPOULOS
MR. JOHN DALEBROUX
MR. ALEJANDRO MARTINEZ DE HOZ

White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005-3807
United States of America

For the United States of America:
MS. LISA GROSH
MS. NICOLE THORNTON
MS. MARGARET SEDGEWICK
MR. JOHN DALEY
Attorney-Advisers
Office of International Claims and
Investment Disputes
Office of the Legal Adviser
U.S. Department of State
Suite 203, South Building
2430 E Street, N.W.
Washington, D.C. 20037-2800
United States of America

MS. AMY COLLINS
U.S. Department of Treasury

C O N T E N T S

PAGE

WITNESSES:

LUIS MIGUEL CASTILLA RUBIO (resumed)
(via videoconference)

Direct examination by Mr. Hamilton.....1169
Cross-examination by Mr. Friedman.....1182

AMBASSADOR PETER ALLGEIER

Direct examination by Ms. Popova.....1316
Direct presentation.....1317
Cross-examination by Mr. Ulrich.....1331
Redirect examination by Ms. Popova.....1379

MARIO CASTILLO FREYRE
(via videoconference)

Direct examination by Ms. Popova.....1387
Direct presentation.....1388
Cross-examination by Mr. Jijón.....1406
Redirect examination by Ms. Popova.....1464

RODRIGO OLIVARES-CAMINAL

Direct examination by Mr. Friedman.....1477
Direct presentation.....1478
Cross-examination by Mr. Panopoulos.....1497

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ ARMESTO: Good morning to all of you on this fourth day of this Arbitration between Gramercy Funds Management LLC and Gramercy Perú Holdings LLC v. Republic of Perú.

LUIS MIGUEL CASTILLA RUBIO, RESPONDENT'S WITNESS,

CALLED (resumed via videoconference)

PRESIDENT FERNÁNDEZ ARMESTO: Here we have Minister Castilla.

Minister, can you hear me?

THE WITNESS: Good morning, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much for the effort to be with us here today.

Without further ado, I am going to--Mr. Minister, you are under oath, and you continue to be under oath, and I am going to give the floor to the Republic of Perú.

MR. HAMILTON: Thank you very much, Mr. President, Members of the Tribunal.

DIRECT EXAMINATION (resumed)

BY MR. HAMILTON:

Q. Minister Castilla, good morning.

A. Good morning.

Q. Minister, we are going to start again, new day, to make sure that the Tribunal can hear what you said yesterday in connection with your professional background.

Would you please sum up your professional background?

A. Yes. I am an economist. I trained in Canada and the U.S. I have a bachelor's degree in economy--in economics in Canada, and I have a master's degree from Johns Hopkins.

I have almost 20 years of experience in multilateral banking. I worked at the World Bank and the Inter-American Development Bank at the same time. I have been in the public sector for seven years, and five years were with the Ministry of Economy and Finance in different positions. That includes the Council of Advisors, Vice Ministers of Finance, and I was also appointed Ambassador of Perú to the U.S. in 2016.

To this professional activity, I should also add academic activity at MIT and other universities

and also participation in the Board on Public Health and Hemispheric Issues.

That is my summary of my professional background.

Q. Thank you very much, Minister Castilla.

In your Witness Statements presented to this Tribunal, you have made reference to fiscal responsibility. What does fiscal responsibility suggest for the Ministry of Economy and Finance of the Peruvian State?

A. Fiscal responsibility is a key concept in managing the Peruvian economy. And here, its basis is in the 1993 Constitution, which enshrines the principles in connection with this concept, particularly a balanced budget. And there are a number of rules then that govern the State in this respect, and this is especially important because it determines the legal and regulatory framework of fiscal policy for addressing the many needs of a developing country such as Perú in terms of resources, social sector, infrastructure, and others.

The fiscal management of the country won Perú

international recognition. We are an investment-friendly--a country open to investment. We have access to capital markets and we are, perhaps, the lowest-risk country in Latin America and the Caribbean today.

Q. Thank you very much, Minister.

You mentioned that your time in the Ministry began in 2009, and obviously you ended up in the position of Minister in 2011. You make reference to the agrarian debt in your statements. What is the agrarian debt and what was your--what was its role or its relevance in the Ministry?

A. The agrarian debt is a historical chapter in Peruvian history. For me, it's a mechanism, a way of compensating those persons whose lands were expropriated in an Agrarian Reform or Land Reform process that occurred in Perú more than 50 years ago.

Now, in my role at the Ministry of Economy and Finance, when I came in in 2009-2010, it was very different from the role involved in managing the public debt, and it referred particularly to the issuance of sovereign bonds whose aim is to raise

resources to finance public sector needs. Therefore, it is a historical issue, a matter of compensation on the one hand, and in my role in the Ministry, initially, it was a role very different from managing the public treasury, and particularly managing the public debt.

Q. Thank you very much, Minister.

When you came into the Ministry in 2009 and took on the role of Vice Minister for Treasury in 2010, what was the status of how the agrarian debt was being handled?

A. I came in as Vice Minister for Treasury, and perhaps associated with this case, I recall, and I refer to my 2018 Statement, where I recall a letter that was sent by representatives of Gramercy Fund making a number of requests, and the main response, which reflects the Ministry's attitude, is that there was not a legal framework for responding to their requests.

During that period when I was Vice Minister for Treasury, there were a couple of efforts to try to come up with such a legal framework. Indeed, there

was one proposed law introduced by the Executive on the one hand, and on the other hand a proposed law that was discussed in Congress. This coincided with the transition process in the Government from one administration to the next after the 2011 elections.

And the last thing that I can mention in this respect is that, as there was no legal framework, being able to negotiate any solution or any claim was impossible. I recall--and this is also in my Statement--once Gramercy Fund came forward, together with the bank, UBS, and on that occasion they put forward--not in a clear way; in an indirect way--whether there might be the possibility of negotiating some sort of agreement, and my answer was no, because there was no legal framework for doing so. That was my experience, and at that time, that was the focus of the center of the Ministry's work, was to address the post-international financial crisis period in 2009-2010, and an effort at fiscal consolidation. That was the key priority of the Peruvian Government at that time.

Q. Thank you very much, Minister.

And this legal vacuum that you've mentioned, was this also--how--was this related to how the agrarian debt was handled during your time as Vice Minister as well?

A. That is correct. There was no legal framework. In particular, we established two important concepts. One was a mechanism that would make it possible to undertake the evaluation on the one hand, and then an administrative mechanism that would make it possible to make the payments once the valuation was done.

Now, all of this changed when, in 2011 or thereabouts, there was a request that was put to the Constitutional Tribunal in carrying out a Judgment, and, basically, there was a waiting period for the--until such time as the Constitutional Tribunal handed down its ruling in the matter. So, it was in July 2013--up until July 2013, well, our position was to wait for the Judgment. And in the meantime, we had to continue with our line of work, understanding there was no legal framework that would allow for a valuation, nor that would establish an administrative

process in this regard.

ARBITRATOR DRYMER: What is not working?

(Comments off microphone.)

ARBITRATOR DRYMER: Apologies, Mr. Minister.

MR. HAMILTON: Minister, we have a technical problem at this end, if you can wait just one moment.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Very well. We resume the Hearing, and I give the floor to counsel for the Republic of Perú.

MR. HAMILTON: Thank you very much, Mr. President.

BY MR. HAMILTON:

Q. Minister Castilla, we now come to the July 16, 2013 Judgment of the Constitutional Tribunal. What was the impact for the Ministry of this Judgment of the Constitutional Tribunal legally?

A. The legal impact is that there was now a legal framework that would allow for four things. It allowed for registration, it allowed for authentication, it allowed for valuation, and certain forms of payment so as to address the issue of the

Agrarian Reform Bonds.

Q. Thank you very much, Minister.

And what was the reaction of the Ministry of Economy and Finance and of the Peruvian State after receiving the Judgment of the Constitutional Tribunal in July of 2013?

A. The reaction was to challenge that Decision, because we considered that they were invading the authority of the Ministry of Economy and Finance beyond, let's say, what would be reasonable. This challenge was dismissed by the Court.

We then sought a clarification, and there was a response to that, and then we had no choice other than to abide by what the Constitutional Tribunal had ruled. So, that's what we did at that time.

Q. Thank you very much, Minister.

And you heard various arguments from the Gramercy Fund as regards the origin of the Judgment of the Constitutional Tribunal in July of 2013; particularly, they allege that you sought to intimidate or pressure the Constitutional Tribunal. What do you say in that regard?

A. I reject such statements--those statements or assertions, first as regards the autonomy and majesty of the Constitutional Tribunal, which merits my greatest respect, and second to state and say that, well, no, I have always acted in a responsible manner, with proper treatment, and in a transparent manner. So, I fully reject those allegations on the part of the Gramercy Fund.

Q. Thank you very much.

The ruling by the Tribunal, based on your comments, set out several steps that the Ministry had to implement. How was compliance with the instructions of the Constitutional Tribunal handled at the Ministry during the time that you were Minister?

A. Well, this must be seen in the framework of this being one activity amidst many other tasks and obligations that the Ministry of Economy and Finance had. A time frame was established, a six-month deadline for being able to come up with a regulations that would make it possible to enforce the Judgment of the Constitutional Tribunal, and this resulted in the publication of a Regulation through Supreme Decrees

that had the proper technical and legal foundations. And here, I would like to mention that we always acted in good faith, trying to diligently carry out that ruling.

In addition, at that time, given the complexity of this task, it was allowed that one could include future provisions if needed or appropriate, so that door was left open. And a number of institutional agreements were entered into in order to be able to carry out the task.

A couple of examples have to do with, for example, we signed an agreement with the Ministry of Interior to be able to authenticate these Bonds, given their historical nature, the years that had elapsed, and also an agreement, for example, with the Bank of the Nation, Banco de la Nación, that would allow for the appropriate custodianship of these securities. These are examples of activities involving institutional coordination so as to create the framework that would make it possible to address the matter to carry out the Judgment. That is what I recall at this time.

Q. As Minister--you continued to serve as Minister until September of 2014. What was the status of implementation of the Bondholder Proceedings or Process as of the time when you left the Ministry, at the end of your time in the Ministry?

A. As I mentioned in my previous comment, it was a process that was already underway.

Now, I remember, initially there was quite a bit of correspondence, a lot of questions, about the nature of this mechanism, and I reiterate there was always a willingness or an openness for further specifications and approaches so that it could best be carried out going forward. I left in September of 2014 with a process that was already underway.

And, finally, on this issue, there was already a legal framework by that time that allowed for valuation and that included an administrative mechanism to be able to address this matter.

Q. And, Minister Ambassador, in 2015 and 2016, you became the Ambassador of the Republic of Perú in the City of Washington. What was your experience with matters involving the Gramercy Fund at the Embassy of

Perú here in the City of Washington?

A. I have very pleasant memories of Washington where I lived. I was recently married. I studied, I worked there, and then I returned as ambassador, at a moment when there was a very deep and positive relationship with the Government of the United States.

And unfortunately, I must say, this relationship was mitigated by or made more negative by a hostile relationship with the Gramercy Fund, indirectly or directly, through lobbying and a lot of pressure brought to bear through authorities of the--with respect to authorities of the Executive and Legislative Branches of the United States with a twofold objective: One, to harm the image of Perú, and second, to harm the bilateral relationship between Perú and the United States.

Therefore, my recollection during a time that I think was quite positive, my time as Ambassador of Perú, was nonetheless darkened somewhat by this experience.

Q. Thank you very much, Minister Ambassador.

MR. HAMILTON: Thank you very much,

Mr. President. I have no more questions for the time being.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much. Thank you, Mr. Hamilton.

I now give the floor to Mr. Friedman, Counsel for Claimants.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q. Thank you very much, Mr. President. Good morning, Minister and Ambassador Castilla. Thank you again also for your indulgence yesterday. We all in this room, I think, share the sentiment that we are grateful to you for having been very patient with us, and we are sorry that yesterday you waited for a long time.

I'm going to ask you some questions today. I would be grateful if you can focus on those questions and provide answers to them.

Am I right that in, of course, 2001, the Constitutional Tribunal of Perú held that the Land Bonds were valid obligations that had to be paid at current value?

A. In 2001, I was not in Perú, but obviously when I came into the Ministry in 2009, and particularly when I became Vice Minister for Treasury, I understood that there had been a constitutional action that had declared--some articles of a law, well, were annulled, and a current value principle was established with respect to the Agrarian Reform Bonds. But that is the only thing I recall in 2001.

Q. And "current value" means restoring the original purchasing power; correct?

A. That is correct.

Q. I'd like to take a look at the Constitutional Tribunal's 2001 Decision, which is in Tab 117 of the books that are in front of you. Tab 117 can be found in Volume 4, and I believe some of the attorneys in the room may assist you in finding it. And for the Tribunal, it is CE-11.

MR. HAMILTON: Excuse me. Could we receive the binders that the Minister has? I don't have the same binders that the Minister has.

MR. FRIEDMAN: They are the same binders we handed out yesterday for the first Witness.

MR. HAMILTON: I don't know.

MR. FRIEDMAN: As the President requested, we prepared a single bundle for the Fact Witnesses.

MR. HAMILTON: Which binder is that, please?

MR. FRIEDMAN: Volume 4.

MR. HAMILTON: Volume 4. Thank you.

MR. RIVERA RIOS: Sorry. Can we have access to the screen?

PRESIDENT FERNÁNDEZ ARMESTO: The Minister has the document. We can continue.

MR. FRIEDMAN: Very good. Thank you.

BY MR. FRIEDMAN:

Q. I'm turning to Foundation 6 of the 2001 Order, and it's on Page 4 of 5. And it begins, just so we're on the same page: "Moreover and needless to say, the Judgments of the Constitutional Tribunal are fully binding on all other public authorities." I think the word in Spanish is "poderes."

Do you see that, Minister?

A. I'm sorry. I did not quite understand you. Could you please repeat the question, sir?

Q. Yes. If you go to Foundation 6 of the

Constitutional Tribunal Order--yes?

A. I have it in front of me, but I would like to ask if you could please repeat the question.

Q. Yes. I'm just drawing your attention to the first sentence. It says: "Moreover and needless to say, the Judgments of the Constitutional Tribunal are fully binding on all other public authorities," and uses the word "poderes" in Spanish.

Do you see that?

And that included the Ministry of Economy and Finance; right?

A. Well, it says "other public authorities," and the Executive Branch is among the public authorities, so the Ministry of Economy is one of those. And so, yes, what you are asking, it is correct.

Q. Okay. And then it continues: "This fact alone means that, although other legal provisions may exist that have not been declared unconstitutional by this Tribunal, that does not mean that this Judgment would be deprived of any effect against such laws that are related to the subject matter at issue in these proceedings." And then towards the end of that, the

next sentence, it says: "And it is the obligation of the other public authorities and the ordinary courts, in particular, to abide by the effects of this ruling."

Do you see that?

PRESIDENT FERNÁNDEZ ARMESTO: Let's make it a little simpler. If you could just read Paragraph 6 and then the lawyer will ask you the questions, it will be simpler. If you would, please read Legal Basis 6, and then the counsel will ask you the questions.

THE WITNESS: I have it right in front of me. I would be grateful if the lawyer could just ask the question. I have read it.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

BY MR. FRIEDMAN:

Q. Very good. So, would you agree with me that the Executive branch had to abide by the effects of the 2001 ruling?

A. Let's see. I think, as I said before, we in the public sector--evidently, the Constitution and therefrom are derived the legal provisions, and in

order to be able to carry out any type of Judgment, one requires a Regulatory Framework. There is an express order that all public entities should carry this out, but this is actually implemented by establishing a legal framework which, as I said earlier, did not exist.

And I would recall that I was not in the Peruvian Government in 2001. I only came in in 2009, eight years after this Judgment was handed down.

Q. Thank you.

You said all public entities should carry this out, and that included the Ministry of Economy and Finance; correct?

MR. HAMILTON: Sorry, Minister. We are not able to hear you at this time.

PRESIDENT FERNÁNDEZ ARMESTO: Could I ask you to leave your microphone on at all times, always on. Otherwise, every time you turn it on and off, we miss something, and there have been--there's been a moment during which we were not able to hear you, so could you please repeat your answer?

THE WITNESS: Fine, Mr. President.

What I'm saying is, the question, as I understand it, is whether all public sector entities were obligated to abide by the judgment of the Constitutional Tribunal. The answer is of course, but in order to abide by it, a legal framework was required to enable us to abide by that judgment. The Ministry of Economy and Finance is, no doubt, part of the Executive Branch, and I was rounding out my answer by saying that one mustn't lose perspective of the fact that in 2001 I was not a public servant, I began in 2009. So, I was just seeing the scope of this judgment right now. I've never seen it before. I'm reading it now for the very first time.

BY MR. FRIEDMAN:

Q. You had never before seen the 2001 Constitutional Tribunal Order before right now?

A. No. I'm not a lawyer. I'm an economist, as I mentioned earlier, and in the Peruvian State and when you are in high-level--or in significant positions, you act under the principle of trust and of a team that backs you. So, evidently the Office of the Government Counsel, the Office of Legal Counsel,

those offices would be well aware of this detail.

I was aware there was a Judgment, but to be very sincere, to read Foundation Number 6 from a 2001 Judgment, that is not something that I would have done nor that was appropriate necessarily for me to do, given the functions that I was performing.

Q. Yes. But you mentioned earlier in your testimony about the absence of a legal framework, but wouldn't you agree with me that in 2001 the Constitutional Tribunal Order required the public authorities, including the Executive Branch, to establish a legal framework?

A. Correct. In this regard, in 2011, when I was Vice Minister of the Treasury, attempts were made to establish a legal framework via a bill that was discussed in the Council of Ministers and this--what happened, is that there was a change in Government, and that's all I can say in that in connection.

Q. Now, during the period 2001 to 2013, I think it is your testimony that neither the Executive nor the Congress established a legal framework; is that correct?

A. I think--and I think I answered this before, and I referred to that answer--while I was the Vice Minister of the Treasury, there were two attempts to create that legal framework, one at the initiative of the Minister at the time, Mr. Benavides, in 2011, if memory serves, and the other attempt was by the Agrarian Commission in Congress at that time.

Q. Now, am I right that as a matter of Peruvian law, the Executive could have created a legal framework at any time?

A. As a matter of Peruvian law, there is a division of powers. The legislative branch of Government is the one that establishes the laws. The Executive does not have legislative powers. There is a delegation of powers that may be granted to the Executive. There was a division of powers, and Congress is the branch that legislates. The Executive manages the Government.

In 2011, we submitted a bill, as I indicated, but I wanted to clarify the functions that the Government has in connection with Congress and the Executive. This has two legislative powers.

Q. Minister, am I correct that the Executive could also act by Emergency Decree?

A. Emergency Decrees need to meet certain requirements that are set by the Constitutional Tribunal. One of the requirements is that they need to be time-barred, and they should not predict the situation because, otherwise, if the situation is predictable, then Congress could legislate.

I am not a lawyer, but an emergency Decree has very specific criteria that it has to meet. I wouldn't say that an Emergency Decree could be a permanent solution legally in connection with that matter.

Q. Were you aware that the President had issued an Emergency Decree with respect to the Land Bonds in 2000?

A. I am not going to address Decisions made at the time. All the Emergency Decrees need to be subject to the political control of Congress and the Commission in Congress. That is the duty of that Commission in Congress. What I can say about the Emergency Decrees is that they need to meet a number

of requirements. Now, if this was done in the past, I don't know. I couldn't give you any clarification on the matter.

Q. Minister, so, were you or were you not aware of the fact that the President had issued an Emergency Decree in 2000 proposing a valuation method for the Land Bonds? Were you aware of that or not?

A. I have knowledge of that, but I do not know the details of that Emergency Decree, to be honest.

Q. Okay. Am I right also that the Land Bonds' updating could have been proposed by the Ministry and the Council of Ministers through a Supreme Decree, even without a Congressional act?

A. I am not a lawyer, but I think that you are not correct. You have to have a provision with a rank of law, that allows for expenses to be made and for the financing that is needed. We have a Budget Law, an indebtedness law, approved by Congress, and that is a legal framework that allows allocations for payments to be made. So, what you have mentioned is not correct.

Q. Am I right that in 2014, when you were

Minister, the Ministry enacted a Supreme Decree with respect to the Land Bonds?

A. Correct.

Q. Am I right that Congress had passed no law?

A. Congress had passed no law, but the contents of the Decision of the Constitutional Tribunal back then, in 2013, provided what a Congress law had established before, a procedure for valuation purposes and the administrative mechanism to conduct the relevant payments.

Q. Am I right that the legal basis for the 2014 Supreme Decree was simply the Constitutional Tribunal's Decision and not a law?

A. Supreme Decrees that were issued in 2014 have to do with the enforcement of the 2013 Judgment. It gave the Minister of the Economy six months to issue the Supreme Decrees that you mentioned. This was an express order by the Constitutional Tribunal. It is the highest court of the land.

Q. But the--you understand, do you not, that the 2013 Constitutional Tribunal Order was simply an enforcement of its 2001 Decision that you've already

accepted was legally binding on the Ministry from 2001?

A. What is your question, Counsel? I didn't really understand what your question was.

Q. Maybe I can help. Maybe we can look at a document. Could you turn with me, please, to Tab 88, which is in Volume 3 of the books in front of you. This is R-15. Sorry, forgive me, Tab 89, R-16.

A. I have found the document behind 89. What would you like me to see?

Q. Right. And this is the document from the General Counsel's Office of the Ministry of Economy and Finance in connection with the January 17, 2014, Supreme Decree. And if you would turn with me to Section 2, they describe the legal grounds for the Supreme Decree that's about to be issued, and if you will look at those legal grounds with me, would you agree with me that--well, the first five are acts that were in existence long before 2013.

And then the sixth bullet is the judgment from the Constitutional Tribunal handed down in case file 961 TC declaring Articles 1 and 2, as well as the

First Final Provisions of the Law Number 26597 unconstitutional, which I think you would agree with me describes the 2001 Constitutional Tribunal Decision; correct?

A. I am reading them. Just one moment, Counsel. Yes, it talks about the judgment.

Legal reports generally include all the background information on the matter, and it does mention the 2001 Decision, but I wanted you to tell me what your question is.

Q. Well, am I right that Section 2 describes the legal grounds that the General Counsel's Office of the Ministry said were the legitimate basis for issuing the Supreme Decree?

PRESIDENT FERNÁNDEZ ARMESTO: Minister, I think what the counselor is indicating is that in this Report of the General Office of the Legal Advisement, you have the legal grounds and you have here the Judgment of 2001, but not the Decision enforcing the 2013. So, the 2013 Decision is not there. What the counselor is asking you is whether that legal grounds existed already in 2001 and whether the Supreme Decree

could have been issued before. That is the basis of the question posed by counsel.

THE WITNESS: I understood, Mr. President. I'm not going to speak as a lawyer because that would not be my place, but I'm going to base my answer on commonsense.

The 2001 Decision declares that a law is unconstitutional. The nominalistic principle is rejected and the current value principle is established. That's my understanding. If you look at the legislation at the time, there is no law that has a current value principle or a legal framework that establishes how value is to be established. That does not exist. Therefore, it was impossible for a legal framework to be established that could translate that 2001 Decision into an express valuation method. There was a legal vacuum, like I said, a legal lacuna, like I explained, and had there been a law that established how the valuation was to be conducted, then what you said would be correct. But that law did not exist, so what bridged that gap was the 2013 Decision by the Constitutional Tribunal. I'm trying to explain this

in a logical manner rather than in a legal manner, Mr. President, Counselor.

BY MR. FRIEDMAN:

Q. Let me ask two factual questions. Am I right that the General Office of Legal Advisement of the Ministry--forgive me, Mr. President, it may be better to use the Spanish term, but that the general director--sorry, that the General Office of Legal Advancement was essentially the top lawyers in the Ministry of Economy and Finance.

A. According to the organic law of the MEF, the General Office of Legal Advisement of the Ministry of Economy is the main location for the legal advisement of the Ministry of the Economy, you're correct.

Q. Okay. And am I right that the Section Number 2 that says "legal grounds" are the legal grounds supporting the 2014 Supreme Decree?

A. Evidently, yes.

Q. Okay. Now, in the absence of--sorry, let me start again. In the period--

PRESIDENT FERNÁNDEZ ARMESTO: I think that the question of why a law was necessary or not, we

have the answer of the Minister.

MR. FRIEDMAN: Yes, I'm moving on.

PRESIDENT FERNÁNDEZ ARMESTO: We should move on to another.

MR. FRIEDMAN: I am moving on to another question actually.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

BY MR. FRIEDMAN:

Q. During the period 2001 to 2013, Bondholders were prosecuting cases to value their Land Bonds in the Peruvian Courts; correct?

A. Correct.

Q. And the Ministry was paying final judgments; correct?

A. Yes.

Q. Okay. Now, I think you described before that in October 2001 the Engineer Bars Association commenced an enforcement action with the Constitutional Tribunal, and you mentioned that during your direct testimony.

Now, we have evidence in the case concerning that there had been an initial draft order that called

for CPI updating. I'm going to ask you some questions about this. Okay.

Were you aware that on Tuesday, July 9, 2013, four Justices had approved a draft order calling for CPI updating? Were you aware of that at or about the time of July 9?

A. Look, I do not recall specific meetings. You would have to tell me who were the meeting attendants and what the purpose was. I don't know who the Justices were.

PRESIDENT FERNÁNDEZ ARMESTO: Maybe there was a translation problem, Mr. Minister. What the counsel is asking is whether you were aware that there was a draft resolution that was signed by four Justices from the Constitutional Tribunal that established that the Bonds would be revalued by applying Consumer Price Index.

THE WITNESS: No, I had no knowledge of that.

PRESIDENT FERNÁNDEZ ARMESTO: He did not know.

BY MR. FRIEDMAN:

Q. Were you aware that the Constitutional

Tribunal Justices met in plenary sessions on Tuesdays?

A. You're talking about the Justices of Constitutional Tribunal; right?--that met in plenary session on Tuesday?

Q. Correct.

A. I wouldn't know. I wouldn't know.

Q. Did you meet with Justice Urviola on or about Wednesday, July 10?

A. Look, I don't recall exactly. You are asking questions about events that took place a long time ago. My function was to meet, many times, with public officials and, perhaps, in those meetings, well, one of those meetings were with a Mr. Urviola, but I don't remember specific dates with specific individuals at this time.

Q. So, you might have met with Justice Urviola on Wednesday, July 10, 2013?

A. I doubt that I had a meeting with Mr. Urviola, but, again, I held meetings with a number of individuals. A lot of time has gone by. I don't have my agenda. I don't have a clear recollection. I held daily 20 to 30 meetings with a number of

individuals. So, it is impossible for me to be able to specifically point it a meeting at that time.

Q. Did you meet with Justice Urviola to discuss the Land Bonds case at any time before the Constitutional Tribunal issued its July 16 Decision?

A. I remember meeting Mr. Urviola at some point in time to discuss--not that issue but sundry issues, issues that had to do with budget-related decisions, and we need to put this in context. So, the heads of the different ministries and state governments, well, all of those individuals came to the Ministry frequently to ask for resources for different projects.

And that was basically the function that I had. I had to interact with a number institutions, and those institutions included the Constitutional Tribunal, and, perhaps, meetings were held in that regard. If Judge Urviola asked me anything in connection with the implications of this, well, perhaps, I gave him my opinion, but I have not given more details than what I remember. I don't remember a specific meeting to discuss this specific subject.

PRESIDENT FERNÁNDEZ ARMESTO: Minister, to put things in context, when I was the President of the Spanish SEC, I went and talked to the Minister on a number of occasions to discuss issues that are of common interest. And this is very common in Spain. A high-ranking official goes and sees the Chief Justice of the Constitutional Tribunal.

Is this regular in Perú? Is this normal in Perú?--that a Minister like you goes to see the Chief Justice of the Constitutional Tribunal, or is it the Chief Justice who goes and meets with the Minister?

THE WITNESS: In Perú, there's a tradition--I don't know if it's good or bad--that the ones that ask for resources come to the MEF to ask for those resources.

PRESIDENT FERNÁNDEZ ARMESTO: So, it was more normal for Mr. Urviola to come and see you to discuss issues related to resources that the CT needed.

THE WITNESS: Yes. Him and the President of the Public Ministry and the President of the Judiciary, any public authority.

PRESIDENT FERNÁNDEZ ARMESTO: Now, the

Constitutional Tribunal is not in Lima. Where does it sit?

THE WITNESS: I can't hear you, sir.

PRESIDENT FERNÁNDEZ ARMESTO: The Constitutional Tribunal, Minister, is not located in Lima. It's in a different city--correct?--in Perú.

THE WITNESS: There are two seats, one in Arequipa and the other one in downtown Lima.

PRESIDENT FERNÁNDEZ ARMESTO: Very close to the MEF. Is it normal for you to go to any of those venues to meet with the Constitutional Tribunal and Chief Justice and to tell them what the interest of the Governments and the debts of the Government were.

THE WITNESS: That never happened.

PRESIDENT FERNÁNDEZ ARMESTO: That never happened?

THE WITNESS: Never.

BY MR. FRIEDMAN:

Q. You said in your testimony that you met with Justice Urviola on issues that had to do with budget-related decisions.

Am I correct that the Ministry considered the

Land Bonds issue to be a budget-related decision?

A. No. If we go back in time before the issuance of the 2013 Decision, this was a legal matter. It was not a budget-related matter.

PRESIDENT FERNÁNDEZ ARMESTO: To summarize, Minister, it is very easy. You never spoke to Mr. Urviola, the Chief Justice of the CT. You never talked to any other Justices in connection with the Land Bonds; correct?

THE WITNESS: Mr. President, what I am going to assert is that I never held a specific meeting to discuss this issue. I held meetings with authorities to discuss budget-related issues. This is a normal thing at the MEF. We were managing the Treasury, but I don't discard the fact that Mr. Urviola talked about this case and other cases.

That's it. That's all I can say on the matter, because otherwise I would be saying something that is false.

BY MR. FRIEDMAN:

Q. Let me take your attention to Tab 70 in the binders, which is in Volume 2.

MR. FRIEDMAN: For the Tribunal, this is CE-292.

BY MR. FRIEDMAN:

Q. This is a newspaper publication from July 12, 2013, titled "Urviola: Constitutional Tribunal's Decision on Land Reform Bonds Will Help the Ministry of Economy and Finance Update Their Value."

A. I'm going to ask you, sir, because we need to listen to your question, look for the page. Please, can you give me one moment to find the document, also. So, we need to work on logistics here. Just one moment, please.

Q. Do you see the article?

PRESIDENT FERNÁNDEZ ARMESTO: Wait. Let him read it.

THE WITNESS: I'm looking at it, yes.

BY MR. FRIEDMAN:

Q. Okay. So this article purports to be an interview with El Comercio, by Justice Urviola, where he discussed his meeting with Prime Minister Juan Jiménez on Wednesday, and this is published, Friday, July 12.

A. Yes, what's your question?

Q. Okay. In the third set of questions--the beginning paragraph, just for context, says: "Prime Minister Juan Jiménez Mayor tried to cool things down in connection with the Land Reform Bonds."

And the third question is: "Ministry of Economy, Luis Miguel Castilla also attended the meeting with the Prime Minister. What did he say?" Justice Urviola is reported to have said "he was concerned because it had been stated that the Tribunal had issued a Judgment, which is not true. He went to the meeting to say this whole situation was detrimental to Perú's image in foreign countries."

Do you see that?

A. I'm looking at it. What is your question?

PRESIDENT FERNÁNDEZ ARMESTO: Minister, please read the interview. El Comercio is a serious newspaper--correct?--in Perú?

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And this is an interview with Chief Justice Urviola, the Chief Justice of the CT. Apparently the CT gave an

interview to El Comercio, and it talks about the matter that we were discussing before.

The lawyer is asking whether you confirm or you do not confirm the words of Chief Justice Urviola.

THE WITNESS: Let me read it, sir, please.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, read it in detail because it's important.

THE WITNESS: Okay. Let me answer your question and put this statement in context, this statement by Mr.--Justice Urviola.

Before you asked me if I had any formal meetings at the Ministry of Economy or the headquarters at the office on this topic, and my answer was no, I never had those meetings on those topics. And I also said--and I confirm what I said, that I do not recall the exact dates, but it could be that Mr. Urviola could have asked me about certain Decisions, and he may have included this one.

This one was very important. There was a lot of pressure from the press as to the resolution to be adopted by the Constitutional Tribunal. And here it is said that, if there was a meeting--it must have

been--but I do not recall. But at no time there was any type of interference or saying something to the Chief Justice of Constitutional Tribunal.

I think that I also stated in my statement that I have always maintained the same position, to be very aware that the Decisions, the Court Decisions may have an impact on the public sector, not only because of fiscal discipline and what we talked before, but also because there is a constitutional principle that is the budget equilibrium.

I said that all of the actors in the country, including the MEF, need to abide by the Decisions of all of the Courts, including the Constitutional Tribunal. That's why the attitude was always to be cautious and clearly follow the Decisions of the Court. That's the way I have always acted, and if Chief Justice Urviola stated this in this meeting, that I honestly do not recall, yes. The answer is we need to be responsible regarding the fiscal management of the country. That was my job, but also I have said that MEF follows the Decisions by Tribunals.

BY MR. FRIEDMAN:

Q. So, that was a very long answer, but I want to be sure I understand the bottom line.

Is the bottom line that you accept Justice Urviola's account that you and Mr. Jiménez met with him on Wednesday, July 10, 2013?

A. No. I have said that I do not recall, but if it is stated there, I am not going to question what Justice Urviola said in a public statement.

Q. So you do not recall, but you cannot deny it; correct?

PRESIDENT FERNÁNDEZ ARMESTO: That's what he said.

MR. FRIEDMAN: Okay. Mr. President, you will appreciate I need clarity for the Transcript.

PRESIDENT FERNÁNDEZ ARMESTO: I'm trying to help.

MR. FRIEDMAN: I appreciate that.

BY MR. FRIEDMAN:

Q. If you turn the page, at least in my book, there's a question, the third-to-last question: "But you had already discussed this matter with the Ministry of Economy and Finance, had you not?"

Do you see that question?

A. I see it, and, once again, let me tell you what I said before. There was never a meeting explicitly to discuss this topic, but President Chief Justice Urviola may have referred to this or any other matter, and my position was always that of responsibility that judicial legal judgments had to be aware that we had limited resources for the population and also to address any Decisions by the Court.

That has been my conduct--that is to say, equilibrium, balance, and consideration, and that is what I mentioned to Mr. Urviola based on the question you are showing me now here at this exhibit.

Q. So in your conversations with Justice Urviola, you stressed the importance of equilibrium and balance; is that correct?

MR. HAMILTON: Objection.

THE WITNESS: That was my public position, and I have sustained that publicly.

MR. HAMILTON: I'm sorry. I think that my--the counsel is often quoting the Minister and some concepts are not fair, are not the same, and now we

are going through interpretation, so those may not have been the words of the Minister.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. I think that based--that the question asked to Chief Justice Urviola in the contents of the discussion seems clear. And he even says clearly, "I have--sure, I have met with the Minister because this is going to have an impact on fiscal account. This is going to entail disbursements for the Government, so I need to discuss with the Minister budgetary issues and also the budgetary consequences of our Decision."

I think that that is what the Minister said and also what Chief Justice Urviola said.

BY MR. FRIEDMAN:

Q. Yes. I'd just like to have confirmation from the Witness, if I could: Do you agree with what the President just said?

MR. HAMILTON: Mr. President--

THE WITNESS: You're asking me if I agree with what the President of the Tribunal has said? Yes.

BY MR. FRIEDMAN:

Q. Yes.

A. So, the President here. Your president here, the arbitral--

PRESIDENT FERNÁNDEZ ARMESTO: Armesto, yes.

BY MR. FRIEDMAN:

Q. Yes, the President of our Tribunal, Armesto, has just summarized what he understands your testimony to be. Is that summary accurate?

A. Yes, I agree with what the President here in the Hearing has just stated.

Q. Now, if you could look with me at Tab 69, which is in the same book. It is CE-291.

A. I got it.

Q. Yes. This is a press report from July 11, 2013. That is an interview with you.

PRESIDENT FERNÁNDEZ ARMESTO: Minister, I'm sure that you had several interviews, so you may not remember this one. So please take a look and then Counsel will ask you a question.

THE WITNESS: Thank you. Very kind.

I read it, Mr. President.

BY MR. FRIEDMAN:

Q. Can you please look at the third paragraph of that article that has a quote from you.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. What is the question?

THE WITNESS: I'm reading it.

BY MR. FRIEDMAN:

Q. Yes. What it says there is that: "We have to be responsible and aware of the importance of doing nothing to harm the constitutional concept of budgetary balance." And then the second sentence says: "So I'm confident that the weighing of considerations will prevail in the ruling to be handed down."

My question to you is simply, did you give that statement to the press on July 11, 2013?

A. Yes, to the "agencia oficial Andina," the Andean official outlet, yes, as you can see here in this document.

Q. Now, prior to this time, am I right that you had taken a position that you shouldn't comment on what the Constitutional Tribunal might or might not do?

A. We are having some issues, so I just need to understand. But I must--we are having some issues here.

PRESIDENT FERNÁNDEZ ARMESTO: You are being asked the following: Whether in general you had made any statements saying that you were not making any comments on the Decision by the Constitutional Tribunal and that you respected their independence.

THE WITNESS: My statements follow the same lines at all times. First, my key obligation is to preserve fiscal discipline in the country, on the one hand, and also, next, to respect the Decision, the judgments of the Courts in the country.

If you look at all of my public statements, they have always been the same, and this is in my Witness Statement, as well as any other information that you may have seen in connection with my statement.

BY MR. FRIEDMAN:

Q. Let me ask you to turn to Tab 60, which is in Volume 3 of the binders.

MR. FRIEDMAN: For the Tribunal, it is R-301.

THE INTERPRETER: Did you say 60?
MR. FRIEDMAN: 6-0, yes.
THE WITNESS: Would you like me to read it or are you going to ask me a question?
BY MR. FRIEDMAN:
Q. It's long. I will draw you to a particular area in this where you are quoted. This is a February 11, 2012, article from a publication called Perú21. And it--on the third page, it quotes you. In English translation it says: "When asked about the upcoming ruling by the Constitutional Tribunal, the Minister of Economy"--I'm sorry, I got the date wrong. This is, I think, November 2, 2012. Forgive me.
"When asked about the upcoming ruling by the Constitutional Tribunal, the Minister of Economy, Luis Castilla, stated that the Judgment would be complied with. We're not above the law, not at all, he said."
And then the next paragraph seems to quote you. It says: "Since we are in the middle of proceedings, I should point out that it is not appropriate to issue statements on the matter since the Constitutional Tribunal must deliberate and then

do what is appropriate."
My question to you is simply, is that an accurate statement from you?
A. It is accurate and it does not contradict what I have said before; that is, to refer to the importance of the fiscal responsibility and budget balance and to say that we abide by the judgments by the CT. And here it also refers or does away with any pressure or interference and that, I think, is the goal of your question in connection with the Constitutional Tribunal.
Q. Yes. Okay. So at that time, you said those words, which was that it was not appropriate to issue statements on the matter of the Constitutional Tribunal; correct?
A. This is a very important topic for the country. This is not just any Judgment. And as an authority, as a public authority, we need to make public statements that indicate the actions of the Government.
In my case, I am respectful of the Judgments and the autonomy of the branches of the State, but

clearly this was a transcendental topic, and, once again, I go back to what I said before: I do not think that this is incompatible with my previous statement. And in my opinion, this does not include any type of undermining of the authority of the CT, and I think that is the goal of your question.
MR. HAMILTON: Just to observe that I think that there was an error in the translation.
BY MR. FRIEDMAN:
Q. Now, could I ask you to turn to Tab 192 of the binder, which is Volume 6.
MR. FRIEDMAN: And for the Tribunal, this is CE-675.
PRESIDENT FERNÁNDEZ ARMESTO: Wait. Before you do that, Minister, in your statements, could you please go back to what you stated to the official Andean outlet, news outlet? That is document CE-291.
THE WITNESS: We are looking for it.
PRESIDENT FERNÁNDEZ ARMESTO: Can you help us. CE-291.
MR. FRIEDMAN: Tab 69. It's in Volume 3.
PRESIDENT FERNÁNDEZ ARMESTO: This is a piece

of news from Andina. So, if you're so kind, Minister, in the second column, the journalist says that this topic would be about $4 billion, therefore, the spokespersons of the Executive Branch have asked not to refer to this topic--have been asked not to refer to this.
So, this is in connection with $4 billion. That is the estimate. So is this the same estimate that the Ministry had?
THE WITNESS: These are not MEF's estimates. These are not our estimates, and we have some contingencies. We do not only look into the requests by any entity but also contingencies that have to do with what the Ministry has to do whenever there is--there will be a judgment.
So those estimates may have been related to old estimates. For example, in 2011, there was an assessment of an amount, but there was no position, no official position or official figures in connection with this process because there was no formula. There were several potential formulas.
So, as to answer your specific question, the

estimates here are not the estimates of the MEF. This does not mean that MEF did not have any estimates. This was not something probably that was public domain, but it could have been from any source.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, but let me explain my doubt. I asked you--I asked Vice Minister Sotelo a similar question, and it wasn't clear to me. It seemed to me that she thought there was never an official estimate by the Ministry because for estimates you need two elements. On the one hand, the number of Bonds that are still awaiting to be paid; and, second, how they are revalued or reassessed.

And I understood that there was no estimate by the MEF. There was some sort of estimation conducted by one of the Commissions. I think it was the Commission and some estimates with several Ministers and Bondholders.

So, my question to you is whether you recall that the Ministry had any projections as to the Bonds that still need to be paid and also the budgetary impact that its potential payment could have.

THE WITNESS: Let me clarify. I imagine that

Vice Minister Sotelo indicated that from an accounting point of view there was no debt. There was no way--

PRESIDENT FERNÁNDEZ ARMESTO: Well, the Vice Minister said "1 cent," not "zero."

THE WITNESS: So, she has more experience with that information than I do. But the fiscal management of a country not only refers to firm liabilities but also contingent liabilities. And it should always be with the prospective view, given legal judgments and also guarantees issued by the branch, and also as part of the macroeconomic analysis office within the Ministry.

We always have different scenarios as to different pressures that could exist in the public sector. This is not reactive management, rather, proactive responsible approach. We never had an estimate by MEF, and I do not think there is any Report on that, but as part of the proper management of the Peruvian economy, from a fiscal point of view.

I am not going to deny that we didn't have any estimates, otherwise, it would have been negligence by the Ministry.

PRESIDENT FERNÁNDEZ ARMESTO: Clearly. And I think that we do not have any information on file regarding this, and you do not recall any figures?

THE WITNESS: No. It would be very bold on my part to try to venture a figure.

PRESIDENT FERNÁNDEZ ARMESTO: We will need a pause, a break at some point. So, let's finish with this line of questions and, when you think proper, we would like to have a break.

MR. FRIEDMAN: Yes. We will be coming soon if the President will allow me to continue for just a bit.

BY MR. FRIEDMAN:

Q. I do want to just confirm what I understood from that last answer, which is that the Ministry, indeed, had some kind of projections about the Cost of the Land Bond debt and that those were in writing; is that correct?

MR. HAMILTON: Objection.

THE WITNESS: I haven't said that. What I said that--is that, to manage potential obligations by the State, for example, because of Social Security,

various obligations and contingencies, or because of natural disasters, a good fiscal management entails scenarios and projections for decision-making, but that does not imply that there is some sort of estimate because, in this case, it was impossible to have any estimate because there was no official valuation to estimate the amount.

This is part of a macroeconomic analysis to be prepared for fiscal contingencies with a good management of the public finances. This is what we have done in the 25 years that I have been in Perú in this area.

BY MR. FRIEDMAN:

Q. I confess that I am confused by that answer, so let me ask a very precise and specific question.

Did the Ministry have projections or estimates about the value or cost of the Land Bonds debt, or did it not make any such projections or estimates?

A. Officially, the answer is no, it didn't have it, officially.

Q. What about unofficially?

A. Let me explain, Counsel, so that you can understand how we proceed with economic management. We are not interested in stocks. We are interested in cash flows because the management of the fiscal policy is based on yearly appropriations, therefore, to estimate a balanced stock is not relevant to me.

To me it is relevant to determine pressure, year after year, and this is reflected on the multi-or the pluri-annual framework that goes together with the budgetary Project that we present to Congress. So, we base our estimates on the flow, on the yearly flow, and it would be impossible to have the flow for a debt that is not assessed, and we wouldn't even have payment, way of paying it--or payment ways or modes, or--there is no formal estimate or informal estimate.

It was a global analysis of the potential contingencies to be faced by the State.

Q. I'm sorry. I still don't have an answer to the question.

Did the Ministry maintain a--official or unofficial estimate of the cost of the Land Bond debt? Yes or no?

A. No, it didn't.

Q. So, you made no estimates about the cost of the Land Bond debt, despite knowing that was a bit--potentially big contingent liability?

Is that your testimony?

A. I don't know if this is related with interpretation, Counsel, but please be clear and restate your question because I don't think I have the feeling of your question. I offered you an answer, and within the Ministry--would you please clarify your question?

Q. I will be happy to.

My question to you is very precise.

MR. HAMILTON: Mr. President, may I ask that he please stop interrupting our Witness.

MR. FRIEDMAN: My question to you--my question--

MR. HAMILTON: I have to ask for a little bit of patience to let him finish his answers.

MR. FRIEDMAN: I have been incredibly patient.

MR. HAMILTON: Let him finish his answers and

let the translation work. I appreciate it. Thank you very much.

MR. FRIEDMAN: I have been extremely patient. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Let's go slowly. Please repeat your question to the Minister, and I'm a little bit confused too.

BY MR. FRIEDMAN:

Q. Minister Castilla, is it your testimony that the Ministry made no estimates, official or unofficial, about the cost of the Land Bond debt, despite knowing that it was a potentially large contingent liability? Yes or no.

Is that your testimony?

A. What I am stating is that, in 2011, a person was hired to quantify the potential cost, but that was not an official document, and it is not an estimate, because the estimates are not stock estimates but flow estimates. So, we need to see how these would have an impact on the fiscal policy that we see year after year.

So, to estimate the foreign debt of the

country, we did not take this into account, and this is also the answer offered by Vice Minister Sotelo. So, any estimate that you may refer, the answer is yes, the only estimate was the accounting estimate. That is not zero, but 1 cent, as the President of this hearing said.

Q. So--

A. Just to put some context to your question, sir.

Q. So, is it the case that the Ministry's only estimate, which I understand the word may be translated, not in the sense that I mean it--I think it is "estimado" is the word that we want?

MR. RIVERA RIOS: "Estimado" instead of "calculo" would be more accurate, we believe. So "un estimado de la deuda."

BY MR. FRIEDMAN:

Q. "Estimado." So, is it your testimony that the only "estimado" that the Ministry maintained about the cost of the Land Bond debt was the work from the consultant that it had hired in 2011?

A. That was a--there was a source of information

in the Ministry, but that was subject to any number of assumptions. I am providing information based on my recollection. You're asking me about matters that are very explicit and, recall, I was Minister of Economy and Finance and this was not the only issue, it was an important issue, no doubt, but it was part of the agenda that I had for policies and stewarding the Peruvian economy.

I'm giving you the best answer that I can based on my recollection. I don't know what else you might want me to respond to your question.

Q. Let me turn to Tab 192. Which is in Volume 6 and it's CE-675. For some context.

PRESIDENT FERNÁNDEZ ARMESTO: He has to find it.

MR. FRIEDMAN: I was asking him a question before he found it, actually, if that's okay, Mr. President.

MR. HAMILTON: Why don't we let him find it and then you can ask him a question.

MR. FRIEDMAN: I will be happy to let him find it.

BY MR. FRIEDMAN:

Q. Now, this is a very long document, so I'll bring you to specific passages.

A. I have it here.

Q. Let me ask you, Minister Castilla, were you aware that, last year, Justice--that several of the Justices of the Constitutional Tribunal gave sworn testimony to the Peruvian Congress?

A. No, I did not know that.

Q. Okay. I would like to direct your attention to Page 32 of this Transcript of that testimony, where Justice Eto is responding to a question.

PRESIDENT FERNÁNDEZ ARMESTO: Minister, I understand that this is a transcription of the minutes of a session, a legislative session or a legislative investigation. The thing is we need to explain to the Minister just what is the document that you're showing him.

THE WITNESS: I see names of members of the Congress, so I assume that these are, indeed, minutes of a Congressional session.

PRESIDENT FERNÁNDEZ ARMESTO: Correct. A

constitutional complaint, which I understand is a procedure that can be carried out in the Peruvian Congress in order to demand responsibility of Justices of the Constitutional Tribunal. I understand that this is the examination of Justice Eto, who was one of the members of the Constitutional Tribunal at the time that we're analyzing. So, what counsel is asking you is if at Page 32--

MR. FRIEDMAN: Forgive me, Mr. President. I would like to go to Page 36 first, if I may.

PRESIDENT FERNÁNDEZ ARMESTO: At Page 36.

BY MR. FRIEDMAN:

Q. There is a question from the counsel in the middle of the page. The question--

PRESIDENT FERNÁNDEZ ARMESTO: No, let's--we all read it.

MR. FRIEDMAN: Yes. Okay. I'm looking at this question from the counsel in the middle of the page and the answer that Justice Eto gives below that.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. It is a question put by a--attorney where he begins by saying, "Thank you, Mr. President." And then the

response.

THE WITNESS: Allow me to read it, please, if I may.

PRESIDENT FERNÁNDEZ ARMESTO: Of course, sir. We are all reading it.

THE WITNESS: Very well. I have read Mr. Eto's response.

BY MR. FRIEDMAN:

Q. Now, the question was whether there was any study establishing that the amount is $18.5 billion, and at the beginning of Justice Eto's response he says: "Those were their projections, the Ministry of Economy."

Was that testimony true or false?

A. Well, this is the first time I'm seeing this testimony. I'm very much struck by this because I've never seen those figures. I've never seen a figure of 18.5 billion, indeed. It seems quite unusual that in the answer there is mention of a meeting of the plenary of the Tribunal with myself. I've never seen this. So, there were meetings at the Ministry on this topic. This I don't recall. That is more or less

what I recall, and much less the figures that you are mentioning, or that are being put to him.

PRESIDENT FERNÁNDEZ ARMESTO: You don't recall what Justice Eto describes as a historical meeting at The Ministry of Economy--that is to say, it seems that the Constitutional Court went to the Ministry of Economy, and the plenary of the Constitutional Tribunal was there. This is six persons. There were six. Legally, there are to be seven, but one was missing or vacant.

You don't recall that six Justices of the Constitutional Tribunal attended a historic meeting at the Ministry?

THE WITNESS: Believe me, Mr. President, that if such a meeting had taken place, I certainly would remember.

PRESIDENT FERNÁNDEZ ARMESTO: That seems logical.

THE WITNESS: So, I'm being very cautious in not making clear-cut assertions because a lot of time has gone by and this is the first time I'm seeing this. But I can assure you, that had there been a

meeting of this sort, I would have a very clear recollection of it. So, for me, this is news.

PRESIDENT FERNÁNDEZ ARMESTO: And when he says the Minister of Economy that the official debt was more or less 4.5 billion, if you don't recall that meeting, I suppose you don't recall that figure either? And the stratospheric sum of 18.5 billion is not something you have ever been familiar with?

THE WITNESS: First of all, I would remember that meeting, and I have no recollection whatsoever, and I've never had those figures in mind. And I don't know Mr. Eto. I've never seen or been with him.

I do, of course, recall Mr. Urviola, but I wouldn't have had any reason to be interacting with the Justices of the CT.

BY MR. FRIEDMAN:

Q. So, let me just be very clear and break this down.

So, are you saying that the Ministry had no projections, or "estimados," that the Land Reform debt could reach $18.5 billion under CPI?

Is that your testimony?

A. My testimony is that this is the first time in my life I'm seeing that amount of $18.5 billion, sir.

Q. So, you deny telling the members of the Constitutional Tribunal about that figure or figures like that; is that correct?

A. What I am saying is that I never met with the plenary of the Constitutional Tribunal to discuss this or any other matter. I've never met with the Constitutional Tribunal plenary.

Q. Forgive me, I don't want to get hung up on words. Did you meet with the Constitutional Tribunal Justices?

PRESIDENT FERNÁNDEZ ARMESTO: The Witness has clearly stated that this meeting to which Judge Eto is referring, that he does not remember it having taken place. And it did not take place.

BY MR. FRIEDMAN:

Q. Okay. I think the answer was a little more cautious, and if I may, because--unless it was just the translation.

PRESIDENT FERNÁNDEZ ARMESTO: No, it was not

cautious. It was clear.

MR. FRIEDMAN: If I may just ask the question--

MR. HAMILTON: Mr. President, maybe our people are answering more clearly and not trained to answer in unclear manners. I think he has answered and we should move along.

MR. FRIEDMAN: If I may just pin this down. I'm almost done with this line of questioning, but if I may just pin this down.

BY MR. FRIEDMAN:

Q. I just want to be absolutely clear, Minister--

MR. HAMILTON: Mr. President, I object. He already answered question. We've heard it three times.

PRESIDENT FERNÁNDEZ ARMESTO: Let me hear your question. I think he has answered and the answer is very clear. What is your exact question?

MR. FRIEDMAN: My exact question is: Do you deny meeting with the members of the Constitutional Tribunal about the Land Bonds debt, whether it's

official or unofficial, in a plenary or not in a plenary?

PRESIDENT FERNÁNDEZ ARMESTO: I think you have answered, Minister, but if it's okay for you to answer one more time.

THE WITNESS: The same thing that I already answered. I would refer to all of my prior answers.

PRESIDENT FERNÁNDEZ ARMESTO: It is clear, Mr. Friedman.

MR. FRIEDMAN: So, I'm told that the answer included the word "en pleno." If it's clear to the Tribunal that he is denying any meetings, formal or informal, of this character, then I can move on.

PRESIDENT FERNÁNDEZ ARMESTO: You can move on. Yes, it's clear that he said he did not meet with the plenary, nor with the Justices of the Constitutional Tribunal, that he did not have any meeting to discuss the matter of the Agrarian Bonds. I think his position is crystal clear.

BY MR. FRIEDMAN:

Q. And would you agree with me that the--and I think you've already told us--that the Ministry had no

estimate of a kind of $18.5 billion about the Land Bonds debt; right?

PRESIDENT FERNÁNDEZ ARMESTO: He said that he was surprised by the sum of 18.5 billion, and that it was the first time that he was seeing this sum. The Minister's position is crystal clear.

BY MR. FRIEDMAN:

Q. So, Justice Eto must have either been mistaken or not telling the truth when he testified before the Constitutional Tribunal; right?

A. I think you would have to summons Mr. Eto and put that question to him. I'm speaking under oath.

Q. So, if that was--if this information was the basis for the Constitutional Tribunal's Decision, then we are left wondering where it came from, are we not?

MR. HAMILTON: Objection, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: I think that this is not--you are starting to discuss with the Witness, and I think it is a very good moment now to have the break.

MR. FRIEDMAN: I completely agree. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: I'm not sure how things are in terms of coffee in Perú and at the office where you are at, but here we have coffee and we're going to take a coffee break for the stenographers, the interpreters, and the attorneys.

And, out of respect to you, if it's agreeable here, it is 10:44. Let us return at 11:00 a.m. to continue, and what I would like to ask, that you please not speak during this time with any of the attorneys for the Republic of Perú. I believe there is a lawyer with you. You can talk about soccer or about the weather, but please do not discuss at all this matter.

And we'll be back at 11:00. Thank you very much.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing, and we are grateful to the Minister for being with us, and we give the floor to counsel for Claimant.

MR. FRIEDMAN: Thank you, Mr. President.

BY MR. FRIEDMAN:

Q. Welcome back, Minister Castilla.

I recall that in your direct testimony this morning, you testified that you always acted in good faith and diligently to carry out the ruling of the Constitutional Tribunal of July 16, 2013. And I assume you would agree with me that it was your obligation as Minister to carry out that ruling in good faith; correct?

A. Of course.

Q. Now, the first thing that the Ministry did--and you also mentioned this in your direct testimony--was to actually challenge that ruling on July 26, 2013; correct?

A. Yes.

Q. And I want to just briefly look at that challenge. It is Tab 224, which we'll hand out now in the room. For the Tribunal, this is R-462. This is a large PDF file. What we have printed out, and the passages I'll be focusing on, are the Ministry's submission to the Constitutional Tribunal, which can be found at Pages 709 to 720 of the PDF.

Mr. Castilla--

A. I have it with me. Thank you.

Q. I'm wondering, in fairness to you--I appreciate you were the Minister and this is a document filed by lawyers with the Constitutional Tribunal--but did you review and approve this document before it was submitted to the Constitutional Tribunal?

A. That was not within my area of competence.

Q. Okay. I would like to first take your attention to Page 711 of the PDF--it is Page 3 at the bottom of the physical document--the paragraph that begins "Sin embargo."

And that paragraph essentially says that the CT Order would not have prejudiced the Ministry if it had not addressed financial and economic aspects or ordered the Ministry to take any action to enforce the 2001 CT Decision.

Do you see this paragraph?

A. I do.

Q. So, was it the Ministry's position in front of the Constitutional Tribunal that it didn't--there should be no Order directing the Ministry to establish

a legal framework?

A. Are you asking that, or is that an assertion by you?

PRESIDENT FERNÁNDEZ ARMESTO: Your question is not really very clear. This is what the lawyers of the Ministry say in an appeal to the--a Constitutional Court.

MR. FRIEDMAN: Yes. Let me look at a different passage, and maybe it will help clarify.

BY MR. FRIEDMAN:

Q. If we turn to Page 715 of the PDF--

A. I haven't understood your question. Perhaps can you pose your question again, because you are asking me to look at something, but you are not allowing me to answer. So, please tell me, what was your question in connection with this passage? With all due respect, Counselor.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think there's any question about this, Minister. If you have a comment, of course, we will be glad to hear your comment, but it seemed to me that this was just a statement by the lawyer from the Ministry. I don't

think this was quite transcendental. It was something quite obvious, and I don't think it merits much more than this. So, that's why we've moved on. But if you do you have a comment about this, we will be glad to hear your comment.

THE WITNESS: So, I can't really hear everything. So, you know, there's a time lag with the transmission and the broadcast.

Go ahead, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Minister.

Go ahead, Mr. Friedman.

BY MR. FRIEDMAN:

Q. In your direct testimony this morning, you said that the Ministry challenged the July 2013 Constitutional Tribunal Order because you considered that that Order invaded the authority of the Ministry.

Was that your testimony earlier this morning?

A. What I stated this morning is that one thing is to set parameters for valuation, and a different thing is to establish criterias to have administrative procedures, and a different thing still is to set a

six-month deadline. We thought that this was within the jurisdiction of the Ministry of the Economy. So, this notwithstanding, the will to comply with the Order by the Tribunal, I think that is related to the question that was posed to me before.

Q. I want to ask about one other passage in here, which, if you can turn with me to Page 7 of the physical document, Page 17 of the PDF, there's a paragraph that begins: "De igual manera"?

A. I've read it. I've read it.

Q. As I read it, that passage seems to say that the--there's no need for an Order of the Constitutional Tribunal because the obligations derived from the Land Bonds are already being upheld on the terms of the Constitutional Tribunal's August 2004 Decision, which had said that Bondholders could always go to court to get the amount due plus interest.

So, my question to you is: Was that the Ministry's position in 2014, that that was the proper way to resolve the Land Bonds debt?

A. Excuse me. Could you please repeat the

question? I wasn't able to understand your question.

PRESIDENT FERNÁNDEZ ARMESTO: I'm going to try to explain this to you. It seems that, in this document, what the lawyer from the Ministry is proposing to the CT is the following: It wasn't necessary to have an order for the enforcement of the Judgment because the 2004 Judgment was being enforced already in the ordinary courts in Perú.

You were asked if you thought that this was the reasonable position of the Ministry. I think, more or less, that was the question.

THE WITNESS: I am not a lawyer, although I'm going make a comment about this. This is the first time that I've seen this document.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman, I do not think that we will get very far with this. This is a legal document prepared by lawyers to the Constitutional Court by the Ministry's lawyers. He was the Minister and--the document stands for itself, and he was the Minister. He did not see it, review it. It was just a technical document. So, I wonder if he can really help us much more.

MR. FRIEDMAN: Yes. The only reason I was asking was because we heard a lot of testimony from Perú's Witnesses, including this morning from the Minister, about the absence of a legal framework for paying the Land Bonds, and here it seems to be that they are taking the position that there was a legal framework established by the August 2004 Decision. But--I'm very happy to move on, but I thought it was fair to give it to him.

PRESIDENT FERNÁNDEZ ARMESTO: I think the Minister is on record. You asked him whether there had been recourse to the courts by individual Bondholders, and he said yes, and you asked him, had there been judgments in favor of Bondholders and have they been paid, and he said yes. So, that avenue was open, has been acknowledged by the Minister.

BY MR. FRIEDMAN:

Q. I want to talk now about the Constitutional Tribunal Decision of July 2013, and you will find that in Tab 72 of the books. By now it may be familiar to the Tribunal as CE-17.

Now, Minister Castilla, this was the Decision

that you said that the Ministry attempted to implement in good faith and diligently. Did you actually read this Decision after it was issued?

A. A few days later it came out, I read it--well, more than read it--I asked for a report. I'm not a lawyer. I didn't have the wherewithal to understand the whole ruling, but it was explained to me.

Q. Yes. And did you also read it?

I mean, you are a very sophisticated man with a Ph.D. in economics, and you've served as ambassador to the United States. I appreciate you're not a lawyer, but did you read it?

A. Again, I was explained the contents of this ruling, and I had multiple functions as the Minister of the Economy. This was a very important issue, but there were a multiplicity of issues in the country. This is a document that is very lengthy. It has lots of pages, and I was told that this was a relevant ruling. It was explained to me. I didn't have time to read this from cover to cover. My advisors provided specific information on it to me.

MS. POPOVA: Mr. President, I don't think the Transcript caught everything the Witness said, and I don't know even if the interpreter caught everything the Witness said.

PRESIDENT FERNÁNDEZ ARMESTO: Minister, could you please come closer to the mike? Could you please bring the mike closer together? Please leave it on and bring it as close as possible to you.

THE INTERPRETER: Mr. Friedman, this is the interpreter. It is an issue because the sound is being cut off. I don't know if you understand that. Nobody can understand it, not the interpreters or anybody else.

PRESIDENT FERNÁNDEZ ARMESTO: Please repeat the question, Minister, because there are doubts as to what you were able to say, if the stenographers and interpreters were able to take down your Statement. So, please repeat your Statement.

THE WITNESS: The lawyer asked me whether I read the whole ruling. My answer to the question is that I do not believe I read it because, first, I had multiple responsibilities and functions as well. I

didn't have time to read all this. I was the Minister of State. I was heading one of the most complex Ministries in the country.

Also, evidently, my advisors informed me of its contents, and perhaps I just read it perfunctorily. I didn't read it in detail. That was not, of course--reading it in detail was not part of my purview. I had lawyers that were tasked with that.

BY MR. FRIEDMAN:

Q. Yes. I asked that because I'm going to bring you to specific passages in here, and it may be that you have never seen them before, or it may be that they were part of the summary you had. But I wanted to have that context in fairness first.

I'd like to first turn to Foundation 23, and in particular, the second paragraph in Foundation 23--Paragraph 23, the second paragraph within that numbered paragraph. There are two economic propositions there. There are two economic propositions there. The first one you see in the first sentence, that, in times of deep economic crisis, the CPI gets disconnected--

PRESIDENT FERNÁNDEZ ARMESTO: Wait. Let's do the following: Let the Minister read Foundation 23, and then you put the question. It's easier.

Minister, read 23, 24, and 25. That is the corpus of this Decision. Please read 23, 24, and 25. This is a summary of the reasoning by the CT.

THE WITNESS: Okay. Give me one moment. I'm going to read it.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Please take all the time you need.

THE INTERPRETER: Mr. Friedman, this is the interpreter again. If you could please let us know where you're reading--like, say, "First sentence, second sentence"--that would help us quite a bit. Thank you so much, sir.

THE WITNESS: I have read 23, 24, and 25, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Great. Excellent, Minister.

Counselor?

BY MR. FRIEDMAN:

Q. I want to take you first to the second

paragraph of 23. That contains two economic propositions. The first one appears in the first sentence, that: "In times of deep economic crisis, the CPI gets disconnected from the economic reality."

My question to you is: Was that the position of the Ministry at the time?

A. The Ministry did not have any position in connection with this. This is the interpretation of the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: What you are being asked, sir, is that--if, in your opinion as a Minister--rather, the opinion the Ministry--your opinion as a Minister, whether you understood that the PCI in times of hyperinflation gets disconnected from the economic reality and it fails to represent the inflation in the system.

THE WITNESS: I'm going to give you an intuitive answer, this in connection with countries that have undergone hyperinflation. Where there is hyperinflation, economic agents tend to seek refuge in hard currency. This has happened in Perú, and, because of hyperinflation, we have very high

dollarization levels in our society, both in assets and liabilities. In countries like Argentina and Bolivia, well, those countries have had similar situations.

So, a regular response to hyperinflation is conversion, to preserve value for individuals so that their assets and liabilities can be turned into foreign currency and to try to preserve value. This is what happened in Perú, and in other countries, as I indicated. What it says here is logical to me, because this is the reality of countries that have undergone hyperinflation.

BY MR. FRIEDMAN:

Q. And is this one of the subjects that you discussed with Justice Urviola or any other member of Constitutional Tribunal?

A. No. This is something that you asked me here, and I'm giving you my opinion as an economist. So, I'm not giving you specific options here. The only observation that I made has to do with how prudent all the Court Decisions have to be. But to talk about calculation formulas, et cetera, well, no.

Q. In this third sentence, there's a statement by the Constitutional Tribunal that, if the update were to be done based on CPI in times of extremely high levels of inflation, the calculations would be artificial, making the original obligation impossible to be paid by the debtor.

My question to you, in light of your testimony before, was: Did the Ministry at the time consider that CPI updating would make the obligation impossible to be paid by Perú?

PRESIDENT FERNÁNDEZ ARMESTO: I have not got the question. You have to repeat it.

Mr. Minister, excuse me--Mr. Minister?

THE WITNESS: So, to calculate the impact, I have to look at the price and the quantity. Otherwise, I wouldn't be able to calculate the impact.

BY MR. FRIEDMAN:

Q. And I think you told us before that that had not been done by the Ministry; correct?

A. I refer to the answers that I have given you before to your questions.

Q. Okay. I'd now like to look at Paragraph 25.

PRESIDENT FERNÁNDEZ ARMESTO: Minister, the technicians are telling me that--if you could place your microphone right in front of you. When you turn and you look at the document, well, it seems that technology fails. So, I think we're going to work even better if we act in that manner.

BY MR. FRIEDMAN:

Q. I'd like to direct your attention now to Paragraph 25. And I want to actually look at the middle and go over to the next page, the page that includes Paragraph 26, to start, because I think it contains a principle. And I'd like to ask you about this.

It explains that the second reason for adopting the Opinion they adopt is because the other valuation methods described would generate severe impacts on the budget of the Republic, to the point of making impractical the very payment of the debt.

And then, in the middle of paragraph, it says: "An elemental criterion for balancing these two obligations to pay the Land Reform debt and to promote the general welfare leads us, therefore, to avoid

giving an absolute preference to one over the serious sacrifice that could occur with respect to the other."

My question to you, Minister Castilla, is: Did you understand that that was the central principle of the Constitutional Tribunal's 2013 Decision?

A. Let's see. In the few minutes that I've had to read this Foundation, well, what I can tell you is that--and I'm basically presupposing things here. There is a provision in the Constitution that talks about budgetary balance. They are not saying this expressly, but I think this probably was in the mind of Justices.

PRESIDENT FERNÁNDEZ ARMESTO: The Minister is here as a Witness. He can help us with the facts. He cannot help us with the interpretation of a Decision by the CT.

This is a legal issue. Perhaps us or the Peruvian law Experts may be able to interpret this. The Minister is not a lawyer. He is here as a Witness to tell us about the facts that he recalls in connection with this dispute.

MR. FRIEDMAN: With greatest respect,

Mr. President, I did ask a factual question. And the reason that I'm asking is because the Minister has said that the Ministry that he directed carried out this order in good faith and with diligence. And my submission will be that you can't carry out this Order in good faith and with diligence unless you apply the central balancing principle.

We also heard from the Minister that maybe he didn't read the whole Decision, he had it summarized for him, and I'm wondering as a factual question whether the Minister, in directing his Ministry to comply in good faith with this Order, understood the central balancing principle. So, it's a very specific factual question of whether he understood that was the principle.

He can say yes or no. Maybe he did; maybe he didn't. But I'm not asking for a legal interpretation.

Is this a fair question?

PRESIDENT FERNÁNDEZ ARMESTO: I'm going to ask the question myself.

What Claimant is asking, Minister, is the

following. The CT determined that there was an element that had to do with weighing two obligations: Paying the Land Bonds and fulfilling all the budget-related obligations that Perú had. And these two things had been weighed against one another. They are asking: One, were you aware of this principle? And, two, did you apply this principle when the Supreme Decree was issued in compliance with this Judgment?

THE WITNESS: Mr. President, when a Tribunal issues Judgments, there is always some weighing in and there is always a right, and in an economy such as ours that we have a lot of obligation, there will always be that weighing in the cost and opportunity of the public resources. So, that is what I can opine based on the consideration by the CT.

And as to the second question, and as to the MEF that has always acted in good faith, this is a Judgment that had to be complied with. There was no room to determine whether that was the correct rationale or not. We were observing. We were complying with the Judgment. There was--it was not

our job to challenge, to question, the Judgment by the Tribunal. That is the last instance in the country on this subject.

BY MR. FRIEDMAN:

Q. If I can get an answer to a factual question: First, did you understand that was the principle of this decision? Yes or no. You either understood it or you didn't.

MR. HAMILTON: Mr. President, I think that counsel has a broader scope with his question than what we had with Mr. Koenigsberger. Mr. Castilla is answering openly, and he has already answered several times on this part of the Constitutional Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: I understand that the Minister--what the Minister had said. Let me sum up.

I understand that he said yes, that the weighing between the two options in a country such as Perú is a key factor of the politics, of the policy, and that it was a principle here, but I understand that it is a principle that is seen throughout the Decisions, and that they comply with the Judgment in

good faith, and that they also comply with this principle of weighing in between both options, because the Judgment was complied with fully.

Have I properly summed up your opinion, Minister?

THE WITNESS: Yes, Mr. President. Thank you very much.

BY MR. FRIEDMAN:

Q. So, thank you.

So, it is your testimony that in the Ministry's carrying out of the implementation of this Decision, that it would ensure that there would not be a serious sacrifice of either element of the balance, paying the Bondholders or fiscal sustainability?

PRESIDENT FERNÁNDEZ ARMESTO: That is what he said, yes.

MR. FRIEDMAN: And can he confirm that that is what he said?

PRESIDENT FERNÁNDEZ ARMESTO: Minister, I think that's the case, but that is what he said. The attorney just repeated what you said, but please reconfirm.

THE WITNESS: I confirm your excellent interpretation, Mr. President.

BY MR. FRIEDMAN:

Q. Okay. Now, I want to look at some specific features that the Court required the MEF to carry out. If we turn at the beginning of Paragraph 25, the Tribunal first said that it finds it appropriate to opt for an updating criterion that employs conversion of the unpaid principal into U.S. dollars.

So, it was obviously for the Ministry to develop the formulas for converting; correct?

A. This is a judgment by the Constitutional Tribunal. This is not a Decision by--so, I don't understand your question. This is not something that was decided by the MEF. I don't understand your question.

PRESIDENT FERNÁNDEZ ARMESTO: I think you are being asked that the Decision by the CT is a high level, and that then the implementation, the technical implementation, the mathematical implementation of the conversion from soles oros to dollars, that was the job of the MEF through a Supreme Decree.

THE WITNESS: Correct.

BY MR. FRIEDMAN:

Q. And so, in exercising that discretion to identify the dollarization formulas, is it your testimony that the Ministry complied with the principle we saw earlier?

A. What I am going to reiterate is that the Ministry complied with the judgment by the CT in all aspects.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Yes. Yes. Let's go on.

BY MR. FRIEDMAN:

Q. All right. And you are now aware that there were serious errors in the original formula that was adopted by the MEF at the time of January 2014; is that correct?

A. I reject your assertion. How could I be aware of something like that? I acted in good faith and with diligence, so I was not aware of any errors that you mentioned, Counsel.

Q. Yes. But you are now aware that there were such errors; is that correct?

A. I left the Ministry almost 16 years, and this happened about 7 years. So, clearly, after that I learned of some new information, but I cannot refer to issues that took place a long time ago and that were not within my area of competence. But I can say, once again, that the MEF, under my leadership, acted always in good faith and with diligence to comply with the CT's judgments, and even I repeat what I said in my initial intervention. We always left space in the Supreme Decrees open to include new scopes and also to perfect whatever we needed to perfect. And this was done later on after, as I learned, after I left the Ministry.

Q. So, am I correct that the formula that you used for converting to dollars was based only on the consultant that you had hired in 2011?

A. Let me explain how the Ministry of Economy and Finance works, Counsel.

Q. Could I get an answer to my question first?

A. There is a concept of competence and also the delegation of some tasks. As part of my competence as Minister and also under the law and based on the

statutes for the obligations, we see clearly what I was responsible for--what the Ministry was responsible for. I did not have a technical role. I had a political role to lead the economic policy of the country. Then if I have the proper reports from the proper areas, that is the support I need to be able to sign the Supreme Decrees and regulations by following the judgment by the CT.

So, in this case, I did not have a technical role, and I assume that that and other information was the one used by the technical people to present the formula that they included in their Reports that are also part of the file attached to that Supreme Decree.

Q. Right. So, are you saying that you don't have any personal knowledge of the basis on which the Supreme Decree developed the valuation formula?

A. What I am telling you, Counsel, is that during the three years as Minister of Economy, I did not work with formula. I worked with concepts and policies, not formulas.

Q. So, that's fair. I am--that's why I'm asking you these questions. So, I take it that your

testimony that you have no personal knowledge of the origin of the 2014 formula? Is that your testimony?

A. What I am stating is that the technical areas review all of the input they have, and we use the technical, legal reports, and the Supreme Decrees did have those reports, and they were the basis to be able to carry out or implement a Supreme Decree.

Q. Okay.

A. I had information on compliance about those requirements.

Q. Okay.

A. Now, if--whether that source or a different source was verified, it was not my job to verify that because I had a different function as part of my role.

Q. Okay. It may be that it's the same with all elements of this. The next item that the Constitutional Tribunal specified was that the--after converting to dollars, the Bonds should be updated using the interest rate of United States Treasury Bonds. But it left to the Ministry how to carry that out, and we know that the Ministry adopted one-year Treasury Bonds instead of Bonds of a different tenor.

Do you have any personal knowledge as to how the Ministry came to that decision, which is a technical matter?

A. I go back to what I said before.

Q. Okay. Now, in Paragraph 28--I'd like to look at Paragraph 28 now. This is describing the Decree must contain a procedure intended to quantify the debt. And I want to focus on the last sentence which says: "This procedure must show the updated amount of the Land Reform Debt Bonds plus the interest, which must be set forth in administrative resolutions." And we know that the 2014 Supreme Decrees and none of the Decrees actually add interest to updated principal.

Was that a Decision that you took, or was that was a Decision that somebody else in the Ministry took?

A. Once again, I will reiterate my position. I always acted in good faith, and I always give priority to trust in the team that worked with me. I had reports from the relevant areas, so I was not going to go into the technical issues because it was not my competence.

Q. Okay. In the--in Article 29, there are considerable details about options for payment. And I'd like to just focus your attention on the last paragraph there, which talks about making payment priorities to, first of all, individuals over legal entities, and within that category, original Bondholders compared to the holders over 65 years of age.

The Ministry had to carry out that mandate too, and we know that the Supreme Decrees had another category for legal persons, of speculative legal persons.

Do you have any personal knowledge as to how that came to be in the Decree?

A. Once again, the technical areas presented their proposal based on their best understanding to be able to comply with the judgment by the CT, including in this order that you are referring to.

Q. And can you tell me, did you--did you--you mentioned in your direct testimony that Gramercy had written to you, and you knew that Gramercy had acquired a significant position in Peruvian Land

Bonds. They are obviously a U.S. asset manager.

Did you consider or did the Ministry consider Gramercy to be a speculative investor?

A. I am not going to qualify the nature of the fund. I think that you know much more about the Party that you represent than myself. So, it was clear to me that, as I mentioned before in my initial Statement, in my opinion, the Bond, the Land Bonds, were a compensation to the Bondholders who were being compensated for the occupation of the land that is at the core of this debate.

Now, as to different orders and legal persons or natural persons, I cannot say anything about this, and I am not going to refer to the criteria used by the CT to determine that hierarchy.

Q. Let me ask you this: Was the Ministry aware of any other investors like Gramercy?

A. Let me see, Counsel. I received several individuals at the Ministry, and I got to learn about this topic at a meeting because I also refer to this in my statement. We had the UBS--the investment bank came to present some topics that had nothing to do

with the Land Bonds, and towards the end of the meeting, they referred to that even though it was not part of the agenda because, as you may understand, when one as Minister welcomes investment banks and investors, we did so--or I did so with a predetermined agenda. So, when I learned of that, I was able to infer that the Party that you represent, the Gramercy Fund, had an interest in this or was interested in this.

But that is how I learned about this as Minister--that is to say, third parties--and I was in the same situation what I became the ambassador. It was through intermediaries rather than directly. Any type of direct correspondence on this topic was handled by the technical areas with the reports that you may have and that are part of the file.

Q. Gramercy had also written to you in 2009 with the proposal for a bond swap. I think you testified about that.

Do you remember that?

A. I go back to my previous statement, that a debt swap refers to a negotiation issue restructuring.

That was not the nature of this topic. Once again, I repeat my answer. This is a compensation mechanism for the holders of these Land Bonds, and if there was no legal framework, as I mentioned before, we couldn't think of a financial engineering swap or any other modality because it was not pertinent. There was no mandate--there was no legal--in the legal framework, it was not allowed to answer that situation at that time.

MR. FRIEDMAN: Mr. President, my question was simply about did he remember the proposal from Gramercy for a bond swap. He gave testimony about it earlier. I was asking whether he remembered it. I would really appreciate if the Witness could answer the questions that I'm putting to him. Otherwise, we'll be here all day.

BY MR. FRIEDMAN:

Q. So, do you or do you not remember that Gramercy specifically had reached to you also in 2009 proposing a bond swap? "Yes" or "no"?

A. I do not recall. Let me see if that is part of my Statement. Just a second, please, because I am

going to follow the Statement that I have presented. So, with the indulgence of the President, I will review, or please let me know or I am going to ask counsel for Perú to tell me where in my Statement I referred to that because you are asking me about topics that took place a long time ago. That was in 2009 and this is 2020, so, please.

Q. Paragraph 13 of your First Witness Statement.

A. If you allow me to, I am going to read it. Just a second, please.

(Pause.)

A. Having read Paragraph 13, Paragraph 13, there is no reference to the debt swap. I do not see that reference in my Statement.

Q. Do you remember that Gramercy--you were aware, though, that Gramercy had accumulated a significant position in the Land Bonds; correct?

A. Gramercy and many other holders of these Bonds.

PRESIDENT FERNÁNDEZ ARMESTO: I'm slightly lost now. Where do you want to go? Because we were in 2013 and now we are suddenly in 2009.

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Let us go back to 2013, and let's start finalizing the examination of the Minister.

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. So, at the time of the Supreme Decree--that's what I'm asking about. I was trying to establish the Ministry's knowledge that Gramercy was an investor in these Bonds at that time, and the question that I have for the Minister is: Am I right that there was the--the Ministry was not aware of any other investor like Gramercy--namely, a financial asset management firm--that had an investment in the significant position in the Land Bonds?

PRESIDENT FERNÁNDEZ ARMESTO: This is a simple question, Mr. Minister, whether you were aware or not of the existence of other investors of the Gramercy type that were investing significant amounts into the purchase of Bonds.

THE WITNESS: It is public knowledge, and this is information that I learned more in my capacity

as ambassador than Minister, but clearly there is correspondence between myself and Gramercy's representative, and there are several requests at the beginning. This was correspondence that had to do with positions that require some type of negotiation, but it wasn't possible because there was no legal framework.

PRESIDENT FERNÁNDEZ ARMESTO: Well, the question was a little bit different, Minister. The question was whether you knew of other investors beyond Gramercy.

THE WITNESS: Let me now answer. The only one that I recall that quite insistently questioned the fact that there was no legal framework and then there was a legal framework and then there were doubts as to whether that applied or not to them was Gramercy. As to whether I recall another financial institution legal person that claimed this, no, I only recall Gramercy.

BY MR. FRIEDMAN:

Q. I want to ask you about another Constitutional Tribunal's Decision, and that's in 27.

That talks about the delegation to the Ministry, the procedure for the identification and regulation of holders of Land Reform Debt Bonds. It's at the end of the paragraph and it refers to--that it would apply to individuals or legal entities, persons whose property was originally expropriated, heir, successors, transferees, or assignees of any kind. And so, the Ministry also was obligated by the Constitutional Tribunal's Decision to make its Supreme Decree applicable to transferees and assignees; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Wait a minute, Minister. I think that the text--

MR. HAMILTON: Minister, the President is speaking.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think that this--this question is not something that the Minister can help us with. The CT said whatever they said. They can help us with facts but not with the interpretation of the Decisions by the CT.

BY MR. FRIEDMAN:

Q. Okay. Now, in Foundation 29 of the Decision, at the end of the Decision, the Tribunal says that:

"It is fully aware that regardless of the option to be used in the process of quantifying the Land Reform debt, it will amount to a fairly large figure, which will undoubtedly generate an inevitable fiscal impact impossible to be faced immediately without damaging important sections or sectors of our economy." The very last sentence.

Do you see that?

A. Yes. What is your question?

Q. Did the Ministry consider that to be the case?

A. Let's see, Counsel. Once again, I am not going to question the scope of a decision by the CT. I am not going to qualify that. It is not my job to qualify its content.

Q. Forgive me. Let me ask a question because that missed the question that I was asking. The question that I'm interested in is: Did Ministry consider that the dollarization approach that the Constitutional Tribunal had ordered would be one that would generate a fairly large figure that would be impossible to be faced immediately without damaging

sectors of the economy?

MR. HAMILTON: The question is very vague.

PRESIDENT FERNÁNDEZ ARMESTO: This is a legitimate question. So, you received the decision by the CT, and I imagine that the first thing you did was to ask the technical staff to value this in terms of impact on the budget. And counsel is asking you whether the outcome was that the impact was going to be quite significant on the future budget of Perú as stated by the CT.

THE WITNESS: Mr. President, it is important here that when one determines a liability to be faced, it is not just a price but also the quantity. I understand, for example, that in 1969, when the MEF was authorized to issue 15 billion soles oro, that was one of the authorizations granted in the law at that time. That is the cap, but for me to have a reliable estimate as to the impact, I have to see the index but also the quantity, so the rate but also the quantity.

So, clearly, in this case, these were not trivial figures. This was a serious matter, and to preserve the discipline that I have sustained at all

times, the fiscal discipline that was one of the cornerstones of the economic policy of Perú, clearly, we weighed in this information, but since we had no clarity as to the quantity of Bonds, it was highly difficult to say--to determine the impact, whether the 15 billion soles oro of 1969 were going to be valued with a specific formula.

Yes. The impact would have been quite significant, and you would have--we would have had to address it with time, but I cannot give you a specific information without a clear estimate. It was not something superficial. I am not diminishing its importance. But once again, it was not something superficial, it was important, that had to be managed carefully and seriously as we did at all times.

PRESIDENT FERNÁNDEZ ARMESTO: Minister, let's see. You encountered this judgment by the Constitutional Tribunal, and then you brought a Supreme Decree to the Council of Ministers. It seems impossible, having heard you for some time now and your concern over a balanced budget and your struggle to clean up Perú's finances.

I'm certain that before presenting that Decree to the Council of Ministers, there must have been some projection to its future budgetary impact, if that was going to imply 100 million or 205,000 soles, if that had to be paid in 8 years, in 14 years. Some type of projection had to be made because, otherwise, it would seem extremely risky to bring a degree to the Council of Ministers without having made such calculations.

THE WITNESS: Mr. President perhaps I haven't been clear in my explanation. I apologize for that. As a technical matter, the Supreme Decree was not brought before the Council of Ministers. There was no need to do so. And, second, no doubt, there was a budgetary implication, and this is consistent with my public statements and it's consistent with what I've said this morning about the importance of keeping fiscal accounts in control or under control and also to assume contingent future liabilities. So, we obviously had different scenarios in terms of the impact this might have on the SFAS.

I don't deny that and I have not denied that,

but to understand, well, yes, there has been an impact, but I can't say if it was a substantial impact or if it was unpayable or if it was something that could be achieved. To reach any of those conclusions, I would have had to engage in a much more in-depth analysis of how many Bonds were owed and the amount.

This is my answer. I don't know if that is clear or if I'm making it confusing, but I do think this is an important point, and please let me know if this clarifies what I've said because I really don't want there to be any sort of contradiction in my deposition this morning.

PRESIDENT FERNÁNDEZ ARMESTO: No, it's not that there is any contradiction, it appears reasonable and diligent for a Government--well, who approved the Supreme Decree? You, yourself, approved it, or does the President approve it upon your proposal? What is the procedure?

THE WITNESS: The procedure is that the technical areas forward the Draft Supreme Decree or prepare the Draft Supreme Decree, and once the minimal requirements are met, I give my clearance and I

forward it to the President of the Republic for his signature.

PRESIDENT FERNÁNDEZ ARMESTO: And is--there is some process that goes through Vice Ministers, there is a Council of Vice Ministers that has to discuss it, it seems to me?

THE WITNESS: The Council of Vice Ministers, Mr. President, is the filter for provisions to the Council of Ministers, whether these are proposed laws or--but in this specific case, there was no need, as far as I recall, to go through any sort of Council of Vice Ministers. This was a provision that was exclusively of the competence of the Ministry of Economy and Finance, so it simply went from my office to the Office of the President.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. So when you gave your clearance, having taken stock of it and having heard about it, I'm certain that the person who presented the document to you, you would have asked that person, what will the budgetary impact be on Perú's future? Is it going to be $100 million? 3,000? 18,000? Do you remember anyone saying 18,000?

You must have inquired into the budgetary impact, and I'm certain, as well, that if you submitted to the President, the President would ask you--would say to you, "Minister, what is the impact going to be for us? How much is this going to cost me?" It is unthinkable that such analysis would not have been performed.

THE WITNESS: You're entirely right, Mr. President. There was an analysis, but, you recall, this was a procedure over time. It wasn't just that the next day there would be a debt of a significant amount. One had to go through a process of authentication. One had to go through a procedure that was going to take time.

So, there was a certain level of gradualness in implementation of that judgment. So, evidently we have had many situations projecting scenarios, but there was nothing we could do, other than carry out the Judgment of the Constitutional Tribunal.

And I have always taken a very responsible attitude towards fiscal policy and fiscal discipline. Evidently, I had my own view. But here I was aware

that this is part of the ultimate Resolution of a legal framework in order to address a legitimate claim, which was a claim on the part of the Agrarian Bondholders. It was a mechanism for compensation in respect of a historical event in the history of Perú that happened 50 years ago.

BY MR. FRIEDMAN:

Q. So, there was an analysis made. Is that your testimony?

PRESIDENT FERNÁNDEZ ARMESTO: The Minister is saying that there were projections.

MR. FRIEDMAN: Yes. And none of those have been provided.

PRESIDENT FERNÁNDEZ ARMESTO: At least not for the Minister.

MR. FRIEDMAN: Yes, I understand.

BY MR. FRIEDMAN:

Q. But there were written projections?

MR. HAMILTON: Objection.

BY MR. FRIEDMAN:

Q. Were the projections in writing?

PRESIDENT FERNÁNDEZ ARMESTO: Projections can

only be in writing. You cannot make mathematical projections--

MR. FRIEDMAN: I agree.

PRESIDENT FERNÁNDEZ ARMESTO: --in the air, Mr. Friedman. It's totally impossible.

MR. HAMILTON: Mr. President--

MR. FRIEDMAN: In--

MR. HAMILTON: Sorry, my turn.

Objection. He is simply planting this comment. You've been given extensive internal files. The Minister has gone for hours answering vague questions with words you're trying to slice like a razor. He's answered in good faith. And asking the same question over and over again is not something the State was allowed to do with your lead witness. I believe we've gone too far.

PRESIDENT FERNÁNDEZ ARMESTO: Let's move on.

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. So, in making those projections, was the Ministry aware of the work of the Commission that had been authorized under Supreme Decree 148 of 2001 that

was specifically charged with estimating the amount of the outstanding principal of the Land Bonds?

PRESIDENT FERNÁNDEZ ARMESTO: The question in reasonable terms: Were you aware that a Commission in--2004? 2005? 2004.

NEW SPEAKER: The Report is from 2004, but the Commission is from--

PRESIDENT FERNÁNDEZ ARMESTO: Yes. There was a commission, which in 2004, before you came into office, had performed some calculations regarding the number of Bonds with respect to which payment might be outstanding.

THE WITNESS: I recall that 2004 Commission because that was the one that generated the Decision, that backed the Decision of the Minister. I was his Vice Minister in 2011 to hire Expert Reports and Experts to provide an updating of the values.

So, I do recall that Commission, given that that was the basis for the Minister to seek the contracting of Experts and then to be able to present a proposed law, which was never subsequently adopted.

PRESIDENT FERNÁNDEZ ARMESTO: I understand

that of this detail, while the Report had a calculation of Bonds in respect to which payment was outstanding, that you don't recall.

THE WITNESS: I want to be very specific here, Mr. President. In effect, there was a Commission in 2004. I was not at the Ministry, but I came to learn of this 2004 Commission because, in 2011, the Minister at the time asked that that file be searched for so as to then commission more contemporary studies that would present a series of methodologies which were then used to support the proposed law that was put to the Council of Ministers and that was not approved in 2011.

So, yes, I am aware of that, but in my role as Vice Minister and for the purposes that I've just explained at that time.

BY MR. FRIEDMAN:

Q. And I think the President's question was, were you aware of the fact that that Report also contained an estimate of the outstanding principal amount of the Land Bonds?

A. You're asking me something--I'm sorry.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, the question is, do you recall--let me explain to you. We have seen that Report. We saw it with Vice Minister Sotelo, and that Report, at some place hidden in it, has a table with projections of how many Bonds could be--with respect to which how many Bonds payment could be outstanding.

So, the only question is, do you or do you not recall that that Report includes a projection? We have the advantage of having seen the Report yesterday, and we already know that it does include that information. So, the counsel is asking you whether or not you remember this detail.

THE WITNESS: I'll be absolutely sincere, Mr. President. I do not recall having read that Report. It was produced five years before I came into the Ministry, and the only knowledge I had of it is when it was used as support for an updating of indices for valuation that was done in 2011.

PRESIDENT FERNÁNDEZ ARMESTO: I would have been surprised had you remembered.

THE WITNESS: I cannot--I did not know

about--this document was produced in 2004. I learned of it in 2011, nine years ago.

PRESIDENT FERNÁNDEZ ARMESTO: I would have been very surprised had you said that you remembered it.

So, let's continue. I'm not sure what the purpose of the question is. What is the purpose? He does not remember, as is logical. It is--he was a Minister, and this was a document four years before his time.

MR. FRIEDMAN: Yes. He's the only Witness from the Ministry from this time, so we need to find out whether he--how they estimated these analyses or created these analyses that we've never seen.

MR. HAMILTON: He's not the only Witness from this time, Mr. President.

MR. FRIEDMAN: Ms. Sotello was not working for--

PRESIDENT FERNÁNDEZ ARMESTO: So, let's move on. At some stage, we are three hours into his Statement.

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: We must start to think about it.

MR. FRIEDMAN: Yes, I have been. The answers have been extremely long enough and not responsive to the question, in fairness.

MR. HAMILTON: Objection. If we're going to start Oral Argument, I have many comments.

PRESIDENT FERNÁNDEZ ARMESTO: Let us put the last questions to the Minister, and let's come slowly to an end.

BY MR. FRIEDMAN:

Q. Now, as part of creating the January 2014 Supreme Decrees, the Ministry was required to prepare a cost-benefit analysis; correct?

A. Correct.

Q. Okay. And I'd like to take a look at the cost-benefit analysis for the Supreme Decrees, which can be found in the books at Tab 92, which is in Volume 4, at R-989.

A. Okay. I have Tab 92 in front of me.

Q. We're looking at the cost-benefit analysis section.

A. Yes.

Q. All right. It's only, I guess, two sentences long, so I'm looking at the second sentence. It says that there is no cost in addition to the cost represented by the Agrarian debt Bonds at their updated value.

Now, isn't that, though, kind of the substantial cost?

A. Let's see. Let me give you an answer to your question. The very nature of the Regulation of the Supreme Decree was precisely to identify what the valuation was going to be so as to be able to come up with a cost. That was precisely the objective, in part, of that Supreme Decree.

So, I would say that the result of applying that Supreme Decree was aimed precisely at identifying the cost because there was no valuation formula, and then all of a sudden there was. So, being able to anticipate what the cost was going to be in a Statement of Grounds is a somewhat partial view, if you leave aside that the objective of the Decree was to come up with a valuation of these Agrarian Reform

Bonds.

So, what it says there is precisely the objective of the Decree, which is to come up with a valuation of these Bonds.

Q. Yes, but you've now told us that you did, in the Ministry, have analyses from these times--projections--from these times, and those projections presumably would have allowed you to explain what the cost implications would be of doing it one way versus another, of making certain choices for using one certain level of Treasury Bonds versus different kinds of Treasury Bonds and so on. A thoughtful analysis of what the Cost would be. But none of that is in here.

MR. HAMILTON: Objection, Mr. President. There's a broad record of internal documents from the Ministry. He has already explained that there was a process with respect to the implementation of this Decision. That was a gradual process where they would go through a process and see how many people tendered in.

We are going in circles, and we know what's

going on here, and it's not appropriate.

PRESIDENT FERNÁNDEZ ARMESTO: I think that the question, which I also asked your Vice Minister, is here there is no quantified costs. In the cost-benefit analysis in Perú, it seems that it is not necessary to come up with a precise quantification of the budgetary impact, that it is sufficient to have a generic formulation, such as this.

THE WITNESS: Are you asking me this, Mr. President?

PRESIDENT FERNÁNDEZ ARMESTO: Yes. This is--can you confirm this for me? I asked the Vice Minister the same thing, and that's, in essence, what she told me.

THE WITNESS: Well, I think it is all going to depend on what it is that is being regulated, not whether or not there is an investment project that has a record that has details of specific costs.

Evidently, that implies a budgetary outlay or a line item, and one can come up with a much more precise cost-benefit analysis. In this specific case, when the purpose of this Regulation is to have a

valuation of these obligations of the State, there would be nothing more than this.

I don't know what the Vice Minister has said. There is no reason why I should. She has extensive experience, has worked in the Ministry of Economy and Finance for many years, so I don't know if this is or is not the norm for a cost-benefit analysis.

But I reiterate, it is going to depend on the purpose of the Regulation that we're discussing. One cannot make a general statement that all cost-benefit analyses will be the same. It will depend on the subject matter covered by the Supreme Decree.

BY MR. FRIEDMAN:

Q. If I could ask you to look at Tab 24 in the Binder 1. Keep this document open, but look at Tab 24 in your binder, which is R-257. And this is the Report we were talking about a few minutes ago of that 148 Commission.

MR. HAMILTON: Mr. President, the Witness has already commented with respect to his knowledge or lack of knowledge of the Commission, which, by the way, is only called "148 Commission." That's a little

buzzword they are trying to use here. He has already commented about this, and even the President has already commented with respect to his familiarity or no with something that predated his arrival to the Ministry by years.

PRESIDENT FERNÁNDEZ ARMESTO: I don't know if this will help us a lot more.

MR. FRIEDMAN: Well, Mr. President--

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: If I could just proceed with the cross-examination--I do think we would get through this much more quickly if I could proceed to ask the questions, and the Minister could answer those questions. I'm sure we will get through it.

PRESIDENT FERNÁNDEZ ARMESTO: Let's make an effort.

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. If you see in this document, there is--after the first page is a cover letter and then some descriptions, and then there's an explanation of reasons, and then there's a section called

cost-benefit analysis. It runs for five pages, and it seems to be a very thoughtful treatment of the issue, trying to take account of the debt stock and the different methods--potential methods of approaching it and their economic consequences.

So my question to you, Minister Castilla, is do you know why the Ministry didn't undertake a similar thoughtful analysis when it published the January 2014 Supreme Decrees, especially in light of the fact that you now say that there were projections or analyses of potential impact?

A. If I may review this, please, for a moment.

As I indicated to the President, everything will depend on the purpose of the Supreme Decree and what is the context of the Supreme Decree. The 2014 one was to carry out a mandate from the Constitutional Tribunal. Therefore, it was what it was. There was no way to avoid or get around that, much less was it the intent--one had to completely carry out, fully carry out what was being ordered by the Constitutional Tribunal.

That is very different from a proposal that

originates in the Executive Branch and that must be accompanied by a cost-benefit analysis. So, I believe that the provision must be seen in its proper dimension.

It is the first time I see this document, and, as I said to the President, depending on the Supreme Decree, the cost-benefit analysis will vary. I am not an attorney. I presume that if I am being required to carry out a judgment by the highest level court, it is what it is. There is no space for bringing any claim. It is what it is, particularly if the objective of that Decree is to come up with a valuation of those Bonds.

So, to show a cost-benefit analysis of an issue that is similar or the same, but in absolutely different context, well, for me, there is no reason to set forth a valuation or to provide an explanation as to why the Statement of Grounds is so lengthy or extensive in this case and so short or concise in the other one, as you are indicating.

In this case, there was a Judgment, which unlike that of 2001, generated the need for the 2004

Report. In that case, only the current value principle thesis was mentioned generically. In contrast, in 2013, the Judgment was clear with respect to criteria for valuation, criteria for having an Administrative Procedure.

Therefore, it's the same issue, but I believe that the history explains the context and why it is that there were different cost-benefit analyses, depending on when these provisions were issued in response to requirements by the Constitutional Tribunal.

Q. But, Minister Castilla, in January of 2014 and coming up with those Supreme Decrees, you would agree, of course, that the specific variables that the Ministry chose could have very meaningful economic consequences. So, the Parity Exchange Rate, the rate of the Treasury Bonds chosen, those could produce massively different outcomes; right?

As an economist, surely you have to agree with that.

A. Yes. But one would have to know with certainty what is the universe to which it's going to

be applied, as I said earlier. So, I'm not going to speculate about the impact right here and now, but I do reiterate what I said earlier. There was a major impact. This was carrying out a Judgment, and it was the technical personnel who proposed this.

I did not write this cost-benefit analysis, sir. It was forwarded to me, and I had the Reports from the technical area and from the legal area.

It was one more of many Decrees that I would sign on a daily basis on any number of issues.

Q. So, but you agree with me that--well, there is obviously no treatment of those issues in here.

Can we look at the other part of this cost-benefit analysis? It says: "There's no cost in addition to the cost represented by the Agrarian debt Bonds at their updated value." You've already said what you said about that. And then it says: "Which will be paid based on payment alternatives that shall take into account the fiscal stability of the nation and the parameters of the current multi-annual macroeconomic framework."

And am I right that what you're referring to

there is that the ultimate fiscal impact of this can be managed by being able to spread out the payments over time, maybe refinance them with other Bond issuances, and that sort of thing; correct?

A. Well, all responsibilities and obligations of the Ministry of Economy--well, it includes dealing with this and other similar responsibilities.

Q. I am talking about specific language here. May I proceed?

The specific language here that "there will be no cost in addition to the cost of paying the Bonds, which will be paid based on payment alternatives that shall take into account the fiscal stability of the nation." That language indicates that you can manage--

(Interruption.)

MR. HAMILTON: He could not hear the question because the Witness has been speaking. We're talking about Tab 24 regarding the 2004 Report.

And now what is the document that we're talking about because it's been several hours.

BY MR. FRIEDMAN:

Q. Tab 92, the Statement of Reasons for the January 2014 Supreme Decree.

A. Counselor, I have the document. Could you please rephrase your question or repeat it, please.

Q. We're looking at the cost-benefit analysis in this Statement of Reasons, and we looked at the first half of it, that there is no cost in addition to the cost of actually paying the Bonds at their updated value. And then it says, "which will be paid based on payment alternatives which shall take into account the fiscal stability of the nation and the parameters of the current multi-annual macroeconomic framework."

So my question to you was, what this cost-benefit analysis is indicating is that we will be able to manage the fiscal impact of having to pay the Land Bonds by being able to spread out those payments over time or pay them with Bonds or in some other means; correct?

A. At the Ministry and at the DGETP, we have the ability to manage because of our creditworthiness and our fiscal management of things, well, we can face those kinds of obligations that are borne of this Rule

in this particular case. There are criteria, and one cannot read this in isolation from the Judgment where the Prime Minister said.

If you're asking if we have the ability to face this, and the country was not going to go bankrupt, the answer is yes, but I would like for you to be more precise and for you to tell me where you are getting at, Counselor.

Q. You remember we looked at the Constitutional Tribunal Decision's balancing principle before, where you were balancing fiscal sustainability on the one hand and paying the Land Bondholders what they were owed. And what this is saying is that we can preserve the fiscal side of the balance by being able to spread out the payments; correct?

A. I am not going to answer to something that is mere speculation. What I'm telling you is that Perú has handled its public treasury in a responsible manner. So, Perú could address the payments in this case and in any other case where payments were required.

In connection with this, given the time that

has lapsed, and, of course, I don't know the status of the proceedings right now, but I don't know if this is creating pressure or tension for the Government that isn't measured. I don't think so, but I cannot speculate--I'm not going to speculate in connection with this.

Clearly, Perú is an investment-grade country and is the one that has the lowest country risk in Latin America, well, we could say, yes, we could address this responsibly and in accordance with the criteria set forth by the CT.

Q. And am I right that Perú could have paid, without damaging its fiscal stability, based on CPI-updating of the Bonds?

A. No. I don't think that Perú cannot pay anything without a legal framework that supports that. In Perú, provisions need to be explicit and they need to authorize payment. When I'm talking about provisions, I'm talking about legal norms, and the CT rulings have the rank of a law.

Q. I'm going to ask you to turn to Tab 208 in the bundle, which--

PRESIDENT FERNÁNDEZ ARMESTO: How long do you have to go?

BY MR. FRIEDMAN:

Q. It depends on how long the answers are, but 10 to 15 minutes? Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: We must find an end to the examination, because it's--we are going since 9:00 a.m.

MR. FRIEDMAN: I understand.

BY MR. FRIEDMAN:

Q. This is CE-21. This is a Moody's Investors Service Report from 18 December 2015. And I don't need to read it out, but on the first page there's a summary that describes--and it's about this Land Bond situation, and in the second header it describes a CPI-based methodology for updating the value of the Bonds that could bring their value to 5.1 billion and looks at the dollar-based methodology of being around 500 million U.S.

And then if you go over to the third page, which has Item 5, what would be the effect on the BDAs of Perú's fiscal accounts, and the last paragraph they

say that "under a worst-case scenario, using the CPI-based methodology, the liability would represent less than 2.6 percent of GDP, spread out over a number of years, the payments would not materially affect the sovereign's fiscal dynamics or its creditworthiness. Under all scenarios, in addition to cash payments, the Government could also exchange the BDAs for market instruments."

Now, Minister, am I correct that Moody's is one of the rating services that Perú pays to rate its sovereign debt?

THE INTERPRETER: Sir, can you please repeat the question?

MR. FRIEDMAN: Yes.

BY MR. FRIEDMAN:

Q. Am I correct that Moody's is one of the rating agencies that Perú pays to rate Perú's sovereign debt?

A. I understand that it's one of the three serious ones. We have Moody's, we have Standard & Poor's and we have Fitch. There are other agencies that are, well, fly-by-nights if you will,

and they are used to damage the reputation by serious Governments, but these are the three important credit rating agencies at the international level.

Q. And you consider them to be highly credible; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

BY MR. FRIEDMAN:

Q. Now, I think you said before that you--

THE INTERPRETER: No answer.

(Comments off the microphone.)

A. In some cases they have not been quite accurate in connection with, for example, predicting the Asian crisis, but they have to do with rating the countries for investments and for international markets.

BY MR. FRIEDMAN:

Q. Okay. And Perú has continued to rely on them along with the other ratings?

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: We can assume that Moody's is responsible.

MR. FRIEDMAN: Okay.

BY MR. FRIEDMAN:

Q. You said before, Minister, that you were not aware of the current progress of the Government's efforts to pay on the Land Bonds through the procedure that was created while you were at the Ministry?

A. Let's see. Please recall that these Decrees were issued in January, then there were clarifications that took place a couple of months later, and I left the MEF in 2014. So, up until 14 September 2014, 5.5 years ago, that's where my knowledge ends.

Q. Okay. So, you--and at that time, of course, no Bondholders had been paid through the process; correct?

A. I don't have knowledge. I know about the Ministry, but only up until 14 September 2014.

PRESIDENT FERNÁNDEZ ARMESTO: We all know.

MR. FRIEDMAN: Yes. Okay.

BY MR. FRIEDMAN:

Q. And am I right that--well, so, up until the time you left the Ministry, at least, no analysis, no further analysis had been made, I trust, about whether or not the program that had been developed achieved

the balance that the Constitutional Tribunal prescribed; correct?

A. Let's see. You are talking about external analyses that had different impacts and different implications in connection with the Decision by the CT. I don't know about that. I don't know if there were or there weren't. I left in 2014. This is a 2015 Report, so this is over four years ago, and I don't know if there has been updates, there have been updates by Moody's or by other agencies. I don't know that. I left the MEF five years ago. 5.5 years ago.

PRESIDENT FERNÁNDEZ ARMESTO: Let's go. All these foundations do not lead us very far.

MR. FRIEDMAN: Let me just ask one more question. We have heard about the current progress of this, that after five years the formula has been changed three times.

MR. HAMILTON: Objection, this is outside the scope of his Witness Statement.

PRESIDENT FERNÁNDEZ ARMESTO: Wait. Wait. Wait.

MR. FRIEDMAN: I will have a question that is

relevant.

BY MR. FRIEDMAN:

Q. 22 cases have been resolved, Bondholders have been paid a total of 4.5 million soles de oro in the aggregate, only about 1 million soles de oro in cash, and only 1.7 percent of those Bondholders who been through the process have done so. These are just the statistics.

My question to you, Minister, is, is that the kind of result that you expected back in January of 2014 when you were trying to, in good faith, implement the Constitutional Tribunal's Decision?

MR. HAMILTON: Objection, Mr. President. Far outside the scope. He has already made it clear that he is not familiar with the details of what happened with the Bondholder Process after he left the Ministry. The comments were a long, vague string of biased information.

PRESIDENT FERNÁNDEZ ARMESTO: "Porque el y con esta terminados," and we must now finish because otherwise we can go on interminably. Last question, Minister, and that's the good news for you.

We've heard that you implemented this process in good faith with the Supreme Decree that you presented to the President. The net result is that in 2020, this year, the Vice Minister told us that the success has been quite poor. Very few Bonds were submitted. There were about 15 or 20 Bondholders that have effectively been paid, and about a million dollars has been paid and most of this amount had to do with debt swaps.

Are you disappointed somewhat that the procedure that you implemented resulted in something so small, something so paltry? Do you have any explanation of why this has happened in that way?

THE WITNESS: Your answer has to do not with facts but with a value judgment. So, I stand from the fact that the Peruvian State has the obligation to meet all the obligations that it has before it, whether it be the Land Bonds or any other debt.

In this case it was impossible to address that historical fact of compensating the people subject to the expropriation because there was no legal framework. Then, in 2013, the criteria were set

out to value the Bonds and to provide a payment system. Evidently, more than the value I would have wanted that a large number of Bondholders would have benefited from the administrative process.

What you were telling me, well, it is disappointing. But that doesn't detract from the fact that we always acted in good faith and we always try to enforce a judgment from the highest court of the land.

The perfect is the enemy of the good, Mr. President, and I think that in this case we are trying to identify responsibilities and such. My conscience is clear. I sleep at night with a clear conscience in connection with this issue.

I would evidently have wanted a more generous or better system, but I do not question the fact that we acted in good faith, that there was a procedure and a legal framework, and, well, I don't have details in connection with the results that you explained, but, personally speaking, I would have wanted this to be a bit better, that the figures could have been a bit better.

This personally. This is my value judgment, more as a citizen then as a former official.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much. We must close the cross-examination.

MR. FRIEDMAN: Gentlemen. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Is there any redirect?

Minister, we are about to finish. Counsel for Perú is deliberating whether they want to ask you any further questions. After that, we will finish.

MR. HAMILTON: Thank you very much, Mr. President. First and foremost, thank you very much, Mr. Minister Castilla.

Mr. President, I would like to state for the record that we are not very happy with the way in which counsel for Claimant posed his questions. However, we consider that the written Transcript is clear, although things were taken out of context, the Minister has made his comments quite clear, especially when answering the last question by the President, and, because of the foregoing, we don't have any questions at this time.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, sir.

Professor Stern? Mr. Drymer.

ARBITRATOR DRYMER: No, thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Minister, we thank you very much for the effort you've made both yesterday and today, thank you for your cooperation with the Tribunal, and without further ado, we release you. You can go back to your duties. Thank you for your patience, for your cooperation and for your--willing to work with the Tribunal.

THE WITNESS: Thank you. It was a pleasure to be before this honorable Tribunal. Thank you, sir.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Madam Secretary, we are going to stop the feed. It is 10 to 1:00. Can we just now devote five minutes to organizing the schedule for the rest of the week, so that we now must really change the pace of movement and really be more dynamic in how we examine the Experts. So, Mr. Friedman, have you reached an Agreement and can you tell us how we will now proceed?

MR. FRIEDMAN: I think we will proceed with

the next Witness; right? Which is Ambassador Allgeier.

PRESIDENT FERNÁNDEZ ARMESTO: He's an Expert, to the best of my knowledge.

MR. FRIEDMAN: Yes, that's correct. We are moving into the Experts, and then we have--and the schedule is then Professor Castillo.

PRESIDENT FERNÁNDEZ ARMESTO: Today. My question is: Who are we going to see today?

MR. FRIEDMAN: Well, these are actually questions for the Respondent's counsel, because it is principally cross-examination. Ambassador Allgeier, these are Claimants' Witnesses who are coming up, the short Opening Presentations, but it is really a question of the length of the cross.

PRESIDENT FERNÁNDEZ ARMESTO: What is your expectation? What is the plan you have agreed upon? Which Experts shall we examine when?

MR. HAMILTON: Mr. President, thank you for the question, and thank you to my colleague. Respondent is prepared to proceed with the cross-examination of Gramercy's Experts in the Order

indicated in the existing procedural schedule. There are, technically, four people between this moment and when Mr. Edwards is indicated on the list.

Obviously, the Tribunal has requested that we start tomorrow with Mr. Edwards, and so what we're prepared to do is move forward. It would be our aim to accomplish at least three of these four today.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. HAMILTON: And we will make every effort. Hopefully we can air out the room a little bit before we resume. It is kind of stuffy, and we'll come in, we will try to tighten up over lunch and see if we can get through the next three. And then we can start with Mr. Edwards in the morning and then pick up the pace and continue from there.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: If I may offer one other proposal, that we took very much to heart the President's comments yesterday about ensuring that we have time, adequate time for the Experts that you were most interested in hearing from. As a consequence, we would be prepared to not cross-examine Professor

Guidotti.

And so, of course, without prejudice to our ability to argue about the contents of his Report, and that is in no way an admission of the veracity of anything that he says. But on that basis, we could, recognizing the Tribunal's interest, make that a priority. So, we offer that.

PRESIDENT FERNÁNDEZ ARMESTO: Is Professor Guidotti with us?

MR. HAMILTON: Professor Guidotti is here, ready, willing and able. The Costs have been expended. He has already been here and waiting his turn. So, perhaps we could simply use common sense in managing the length of time allocated, and we will be doing the same with Gramercy's Experts as well.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I think we have to do the following. Professor Guidotti has been here with us. It is out of respect to him. We should give him the opportunity to summarize.

And I think that basically what we will do with all the Experts--because it's a question of time--is we will have them present their case, and

there will not be much time for cross-examination, neither by you nor by--because by the time they have presented, make their direct examination, and presentation, there will not be too much time, neither for Claimant nor for Respondent to subject these Experts to extensive cross-examination.

MR. FRIEDMAN: Okay. Then, we will preserve our right to cross-examine Professor Guidotti.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. It must be very brief.

MR. FRIEDMAN: I understand.

PRESIDENT FERNÁNDEZ ARMESTO: What is not possible is to go in cross through their presentations. You can. If you feel that there is something blatantly wrong with one of their presentations, you will have the post-hearing briefs to bring up the argument, and we are perfectly able without the cross-examination to judge whether your criticism is well-based or not.

So, I don't think that there is much--there is a risk for the position of any of the Parties if you do not have a very extensive opportunity of

cross-examining. So, the thing is we will have to time--we have to--I will have to cut you because we have to finish at reasonable times. We cannot finish every day at 8:00. This is just impossible.

And we must--so, we must manage our time well, and we will do that. And I think we will have a very fair hearing and both Parties will have full opportunities to present their case. Lunch.

MR. HAMILTON: We cut preparations for one Expert, for instance, by a third last night. Not you, Mr. Edwards, but we cut some by, you know, significantly. We are going to use common--we are going to try to use common sense. Some more, some less.

PRESIDENT FERNÁNDEZ ARMESTO: I will cut you if I see that you are--that we are not doing it, I will just draw your attention. It is my duty to guillotine.

(Comments off the microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Because we have to finish and we need to leave time for those, because my worry, as you know, is that--that happens in

hearings, that, if we leave too much time to the beginning, we end up a--very important issues at the end where you have no time. And this is something for which, for me, is an anathema.

MR. FRIEDMAN: Right.

PRESIDENT FERNÁNDEZ ARMESTO: That is why I prefer to cut you now, but leave time for issues I know will come up and are important.

MR. FRIEDMAN: Yes. Yes. So, we've now finished, obviously, with the Fact Witnesses, and so there is--that is--the record needs to be made. We are now moving on to Experts, and some of those are even questions of law. So, I think we all accept and understand and want to make it life--the life easier for the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. 2:00 p.m.

(Whereupon, at 12:56 p.m., the Hearing was adjourned until 2:00 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT FERNÁNDEZ ARMESTO: Are we ready?

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing, and we do so in order to welcome Ambassador Peter Allgeier.

PETER ALLGEIER, CLAIMANTS' WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Ambassador, thank you very much for being here with us. You are here, you have been called, as an Expert, and as an Expert, the first thing you have to do is to take your oath as an Expert.

Can I kindly ask you to stand up and to take your oath?

THE WITNESS: I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much, Ambassador.

I think without further ado, I'll give the floor to Ms. Popova, who will organize the direct examination.

MS. POPOVA: Thank you, Mr. President.

DIRECT EXAMINATION

BY MS. POPOVA:

Q. Good afternoon, Ambassador Allgeier.

A. Good afternoon.

Q. Do you see you have two Reports in front of you?

A. Yes.

Q. Could you confirm for the Tribunal that those are the two Reports you submitted in this proceeding, please.

A. Yes, they are.

Q. And can you see on the last page of each of those documents, they bear your signature?

A. Yes.

Q. Are you content for the Tribunal to rely on them as your testimony in this proceeding?

A. Yes, I am.

Q. Thank you.

I believe you prepared some remarks that you'd like to share with the Tribunal?

A. Yes, that's correct.

Q. Please proceed.

A. Thank you.

DIRECT PRESENTATION

THE WITNESS: First of all, thank you, Mr. President and Members of the Tribunal, for the opportunity to present on certain issues regarding the negotiations of the Trade Promotion Agreement between the United States and Perú.

For nearly 30 years I had the privilege to serve as a trade negotiator at the Office of the U.S. Trade Representative, and specifically as the Senate-confirmed Deputy USTR for all negotiations with the western hemisphere at the time of the negotiations of the U.S.-Perú Trade Promotion Agreement.

I've participated personally in negotiations of investment chapters with Poland, Hungary, Czechoslovakia, Chile, and in the Free Trade Area of the Americas, which involved all 33 countries in the western hemisphere. And I supervised directly the negotiations with Colombia, Perú, Uruguay, and Central American countries in the Dominican Republic when we negotiated a Free Trade Agreement with them.

In the case of the Perú negotiations, I was responsible for ensuring that the results of the negotiations met U.S. negotiating objectives as specified in the 2004 Model Bilateral Investment Treaty and to meet the political and legal requirements for Congressional approval. Throughout the Perú negotiations, the chief U.S. negotiator, Assistant U.S. Trade Representative Regina Vargo, met with me at length before and after each negotiating round to identify issues in the negotiations and to devise the U.S. responses to remaining issues.

I wish to share with the Tribunal my views on our purposes in negotiating this Agreement and to explain why I believe that the Agreement we negotiated is consistent with coverage of investments such as the Agrarian Reform Bonds. I also wish to respond to some assertions made on Friday that do not correspond to the conduct of the negotiations or to my experience supervising these negotiations.

As I explained in my Expert Reports, I disagree with the contention by Perú that these Bonds somehow are not covered by the Agreement. The

structure and the text of the Agreement make it clear that the scope of covered investments is very broad, and the Agrarian Reform Bonds are the type of investment that we endeavored to cover. So, in addition to the Agreement itself, the context of the Agreement negotiations further supports my view, from my perspective. So, what I'd like to do is first talk a bit about the structure of the Agreement and then to talk about the text.

So, the objective of the negotiation with Perú was to provide the broadest possible protection to investments by U.S. investors. This was a key requirement of the Model BIT, the Bilateral Investment Treaty. We relied on both the structure of the Agreement and its text to achieve these objectives. Accordingly, we conducted the negotiations under the "negative list" principle to structure the Agreement.

The "negative list" approach is a well-known negotiating approach designed to minimize any confusion about what is covered in an Agreement. Under the negative list, any exceptions to the definition of "investment" must, as Perú noted in its

own negotiating notes, be "expressly stipulated" in the Agreement.

We used a negative list to avoid disputes over what is covered in an Agreement and what is not covered, and this enables both Parties to provide expansive coverage and also to exclude specifically from the Agreement items of particular sensitivity to one or both of the Parties.

I can give you an example. In one of the negotiations in which I participated, we were negotiating duty-free treatment for certain IT equipment under a positive list approach. The positive list included mobile phones, but relatively quickly, technology advanced, and phones became computers, which hadn't been included in the positive list. So, the question was: Is a smartphone covered or not? The issue was a big dispute over coverage, and if we had used a negative list in that case, the iPhone would have been covered automatically.

Now, Perú's own negotiating record of the 13th round of negotiations, the final round, confirms that we used the negative list in this Agreement. We

most certainly did not negotiate under a positive list, which is, by definition, inconsistent with the "negative list" approach.

Now, on Friday, Ms. Menaker asserted that the Parties used a so-called "open list" approach. Actually, I never encountered such an approach in any of my negotiations. Now, if by an "open list" she meant expansive coverage, well, perhaps we're talking about the same thing. But if she meant an expansive coverage of exclusions, that would be totally inconsistent with the "negative list" approach and would not accord with what we did.

So, adopting this "negative list" approach was standard practice that we have followed at least since 2004 in all of our investment negotiations. And, as I explained in my Report, any departure from this approach would have required approval by cabinet-level departments in consultation with relevant Congressional committees.

Let me talk a bit about, then, the text of the Treaty, or what we were trying to do in the text.

So, I said this Agreement was negotiated

under the "negative list" structure to cover the broadest range of investments and investors. So, for a U.S. citizen or U.S.-incorporated enterprise with a qualified investment to be excluded from coverage would require an explicit exception in the Agreement, an explicit exception in the Agreement.

Now, the definition of "investment" had with it an illustrative, nonexclusive list of assets that are likely to have the characteristics of an investment: Commitment of capital, expectation of gain or profit, or--to use "or," not "and"--assumption of risk. The Agrarian Reform Bonds seem to exhibit these characteristics.

Then, in Footnote 12 on Page 1024 of the Agreement, it indicates that: "Some forms of debt, such as Bonds and long-term notes, are more likely to have the characteristics of an investment." Nowhere in the Agreement is there an exclusion of the Agrarian Reform Bonds from its coverage. In fact, Bonds are specifically enumerated in the list of forms of investment.

Now, the text does include an exclusion from

coverage in Footnote 13 on Page 1024, which specifies bilateral debt--i.e., Government-to-Government loans. And I'll discuss the evolution of this exception, because it is noteworthy, a bit later in my presentation.

Now, on Friday, Ms. Menaker referred to Footnote 12 to argue that, since the Agrarian Reform Bonds were past due, "these were claims to payment that were immediately due." And then she quoted Footnote 12, but only in part, saying: "Other forms of debt, such as claims to payment that are immediately due, are less likely to have such characteristics." On that basis, she claimed that the Agrarian Reform Bonds "did not possess the characteristic of a true investment." However, she omitted the critical part of the footnote. The entire phrase says: "Some forms of debt, such as claims to payment that are immediately due and result from the sale of goods and services, are less likely to have such characteristics" of an investment. "Are immediately due and result from the sale of goods and services." This gives an entirely different meaning

to the footnote, and it provides no basis for excluding the Agrarian Reform Bonds from the Agreement's coverage.

Furthermore, there is nothing in the text of the Agreement that would lead a potential investor to believe that long-term Bonds, such as the Agrarian Reform Bonds, were subject to additional limitations, such as a requirement of being offered on international markets or in international currency, nor can one find an exception to coverage in the preamble of the Agreement.

The preamble of the U.S.-Perú Trade Promotion Agreement applies to the entire Free Trade Agreement. There is not a separate preamble for the investment chapter. So, it applies to the entire Free Trade Agreement in which investment is only one chapter of nearly two dozen, covering topics as diverse as intellectual property, phytosanitary standards, labor, and environment.

Also, as in my Report, the aspiration in the preamble, "to promote integrated economic development," does not provide the basis for an

exception. The preamble, as we negotiate them, are--is a broad hortatory political statement of the motivation of the Parties in entering negotiations. It was not drafted, nor is it understood, to be a legal filter applied to each and every article of this broad Free Trade Agreement. Indeed, it is so general as to render it unsuitable as an objective metric for interpreting individual provisions of the Agreement.

Now I'd like to address some of claims that Perú made on Friday. I recall, again, Ms. Menaker on Friday referred to "the so-called 'Salini factors'" and said that "they"--presumably the negotiators--"wanted to make sure that these characteristics were considered," so they wrote it into their Treaty. Well, I have to admit, that came as a surprise to me, because I never heard of the Salini Case until this Arbitration process. So, we most certainly did not make any attempt to include whatever those Salini characteristics are in the Agreement.

Second, Perú asserts that an investor, to qualify for protection under the Agreement, it must

make some tangible and active contribution. As I stated in my Report, I am not aware of any basis for such a requirement or any evidence agreed by the Parties. So, in my view, therefore, both the structure of the Agreement and its text are consistent with the view that Agrarian Reform Bonds are the type of investment that we endeavored to cover by this Agreement.

Now, I just want to say a few things about the context of the negotiations.

The structure and the text the Treaty make it clear that the scope of protection was meant to be broad, but, in addition, the context at the time of the negotiations provides further evidence. There are two principle elements in this regard: The first, ongoing, unresolved investment disputes between U.S. investors and the Government of Perú; and, secondly, extensive discussions at very high levels throughout the negotiations on the kinds of public debt to be excluded and how to do so.

The issue of investment disputes between U.S. investors and the Government of Perú was central to

the launch of negotiations. In fact, Perú initially was excluded from the negotiations with the Andean countries because of these outstanding investment disputes. One of the most prominent of the disputes stemmed from the Agrarian Reform, which I cited in Page 67 of my Report of May 2019. Perú was added to the negotiation only after providing assurances of commitment to work to address these outstanding disputes.

So, in parallel with and throughout the negotiations, both State and USTR and Embassy Lima worked with the Peruvian Government to resolve the outstanding disputes. Now, the linkage between the investment disputes and the negotiations was an important political issue. It was not a technical issue, and, therefore, as such, it was handled at the political level rather than by the technocrats who were negotiating individual chapters in this Agreement.

So, for example, key members of Congress and senior members of the Administration, including myself, made very clear publicly that the entire

Agreement was at risk by the unresolved investment disputes. Congress was explicit that it would not consider an agreement with Perú unless the investment disputes were resolved and it--Congress--was confident that the Agreement met the full requirements of the U.S. Model BIT and the authorizing legislation for negotiations, the Trade Promotion Act.

This message was reinforced by numerous press releases, delegation visits to Perú, and other diplomatic messages to Perú. The high-level attention to the investment disputes with Perú was underlined by various public reports to Congress from the Congressional Research Service and in public testimony, such as the extensive hearing by the House Subcommittee on the Western Hemisphere in October of 2004, at which the Chairman and ranking member both made clear their opposition to acting on an Agreement with Perú while any investment disputes were still unresolved.

Now, with my Expert Reports, I've documented extensive and ongoing efforts to resolve these cases. I've provided seven diplomatic cables, seven official

U.S. Reports on Perú's investment climate and eligibility for trade preferences, one Congressional Research Service Report on the Agreement negotiations, and three official statements from USTR.

Although the negotiations with Perú were concluded in December 2005, the Agreement was not signed until April 12 of 2006, and that was only after we received confirmation from our Ambassador in Lima that the LeTourneau investor had accepted a settlement offer from the Government of Perú on March 30 of 2006.

So, this record demonstrates clearly that the Land Reform was very connected with the negotiating process and, indeed, a determining factor in the success of the negotiations themselves. Basically, it was a proverbial Damocles sword over the enterprise.

Just a quick word on public debt. The question of public debt was an ongoing topic of negotiation through most of the rounds. The U.S. had wanted to include all public debt, but the Andean countries objected. Ultimately, a compromise proposed by the U.S.--and this is recorded in Footnote 13 on Page 1024 of the Agreement--was accepted by Perú.

Bilateral--that is, Government-to-Government--debt would be excluded, and there would be some additional time provided--or required, I should say, before one could file a claim against either Party for such debt.

Perú's negotiating notes from the 10th round of negotiations confirmed that the U.S. proposal for the treatment of public debt--Perú's words--"fully satisfies the interest of the Ministry of Economy and Finance."

So, given this context of the negotiations, Perú could easily have eliminated its obligations on the Agrarian Reform Bonds by taking an explicit reservation in the Agreement. Perú did not do that.

So, in conclusion, in light of these structural, textual, and contextual factors, it is my conclusion that covering the Agrarian Reform Bonds is entirely consistent with the U.S.-Perú Trade Promotion Agreement.

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you, Ambassador. And thank you also for being brief in your presentation.

Is there any further direct question to the Ambassador?

MS. POPOVA: I will also be brief, Mr. President. No further questions.

Thank you, Ambassador Allgeier.

PRESIDENT FERNÁNDEZ ARMESTO: So, I give the floor to the Republic of Perú.

MR. HAMILTON: Mr. Ulrich will handle the examination. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Ulrich?

Would you like a short break, Mr. Ulrich?

Okay. Perfect. As you prefer.

CROSS-EXAMINATION

BY MR. ULRICH:

Q. Ambassador Allgeier, good afternoon.

A. Good afternoon.

Q. I'm Jonathan Ulrich. I'm going to be asking you some questions today.

A. Thank you.

Q. You have your two Reports in front of you. We're going to hand out a binder as well.

A. I just got the binder.

Q. Perfect. I know that you've watched a couple of the examinations, and you're accustomed to seeing many piles and many binders of documents. I hope you are not disappointed; we're going to try to keep this one targeted and focused today.

A. No, no, not at all.

Q. Okay. Ambassador, I'd like to start with a few preliminary questions on the scope of your expertise and the scope of your Reports.

A. Umm-hmm.

Q. So, you worked as a trade negotiator at the Office of the U.S. Trade Representative, yes?

A. Yes, I did.

Q. Okay. And you--including in the position of the Deputy U.S. Trade Representative.

A. That is correct.

Q. And you left government service in 2009?

A. That is correct.

Q. And since then you have worked as a trade consultant; is that right?

A. Yes, that is right, although part of the time, I was the head of a trade association here in

Washington.

Q. Okay. Ambassador, you're not an international law expert; correct?

A. I do not claim to be.

Q. And you're not a lawyer.

A. I do not claim to be.

Q. And you don't draw any legal conclusions on treaty interpretation; correct?

A. That is not my job.

Q. And no legal conclusions on any other issue; correct?

A. I can't think of a time that I would have done that. As I say, that is not part of my job.

Q. Okay. Right. In fact, you state in your Reports--right?--in First Report, "I am not a lawyer and do not intend to address arguments of treaty interpretation"?

A. I do just want to address what we were trying to do in the negotiations.

Q. And in your Second Report, similarly, you state: "I don't purport to interpret the Agreement as a matter of international law"; right?

A. Again, that's not my job.

Q. Okay. You do purport to respond to Perú's International Law Expert Professor Reisman; right?

A. You say I intend to. I have provided in my Reports my view of certain arguments that were made in other people's Reports, including Professor Reisman's. Whether they were matters of law or other assertions is another matter.

Q. So, you are more a fact witness, then, speaking to your experience with the negotiation?

PRESIDENT FERNÁNDEZ ARMESTO: He's here at an expert. He has taken the oath as an expert.

BY MR. ULRICH:

Q. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: He's an expert here on international treaty negotiation.

BY MR. ULRICH:

Q. Professor Reisman draws conclusions on treaty interpretation as a matter of international law; right?

A. I believe that was his intention.

Q. Okay. And you can't respond in kind as a

matter of international law; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Ulrich, it is quite clear what Ambassador Allgeier--his expertise is on. It is evidently not a professor of international law. He's a U.S. trade negotiator, and, yeah, his expertise is negotiation of trade agreements between States.

MR. ULRICH: Thank you, Mr. President, just laying a foundation.

BY MR. ULRICH:

Q. Let's please move along. Looking at your First Report, please.

A. That is the May--

Q. That in the spiral binding that Gramercy's counsel gave you.

A. Okay.

Q. Let's take a look at Page 3, please, Paragraph 11. So, here's where you say you're not a lawyer, you're not addressing treaty interpretation, but then you say: "I'm instructed that a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in

context"--"in a context and in light of the Treaty's object and purpose."

I'll stop there briefly. So, you were instructed--that was by Gramercy?

A. I was given assistance in organizing my presentation in a way that could be helpful to the Tribunal.

Q. Okay. So, when you say here "I am instructed" and you say now that you received assistance, that was from Gramercy, they instructed you what to say here?

A. On this part of it.

Q. Okay. And they also instructed you that in certain circumstances, the Tribunal may resort to supplementary means of interpretation, including the preparatory works and the circumstances of the Treaty's conclusion?

A. I assumed that this was basic language that was put in submissions in order to fit with the way Tribunals are conducted.

Q. Well, those instructions sound a lot like the rules of treaty interpretation under international

law, don't they?

A. No, I don't think so.

Q. Okay.

A. I think it is more of an editing instruction.

Q. Okay. Those instructions don't track the Vienna Convention on the Law of Treaties?

A. I am not familiar with the Vienna Convention on the Law of Treaties.

Q. Okay. Well, in any event, interpreting the Vienna Convention would be outside the scope of your expertise; right?

A. Yeah, because that was not part of our negotiations.

Q. Right. And applying the Vienna Convention to the Treaty in this case, also outside the scope of your expertise; right?

A. I believe that's a matter for the Tribunal.

Q. Ambassador, an issue you've addressed is the U.S. Government's approach to Treaty Negotiation and ratification. You've demonstrated that U.S. law establishes certain substantive and procedural requirements; right?

A. Correct.

Q. So, for example, U.S. law known as the Trade Promotion Authority sets out objectives that provide the overall direction trade negotiations are expected to take; right?

A. Correct.

Q. And as another example, the Trade Promotion Authority also establishes procedures and timetables for Congressional oversight of Treaty Negotiation; right?

A. That's correct. Well, actually, it's--they are not Treaties. They are agreements. A treaty would have to go through the Senate, as you know, and be ratified by the Senate. What we are negotiating are agreements, and what Congress deals with is the implementing legislation that would be required to bring a whole variety of U.S. laws into compliance with the Agreement.

So, in the case of the agreements that we negotiate, they have to be approved by the majority in both Houses as opposed to a treaty, which is the Senate. I just want it to be clear.

Q. Okay. So, these various requirements under the U.S. law that you're talking about, they govern how U.S. treaty negotiators go about doing their job; right?

A. That is correct.

Q. And this U.S. legal framework isn't binding on the counterparty to Treaty Negotiations; right?

A. No, of course not. We each have our own mandates.

Q. And so, in the case of U.S.-Perú Treaty, Perú's negotiators are not bound by this U.S. framework; right?

A. No. But if they expect to conclude a successful agreement, they are going to have to pay some attention to it or we're not going to be able to agree, not to say--I'll leave it at that.

Q. Well, Perú has its own legal framework--right?--for Treaty Negotiation and ratification?

A. I assume so. I don't know that for a fact.

Q. And you're not a Peruvian lawyer.

A. No, never claimed it.

Q. Well, is it fair to say as a general matter that, in Treaty Negotiations, each State shows up with its own objectives and its own requirements?

A. That is correct.

Q. And the goal ultimately is to arrive at a mutual agreement that reconciles the objectives and requirements of each side?

A. That is correct.

Q. And at the end of the day, the Treaty reflects what both States agree together.

A. And what is--yes, and is what is documented in the Agreement itself.

Q. And that Agreement--it doesn't document the unilateral requirements of a one State?

A. No. It documents what we agreed upon.

Q. And in your Second Report, you said it profoundly surprising to you that the U.S. legal framework would be irrelevant to interpreting the Treaty. The instructions you've received to treaty interpretation, they didn't say that to understand the Treaty, you should examine the domestic legal framework of one Contracting Party; right? It didn't

say that?

A. Could you repeat that?

Q. Sure. The instructions you received, looking at the text of the Treaty, object and purpose, may be supplementary means. It didn't say you should also look at the unilateral legal requirements of one Contracting Party, did it?

A. Each Contracting Party would lay that out for the other side to understand.

Q. And you offer no conclusion as a matter of international law as to the relevance or irrelevance of the U.S. legal framework to understanding this Treaty?

A. No, I'm not sure that I agree with that. I'm sorry, could you ask that question again.

Q. Sure.

As a matter of law, international law, you're not weighing in on how relevant or irrelevant the U.S. framework is to interpreting the Treaty. That is outside the scope of your expertise; right?

A. That's right. Yeah. I'm quite up front that I'm not a lawyer.

Q. Okay. Thank you. Let's move to the Treaty text, please.

As an initial matter, you've said you are thoroughly familiar with the U.S. Government's understanding of the coverage of its investment treaties; is that right?

A. I'm sorry, you want me to look at the agreement itself? Is that what you're asking?

Q. I'm going to take you to your Report actually--

A. Oh.

Q. --but we're going to look at your Report as a way of discussing a few points on the Treaty.

A. Okay.

Q. But as a preliminary matter, you've said you have a thorough understanding--you are thoroughly familiar--excuse me, your First Report, "thoroughly familiar with the U.S. Government's understanding of the coverage of its treaties."

A. Yes. At least of the trade--trade agreements.

(Overlapping speakers.)

ARBITRATOR DRYMER: Counsel, I'm sorry, I just want to--I don't want me to interrupt your answer, but help me find where you are in this Statement, please.

MR. ULRICH: Absolutely, Mr. Drymer.

ARBITRATOR DRYMER: Thank you.

MR. ULRICH: That particular statement is in his First Report, Paragraph 3.

ARBITRATOR DRYMER: Thank you.

MR. ULRICH: But in the interest of time, I'm trying to just move along--

ARBITRATOR DRYMER: Understood.

MR. ULRICH: --and not necessarily point to the Report in each instance.

ARBITRATOR DRYMER: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: That's appreciated.

BY MR. ULRICH:

Q. Ambassador, could you please turn to Page 11 of this First Report. I'm looking at Paragraph 35.

And for the record, Members of the Tribunal, his First Report is at CER-7.

ARBITRATOR DRYMER: I didn't mean to interrupt before, but I did. Was the Ambassador's answer recorded? I don't have access to any of that.

THE WITNESS: What is question?--other than directing me to this paragraph?

BY MR. ULRICH:

Q. I haven't gotten to the question yet.

A. I didn't think so.

Q. I think Arbitrator Drymer is referring to the prior question--

(Overlapping speakers.)

Q. --for the paragraph number? Paragraph 3--

ARBITRATOR DRYMER: If you got the answer, that's all that matters.

(Overlapping speakers.)

BY MR. ULRICH:

Q. Yes. "Thoroughly familiar with the U.S. Government's understanding of its investment treaties," that's the point.

A. Yes.

Q. We are just clarifying for the Transcript.

A. Yes.

Q. Okay. Thank you.

Okay. Here at Paragraph 35 now, you quote the definition of "investment" under Article 10.28. We've all read it. You and I have studied it. I'm going to avoid reading the whole thing out loud, so maybe keep it here for reference, and I'll ask you questions; okay?

A. Yes.

Q. We agree that here in Article 10.28, the Treaty requires that for an investment to meet the definition of "investment" it has to have the characteristics of an "investment"; right?

A. I'm sorry. Where are you reading this from?

Q. I'm at your First Report, Paragraph 35.

A. 35, right.

Q. You quote Article 10.28, definition of "investment."

A. Okay.

Q. And are you with me?

A. Yeah.

Q. Okay. It says here: "'Investment' means every asset an investor owns or controls, directly or

indirectly, that has the characteristics of an investment."

So, we agree that's a requirement, yes?

MS. POPOVA: Objection, Mr. President.

Are you asking him to agree to what you believe the Treaty requires, or are you asking him his understanding of what that language means?

PRESIDENT FERNÁNDEZ ARMESTO: Ms. Popova, let's go on, please. I think it was going very smoothly.

Why don't you go on, Mr. Ulrich. It is clear that the treaty has that language and that it's a requirement.

(Overlapping speakers.)

MR. ULRICH: Thank you, Mr. President.

BY MR. ULRICH:

Q. And the definition also includes a list of forms that an investment may take; right?

A. Yes.

Q. And you said in your Opening Presentation, that's an illustrative list, the forms that an investment may take; right?

A. It is an illustrative list--

Q. Okay. And let's please turn just to the next page in Paragraph 36. And further on this point, you say: "This is not a limiting list. On the other hand, the assets specifically listed are intended to qualify as investments. The descriptive list includes Bonds, debentures, other debt instruments, and loans, and means these types of assets are presumed to, indeed, present the characteristics of an investment."

Do you see that? That's your understanding.

A. Yes. I agree with that sentence as it is written.

Q. Okay. But the U.S. Government has a different understanding, doesn't it?

A. No. What do you mean it has a different understanding?

Q. Let's take a look, please, if you could open your binder to Tab 2. This is the submission of the United States of America filed in this proceeding. If you could please follow me to Page 7, in Tab 2, I'm looking at Paragraph 18 with the heading of "Article 10.28."

A. Okay.

Q. So, the United States says here that: "The enumeration of a type of an asset in Article 10.28, however, is not dispositive as to whether a particular asset, owned or controlled by an investor meets the definition of an investment. It must still always possess the characteristics of an investment, including such characteristics as commitment of capital or other resources, the expectation of gain of profit or the assumption of risk."

Do you see that?

A. Yeah. It just quotes from the agreement.

Q. Okay. So, it's not the position of the United States, as you have said, that all of the assets specifically listed are intended to qualify as investments?

A. I don't agree with that. I am not a lawyer, and so if you are asking for legal interpretations, I'm not in a position to give you legal interpretations. And this is not a part of the agreement. This is a description by the Department of State.

Q. Okay. Well, the Department of State, the United States says that the fact that a certain type of asset is listed not dispositive; right? That's the position of the U.S. Government in this case?

A. No--

Q. Yeah.

A. --it is the position of the United States Department of State in the L Bureau. That's who signed it.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think the Ambassador says that contrary to what the United States says. The Ambassador says that descriptive lists are presumed to, indeed, present the characteristics of an investment. He says there is a presumption. But he doesn't--I don't think--this is a rebuttal presumption, so you could rebut the presumption that a certain type of asset, which is on the list, still does not comply with all the characteristics of an investment?

THE WITNESS: I think that's a legal question.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Yeah.

But to take an example, you could have an Option Agreement, which is in the list of--if I am not wrong, options are in the list of these assets, and it could--what you say it is presumed to be an investment, but it is a rebuttal presumption, which can be rebutted if the asset does not meet the inherent characteristics of "investment." It gets confusing to say it in words.

THE WITNESS: I assume that's what Tribunals are for.

PRESIDENT FERNÁNDEZ ARMESTO: Please.

MR. ULRICH: Well, Mr. President, it's the conclusion of Ambassador Allgeier that there's a presumption.

PRESIDENT FERNÁNDEZ ARMESTO: That's what I wrote.

MR. ULRICH: Correct. That is what he wrote. That's not what the United States says and that's not what Perú says. In the referenced paragraph, it says nothing about a presumption that something listed will be an investment.

PRESIDENT FERNÁNDEZ ARMESTO: That is true.

BY MR. ULRICH:

Q. Correct, Mr. Allgeier? The U.S. doesn't state that there's an alleged presumption that something listed will be an investment.

A. In this document, the Department of State did not say that.

Q. Okay. They say here, as Perú has submitted, that even a type of asset listed must still have the characteristics of an investment; right?

A. That's what it says.

Q. Okay. So if an asset doesn't have those characteristics, it's not an investment covered under the Treaty; right?

A. Again, you're getting me into the legal area, but if it's an illustrative list, I don't think that it means that those are the only type of assets or those are the only characteristics of an investment. But, again, I'm treading now into the Tribunal's area.

Q. Okay. Well, let's go into an area that you have covered, including today. You said that the Treaty was negotiated according to a so-called "negative list" approach; right?

A. I said not so-called. The "negative list," yes.

Q. Okay. So this "negative list" approach, under that all assets are supposed to be covered unless they are expressly excluded; right?

A. That is the principle of the negative list.

Q. Okay. "Negative list," that's not a term that's used in Article 10.28 of the Treaty; right?

A. That is a negotiating approach, and so you don't put your negotiating approach in the Treaty, but it is not mentioned in the agreement, no.

Q. Okay. So we agree it is not a legal requirement. It's an approach that the U.S. follows.

A. And many other countries.

Q. And here in the U.S. submission before you, where they are articulating a position on Article 10.28, they don't say anything about "negative list," do they?

A. Who they, I'm sorry.

Q. The United States Government in this submission before you.

A. I don't believe they are commenting on the

approach, but they do not mention the "negative list" in this summary of the Agreement.

Q. Okay. Moving along.

So, we agree, I think, that, if an asset doesn't have the characteristics of an investment, it is not a covered investment under the Treaty; right? The Treaty requires it must have the characteristics of an investment.

A. I believe--characteristics of an--there are several pieces of guidance, I believe, in determining whether an investment is covered, and it includes a presumptive list that you talked about where Bonds are included. It includes the characteristics, those--one or more of those characteristics, and possibly other characteristics.

Q. And the Treaty specifies some characteristics of an investment; right?

A. Illustrative, yes.

Q. But before the illustrative forms of investment, the Treaty specifies that characteristics of an investment include such characteristics as contribution risks.

A. Those characteristics are listed, yes.

Q. So, if an investment, for example, didn't involve contribution, didn't meet that characteristic of an investment, then it wouldn't fall under coverage of the Treaty; right?

A. Wait, what do you mean "contribution"? Contribution wasn't one of those characteristics that you were just citing, I don't believe.

PRESIDENT FERNÁNDEZ ARMESTO: It is commitment. The Treaty says it is commitment of capital or other resources. That's the precise term. So, I think you are referring--

MR. ULRICH: Precisely, Mr. President. Thank you for the clarification.

BY MR. ULRICH:

Q. So, at Article 10.28, we see that characteristics of an investment include such characteristics as the commitment of capital. So, if a type of asset that you're looking at didn't have a commitment of capital--

A. No, because the list uses the conjunction "or" not "and."

Q. Well, can we agree that if an asset doesn't have any of the characteristics of an investment listed in Article 10.28, then it can't be an investment under the Treaty?

A. No, because it's an illustrative list, as you said, and as it says there.

Q. I think we're talking about two different lists. Maybe it might make sense to go back to Page 11 of your First Report, Paragraph 35.

A. Page 11 of my First Report. The First Report. Okay. All right. Page 11.

Q. Yes. Paragraph 35. This is where you just have a big block quote of Article 10.28; right?

A. Right.

Q. And we see that the Treaty specifies--states that: "Investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or the resources, the expectation of gain or profit, or the assumption of risks."

A. Umm-hmm.

Q. So, the Treaty gives some examples of what a characteristic of an investment is; right? Of capital, assumption of risk, expectation of gain or profit.

A. It gives some characteristics, yes. It does not here specify that all of these characteristics have to be held by an investment. It is "or." It could be all three, it could be two, it could be one, it could be some other.

Q. Let's assume that there are zero. An asset doesn't meet any of these characteristics of an investment.

So, if an investment under the Treaty means an asset that has the characteristics of an investment, and we're looking at an asset that doesn't have those characteristics, then it falls outside the scope of the definition of "investment"; right?

A. No. Because there could be other characteristics. This is illustrative.

PRESIDENT FERNÁNDEZ ARMESTO: Any further questions, Mr. Ulrich?

MR. ULRICH: Yes, Mr. President.

BY MR. ULRICH:

Q. Let's move on from this point.

Let me ask you this, Ambassador. The Treaty doesn't contain a "negative list" identifying every asset under the sun that doesn't have the characteristics of an investment; right?

A. No. It is up to each Party to identify specific exceptions. In other words, either Party wants to make very clear, look, this particular asset or characteristic of an investment is not covered, and the only place that that occurs is in that footnote--I believe it is Footnote 13, Government-to-Government loans.

Q. Well, if we're going to look at an asset to determine if it possesses the characteristics of an investment, that's a fact-specific, case-specific inquiry; right?

A. Repeat the question, please.

Q. If you're going to examine an asset to determine if it meets the characteristics of an investment as required by the Treaty, that's going to depend on the particular characteristics of that

particular asset; right?

A. When you say characteristics required by the Agreement, the characteristics were illustrative guidance, so one would look at characteristics. But one would have to look at the entire section on the definition of "investment," I would think. I'm not a lawyer, but it seems logical.

Q. The definition states that "investment" means every asset that has the characteristics of an investment; right?

A. Umm-hmm.

Q. So, to determine if an asset is an investment, you have to look at it to see if it has the characteristics of an investment. We agree?

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Ulrich, it is not really very helpful because this is a question for the Tribunal to decide. It's a very difficult question of how--as you know, of how the characteristics of an investment and what is an investment and what is not. But eventually this is something which falls on the Tribunal.

Ambassador Allgeier is not really very--he's

very helpful with his explanations of the trade negotiations, but I don't think he can actually help us too much here.

BY MR. ULRICH:

Q. All right. Let's talk about Footnote 12 for a minute. That's something you address in your Report. And you also addressed it here today.

A. Footnote 12.

Q. You also quote Footnote 12 on Page 11 of your First Report, if you want to refer there.

A. Yeah. I was just looking for the text of Footnote 12. All right.

Q. Okay. Now, you've said that the purpose of Footnote 12 is to establish the presumption that forms of debt meet the definition of a covered investment; right? So a Tribunal should start from the fact that it's intended to be covered and work backwards if it's not; right?

A. Footnote 12 is additional guidance for people to understand what sorts of assets the negotiators intended to cover.

Q. Footnote 12 doesn't say that some forms of

debt are presumed to be investments; right?

A. No. That's covered elsewhere in that definition.

Q. Well, the definition doesn't say "presumed" either; right? We covered that.

A. No, it doesn't say "presumed."

Q. And the footnote doesn't say that some forms of debt are investments; right? It says some forms are more likely, some less likely, to have the characteristics of an investment; right?

A. That's what it says.

Q. Okay. So the footnote doesn't obviate the need to look for these characteristics of an investment. There's a spectrum. You still have to look.

A. It may be more obvious in some cases than others.

Q. The Bonds that are at issue in this case, you're aware that Gramercy acquired them through sales contracts providing them for an expectative right of possible payment?

A. No. I'm not familiar with the transactions

involving the Bonds, how they were acquired.

Q. Okay. And you didn't review the sales contracts?

A. No.

Q. Okay. Gramercy didn't show you those.

A. No.

Q. Okay. You're aware that Gramercy didn't plan to submit the Bond coupons for payment at designated dates? In fact, most of them were past maturity?

A. No.

Q. Are you aware that--

A. Just to save you time, I am totally unfamiliar with the Bonds themselves and the transactions that took place. That's not my area of expertise. Sorry.

Q. Okay. Well, let's cover briefly, then, something that you did cover in your presentation.

A. Umm-hmm.

Q. We were talking about the issue of a claim for payment immediately due; right? So, in this Footnote 12, it says that at one end of the spectrum, where something is less likely to have the

characteristics of an investment, that includes claims to payment that are immediately due, and then you emphasize in your presentation "end result from the sale of goods or services"; right?

A. Yeah, I was just trying to be accurate as to what the footnote says.

Q. Sure. So, if Gramercy is making a claim for payment immediately due on a contract that they use to acquire these Bonds, we are talking about something on the other end of that spectrum; right? Less likely to have characteristics of an investment?

A. I don't follow that at all. Explain that, please.

Q. Okay. Gramercy has said that it acquired a bond.

PRESIDENT FERNÁNDEZ ARMESTO: It is--I'm trying to help, Mr. Ulrich. It is not really very helpful. I mean, I think what is the take I have from the Experts is his negotiation with his experience as a negotiator of the U.S.

What he makes out of a text--and he was not even the negotiator of this text. He was the boss of

the negotiator of this text.

THE WITNESS: Right.

PRESIDENT FERNÁNDEZ ARMESTO: No, Professor--Ambassador Allgeier--I'm making you now a Professor. Ambassador Allgeier, you were the boss of the negotiators.

THE WITNESS: Yes. Regina Vargo was my Deputy on Western Hemisphere, that's correct.

PRESIDENT FERNÁNDEZ ARMESTO: And he can tell us something about the practice of U.S. trade negotiations, but it is not helpful, really, Mr. Ulrich. But in the interest of time, I find that he cannot really help us much.

MR. ULRICH: Okay, Mr. President, I'll move along.

BY MR. ULRICH:

Q. Ambassador Allgeier, you mentioned in your presentation today that you never heard of the Salini Case until this Arbitration; right?

A. That's correct.

Q. And so your Reports, they don't address any of the jurisprudence on the definition of "investment"

under international law; right?

A. Pardon me. Say that, again, please.

Q. Your Reports don't address jurisprudence, like Salini, on the definition of "investment" under international law.

A. That's correct.

Q. Not covered.

Okay. That would be outside the scope of your Reports; yes?

A. To comment on it, yes. The only part of it was, as I said, I have no awareness that we had any discussions about so-called "Salini Cases" during the negotiations.

Q. Okay. And were there any lawyers involved on the U.S. side in negotiating the Treaty or with input into negotiating?

A. Absolutely.

Q. And it's possible they had some input into the investment chapter of this Treaty?

A. Certainly, they had a lot of input into it, but let me just explain one thing about the way we work. And that is that the lawyers are all--my

experience is the lawyers at USTR have been very good about explaining to nonlawyer supervisors why certain language is put into an agreement. And there are a number of occasions where I would say to one of our lawyers, why are we putting that language in?

And they would then explain to me, "well, maybe it was some WTO case they were worried about or some other."

At no time do I recall having a discussion with any of the lawyers about why we were putting in something called "the Salini Case factors," whatever the term is.

Q. Okay. You're not familiar with the so-called "Maffezini footnote in the U.S. Model BIT; is that right?

A. The what footnote?

(Comments off microphone.)

A. What fun to watch from the side.

Q. So, you're not familiar with the Maffezini Case?

A. No.

Q. Okay. And you're not familiar with the

Maffezini footnote in the U.S. Model BIT?

A. I'm not aware of a footnote called the "Maffezini footnote." I don't know which footnote you're talking about. Maybe you could direct me to it, but I don't know who Mr. or Ms. Maffezini was.

PRESIDENT FERNÁNDEZ ARMESTO: For once, we are not discussing Maffezini. So let's not open that can of worms.

Is there any further question for the Ambassador?

MR. ULRICH: Yes, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Because we have been just going--it's more than half an hour of cross-examination, and we have--we must go on. I hate to do this, Mr. Ulrich, but it is my duty, as Chairman, to move this procedure along, because otherwise we will not finish.

MR. ULRICH: We are mindful of the time, Mr. President. We'll move along. Okay? But I do have some additional questions.

PRESIDENT FERNÁNDEZ ARMESTO: Let's keep them to the areas where the Ambassador can really help us.

MR. ULRICH: Mr. President, every single question here is on an issue that is covered in his Report and covered in his testimony today.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, but you know what part of his testimony is really unique and relevant.

MR. ULRICH: Well, perhaps that's the problem with his testimony.

BY MR. ULRICH:

Q. Ambassador, let's quickly talk about object and purpose. Okay?

Now, you've said that the language of the preamble in the Treaty was not intended to act as a mandatory filter for understanding the terms of the Treaty; correct?

A. That's correct.

Q. If we go--we can turn back or just think back to those instructions that you received for your Report that specified that "a Treaty must be interpreted in good faith in accordance with ordinary meaning to be given to terms in their context and in light of the Treaty's object and purpose"; right?

Those instructions were set out in your Report?

A. Whereabouts in the Report?

Q. This is Paragraph 11 of your First Report.

A. Of the First Report?

Q. Yes. Page 3, Paragraph 11 of your First Report.

A. Oh.

Q. So, "a Treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms in their context and in light of the Treaty's object and purpose."

Do you see that?

A. Yeah, I see it.

Q. Okay. When something "must be done," another way of saying that is that it's "mandatory;" right?

A. It's a requirement that it must be interpreted--well, that could be read. If you need to interpret it, then you must do it in good faith, in accordance with the ordinary meaning.

Q. "In context and in light of the Treaty's object and purpose." Right? We agree?

A. Okay.

Q. Okay. So, are you aware that, under principles of treaty interpretation, the preamble is considered context to be considered?

A. I don't know that for a fact.

Q. Okay. And you're not aware that, under principles of treaty interpretation, the preamble is also viewed as evidence of object and purpose?

A. Now, I don't know international law, so I don't know that for a fact.

Q. Okay.

A. I know how we go about drafting preambles. And often we are doing that to deal with some concern of Congress.

Q. Okay. Let's move along, last line of questioning, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Mr. Ulrich.

BY MR. ULRICH:

Q. Let's talk a couple minutes about disputes predating the Treaty. Okay? That is something you've covered in your Reports and in your presentation

today.

Now, we've had an exchange in the Briefs as to whether it was a true "precondition" as to whether these preexisting disputes between U.S. investors and Perú had to be resolved before negotiations could begin. I think we're at the point where, we agree, negotiations began before all of these disputes were resolved; right?

A. The negotiations began only after the Administration had a degree of confidence that the Government of Perú would work with us seriously to resolve these disputes.

Q. Okay. And some of these disputes that we're talking about, they are disputes arising out of Perú's Agrarian reform? We agree on that?

A. That's correct.

Q. Okay. And so, we agree these disputes arose well before Treaty Negotiations be began; right?

A. Yes. There were a number of--there were quite a number of disputes that started at different times. A whole range of disputes, yes.

Q. Okay. And the disputes involving the

Agrarian Reform, in particular, those dated back decades--right?--well before the Treaty negotiation?

A. That's correct.

Q. Okay. One of the higher profile disputes that you've addressed, and today as well, LeTourneau Case; right?

LeTourneau was a U.S. investor and had a dispute with Perú?

A. That's correct.

Q. Okay. And Perú and the U.S. were aware of that case at the time of the Treaty negotiations?

A. That and other disputes, yes.

Q. Okay. And you've suggested that because cases like LeTourneau were on the radar of the Contracting Parties, they must have accounted for the Land Bonds during negotiations; right? That's your position?

A. I would assume that they did. They should have. They had to, because we were raising that in a variety of ways at a very high political level, and our Embassy was extremely active in that.

Q. And in this respect, you relied on--you

mentioned a couple documents in your presentation that included leaked internal diplomatic cables from the U.S. Embassy in Lima; right?

A. I don't know if they were leaked. All I'm saying is there was--certainly there were cables back and forth about the Embassy's work with the Government of Perú to resolve this.

Q. Okay. Well, the exhibits you attach to your Statement, they are internal cables sent from the U.S. Embassy in Lima to certain U.S. Government agencies that happened to be published on WikiLeaks; right?

A. I don't know that they were published on WikiLeaks, and I will say that, of course, at the time I had a very high security clearance, and so all those cables would have been cables that I would have seen.

Q. Okay.

A. At the time.

Q. If all those exhibits had a WikiLeaks icon on it and said WikiLeaks, printed from WikiLeaks, in the header, that might be some indication that they were drawn off of WikiLeaks?

A. I'm sorry, I didn't pay attention to what the

icon was up at the paper. I was more interested in the content.

Q. Okay. Well, in any event, the LeTourneau Case wasn't about Land Bonds, was it?

A. The LeTourneau Case, it was--well, it was about Agrarian Reform. It had a connection with Agrarian Reform.

Q. Why don't we take a quick look, please, in back in the binder, Tab 3.

A. Now, I do see the WikiLeaks icon there.

Q. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Do you have the precise number?

MR. ULRICH: CE-453.

BY MR. ULRICH:

Q. Well, now that you've noticed the WikiLeaks icon, as a former high-level U.S. official, you endorse the use of WikiLeaks documents in public proceedings like this?

A. I'm not--that is not my area of expertise.

MS. POPOVA: Objection. Mr. President, that is really not appropriate.

BY MR. ULRICH:

Q. Okay. Moving along, just a few quick questions left. I'm at exhibit--this is Tab 3, Exhibit CE-435.

(Overlapping speakers.)

A. Would you like me to look at this cable?

Q. Yes.

A. Okay.

Q. We're at the cable. Okay. Let's take a quick look at a few lines here. On the first page, the subject line says "LeTourneau and GOP reach settlement after 35 years;" right?

A. That's what it says.

Q. Okay. And "GOP" here, I presume that means Government of Peru?

A. Correct.

Q. Okay. And if we look at the bottom of the page, Item Number 1, the last full paragraph here, says "LeTourneau's attorney on March 30 accepted Perú's offer of compensation for road construction performed more than 35 years ago;" right?

A. Yes.

Q. Okay. Let's please take a look at Page 2. I'm near the top of the page, Item 2, about halfway through that paragraph. Okay. It says: "Perú recognized the need to implement a 1970 Peruvian Supreme Court Decision that ordered LeTourneau be compensated for the value of a 60-kilometer road the Company built in difficult jungle terrain;" right?

A. That's what it says.

Q. Okay. And then Item 3, just below that, "LeTourneau accepted the GOP's approximately $10 million settlement offer;" right?

A. That's what it says.

Q. Okay. So, this case was a commercial dispute; right? Adjudicated in Peruvian Court over a road. That's what this cable says.

A. No, it doesn't say where it was adjudicated.

Q. Well, it says there was a 1970 Peruvian Supreme Court Decision on it; right?

A. Okay.

Q. Okay. And this is a dispute over a road, yes?

A. It is part--it was the last part of a broader

dispute, and the road question was the last remaining part of it.

Q. LeTourneau didn't seek payment for the road in Land Bonds; right? And Perú didn't pay them in Land Bonds; right? It was a $10 million lump sum settlement payment?

A. I don't know what LeTourneau sought initially, what they were seeking initially.

Q. Okay.

A. This talks about the settlement.

Q. All right. So, LeTourneau, then, that case--it wasn't about the legal status of the Bonds or valuation of the Bonds or payment of the Bonds.

A. No. It was one of the disputes that we were concerned about with Perú, and it was only after it was settled that we agreed to sign the Agreement.

Q. Okay. And LeTourneau, that case, it wasn't about any Peruvian Court Decision or a draft decree or--

(Overlapping speakers.)

Q. --law about the Bonds?

A. I have no idea. I have not gone in detail to

follow the tortuous route of the LeTourneau Case.

Q. Okay. And the other two cases that you've cited involving U.S. investors and Perú, they likewise involved a dispute over expropriation of land and weren't in dispute over the Bonds; right?

A. I don't know. My area was not to go into detail on these disputes. My responsibility was to convey to Perú that they needed to resolve an array of disputes. There were other disputes. There were tax disputes, other disputes, they had to deal with and resolve before they were going to see any final Agreement with us.

Q. Okay. But from what we've seen, none of these pre-Treaty cases addressed in your Report specifically concern the Bonds.

We agree on that; right?

A. I don't know. As I said, I have not gone into the detail of each and every case.

Q. Okay. Okay. Thank you. We'll move along.

Last few questions.

PRESIDENT FERNÁNDEZ ARMESTO: Any further questions?

MR. ULRICH: Maybe a minute, Mr. President.

BY MR. ULRICH:

Q. All right. You were here, yesterday; right?

You saw the testimony from Mr. Herrera, Perú's Chief Negotiator for the investment chapter of the Treaty?

A. Yes.

Q. And you saw that he testified the Land Bonds were never even mentioned during Treaty Negotiations; right?

A. That's what he said, yep.

Q. Okay. And Mr. Herrera, he personally participated in the negotiations; right?

A. That's my understanding, from his submission.

Q. And you didn't personally participate; right? You weren't in the room.

A. I was the supervisor, that's correct.

Q. Okay.

A. So, the supervisor doesn't normally sit there and undercut the lead on the negotiating team.

Q. Okay. And the minutes of the 13 rounds of the Treaty negotiations, to assist those of us who

weren't in the room, they make no mention of the Land Bonds; right?

A. I don't recall. I think that's right. I think that's right. They don't mention it.

Q. Okay. Thank you.

(Overlapping speakers.)

A. Yeah. Okay.

MR. ULRICH: No more questions at this time.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you. Thank you, Mr. Ulrich.

Ms. Popova, do you have any redirect for the ambassador?

MS. POPOVA: A very limited one, Mr. President. Thank you.

REDIRECT EXAMINATION

BY MS. POPOVA:

Q. Ambassador Allgeier, you were just asked by Mr. Ulrich--it was put to you that at 15:13 in the Transcript: "None of the pre-Treaty cases addressed in your Report specifically concern the Bonds."

Do you remember that question?

A. Yes.

Q. Yes. Could I take you, please, to Paragraph 67 of your Second Report.

A. I'm sorry. First?

Q. Apologies. Your First Report.

A. Yeah. Okay.

Q. Thanks to my colleague keeping me honest. First Report, Paragraph 67. Thank you.

A. Okay. Yes.

Q. Do you see at the end of that paragraph, you quote a document, the very end, you say: "One of the disputes identified by the U.S. Government involved a U.S. person who claimed that, in about 1970, Perú's military Government expropriated his farm as part of a general land"--

A. Did you say Paragraph 57?

Q. Paragraph 67.

A. Oh, 67. I'm sorry. Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: I think she said 57, to be fair to you. I think she started with 57, and then it became 67.

THE WITNESS: Okay. All right.

PRESIDENT FERNÁNDEZ ARMESTO: I was also at

57.

BY MS. POPOVA:

Q. 67.

A. I see 67. Fine.

Q. Thank you.

A. Okay.

Q. Yes. Let me know when you've read that paragraph.

A. Okay. Yes, I've read it, yeah.

Q. You see you quote there from Document CE-46, and you say that one of the Claimants was "issued compensation Bonds."

Do you see that?

A. Yes.

Q. I'd like to take you to that document. It is in the binder that was given to you by my learned friends. It is CE-456, which is the document you cite here at Tab 4.

A. Tab 4. Okay. The cable from the Embassy.

Q. Yes. Would you look with me at Paragraph 11 of this document, which is what you cite in this Report.

A. All right. About Claimant K.

Q. K, yes. Could you look at, please, at the last two sentences on that page.

A. On that page. Oh, okay. Umm-hmm.

Q. Do you see where it says "Claimant K was issued compensation Bonds, which have since become worthless as a result of hyperinflation?"

A. Yes, I see that.

Q. So, could you please explain to the Tribunal what you understand this reference to compensation Bonds that have become worthless refers to?

A. Well, as I understand it to be, that a particular Claimant, so-called "Claimant K "was issued some form of Bonds in compensation for the land that was taken earlier, but these Bonds, because they have been--the value of what they had when they were given to him in compensation, have lost most of that value because of the high rate of inflation.

Q. And you described earlier that there were several cases arising out of Perú's Land Reform.

Is this one of the cases that arose out of Perú's Land Reform that you described earlier?

A. Yeah. Yes, it is.

Q. Thank you, Ambassador Allgeier. No further questions.

MR. ULRICH: Mr. President, could we have very brief follow-up just on this document?

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

RECROSS-EXAMINATION

BY MR. ULRICH:

Q. Okay. Ambassador Allgeier, I'm still on same page of CE-456, and it says that "Claimant K made no attempt to redeem the Bonds;" right? And that maintaining--

A. I'm sorry. Where does that say?

Q. It's at the top of Page 10, beginning--it reads "Claimant K asserts." You're in that paragraph?

A. "Claimant K." Oh, "Claimant K asserts that because he believed." Yeah.

Q. Okay. And it says there he made no attempt to redeem the Bonds, and, in fact, he maintained his goal was to have his land returned?

A. Umm-hmm.

Q. And he had begun efforts to recover the farm.

That's what the cable says; right?

A. Yeah, that's what it says.

Q. Okay. So, he wasn't disputing the Bonds. He was trying to get his farm back.

A. Well, I don't know what Claimant K's objectives were. We--I agree with what you said when you were quoting this. So, that's whatever evidence we have.

Q. Okay. Thank you. One last very quick question. Let's just turn briefly to the first page of this document. Same document we're in, same tab.

A. Of this cable?

Q. Of this cable.

A. Okay. Yeah.

Q. And I'm looking at the paragraph at the bottom that says "the U.S. Government is aware of seven claims"--

A. Umm-hmm.

Q. --"that may be outstanding?"

A. Right.

Q. And then at the bottom there, just before we turn the page, it says "post also recommends the

removal of five cases due to continued lack of involvement by the Claimants;" right?

Do you see that?

A. Yes.

Q. And Claimant K is one of those Claimants?

A. That is correct.

Q. Okay. Thank you, Ambassador.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Professor Stern?

ARBITRATOR DRYMER: No, I'm okay. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Ambassador, thank you very much for helping to better understand the policies of the United States in negotiating trade Agreements and, with that, we finalize your examination. Thank you very much.

THE WITNESS: Thank you very much, Mr. Chairman, Members of the Tribunal.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: We are now--it is now 3:20. We will reconvene at 3:30.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the

Hearing, and we do so to examine, in Lima, the Expert Professor Mario Castillo Freyre.

MARIO CASTILLO FREYRE, CLAIMANTS' WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Professor Castillo, good afternoon to you in Lima.

THE WITNESS: Good afternoon, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much for being here with us.

The first thing we need to do, Professor, as you know, is to take your declaration as an Expert. I would ask that you please stand up, and you should have before you the declaration, and I would ask that you please read it out.

THE WITNESS: Of course.

I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much, Professor.

Ms. Popova is going to put a series of questions to you on behalf of Claimant.

MS. POPOVA: Thank you, Mr. President.

DIRECT EXAMINATION

BY MS. POPOVA:

Q. Good afternoon, Professor Castillo.

A. Good afternoon.

Q. You will find your Report in front of you. Can you please confirm that this is the Report that you've submitted in this Arbitration, and that the signature on the last page is yours?

A. Yes. It is the Report that I produced a few months ago.

Q. And do you agree with the Tribunal relying on this Report as your testimony in this Arbitration?

A. Yes, and here I see the English-language version. Ah, here it is.

Q. Do you have any corrections to make to the Report?

A. No, I do not have any corrections to make.

Q. Thank you.

You have prepared a presentation for the Tribunal. And if you are ready, then can you begin.

A. Of course. Of course.

Thank you very much.

DIRECT PRESENTATION

THE WITNESS: Mr. President of the Tribunal, Juan Fernández-Armesto; Arbitrator Brigitte Stern; Mr. Steven Drymer; attorneys; and representatives of the Parties, my name is Mario Castillo Freyre, and I was called by the Company Gramercy some months ago to prepare a legal Report on issues having to do with nominalism and the current value principle in Perú and how this is related to the debt of the Agrarian Reform. This is what it says in the Report, and I will talk about this for just a few brief moments this afternoon.

I must begin by indicating that I teach a course on obligations in Perú as of exactly 30 years ago--I began in 1990--and I have also published other material on contracts' general and special considerations.

Moreover, part of my academic work is writing. Since 1993 and for 21 years, I wrote with Mr. Osterling Parodi, my mentor. He was Chair of the Commission that drafted the Civil Code in its current form, and the--I also have written a treatise on

obligations that was published twice. One appeared shortly before his death in 2014. We also drew up a compendium on obligations that is often used in Perú, and two years ago I published a manual on obligations within a centenary at the Catholic University. I've also given any number of talks on these topics throughout my professional and academic activity. So, what I'm going to say is consistent with what I have been addressing in my research and in my professional life in the last 30 years.

One of the issues on which I was called to give an opinion has to do with the treatment of nominalism and current value in--principle in Perú. The treatment of these topics is quite clear, in my view. The Civil Code regulates this matter in three different Articles. The general rule on obligations to pay sums of money is constituted by Article 1234 of the Civil Code. This is the general rule, and 1234--I'm going to read the four lines of this brief paragraph. It says: "The payment of a debt contracted in national currency cannot be demanded in a different currency, nor in any sum other than the

original nominal amount agreed upon." In other words, if one is obligated to give 1,000 soles, for example, under a contract, and I'm required to return them in one year, I have to return those 1,000 soles independent of any interest that might be called for, but I have to repay those--that same quantity independent of the value of those 1,000 soles at the time that the obligation was contracted and at the time that I delivered the 1,000 soles.

That is the rule, but it is a rule that has two noteworthy exceptions. The first major exception is constituted by Article 1235 of the Civil Code, which regulates the so-called "value clauses" or current value clauses, and they are called "clauses" precisely because, in order for 1235 to apply, there must be an agreement as between the Parties.

What I'm going to read now, it does not hold unless there is a meeting of minds, an agreement as between the Parties. In other words, an obligation cannot be updated applying the factors mentioned in Article--at 1235 just randomly. Rather, it would have to--it would be applied only because the Parties have

agreed upon a certain factor.

What does 1235 say, just in its first paragraph which is relevant? Well, not withstanding what is established in Article 1234, the Parties may agree that the amount of a debt contracted in national currency is referred to automatic adjustment indices set by the Central Bank of Reserve of Perú to other currencies or merchandise or commodities in order to keep that value at a constant value.

It mentions three factors of readjustment by reference or for illustrative purposes. The first is the Consumer Price Index, but with a one-month lag. It mentions other currencies or commodities, and what is clear about this--there is no question at all in Peruvian doctrine or Peruvian legal practice--is that the three mentions made by 1235 are merely illustrative--that is to say, in Perú, there is no restriction when it comes to agreeing on value or current value clauses as the Parties see fit.

And why do Parties agree on such provisions? In order to safeguard the value of a given consideration. If I don't want to simply contract a

money debt--I want that to be tied to the value of gold or the value of fluctuating foreign currency or the value of a given product--I can do so together with the Party with which I'm entering into the Contract. But this first has to be a matter of initial agreement, and one will apply the factor chosen by the Parties, agreed upon. That's Article 1235.

The second exception--I said just a moment ago that there are two exceptions to the nominalist tool--is constituted by Article 1236. Article 1236 regulates what is known by obligations of value or debts of value by nature. In other words, the application of Article 1236 is not a matter of agreement between the Parties. That is not what kicks it in, but rather, it is because the nature of the obligation so requires, and on a regular basis the law recognizes it.

Article 1236, which is also a very brief provision, says that when one must restore the value of a consideration, it is calculated as of the date of payment unless there are legal provisions otherwise or

it is agreed upon otherwise. This implies updating the value of a given consideration.

Now, if I were to be asked what is the example par excellence of a debt in value, the one I have been teaching in class since December when one refers to this issue is the case of expropriations, because expropriation, as a matter of mandate of the successive Articles of the Constitution that have held in Perú, and particularly by mandate of Article 70 of the 1993 Constitution, one must compensate at fair market price, which includes possible damages suffered by the person expropriated, such that the debt that arises from an expropriation is no doubt a debt of value.

Now, there are other examples that one could think of applied to these cases and which I'll refer to in just a moment. What is important is that the current value principle determines that the obligation has to be adjusted to value as of the moment the obligation is born--otherwise, we would be talking about anything other than an updating of value; that is fundamental--and, second, that updating of value

has to be done in keeping with the nature of the obligation.

In other words, if we were to speak of restitution because of an accident, what have you, of the value of a load of gold that has been lost, well, what one would have to do is see, what would the value of that gold be at the moment when such payment has to be in the national currency to be paid, or had the damage been, with respect to oil, the same thing? If it were real property, for example, then one would have to see, how much would that real property cost at the moment that it is paid?

And, naturally, if it's a question of updating a sum of money--that is to say, a sum in soles, national currency--what one would have to do would be to apply the only adjustment factor that is possible to apply in this case, which is the Consumer Price Index, which is nothing other than the index which, for practically one century in Perú, is applied to measure the variation in the cost of the basic market basket of goods and services, which is nothing other than an increase in the cost of life and the

depreciation of the national currency in relation to the goods and services consumed in Perú, such that that would be the formula that one would have to follow.

Now, what I've just been explaining with respect to current value principle is independent--that is to say, it does not rule out or exclude those obligations in which one would have to apply an interest rate. Those obligations in respect of which one would pay a rate of interest, well, that doesn't mean that the updating of value, if it's a question of a debt of value, does not exclude application of interest. They are two totally different things.

Now, in the case of the agrarian debt, in the case of the debt associated with the Agrarian Bonds, I consider naturally that in respect of this, there should be no controversy that it is a debt of value, and it's a debt that Article 1236 of the Civil Code applies to. It requires an updating, clearly, in light of these current value principles that I have been discussing.

Now, the date as of which this updating should be done, I consider, is the date of issue of the securities, because that's the date at which the obligation emerged or was born. So, as I said a moment ago, it's an updating just in quotes--rather, it is not just an updating in name. Updating of a debt in national concern, there is only one way to do it, and it's through the CPI.

There are not two ways to do it, because any other factor that is chosen is going to yield a different figure which is going to be different, too little or too much, but it doesn't mean that I'm not applying the correct criterion. I have to apply the criterion that corresponds to the nature of the debt of value.

Now, in the case of the agrarian debt, I am of the view that one must pay the opportunity cost for not having paid it in a timely fashion. This is reflected in Article 70 of the Constitution, when it speaks with us not only of payment of fair market price; it also says that one must compensate the harm suffered.

On this issue, based on the documentation that I've had the opportunity to review, the Bonds contain a rate of interest, a rate of interest which is set by Bond. For some it was 4 percent, for others it was 5 percent, and for still others it was 6 percent.

Now, I believe that, no doubt, there being a set rate, that set rate would have to be paid in any event. Now, what is novel in this case with respect to interest and how interest is handled in my country has to do with the term of compensation of the harm suffered as established by Article 70 of the Constitution, in that, if there is a possibility of paying compensation beyond what is established by rate of interest--that is to say, if one must compensate all of the harm suffered, as Article 70 establishes--well, naturally, this has not been addressed in detail in my Report, and evidently, obviously, it will be a matter for the analysis of the Honorable Tribunal.

I've also had the opportunity to read the Judgment, the 2001 Judgment of the Constitutional

Tribunal, which found unconstitutional some of the provisions of Law 26597. This has been very important because, first of all, it found unconstitutional the application of a nominalist calculation in relation to the Agrarian Reform Bonds and, therefore, one had to apply Article 1236 of the Civil Code--that is to say, the current value principle--as it was a debt the nature of which is a debt of value. So, what the Constitutional Tribunal did, in my view, was to recognize the nature always of the Agrarian form--or the Agrarian Bonds, rather.

It's not that in 2001, the debt all of a sudden became a debt of the value. No, because the debt in the case of expropriation is a debt of value, but, unfortunately, it was necessary for there to be litigation and for the Constitutional Tribunal to state what, in my view, it never had to say, insofar as for someone who was on top of the issues in the law of obligations as well as others related thereto, it is clear that it was always a debt of value, as is any debt that is the result of an expropriation.

Now, on this point, there are also implicit

consequences, in my view. The first is that, if we talk about a debt of value, that value should be updated as of the date that the obligation emerges and not as of any later date. This is an important issue. And, second, that the updating, hand-in-hand with what I've been arguing, should be done in keeping with the nature of the obligation applying the correct factor, which is nothing other than--in this specific case, as this is the updating of natural currency, it is nothing other than application of the Consumer Price Index.

In 2004, there was another Judgment by the Constitutional Tribunal that referred to a claim of unconstitutionality on--with respect to Emergency Decree 088 of 2000, which the Constitutional Tribunal did not find unconstitutional. They considered that it was constitutional. This provision established a procedure of dollarization for payment of the agrarian debt.

What the Tribunal did in a very detailed fashion, when one reads each of the measures of that claim on--unconstitutionality claim and the Tribunal's

analysis, well, it was not unconstitutional insofar--and I'm summarizing--insofar as the mechanism established by Emergency Decree 088 was not obligatory--that is to say, it did not stand in the way of the interested Party being able to have recourse to the Courts of Justice with the claims for the compensation as it saw fit. That was not being prohibited by Supreme Decree 088 of 2000, and that is why the Tribunal did not find unconstitutional.

Now, after this 2004 Judgment, another one was handed down, which was a decision of 2013 in relation to what was decided in 2001, and which I referred to earlier, which is--which goes to the need to update of the value of Agrarian Reform Bonds. Now, in my view, the judgment of 2013, no doubt, was at odds with the 2001 judgment. What needs to be done, at any rate, is to facilitate its enforcement. That was the idea. Yet, the Judgment --yet, it was flagrantly at odds with the Judgment of 2001; first, because it established a special system of dollarization as of date of payment of the last coupon, and second, it applies an interest rate

for--based on U.S. Treasury Bonds, which has nothing to do with the situation. So, it really is out of whack, because the 2001 Judgment simply establishes that there must be a calculation of current value, and the only way that can be done is looking at the depreciation of the national currency in Peru with respect to goods and services that can be purchased with the same sum, the same sum of units of national currency on a given date and the sum of units of national currency on another date. How many--with how many units of national currency can I buy the same goods and services that I would be able to purchase before? Well, it's a different sum, but that has nothing to do with any foreign currency, with no foreign currency at all.

So, it's a very exotic method, I would say. First of all, it's not a straightforward dollarization. Straightforward dollarization would apply as--it would be applied uniformly to everyone in Perú. Dollarization is applied independent of the fluctuation of the value of the dollar at any period. That's dollarization of an obligation, which would not

have been the appropriate thing to do, either.

I defend the thesis that the only factor that should be applied is the CPI. But this is not even a simple straightforward dollarization. It's a halfway dollarization of an obligation that does not bring its value to current value.

So, so strange is the application of the dollar as a reference as if one had said the Sterling--the pound sterling. Foreign currencies suffer ups and downs, having to do with any number political and economic factors, so if we had applied the pound sterling in Perú for this debt, then we would be seeing what are the consequences for it of Brexit, which has nothing to do with the situation in Perú, nor does the dollar, but this is what the Constitutional Tribunal did with its Order of 2013.

Now, it was based on the Judgment of 2004, which I made reference to, but the 2004 Judgment, which did not find the dollarization unconstitutional, well, that was because it was an optional procedure, and it was very much an alternative that one might choose to bring before the Tribunal--that is, that the

creditors--Agrarian Reform Bond creditors might bring before the Court. So, it wasn't mandatory.

Thus, in addition, the 2013 Ruling by the Constitutional Court produced--well, when I read it for the first time, it very much surprised me. It established that to update the value and to determine the values for adjusting for it, one must bear in mind the fiscal capacity of the debtor. In other words, it is as though we, private persons, were allowed to establish how much we owe to say what is our ability to pay.

Well, I don't have a strong ability to pay, therefore, I can reduce any of my debts, well, not just any but all of my debts.

Now, with 2013 and what the Constitutional Court said, well, its logical result is that everyone could take some of the zeros off the debts they owe because at the end of day, it would be the debtor himself who would determine the amount of the obligation. If that were generalized, quite simply, tomorrow one would no longer write about the law and obligations, and there would be no more courses to be

given in Perú on the law of obligations.

It is the debtor who sets the figure, and that is not exactly what the 2001 Judgment established. It did not establish any parameter, the 2001 Judgment did not, any parameter of the sort. The thing is, the phraseology used by the 2013 Ruling leaves no sensation other than, well, even though it is recognized that it is a major debt, the Tribunal has adopted a mechanism to reduce it. No doubt, that is not acceptable within the law of obligations, not only in Perú, but any country that claims to be a civilized one.

Now, even though I do not agree at all with the Order of 2013, I must say that the judicial decisions that have been based on it have recognized the mechanism established by the Constitutional Tribunal in that order, and they also accepted payment of interest, not only those established in that Order, but also interest established in the 4 or 5 or 6 percent Bonds.

Now, what would my conclusions be in 30 seconds? My conclusions are three mainly: The

first conclusion is that the debt associated with the Agrarian Bonds is an obligation of value as a matter of nature and because it is so established by the Constitutions that have held in this period in Perú, the last one that I just cited, in the latest I cited just now, and under which Article 1236 would be the only relevant provision in this regard of the Civil Code.

In addition, second conclusion, that, as a factor of updating, one must apply the Consumer Price Index because it is the only relevant factor for updating. I don't accept, in a strictly legal and theoretical framework of law of obligations, that there are different ways to update the value of the debt, but, rather, just one, what I just said, having to do with Consumer Price Index.

And, finally, the holders of the Agrarian Bonds have the right not only to the principal updated, but also to payment of compensatory interest.

Thank you very much, Mr. President of the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very

much, Professor. Any additional questions by Claimant?

MS. POPOVA: No. I'll give the floor to Mr. Hamilton or to Mr. Jijón.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón.

Professor, on behalf of the Republic of Perú, Mr. Jijón is going to pose some questions to you.

But before giving you the floor, Mr. Jijón, we need to mark the presentation by Professor Castillo H-6.

THE INTERPRETER: No microphone.

PRESIDENT FERNÁNDEZ ARMESTO: Clearly, we have a day filled with technical difficulties.

MR. JIJÓN: Thank you very much, Mr. President.

CROSS-EXAMINATION

BY MR. JIJÓN:

Q. Good afternoon, Mr. Castillo. How are you?

A. Good afternoon, sir. How are you?

Q. Thank you very much for being here today this afternoon, albeit virtually. I'm going to ask you a few questions in connection with your Report. I'm

sure you have before you a binder that has a number of tabs. Each one of these tabs makes reference to a document, and we are going to refer to those documents.

At the outset, I'd like to clarify some issues in connection with the scope of your Report, if you see fit.

A. Of course, gladly.

Q. Thank you. You say that counsel for Gramercy asked you to prepare this Report. When was this, please?

A. I do not recall exactly the date, but if I look at my Report, I will be able to tell you approximately. My Report was May 21, 2019. I may have worked on it for about a month. I don't remember exactly the date when the request was made.

Q. We could say the beginning of 2019 then; right?

A. Yes, of course. It was at the beginning of the year.

Q. All right. Thank you.

Your Report is legal in nature, and it's not

economic in nature.

A. It is legal in nature, yes. It is legal in nature, juridical, if you will. It is not economic.

Q. You are not an economist; right?

A. No, I am not an economist. I am a lawyer.

Q. Thank you.

In particular, you make reference to a number of issues that have to do with the current value principle and the nominalistic principle?

A. Yes. You're making straight reference to the items I was asked to opine in connection with the application of these principles vis-à-vis the rulings and judgments by the Constitutional Tribunal.

Q. Thank you.

In connection with the issue of interests that--you mentioned this, but just to confirm, you don't delve into the issue of interest, but you confirm that interest is something different from the current value principle?

A. Yes. That's right. I do not delve into the matter of interest, but interest is something different from the updating of value.

Q. You mentioned that you looked at the Report of Ms. Revoredo; correct?

A. Yes, I did look at it.

Q. Have you talked to Ms. Revoredo about her Report?

A. No, not at all.

Q. Many of the issues that Ms. Revoredo deals with, you also deal with; is that correct?

A. Yes.

I understand that they may have asked her, well, before her health declined, well, to opine on issues that I was asked to opine on as well.

Q. However, you do not deal with every one of the issues that Ms. Revoredo dealt with. I'm going to ask you to confirm that you have not dealt with the issue of the jurisdiction of the Constitutional Tribunal.

A. No, I don't.

Q. You do not opine in connection with the accusations in connection with forgery and illicit acts?

A. I do not at all.

Q. Excuse me. Apparently, there was an issue with the signals.

A. In connection with the question that you posed, I said that I was not asked to opine on the accusations related to the Decision or to the Enforcement Act Order of 2013.

Q. You were not asked to opine either in connection with matters of due process, voting, the process of takings of a Constitutional Tribunal, none of those issues?

A. No, sir, none of those.

Q. Just to confirm, none of those issues, sir?

A. None of those, sir. None of those, sir. They are not part of my Reports. I was not asked to do this.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón, how is he going to opine about something like that?

MR. JIJÓN: Mr. President, I'm trying to do my cross-examination.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón, we have all read the Report. We are going to have to move forward, please.

BY MR. JIJÓN:

Q. Mr. Castillo, do you hold Land Reform Bonds?

A. No.

Q. Anyone in your family?

A. No, no one in my family either.

Q. Thank you.

A. You're welcome.

Q. I'd like to consider the main conclusions of your Report. You considered that the 2001 Ruling did not require any kind of clarification; correct?

A. Correct. Technically speaking, it did not require any clarification.

Q. Okay. You said technically speaking. It was very clear; right?

A. In my opinion, yes.

Q. Your position is that the Bonds undoubtedly were debts of value.

A. Undoubtedly.

Q. Okay. One single value may be kept in time by using the correct updating methodology; right?

A. That's right.

Q. You would say logically that to use the

incorrect methodology would be to breach the current value principle?

A. Yes, because it could be possible and it may so happen that different values would be obtained instead of obtaining the right value.

Q. And you're saying that it is absolutely clear that the 2013 Ruling violates the current value principle?

A. Yes. I have no doubts about that.

Q. Okay. You have no doubts about that. In fact, you say this with absolute belief, that the 2013 Ruling violates the current value principle?

A. Yes.

Q. Have you reviewed the ruling in detail?

A. The 2013 Ruling? Yes, I have.

Q. Apart from agreeing with what the Constitutional Tribunal said, do you think you understand what the Constitutional Tribunal said?

A. Yes, I think I understand what the CT said. Undoubtedly.

Q. You have no doubts about what this ruling means?

A. In accordance with my understanding and what I have been able to read as a lawyer, I have no doubts.

Q. Do you think that on the basis of the ruling of the CT--let me rephrase.

Do you think that the CT Ruling is clear enough for someone to be able to implement an updating formula?

A. Are you making reference to the one in 2001?

Q. No, to the one in 2013.

A. The one in 2013. Well, the 2013 Ruling was the basis of a number of Supreme Decrees that were necessary for its implementation. Clearly, the ruling itself--and this is clear to me--the ruling itself has certain aspects that I can delve into in detail, if you want me to do so, that violate the current value principle. I think I said that in my Opening. But for its implementation, the Government sought necessary to issue some Supreme Decrees to put it into practice.

Q. I understand that you think the ruling violated the current value principle. But my question

has to do with whether the ruling was clear enough from a legal viewpoint so that an updating mechanism could be implemented.

A. The 2013 Resolution?

Q. Correct.

A. The 2013 Resolution or ruling--well, let me be honest. In connection with the 2013 Ruling, well, I've studied it from a legal viewpoint. I have objections that are legal in nature in connection with the application of the rules of value and the applicable factors, but as a lawyer, I could not tell you whether the Supreme Decrees were necessary or they were not necessary. They were issued later. This was not asked of me by Gramercy, and it was not the subject matter of analysis in my Report.

Q. I think we are understanding each other, sir. But just to confirm, I am not making reference to the Supreme Decrees. I just wanted to know whether you think that the 2013 Ruling did not require any clarification.

A. It's an issue that I have not examined. In connection with the 2013 Ruling, I have looked at the

aspects that are included in my Report, but to be perfectly honest, I cannot answer your question because I have not examined that in detail.

Q. Now, in connection with the 2001 Ruling, you think that that ruling is absolutely clear?

A. The 2001 Ruling is clear because the terms are absolutely clear in connection with the fact that the Articles of the Law 26597 were deemed unconstitutional. I don't think there is any major objection for the application of a value updating, as it should.

Q. Thank you very much, Mr. Castillo.

A. With pleasure.

Q. Let's move on. We are going to talk about the underlying obligation in connection with the Land Reform Bonds. We've heard a lot at this Hearing--well, but before, have you been following the Hearing? If I refer to issues that we dealt with before, are you going to know what I'm talking about?

A. No.

Q. There has been discussion here in the sense that the current value principle protects the original

value of on obligation.

I understand that you agree with that principle?

A. Yes, I agree with that principle.

Q. From your Report, I understand that you think that the methodology to update a debt of value has to reflect the nature of the underlying obligation?

A. That's correct. That's right.

Q. Let's go back to that point. In connection with the Bonds, you know that the obligations in the Bonds is borne of a land expropriation?

A. Yes, of course. The Land Reform Law of 1969.

Q. Yes, exactly. These were rural lands that were expropriated, and in exchange for that, Bonds were issued and delivered.

A. Yes, sir.

Q. The Bonds were given to pay that debt.

A. No. The Bonds did not pay the debt. The Bonds had to be paid ever so often in money.

Q. But they--the Bonds were provided as a compensation.

A. Well, they were securities that represented a

compensation that was going to be paid gradually.

Q. Okay. And like you said, they were going to be paid from time to time?

A. Yes, that was the idea.

Q. Just to confirm--and I think we agree on this--you did not consider that the value of the Bonds is linked to the value of the expropriated lands?

A. No. What I understand from the documents that I read to produce my Report is that what is being discussed here is the updating of the face value of the Bonds as national currency that can be updated to national currency in 2020 and not the value of the lands. That is separate from the subject matter of the dispute in these proceedings.

Q. Okay. We will have to see what the Bond says to talk about. The land is something separate.

A. I have no doubts about that, sir.

Q. You mentioned the Land Reform law. I think you're making reference to the Decree-Law 17716?

A. Yes, that's right.

Q. Have you examined that law?

A. Yes, I read it for purposes of my Report.

Q. That law is the one that establishes how the Bonds are going to be issued and paid; right?

A. Right.

Q. Apart from looking at what is written on the Bonds, we would--it would be relevant for us to consider what the law says.

A. Yes, of course.

Q. Let's go at--let's go to Tab 3 in your folder.

A. Yes, of course. One moment.

Q. Tab 3, for the record, is the Land Reform law.

PRESIDENT FERNÁNDEZ ARMESTO: You said "for the record." Don't use--well, I have spent a long time in the United States, so I used certain words in English that have come into Spanish. So, I would like for you to use the correct Spanish words. Don't use the word "record." I'm sorry. I'm trying to do that. The French also do that when they try to defend the French language, and we need to be very detailed when we defend the Spanish language.

MR. JIJÓN: I fully agree. Please correct

me, sir.

BY MR. JIJÓN:

Q. Right. For the record then, this is RA-155. Do you have it before you, sir?

A. Yes, I do. I have 17716 before me.

Q. Please go to Article 174.

PRESIDENT FERNÁNDEZ ARMESTO: Just one moment. I am a little behind.

MR. JIJÓN: RA-155.

PRESIDENT FERNÁNDEZ ARMESTO: I have found it.

THE WITNESS: Yes, and I have also found Exhibit 174.

MR. JIJÓN: Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Go ahead, please.

BY MR. JIJÓN:

Q. Article 174 is the Article that indicates how the Bonds are going to be; is that correct?

A. Yes, indeed.

Q. And something we've seen tangentially here at the Hearing, but we should look at in detail, so,

there are three types of Bonds: Class B, A, and C?

A. Yes, that's what the provision says.

Q. Each one of these have different interest rates: 6, 4, and 5 percent?

A. Yes. That is what Article 174 says.

Q. And each one of them will be redeemed by equal yearly redemption rates.

A. Yes.

Q. And that's what you said when--what you meant when you said that they were going to be paid from time to time?

A. Yes.

Q. When we talk about coupons, we are talking about both principal and interest in connection with this debt; correct?

A. Yes, both.

Q. Go to 180, Article 180.

A. Yes, I'm looking at it.

Q. Here the law provides for the payment process for redemptions and interest for coupons, that is.

A. Yes, that's right.

Q. What it says is that those payments were

going to be done in cash up to a value of 150 salaries of the Province of Lima and a difference in shares at Market Value that the Industrial Development Bank Companies deemed fit for the payment of the Land Bonds; correct?

A. Yes, correct.

Q. So, the idea was that each coupon was to be paid yearly up to a certain limit, and the difference would be paid through the shares.

A. That's what Article 180 says. If this obligation had materialized in the timelines provided for, surely this would have been the way things would have gone.

Q. Right. You understand that during the years of Land Reform, there was a period of high inflation?

A. Well, the inflation started to run rampant in Perú at the end of the '70s, when the Land Reform started, and then it ended in a very disastrous manner in 1994 or--I'm sorry, 1992 and '93--but in '72 to '77, there was inflation, but the inflation was not rampant in the country, as far as I can remember.

Q. Okay. Agree. In fact, in those first years,

some Bondholders did get paid through their coupons.

A. Yeah, I have no doubt. I'm sure they got paid. I just wanted to supplement my answer by saying that if this process had happened under normal circumstances, apart from substantial issues that have to do with the Regulations modifying the Constitution in '73, if this process had ended in an opportune manner, we wouldn't be discussing anything here. The circumstances show that that is not how things ended up, and that's the problem.

Q. Now before, talking about how it ended, during the period where payments were made, you were saying that the inflation was not huge, but there was a little bit of inflation; right?

A. Yes, of course there was inflation, but compared to what we had during the second half of the '80s and the '90s, well, it was very different. I don't remember the rates, but I lived through it.

Q. Do you know of any case where it was claimed that the payment had to be updated? I'm talking about that time, during that time.

A. I had not conducted a historic review of

those cases. Professionally, I have not looked at those. I wouldn't be able to tell you because that was not part of what I was asked to research.

Q. You said that the Bonds were debts of value. They could have been updated yearly; right?

A. Yes, of course. I understand your question now. The Bonds were a debt of value.

According to my theory, a depreciation process of the currency could have had the interested Party go to the courts. But we need to be careful here. From '69 to 1980--this is the period when the Land Reform took place--we had a military dictatorship in Perú, so it was very hard to claim before the Courts, specifically with such a specific thing as the Land Reform process at the time.

In Perú since 1990, when the old Constitutional Guarantee was established, today it's called the Constitutional Tribunal, well, that made people know their rights, their Constitutional rights.

So in the military Government, the courts were controlled by the military, and inflation was not rampant. So, this issue at the time was not on the

table. I am giving you a backwards-looking view. I was a kid at the time. I wasn't even a lawyer at that time.

Q. Well, I understand what you're saying. I just wanted to confirm, you have not seen those cases. You have not cited those cases.

A. Of course not. Of course not. I'm just trying to provide an answer as to why I think it's reasonable that that was the way things went, but that was not the subject matter of my research to write this Report.

Q. Last question on this issue.

PRESIDENT FERNÁNDEZ ARMESTO: This is very far from our discussion.

MR. ULRICH: This is about the underlying obligation.

BY MR. ULRICH:

Q. We were talking about determining the value of the Bonds or of a current debt of value. What we were saying is that what has to be updated is the value of the unpaid principal; correct?

A. Yes, indeed.

Q. From date of issue of Bonds.

A. What I was saying is that indeed the theory--I think it's applicable--is that the CPI needs to be applied from the date of the issuance of the Bonds.

Q. But we're not talking about paying the difference of the updated value of what was already paid.

A. Oh, no. What was already paid was already paid, and that is not the subject matter of debate in these proceedings.

Q. Thank you very much, Mr. Castillo.

A. With pleasure.

Q. Let us now talk about the current value principle.

PRESIDENT FERNÁNDEZ ARMESTO: Excuse me. This is an issue that I wanted to ask the Professor about.

You remember that the Constitutional Tribunal in the 2013 Ruling said that things have to be updated as of the date of the last unpaid coupon.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And you disagree with that Decision.

THE WITNESS: Of course. Because in reality, the debt did not start at the date of the last unpaid coupon. Perhaps, the last unpaid coupon was in '85. And the obligation was borne in 1970. So, the CT, when it says that an update is necessary, it said that in 2013, well, that was mystical. Nothing was updated.

So, we are eating up a number of years with no updating whatsoever. So, if you allow me, the updating that the CT is referring to in its 2013 Ruling is an update.

PRESIDENT FERNÁNDEZ ARMESTO: But it's a, quote/unquote, "updating." It's not a true updating.

Let me give you an example to understand this better. In 1950, I leased a piece of land. It's a fixed rent of 1,000 soles each year, and I sign 50 IOUs to pay the 50 years of rent from 1950 to 2000.

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And for 40 years, the IOUs are paid, and they are redeemed.

Then imagine that in 2005, a court says that the last 10 years of IOUs, this--well, they are now soles oro--they are worth nothing, and because of the hyperinflation, their value disappeared. Well, the landowner goes to a judge, and the judge recognizes that the value needs to be updated.

There is something that I wanted you to explain to me. Why is it that in the value updating in 2005 in connection with the IOUs that remain unpaid from 1990 to 2000--why is it that the value update is going to have to apply the indices of 1950? I instinctively would say that the unpaid IOUs in 2005 need to be updated as of 1990.

Explain this to me, please.

THE WITNESS: This is a different issue. In your example, what one could discuss in Peruvian law is the updating of the value of the debt in general. In your example, Mr. President, and according to the Agreement, this is a money debt. It's not a debt of value.

PRESIDENT FERNÁNDEZ ARMESTO: No, I would not agree with you, sir. I wouldn't agree with you. A

debt borne of a lease of a piece of land for 50 years, it is a long-term debt, and it is adversely impacted, such as an expropriation, 20-year expropriation, it is impacted because of effects of inflation.

So, it would be reasonable for a court to say, okay, you are going to pay 1 cent a year for this enormous plot of land. This is an expropriation. So, this is also a debt of value.

My point is the following: The payment of the first 40 IOU extinguish the debt. Since the debt is extinguished, I don't understand why it is extinguished. When we want to update the value, we do the update from the initial date of the Lease and not from the date of the first breach. And that's why it is hard for me to understand. Why is it like this?

THE WITNESS: Well, the differences are many, sir. Let me finish the first idea.

It may sound very unfair, but in my country's law, the Lease Agreement would be a money debt. It's not a debt of value, and the mechanisms to update the value lost would not be governed by 1235 or 1236 of the Civil Code. They would have to do with abuse of

process or any other provision in the Code in my country.

This is not a debt that in and of itself is a debt of value. That's the first difference.

The second difference is that no claim can be brought for the payments made. The payments made were made. Now, what we're saying in your example of the Lease, that the installments that have just come to were not the installments where the debtor is in arrears. And as a creditor, you look for a remedy to claim against the debtor.

The difference with this case is that we're talking about debts that came due a long time ago and they were not paid opportunely. So the way to update this is to readjust those installments that were not paid and that have become, in practical terms, historical debts.

PRESIDENT FERNÁNDEZ ARMESTO: But your argument is that the debt, the lease in the '90s up and to 2000, would have to be updated to reflect the same value that the lease had in 1950. Is that what--so that would be the principle under Peruvian

law?

THE WITNESS: But I also need to underscore something. To get to that solution, I could not apply 1235 because I am not allowed. I have not agreed on a current value principle, and I cannot apply 1236 because it has to do with value obligations, and this is a money debt, but not a debt of value.

But I think that because of justice, we need to try to find a solution to that problem, and it would not be applicable to use 1236 or 1235. They are not relevant because we also have 1234. 1234 is a rule that comes from the Code of 36, and this has illustrations similar to the one that you just indicated. When we have a debt that is not a debt of value and it is an expropriation debt, we had problems such as the one related to the lease that you mentioned.

PRESIDENT FERNÁNDEZ ARMESTO: Now, question: The purchase of a lot, we're talking about the purchase of a lot that is paid over the long term. Is that a debt of value?

THE WITNESS: No, it's a money debt.

PRESIDENT FERNÁNDEZ ARMESTO: Why is expropriation a debt of value?

THE WITNESS: It is a debt of value because of the Constitution of 3379 and 93 that provides for the payment of the updated value of the Property.

PRESIDENT FERNÁNDEZ ARMESTO: What other debt of value do you have under Peruvian law, for example, the debt related to undue payment received in bad faith that has to be returned.

THE WITNESS: So, those are exceptional cases, very exceptional, when you explain that--in the classroom, you explain the expropriation, the undue payment received in bad faith because it is stated in the Civil Code.

PRESIDENT FERNÁNDEZ ARMESTO: And do you have any other under Peruvian law?

THE WITNESS: The rules are the money debt, and the exceptions, the most significant one, 1235, the clauses that include value debt and the most restricted one have to do with value nature debt. Over the last 80 years, there has been no change to the 1234 rule. Therefore, the current value examples

are not very many in my country.

PRESIDENT FERNÁNDEZ ARMESTO: I apologize, Mr. Jijón. I just wanted to clarify this.

MR. JIJÓN: Thank you very much, Mr. President. I have some follow-up questions based on what Mr. Castillo just mentioned.

BY MR. JIJÓN:

Q. You indicated that the reason why this is a value debt is because of some provisions--constitutional provisions. You mentioned three various Constitutions?

A. Yes, indeed.

Q. Now, I understand, based on your Report, that this is also the reason why you consider that the date--the benchmark date to update the reference date that gives birth to the obligation is the date of expropriation?

A. Yes, otherwise we would not be paying--we would not be actually updating the amount of money expressed in the Bonds to an equivalent amount in 2020. That would be the only way to do it.

Q. And in your Report, as a matter of fact, you

cite three provisions, constitutional provisions, that state that the price has to be paid before expropriation? That is one of the requirements under Article 70?

A. Yes, because of the negative experience with the Agrarian Reform, the members of the Reform of '73 eliminated the payment in Bonds and also established the scope of expropriation compensation. The scope of the compensation had to do with the damages suffered by the expropriated Party. It was a rule that was elaborated based on the Peruvian experience.

Q. Yes, but the 1933 Constitution also stated that the expropriation had to be compensated before?

A. Yes, but the '33 and '79 Constitutions, when considering the Bond issue, also opened up a door that has created a problem in relation with the Bonds that has led to these hearings.

Q. Yes. I think that you are referring to the law of '64 that modified--that amended Constitution?

A. Yes. Prior to that law, the Constitution of '33 did not consider that, but the land reform was also political topic in the '60s, and at the beginning

of the Belaúnde Administration, this law amended the Constitution with the addition that you are mentioning.

Q. And in particular, that constitutional amendment stated that whenever it had to do with expropriation for land reform purposes, the State did not have to pay a compensation before; rather, they could pay towards the future with Bonds or some other form?

A. Yes.

Q. That was the Constitution, and that is what happened. The payment was in Bonds and the payment was after a specific period, not at the time of expropriation.

A. Yes. Here you need to differentiate. Bonds were given, but it doesn't mean that the expropriation was paid. The expropriation was always paid in money, so it was going to be paid slowly. So, the Bonds were not a form of payment. They were the instruments that were going to allow the expropriated Party to cash little by little.

Q. Okay. Little by little.

So, you're saying, in particular, that we need to refer to the date of expropriation, but also in your Report you indicate that the original value of the Bonds has to be determined as of the issuance of the dates of the Bonds?

A. Yes.

Q. I understand that when the Bonds are issued, the obligation therein contained is borne. So, do you understand that the date of expropriation is not the same as the date of Bond issuance?

A. Well, clearly it is not the same because the Expropriation Law of 1969 indicates the beginning of an expropriation process, all of the--not all the laws were expropriated in the same manner. The amount of land that was expropriated was very significant and not all of the Bonds were issued on the same date.

Q. And not all of the lots have the same expropriation date.

A. Exactly.

Q. Do you know, for example, that the process started with the Supreme Decree that stated that there would be expropriation and then there was a process

that could take up to two years that had to do with impairment and after there was a valuation process and also there were Bonds in exchange for the titles to those plots and the date of issuance for those Bonds was not necessarily related to all of this.

A. Yes, that's the reason why, even though this can be--you can use in terms the date of expropriation, expropriation is a very broad term. It doesn't mean that just as an act of magic everything is expropriated. So, the date that I consider the most proper for the updating of the value is the date of issuance of the Bonds.

Q. So, you're saying the date that you consider the most relevant. Do you think that there is a discussion around it? Do you think that everyone agrees on that?

A. Let me see. It is difficult. It is very difficult to say that it is such a controversial political issue--that is to say, the land reform we can say that there is a unanimous agreement. I offer my opinion as a professor, as an attorney, and in my opinion, the relevant date would be the date of

issuance of those Bonds.

Q. Do you know that some courts have not agreed with that, in that they have estimated the updating after the date of the last payment?

A. Yes. I have read some resolutions that show that and others that are contrary to that.

Q. And as a matter of fact, you quote some of those--you cite some of those cases.

A. Yes, precisely.

Q. Very well. Let's move on to the ruling of 2001 that you said did not require any clarification.

Do you agree that this ruling does not make any reference to the CPI?

A. Yes, agreed, it does not refer to the CPI. And my opinion is that it was not necessary to do it.

And here we have a topic that, in my opinion, is key. In theory, as a professor, as a researcher, and attorney devoted to these topics, I think that it was not necessary to clarify, but clearly, since this is a topic in which someone will have to pay a debt, the topic has been affected by the problem that I mentioned. From the legal standpoint, I don't think

there was nothing to clarify.

Q. So, there was nothing to clarify from the legal point, but, in practice, there were some--some clarification was due; correct?

A. Well, when you analyze the right--and I think that the law will help me charge an amount for an X amount of debt, for me, for counsel, and Experts on this subject matter may be clear. But it does not imply that the debtor will be paying or that the courts will decide in my favor.

Q. Those are other elements that are not only characteristic of this obligation, but characteristic of any obligation or any creditor that has a problem with a debtor.

And here the creditor, the State, may not have had this clarity. Is that what you're saying?

A. The debtor, you mean?

Q. Yes. Thank you for the correction.

The debtor?

A. Yes, the debtor did not have that clarity, and, honestly, I don't know whether the clarity did not exist. I think that unfortunately there was a

treatment of these Bonds that was different in Perú, but Perú has duly approached some of the debts in a way that should be applauded--

Q. But, yes, this is something debatable. You have your opinion and others may have a different opinion.

A. I respect, as I couldn't do otherwise, other people's opinions, but in this forum, I should say that I strongly believe in the opinion that I express in my Report, and that I have summed up before the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón, please move forward.

BY MR. JIJÓN:

Q. In your Report, you referred to several cases that were cited by Mr. Hundskopf, I think, where the application of 1236 was mentioned, and, instead, of CPI, dollarization was applied.

Do you recall that?

A. Yes. There were four or five cases that my esteemed colleague, Mr. Hundskopf, cited in his Reports. Yes, the Tribunals or the Courts decided to

apply dollarization. But as far as I recall, they were not land issues, they were issues related to other claims.

Q. And that was my next question. I thought to understand today after your direct examination that the CPI was applied as a general rule, by default?

A. The CPI by default, no. What I said is that when we're talking about obligations due to the nature of value, the rate to be applied to the nature of the subject matter to be analyzed has to be applied. For example, if we think of oil, we need to think of the current value of oil. The same applies to gold. And if we need to update an amount of value in time--throughout time, yes, we do need to apply the CPI.

Q. And in three of the cases that we were citing, you said that the reason why the dollar was used or it was allowed to be used, it was because they were using an earlier version of the Civil Code; is that correct?

A. Yes. But there is something that is not clear from the reading of the Resolution because with

the reading of an appeal or a legal decision, we cannot appreciate everything that is behind it. There are some cases in which there may be the intent to receive an amount of money, of U.S. dollars, yes, and that's okay. But if I had had, for example, damages done on to my vehicle and the spare parts will be paid in U.S. dollars, I should ask for a compensation in U.S. dollars because I will have to pay U.S. dollars to buy the spare parts in my car. That would be proper in that case. But that, again, depends on the nature of the Claimant, also why it is being claimed and the relationship of the dollar to the subject matter of the claim.

So, in the case of the land debt, this dollarization would not be applicable.

Q. So, you think that--you think it is relevant if Gramercy bought the Bonds in U.S. dollars, do you think that would be relevant?

A. No. I wouldn't say so.

Q. The reason I'm asking you this is because I understood from your Report, that you thought that there was an earlier version of Article 1236 that was

not relevant. It was a version that you cited in a footnote and that refers expressly to the powers that the judges had to use any index, including the ones mentioned under 1235.

Do you recall that?

A. When the Civil Procedural Code was passed, the civil rules of 1236 were amended because of what you just mentioned. But when we discussed this topic, we thought it was okay, but also indicated, yes, it is okay but not for the judge to have the power to determine the updating value that he or she desires, but it has to do with the nature of the obligation to be updated.

That rule, in general, was not widely accepted by the legal field, and it was abrogated three years later. It was a rule that was in force for three years, and it was the only Article that was amended twice, but the second--in the second instance, it went back to the original draft that I included in my Report.

Q. So, basically there was a version that did not refer to the index, and for three years, there was

a version that the judges were empowered to use these other indices and then it reverted?

A. That is correct. That's what happened.

Q. Can we please look at--

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no. We are not going to see the evolution of 1236. That is irrelevant. That is an evolution in 1236 in the '90s. This is 2013. This is 2013. So, please, let's go to the relevant portion.

MR. JIJÓN: I was taking him to the Judgment of 2001.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, but let's come closer to 2013.

MR. JIJÓN: But this is the history of Perú, but at the end of the day, we need to make a Decision whether the Resolution of 2013 and the Supreme Decrees violate international law or not. We need to focus on the relevant aspects.

PRESIDENT FERNÁNDEZ ARMESTO: With due respect, Mr. Jijón, I think that Mr. Mark Friedman on the first day of the Hearing enumerated the key points that, in his opinion, had to be decided by the

Tribunal. And the first point was that there was an absolute rule in connection with the principle of updating a valuation, and it is very important to determine whether that rule actually existed and how to be interpreted.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Let's move on.

MR. JIJÓN: Thank you, Mr. President. I will try to speed up.

PRESIDENT FERNÁNDEZ ARMESTO: I am just letting you know that we have another Expert, and we need to conclude at a reasonable time. So, we need to focus on the object of the claim.

Yes, the Reports are very interesting. We read them, and we have very good underlying information about everything that happened, for example, Article 1236. Yes, I am fully aware that there was a version that also led to a breach because the judges may reassess obligations. That is a factor that leads to inflation and that was later on eliminated. But this is in the '90s, and let's move on to 2001.

MR. JIJÓN: Mr. President, you just saved 10 minutes of questioning because that was my question.

BY MR. JIJÓN:

Q. Mr. Castillo, the Judgment of 2001 refers to the constitutionality of Law 26597; correct?

A. Yes.

Q. And that law or Article 2 has been cited in the background to the Judgment or the underlying facts; correct?

A. Yes.

Q. And what it says--and here I am going to show you Article 2, is that based on Article--

PRESIDENT FERNÁNDEZ ARMESTO: If you're going to ask him that this judgment refers to the previous--or that the law declaring the unconstitutionality refers to the Civil Code, it is clear to me. Was that your question?

MR. JIJÓN: More or less it was. I was going to ask him whether he was aware that this law, 26597, was the one prior to the one that derogated the Civil Code.

THE WITNESS: The one that was immediately prior to the law that amended the change--that amended the Article of 276 under the Civil Code.

BY MR. JIJÓN:

Q. Yes. It's the previous one. So, you have two laws that were passed on the same day?

PRESIDENT FERNÁNDEZ ARMESTO: Well, this law refers to the previous version of the Civil Code that was changed in the law that was passed immediately afterwards.

THE WITNESS: Well, I had not thought about--I think there is a problem here with the audio that I am receiving, but based on what I heard, and if the question is whether I had realized that both laws were successive, no, I had not seen that one came right after the other one.

PRESIDENT FERNÁNDEZ ARMESTO: And it is fun because the law that was declared inconstitutional--unconstitutional refers to the previous draft of 1236 that the subsequent law derogated.

THE WITNESS: Yes, I do understand the

question. But if you have the dates handy, and if one is derogated afterwards by another rule, yes, I have no reasons to second-guess that.

BY MR. JIJÓN:

Q. And actually, the Claimants that presented this claim cited both rules and the amendment to both rules as something that was taking their right away--that is to say, the right to apply updating indices.

A. Well, Article 1236 was in force for as long as it was, and then it was amended, and the reasons that led to what the Claimants indicated, that's the way it is, but this rule is no longer in force, and the rule that is applied is the original rule that--and that is the one in force and it was not in force for three years. Yes.

Q. Thank you very much.

A. Thank you.

Q. You told us that Bondholders always had the opportunity to resort to the courts.

A. Correct.

Q. And you know that a judge may solve any

debates regarding the updating index to apply?

A. Let me see. As a matter of fact, the judge should decide in connection with the claim and the procedural issues. I could not offer a general Opinion because that is also linked to the content of the claim and the Resolution. The power of the judge, if the question is regarding the fact that the judge may determine the factor or the updating index to apply from a legal standpoint, the answer is no.

He or she should apply the one that is relevant. What I'm saying is that, if the judge applies the right one, he or she will proceed accordingly. But if the--but the conduct is not proper if the index applied is incorrect.

Q. I was referring to Paragraph 82 of your Report where you say that, given a complaint--the updating is in the hands of the judge.

You agree with that; correct?

A. Yes. My Opinion in this paragraph--and I thank you for reading that paragraph. My Opinion is that the judge has to decide the principle or the factor to be applied to the case based on the nature

of the subject matter to update.

Q. That is clear. And a Bondholder, as of 2001, according to you, could resort to a judge?

A. The Bondholder could resort to a judge, not only as of 2001, because the Constitutional Tribunal in 2001 stated whatever they stated. They declared the unconstitutional nature of whatever they declare unconstitutional, but in theory, in my country, a person never had a legal standard or a legal rule above the Constitution that would allow them to go to the Courts.

If they did not resort to the Court, and if the judges did not understand the complaint properly, there was always a right to resort to the courts to claim fulfillment of a right beyond the mechanisms that this State has established in certain occasions for the payment of the debt.

Q. Thank you, Mr. Castillo. I am going to look at your answer step by step. First of all, even before 2001, I understand they could resort to the courts because the Bonds had already expired and there was an immediate debt, or an immediate payment to be

demanded?

A. Yes. If there was an unpaid debt, there was a right to request payment, and depending on how the Claimants decided to present that claim, they could follow the criterion that I have--the--if they applied a criterion that I am referring to, they would be requesting for the update of the value. Not everyone thought the same way, and I think that we need to analyze the vast jurisprudence in this case.

Q. Thank you very much. Now, the second part of your previous answer, it seems to me that you were referring to the fact that the right to go before the courts had never been taken away.

A. A legal provision could not override any of the Constitutions that have been in force in my country, and had there been such a law, it would have been openly unconstitutional, and the judges would have to refer to--would have to find any such law unconstitutional.

Q. Could you please turn to Tab 28?

A. Of course.

Q. Do you have it there for the Court? This is

CE-160. This is a Decision that refers to draft laws of 2011, which have been discussed quite a bit, or it is an Opinion, rather.

Could you please turn to Page 2.

A. Yes. I am at Page 2.

Q. This is a summary of the content of the bill. The second point says Article 4 specifies that the administrative updating that is established is incompatible with the judicial updating. The interested person must desist from this in order--from the latter to take advantage of the former.

Do you see that?

A. Yes.

Q. Now, I understand that you said this was manifestly unconstitutional.

A. No. What this bill said, that if I wanted to have recourse to the mechanism for updating an administrative payment, I would have to give up any judicial action that I might have brought. But it did not say I could not bring a judicial action. It could not say so. Had it said so, it would have been openly unconstitutional, and that's not what it says.

Q. Thank you very much.

PRESIDENT FERNÁNDEZ ARMESTO: Do you have much more to go, Mr. Jijón?

MR. JIJÓN: No, I don't, Mr. President.

BY MR. JIJÓN:

Q. I'm now going to take you to the previous page where you see the summary of Article 1. And it says Article 1 sets out that the purpose of the law is to physically and legally clear up the situation of the Properties affected by the Agrarian Reform established mechanisms for updating and payment of the Agrarian debt, and its conversion into productive investment.

Do you interpret this as saying that it was necessary to have a statute for establishing a payment mechanism?

A. No, sir. The thing is that, as it is a debt, most of which has not ended up being honored, or is not completed being honored, in my country, I understand that over the decades, there have been any number of attempts on the part of civil society, associations and in this case, the Congress of the

Republic, to establish some legal way in addition to the courts of justice to conclude this history in a satisfactory manner for society in general.

It does not mean that, in my view, it has been indispensable. The evidence is that, in tandem with this bill, there should have been, as, indeed, there was, any number of judicial case claiming payments of the Agrarian debt.

Q. And just to confirm, we're talking, once again, about your Opinion or a consensus that existed at that time?

A. Well, let's see. I could not say whether it was a matter of consensus, because this is not really a matter on which there is consensus. This is a question of who has the right, beyond some persons or actors in this political legal problem and what have you in my country are not in agreement.

I am expressing my Legal Opinion. It is my Opinion, and also it's 2011. I have--was not following the matter at that time, so as to be able to say whether there was or was not a consensus. What there was was an interest in seeing the problem

solved.

Q. The reason I ask you is because you cite this document as an example of legislation that confirms your view of what the 2001 Judgment said. And what I'd like to know is, you reading this summary of Article 1--and if you'd like, we could turn to Article 1, but do you believe that it means that it was necessary to have a method for updating, or is that not what the legislature is saying here?

A. First of all, this did not become law. This was a bill that was discussed in the Agrarian Commission. It is a reference that I make to this bill, which I think is quite interesting, but strictly, as a matter of law, the 2001 Ruling did not need anything, but it is something that--well, my title, there is no doubt about it, I knock on the door of the debtor, the debtor doesn't pay me.

So, independent of me having the right. I don't think this is a single comma missing in my title, but if the obligation is not honored that doesn't mean my title is questionable. The issue is one where evidently, in practice, it has met all the

obstacles that we are now familiar with, but I believe, and I ratify, that the Decision, the judgment of the Constitutional Court of 2001 did not require any clarification nor any guideline for enforcement, much less the Judgment of 2013.

Q. Thank you, Mr. Castillo. We fully agree that this never was passed into law, and the only reason I mentioned it is because you cited it as something that helped you form your view of the Judgment of 2001. But I do understand that you did not consider this was necessary because the 2001 Judgment existed.

A. Exactly.

Q. And I also want to confirm that that was not the view of the legislature. Now, if you'd like to turn to Page 13?

PRESIDENT FERNÁNDEZ ARMESTO: I don't think that there is any disagreement at all. We need to look at those issues where there might be some disagreement. There have been a couple of bills to try to revalue the Agrarian Bonds. Neither of them was approved.

And I don't think that the Expert can help us

much more here. He understood that the Judgment of 2001 was clear. And I really think that there is not much more here. We have to continue. The problem is that we have another Expert and we have to conclude. His position is clear. And the cross-examination is not making it any clearer and, of course, it is not going to lead him to change his views.

So, I would encourage you to wind up at this time.

MR. HAMILTON: Mr. President, we understand the concern with the clock. Respectfully, we have heard comments for days on 2001. Today, we have spent hours and hours with the Minister. We are now trying to manage the time available to us as best we can. We understand the time pressure, and at the same time we have a responsibility as representatives for the State to respond to the comments or arguments that have been put forth by our colleagues from the other Party, including in examining this Expert.

So, excuse me, but we think that a few points could provide support. I do understand the pressure. We are going to do our best. We spent half the day

with the first Witness.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Yes. I know, but, Mr. Hamilton, please, don't forget you have Mr. Hundskopf who is going to be here the day after tomorrow who covers the same area as Mr. Castillo, and we can discuss this matter, once again, with Mr. Hundskopf. My point is that, once the position of an Expert is clear, it's clear. We could be--we may be in agreement or in disagreement, but it's clear.

In other words, it doesn't help us much more to continue this discussion with the Expert. He has explained his position, made his presentation. It just--there's just no more. I have explained this from the outset, what we cannot do with the Legal Expert is, through a cross-examination, convince him of the contrary of his position.

MR. HAMILTON: It has happened several times in cases with the Republic of Perú, Mr. President. It has happened with the Experts proposed by other companies in the past.

PRESIDENT FERNÁNDEZ ARMESTO: My concern is that we need to reach a result. We have a certain

number of hours. We have to examine one more Expert today, and I'd like to still be fresh for the next Expert and to receive him in a positive way.

I'm in your hands, of course, each Party has to be able to present its case, but when I see that my colleagues on the Tribunal, I see that they are concerned, and nor are they--do they feel that we are making much progress in getting deeper into the case, and it's my duty to let you know. You use your time as you wish, Mr. Hamilton. It is your case. It is not my case.

MR. HAMILTON: Thank you very much, Mr. President. Could you give us two or three minutes to coordinate, mindful of the clock and this time pressure.

PRESIDENT FERNÁNDEZ ARMESTO: Of course, Mr. Hamilton. Thank--of course.

(Pause.)

PRESIDENT FERNÁNDEZ ARMESTO: Let's take a five-minute break.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We will now

resume, and I will ask the Secretary for a time check, in any case, so that the Parties know where they stand.

SECRETARY PLANELLS-VALERO: As of now, Claimants have 7 hours and 51 minutes left, and Respondent has 7 hours and 52 minutes left.

PRESIDENT FERNÁNDEZ ARMESTO: So it's very, very close.

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: So, Mr. Hamilton, we're in your hands. I think that with the utmost of goodwill, later than 7:30, I will die. I will die here, I mean, because it is impossible. So, except if you push me to--

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: With that, Dr. Jijón, you have the floor. My apologies if I have been pushing you. It is done in the best of interest of the case, and--please.

MR. JIJÓN: Thank you very much, Mr. President, and thank you, Mr. Castillo, for your patience.

BY MR. JIJÓN:

Q. Mr. Castillo, you know that there are many different types of CPI?

A. In theory, yes.

Q. In Perú, there's an official index; there's CPIs that are calculated based on regional price variations, but there is an overall CPI in Perú, yes?

A. There is a general formula that is calculated by the National Institute of Statistics and Informatics. I'm talking about the CPI.

Well, in Perú it was adopted by the Ministry of Treasury a century ago in the wake of research by an engineer, Oscar Arruz (phonetic), and from that time, first the Ministry and then the Institute have been applying CPI.

Q. Thank you, Mr. Castillo.

Just as a matter of time, as the President has indicated, I'm going to try to move a bit more quickly, and I would be grateful if you could just stick to answering my question.

Now, you mentioned the official CPI. I understand that it refers to metropolitan Lima; is

that not so?

A. Yes, indeed.

Q. And the same Institute calculates CPI for Piura, Trujillo, Ancash, other regions of Perú?

A. Yes, of course.

Q. And you know that, in cases that have reached the courts regarding the Agrarian Reform Bonds, different courts have used the regional CPIs in some cases to update the debt?

A. I have seen that, yes, indeed. I found that interesting. The only doubt I've had--I've not been able to confirm that in relation to the documentation I've had before me--is whether--or what was the place where the Bonds were issued? I wondered if they were all issued in Lima, or if different Bonds were issued in different parts of country.

Q. If that were the case, then one would have a discussion as to which CPI should be applied?

A. Yes, of course. I would have no conceptual problem opening up such a discussion. Not at all. At the end of the day, I'm talking about CPI, and it would be related to the CPI in the zone or region

where the Bonds were issued.

Q. Exactly. Indeed, there could be any infinite number of calculations of CPI; correct?

A. Infinite, no. Infinite, no, because first of all, there is not an infinite number of places where they were issued, nor are there infinite calculations of CPI. It is finite, the number of CPIs, and one would have to look at each specific case if it doesn't answer to the place where the Bond was issued, the general rule which I explained in my Report.

Q. In any event, there would be many ways of calculating it?

A. Well, we're not talking about many forms or many ways. The variation as between CPI Arequipa, CPI Piura, in any event, if you ask me which of them has to be applied in relation to the place of issue of the Bonds, well, the one that corresponds, but it doesn't mean that two or more or applicable. Which? The one--the appropriate one. My answer is not, we can apply just any one. One has to apply the particular one that corresponds to that Bond.

Q. Thank you very much.

And the one that corresponds would yield a different updated value than if a different CPI were to be used; correct?

A. Yes, it's minimal, but, yes, there would be a small difference.

Q. You know the Report that was published by a Committee 148 in 2004; correct?

A. I have read that Report. It is not a report that I discovered when I conducted the research to prepare my Report. I gained knowledge of it later on. I have read it and I know of it.

Q. There, they make reference to the CPI and to the adjusted CPI. The Tribunal knows about this.

A. This is a very curious Report. It has a very cheeky formula because it adjusts the CPI of 80 to 93, large inflation in Perú, and they said, "Okay. We are going to have an adjusted CPI there, because things are going to cost a lot."

So, I adjusted the CPI for it to be less, but I cannot accept this adjusted CPI from 80 to 93. The only reason to do that is for the debt to be smaller. That's the reality.

Q. It's quite cheeky, you would say; right? That's what you would say?

A. Right.

Q. And the 2001 Ruling does not make reference to any of these things; it does not make reference to the different forms and the adjustments, et cetera?

A. No. The 2001 Ruling didn't need to refer to this because of the terms in which it decided that the subject matter put to it was unconstitutional. So, that's all they had to rule on. Sometimes the CT goes beyond what it is asked to do. But it doesn't have to do that.

Q. Thank you very much, Mr. Castillo.

MR. ULRICH: I have no further questions.

THE WITNESS: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Mr. Jijón.

Claimant has the floor. Do you have any questions for Mr. Castillo?

MS. POPOVA: Yes, I have a few questions, please, Mr. President.

REDIRECT EXAMINATION

BY MS. POPOVA:

Q. Professor Castillo, I'm going to go back to three issues that you discussed with my colleague.

The first one has to do with a discussion that was had with the President, and they were talking about the examples of debts of value in Peruvian law. You cited some examples.

Do you remember that discussion?

A. Yes, of course. I cited two examples, expropriation and the undue payment received in bad faith by the alleged creditor. These are assumptions of debts of value by nature.

Q. In your presentation, you indicated that you have written about these issues for a long time, many years. So, if you go to Tab 8, RA-357--

MR. JIJÓN: Mr. President, I have not shown the Expert this document.

PRESIDENT FERNÁNDEZ ARMESTO: The issue that the question is being asked on has to do with a question that I asked. Let's look at 357, and we'll see whether it's relevant or not.

BY MS. POPOVA:

Q. I'm going to ask Dr. Castillo. Would you please explain to the President of the Tribunal what this document is?

PRESIDENT FERNÁNDEZ ARMESTO: I haven't found it. What is it? RA-357?

MS. POPOVA: Yes, Mr. President. It's behind Tab 8.

PRESIDENT FERNÁNDEZ ARMESTO: It looks like it's an Article. And, Castillo, that must be you.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Why would you like the professor to cite himself?

MS. POPOVA: Well, just because you were asking about examples of debts of value in Peruvian law.

PRESIDENT FERNÁNDEZ ARMESTO: And we have 90-plus examples here.

MS. POPOVA: Perhaps the professor may wish to correct me.

MR. JIJÓN: Mr. President, this is a typical example of a leading question. We object.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So

RA-357 shows there are more examples of debts of value, and that's what you wanted.

BY MS. POPOVA:

Q. Professor Castillo, the second issue is the following: You remember that you discussed with my colleague your Opinion of the dates as of which the updating should take place.

Do you remember that?

A. I do perfectly well remember that, yes, ma'am.

Q. Mr. Jijón suggested that it was also possible to do an update as of the last date when payment stopped.

Do you remember that discussion?

A. I do not remember that discussion exactly, but I say that the updated value has to start from the moment the obligation was born, because otherwise we wouldn't be talking about a value updating. It would be just an updating. It would be an incomplete calculation process, or something like that. But that would not be an update of value.

Q. Could you please explain in more detail, sir,

to the Tribunal why is it that you think that?

A. Gladly. When we talk about updating the value of an obligation in time and we're referring to a debt of value, for example, to update money of 1970 to the year 2020, what we have to see is the purchase power lost in the currency, and in this case we're talking about Perú, of course. But we are talking about the country of Perú.

So, that can only be measured from the very beginning. There is no legal reason to start counting this from a different date. We are updating the value of an amount that has not been paid since 1970. Any other factor would be a distorting factor of the true nature of that updating process.

I cannot update a debt from 1970 starting in 1980. They say, okay, the last coupon was paid in 1980, but I cannot do that. The payment of the last coupon has nothing to do with the debt that remains unpaid since 1970. It has nothing to do.

It would be like saying, okay, I'm going to update since the last Solar Eclipse took place. Well, then we're going to have to see whether the obligation

was paid or not. In the law of obligations, we do not have two moments in time to take that reference unless we are talking about the fact that we don't want to see the real figure that is borne of the calculation of the period from 1970 to 2020. That's the only reason.

Q. Thank you, Professor.

Third issue, the last one, Mr. Jijón took you to Article 174 of the Agrarian law.

Do you remember that?

A. Yes, yes, of course. 174. I had it before me, and I think I'm looking at it again.

Q. Okay. Perfect.

Great. So you have anticipated my question. You spoke with Mr. Jijón about the three types of Bonds that are provided for in this law. Do you remember?

A. Indeed, the three types of Bonds, Class A, B, and C.

Q. He also talked about the interest that accrued in each one of these cases, for each one of these types of Bonds.

A. Yes, exactly, 4, 5, and 6 percent.

Q. You also talked about the updating of the face value amount of the Bond, and Mr. Jijón suggested to you that this was something different from the value of the expropriated land. Do you remember the discussion?

A. Right. What I understand happened with the Land Reform process and the process after that is that the expropriated land was valued and a face amount was included in the Bonds, and the Bonds were given to each one of the holders of the land. So, we are talking about the updating of the amount of money and not a piece of land. They are two different things.

Q. You also mentioned in answer to questions by Mr. Jijón that in Peruvian law in the Constitution, there is this concept of Fair Market Value for expropriation.

A. Yes, of course, I remember. This was the concept that was included in the three constitutions we've had so far in this country.

Q. Look at Article 177 of the Agrarian law that you should have right after.

A. I'm looking at it, ma'am.

PRESIDENT FERNÁNDEZ ARMESTO: Where can I find it, Ms. Popova?

MS. POPOVA: It is at CE-1.

PRESIDENT FERNÁNDEZ ARMESTO: Or RA-155. Perhaps. I think so. And you want us to look at Article 177.

MR. JIJÓN: Mr. President, I think I did not show the Expert this article.

PRESIDENT FERNÁNDEZ ARMESTO: Surely you did not show this to him. What's the question?

MS. POPOVA: Have you found the article, Mr. President?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, ma'am.

BY MS. POPOVA:

Q. Professor Castillo, you see that this article says that the value of the expropriation will be paid in the following manner.

Do you see that?

A. Yes.

Q. And then you can see that it is explained here how Bonds from Class A, B, and C are going to be

paid.

MR. JIJÓN: Objection, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: We have not heard the question, sir. I don't know what the question is. What's the question?

BY MS. POPOVA:

Q. The question is the following: If you can look at the kinds of land that was paid with the three types of Bonds that Mr. Jijón asked you about.

MR. JIJÓN: Objection, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: This is irrelevant. We have Bonds, A, B and C that have to do with different expropriation situations, but I don't think that this is any relevance whatsoever for our purposes.

MS. POPOVA: I disagree, Mr. President. If I could continue with my questions, I'm sure--I hope I will convince you.

MR. JIJÓN: Mr. President, this has nothing to do with my questions to the Expert. This is an opportunity for them to bring up new issues.

MS. POPOVA: This is not a new issue,

Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Well, ask the question. I don't know how relevant this is. I have some doubts in connection with the relevance of your question.

What is the relevance of your question, ma'am? So, you're saying A, B, C have to do with different expropriation types?

MS. POPOVA: No, sir. No. Perhaps we could read this together, Mr. President.

MR. JIJÓN: Mr. President, I have very diligently tried to cut a large number of questions that were posed to the Expert. But we cannot open this new can of worms here.

PRESIDENT FERNÁNDEZ ARMESTO: This has nothing to do with the examination. We are really at the 11th hour, so if you see fit, we are going to leave this line of questions. I don't think it's relevant.

MS. POPOVA: Mr. President, if you allow me one last question, Mr. Jijón asked Mr. Castillo in connection with the different interest rates, and the

different types of Bonds, and the different Bond classes. I don't think that this is not within the scope of the examination.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Fine. What is the question you would like to ask the Professor? I'm sure the Professor knows the law by heart. Ask the question, please.

MR. HAMILTON: It is completely leading what she is doing. She's leading him like an animal to the water to drink what she wants him to drink, and we have to object. I'm sorry.

PRESIDENT FERNÁNDEZ ARMESTO: The Professor will not be allowed to be led. What's the question?

BY MS. POPOVA:

Q. How the different Bond classes are related to the value of the lands that were expropriated.

MR. JIJÓN: Objection, Mr. President. One of the first questions that I put to the Expert was to confirm that the issue of interest is not or was not a substantial part of his Report. This is not within the scope of his Report. It is almost preposterous.

PRESIDENT FERNÁNDEZ ARMESTO: I think the

question, ma'am, is irrelevant. And if it were relevant, we can bring this question up later on.

I think we are far beyond the scope of the cross-examination and the Report by the Witness.

Any other question?

MS. POPOVA: No, Mr. President. No further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Great. More questions from Respondent?

MR. HAMILTON: No, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Drymer.

ARBITRATOR DRYMER: No, sir, and that's because of the excellent examination conducted by both counsel.

PRESIDENT FERNÁNDEZ ARMESTO: Any other question?

Very well, Professor. Thank you very much for being here with us this afternoon and having helped us. Thank you for your effort, and we are going to end your examination. Thank you, sir.

THE WITNESS: Thank you, Mr. President.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Great. We will now break for 10 minutes, and we will now call Professor Olivares-Caminal.

(Brief recess.)

RODRIGO OLIVARES-CAMINAL, CLAIMANTS' WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Professor Olivares-Caminal, I don't know in which language to address you. We will be deposing in English?

THE WITNESS: You can address me in any of the two languages of this Arbitration. I will be deposed in English, yes. That's correct.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, then, I will address you in English.

Professor, thank you very much for being here with us. The first thing we have to do is to take your oath.

THE WITNESS: I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much, Professor. I give, now, the

floor to--

MR. FRIEDMAN: That would be me, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you, Mr. Friedman.

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. Good afternoon, Professor.

Do you have in front of you your two Reports dated May 21, 2019, and November 13, 2019?

A. Good afternoon, Mr. Friedman. Yes, I do. I have both Reports in front of me.

Q. Can you confirm for the Tribunal that those are your Expert Reports and that you're content for the Tribunal to rely upon them as your Expert Opinion in this case?

A. Yes, Mr. Friedman, I can confirm that.

Q. You have prepared a presentation, and I'd invite you, with the President's permission, to proceed with that presentation right now.

PRESIDENT FERNÁNDEZ ARMESTO: And we will give the number H-7 to the presentation.

Professor, you have the floor.

DIRECT PRESENTATION

THE WITNESS: Good afternoon, Mr. President, Members of the Tribunal, and Counsel for Claimants and Respondent. I will start with my presentation.

I am acting in my capacity as an Independent Expert on--my main field of expertise is on private international law, international finance, and focusing mostly on sovereign debt.

From the record, as you may know, I'm a professor in banking and financial law at Queen Mary University of London. At the university, I'm the director of a program in law and economics and another program in law and finance, and I specialize in debt in distressed situations. I have acted for governments, central banks, and many other organizations and creditors, and I have acted as a sovereign debt expert with UNCTAD, a senior insolvency expert with the World Bank, and I have served in several committees, including the Institution of International Finance here in Washington, D.C., in the sovereign risk committee there. I also sit in the

Financial Markets Law Group, which is a group within the scope of the Bank of England, and there I sit on the Sovereign Debt Scoping Group.

Besides that, I have been engaged in different academic and professional exercises dealing with sovereign debt under distressed scenarios. I have recently drafted two handbooks for the African Development Bank on how to deal with these types of situations, and I have also called for, with other international experts, a book on how to--for sovereigns, how to deal with situations of distress.

Basically, I have been asked from the perspective of my expertise to look mainly at three things which then I condense under two parts in my presentation. Basically, provide context to the ordinary meaning of certain terms included in Article 10.28 and Annex 10F of the Treaty, and it says how, if at all, these terms apply to the Land Bonds--that would be part one of my presentation--and then I have also been asked to analyzed the MEF process in view of international best practices.

So, I will start with the first part of the

presentation focusing on the Land Bonds. Surprisingly enough, I've been requested to explain whether--or to contextualize and understand whether the Land Bonds are a Bond, and basically, I start by going back to very simple definition. Basically, a bond is an instrument that acknowledges a debt, and it's a subsequent debt obligation. And for this, I have contextualized this from an historical perspective, as you can see from my First Expert Report, to more modern sources, and basically whether--another important aspect that has been raised in the context of this arbitration is whether a bond needs to raise new funds for the Government to qualify as a bond. And, in my Expert Opinion, this is not the case. A bond do not necessarily need to raise new financing for the issuer.

A clear example we can draw from Monarch International, what happened with Argentina, for example, that they did a debt swap, and actually, part of the payment mechanisms of the MEF process includes the possibility of receiving another debt instrument.

And based on this, for me, the Land Bonds are

simply bonds because they acknowledge a debt obligation which is owed to the Agrarian Reform. And what you see there at the bottom of my slide is what I called a bond menu, which is basically--because this is in the context of some of the characteristics of a bond, and basically--a bond can be physical and material; a bond can be bearer or registered; a bond can be subordinated or unsubordinated; short-term, long-term; domestic currency, foreign currency, domestic law--

(Interruption.)

THE WITNESS: Apologies. I got carried away by the excitement.

Basically, there are--actually, the list of characteristics I was referring to is just examples. I'm not sure whether that is relevant for the record, but basically, what--the main point that I want to come across clearly is that there are menus of options that you can choose when you are issuing a bond. You don't necessarily need to have all of these on a bond to make it a bond. And, for me, the most--probably the most striking one is that you can even have a bond

which does not have interest rate, and that still is a bond. And, in particular, to the reference that Perú has made, the fact that they are not rated, or not registered, these are nonessential characteristics of a bond.

And it was even more striking when, on day one, I hear that basically they referred to the Land Bonds that they are just paper; they are worthless. And bonds can take multiple forms. They can be--they can refer on its face as a loan, but they are still a bond, because basically, it's a loan that has been securitized in instruments, and there are hundreds of examples from history where you can see this. But basically, as a professor, one of the things in which I spend quite a lot of time is explaining the financial systems and the different instruments you come across in the financial systems, and then when you hear that they refer to a bond that is just paper and it is worthless, it is a bit striking, because then, when we look at a particular one, they have expressed references from the actual instrument, that basically, it has a full guarantee of--unreserved

guarantee of the State, or that basically, we pledge the full faith and credit to make all payments on securities.

And why am I referring to this? Because, when we look at the actual instruments on Slide Number 6, from the face of the actual instrument, you see that there is an express reference to the term "bond" on more than one occasion. There's an express acknowledgment of debt. So--and the Land Bonds are even guaranteed. So, basically, the Peruvian Government itself has referred to them as Bonds and expressly acknowledged a debt obligation, which, for me, is the main characterizing element of a Bond.

And if we look from a comparative perspective because of the reference that has been made on record about what has been referred to as "global" or "contemporary" debt instruments, from the face of it, I know that this is the prospectus. I know that this is not the actual instrument because, as we know nowadays, instruments has been first immobilized and then dematerialized. If the paper is worthless, now there are even ones and zeros, which is an electronic

record, but there is no more than that. But basically, from the face of it, you can also see that there's an express reference to bonds; there's an express acknowledgment of debt, same as in the Land Bonds. There is no meaningful difference.

And in a rhetorical manner, I see these as--on the next slide, on Slide 8, whether basically we have a car from 1969 which represents the Land Bond, and then we have a car from this year which is basically a Tesla, and basically, the fact that one does not have an airbag, it doesn't make it less of a car. It just makes it a different car. Basically, the Land Bonds may not share all characteristics of modern or contemporary bonds, but that in no way alters their essence. That's the point that I'm trying to make with this.

Looking in slightly more detail at that typology that you can find in Article 10.28 in Annex 10F--and by no means I'm trying to interpret the Treaty; I'm just trying to give context to these terms--the way in which I see these is in concentric circles, where you put the Land Bonds within the

category of bonds, the typology of bonds. Bonds can fall also under public debt, because bonds, they can be corporate bonds or Government bonds. The Government bonds, I will definitely put them, without doubt whatsoever, under public debt. And then both bonds that have already been put within public debt and public debt would definitely--because of the debt nature of it, it will definitely fall under debt instruments.

And even if we look at the Spanish version, there's another category in which the bonds can fall, which is obligaciones.

And, since I make reference to public debt, just very briefly: Two of the Experts providing Expert Opinion on behalf of the Republic, they say that, basically, public debt--that the bonds do not fall under the category of public debt and that they will sit uncomfortably within that category. And then we have seen yesterday, Vice Minister Sotelo says, basically, there are domestic public debt. So, I think that, basically, that settles the issue.

With Slide 11, the next slide, I just want to

make a brief reference to a point that has been raised by Professor Reisman. I am not trying to interpret the Treaty. I'm just trying to give sense from my field of expertise, which is the way in which I see the Land Bonds and the contribution to the economy, that when Perú carried the Agrarian Reform, they had different options to implement Agrarian Reform. It could have been increasing taxes; it could have been raising money from the markets and using that money to compensate the Bondholders for what they have been expropriated, or issue the Bond and give the Bond to the Bondholders--to the current Bondholders, those that need to receive a compensation for the expropriation. And that is what has happened.

So, basically, it was the decision of Perú to issue this bond, to give the bond to the landowners. It is like--to give you an analogy, it's like paying for this compensation that they have to with a future promise, and that's the acknowledgment of the debt that has materialized on a given date and time.

And, actually, in Articles 1 and 2 of the Law Reform Decree, it says that basically, the Land Reform

is part of the social and economic development of the nation, and basically, it will contribute to the national development policy.

If we look at this from today's perspective, in my view, Gramercy has committed capital that has been transferred from the U.S. to Perú, and this has created a multiplier effect.

In addition to that, there has been a creation of a secondary market, transforming an illiquid asset into cash. And, last--and I will probably say, in my view, something which is very important is that we see a sophisticated creditor that can contribute to facilitate a resolution. I have seen this from many other episodes where you have dispersed creditors, that it's very difficult to coordinate. It is very difficult to reach an understanding and resolve the situation, to move forward where can you create value to all Parties. And particularly here, I have put these three flags, because these are three examples.

The Ukrainian one is one that I refer to in my Second Expert Report, where this precisely

resolution has been achieved through the involvement of one of these sophisticated creditors, which is on record on my Second Opinion, Franklin Templeton, and then the flags of Argentina and Nicaragua, because those are the ones where Gramercy has been involved. Particularly, the one in Argentina came up on Saturday when there were--when Mr. Koenigsberger was testifying.

Now, moving on into the second part of my presentation, when I talk about the MEF process. One of the things that has been discussed in the view of an Expert is that this is a claims process--i.e., I particularly feel uncomfortable with that position. I don't think that this should be a claims process. I think that, basically, that's not the process. I refer to a debt restructuring process, but I--let me make clear for the record--it is in both of my Reports, but basically, I don't think it's a debt restructuring process, either. I think that debt restructuring is the closest analogy to what we are dealing with, because it will return to service an outstanding debt obligation.

So, in my view, Professor Wühler's take on the claim process, I think it is wrong. I think that there are some valuable elements, but the reality that--the rights of the Parties and the value of their Claim has been determined a long time ago, when the expropriation took place. That's why I don't see a claim process there.

And then the other element was the fraud element. Out of all the cases that have been presented through the MEF process, if memory does not fail, I think that there were only 10 that have been rejected. So, basically, the percentage is that 97 percent of Bonds have been accepted. So, basically, fraud has not been a main issue in the validation of the extra titles.

And one of the--for me, one of the main issues that makes me feel quite uncomfortable with this whole process is that--the degree of participation. Basically, if you can spare me--I know that it's late, but a couple of extra minutes, I would like to very quickly walk through this slide, because from the universe of bonds, we have those that have

been canceled and we have the actual net placement of bonds, out of which then we need to--

PRESIDENT FERNÁNDEZ ARMESTO: What means "canceled"?

THE WITNESS: From the Commission Report, these are bonds that were--apparently, what I understand--I don't have--basically, it was very difficult to come with sufficient information to formulate the table. My understanding is canceled bonds were bonds that were canceled, and then were annulled by the Government before they were actually placed with Bondholders.

So, that's why it gives a net placement, which is lower than that. It will discount amortization and principal. It gives us a total outstanding ballpark figure of 2.5 billion.

PRESIDENT FERNÁNDEZ ARMESTO: This does not look reasonable. I mean, the interest payments cannot--if you have a 5 percent coupon or interest payment, it seems impossible that the interest payments are 50 percent of the principal payments.

THE WITNESS: Mr. President, that is

information that I have taken from the Agrarian Commission with the Peruvian Congress. So, basically, it's not my calculation of interest.

But they do not affect the universe, because basically, what we have is the universe of bonds that have been placed, and then those are outstanding. The interest, in my view, Mr. President, if you agree with me, it is something which is on the side. It is basically an additional piece of information which does not affect what I'm trying to achieve here, which is determining as close as I can the universe of the outstanding bonds.

PRESIDENT FERNÁNDEZ ARMESTO: But don't you agree that this looks extremely high?

THE WITNESS: The way it is explained between the amortization and interest--because I would feel inclined to agree with you, Mr. President, but basically I'm not questioning--I take this as official figures.

PRESIDENT FERNÁNDEZ ARMESTO: Figures.

THE WITNESS: Exactly.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

THE WITNESS: So the total universe of Bonds is 2.5, and this is a figure that has been discussed in the previous days.

PRESIDENT FERNÁNDEZ ARMESTO: And it arises from 13,285 minus 10,763?

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: So then the amount that has been submitted through the MEF process is the 0.22.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry, to be absolutely clear on your numbers, this figure of 2.522 is just the principal. It does not include the interest, the outstanding interest.

THE WITNESS: Yes. It's principal because what I'm trying to quantify is the universe. I'm not looking into interest payment. That's not an area in which I'm supposed to be looking at.

So once we determine the universe, that if you allow me--let's move to the next slide where basically what I tried to do here is I tried to reflect the whole MEF process to determine the percentage of participation in the MEF process.

So, basically, from the total universe that I draw from the Agrarian Commission, then what we have that has been submitted through the Claim process is 0.22 billion soles oro, and taking into account what had been paid as of August 2019, it's only 0.0077 billion.

So, if we move now to the column on the right where we have the white bubbles, of course apart from the universe of total outstanding debt, which is 100 percent, and what has been submitted through the MEF process, only 8.7 percent, which is, in my view, based on international experience, it's a very low participation percentage, out of which only 0.3 has been paid.

So, if we look at this in the context of what has happened in similar episodes and what I--on Slide 16, I have different examples of other sovereign debt restructuring episodes, where you see that the degree of participation has in all of them been above 90 percent. And basically sovereign debt restructuring parties have shown the debt, which are, in my view, in a more complex scenario, and have been

resolved swiftly and effectively, as long as they have been of certain accepted principles. So the review for the position has been very, very high compared or contrasted with the number that we have seen from the previous slide.

And what I have identified as a flaw--well, this is a process that, to date, has resolved just a tiny fraction of the overall debt. Perú has declined to meet with its creditors and has alienated a number of creditors, which, among others, have resulted in this Arbitration. And the poor result of the Bondholder process for me, no surprise really, if we look at that flaw that we see in the process, it is common practice to engage with creditors, and this process does not contain any of the hallmarks of what is understood as an effective process to resolve sovereign debt obligations.

And these are the six boxes that I list there, which are greater engagement, transparency, good faith, impartiality, the rule of law, legal entitlement, and fair and equitable treatment.

And basically Perú's processes are anathema

to establish principles to deal with sovereign debt, and mainly my main takeaway on this is basically the lack of dialogue and the lack of participation. You can claim that one is directly correlated with the other one.

And just some brief concluding remarks. What we are seeing here is one which is usually resolved swiftly. For example, I can refer to some previous examples in Uruguay it took 30 days to resolve the situation without the participation of more than 90 percent. Basically, if there's a way to move forward--and I have seen way more complex situations. I am coordinating, for example, a committee of a country in default since the '80s, and the situation is completely different.

And one of the key elements is trying to have an open, fair, and transparent dialogue with the Parties, and this is--in my view, it's a simple way forward. Basically, just pay an updated value.

The debt is not disputed, and it has been said that basically liquidity/solvency is not a problem in this case, and I have seen in many other

situations, and I will refer particularly to African country, where this is a big issue.

What we are witnessing is simply a number of self-imposed obstacles towards favorable Resolution, and I would like--I think that probably I will just conclude there. I don't think that basically--because I think that I said what I thought was relevant to hopefully shed some light to the Tribunal.

Thank you very much for your time.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much, Professor Olivares-Caminal.

Is there any follow-up question?

MR. FRIEDMAN: No. Thank you, Professor Olivares-Caminal. Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent. Thank you. So we now give the floor to Mr. Hamilton.

MR. HAMILTON: Mr. President, I'd like to introduce my colleague, Frank Panopoulos.

MR. PANOPOULOS: Good evening, Members of the Tribunal. I think we'll be done before 7:30.

PRESIDENT FERNÁNDEZ ARMESTO: Take your time.

MR. PANOPOULOS: We certainly won't let you

die in this room.

PRESIDENT FERNÁNDEZ ARMESTO: We have opened the--no, the windows not, the doors to get some fresh air, because I'm afraid that the air-conditioning has stopped working.

MR. PANOPOULOS: We're distributing a binder for the Witness, and obviously I'll read out the exhibit numbers for the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: That's very kind. Thank you.

CROSS-EXAMINATION

BY MR. PANOPOULOS:

Q. Good evening, Professor Olivares-Caminal.

A. Good evening, sir.

MR. PANOPOULOS: Could you please put up the last slide you had, the debtor?

BY MR. PANOPOULOS:

Q. So those things hanging from the hands of this distressed debtor here that you have, those are Bonds; right?

A. Hanging from the hands?

Q. Yeah.

A. I would say from the hands. Nothing from the wrists.

Q. From the wrists. Okay. From the wrists.

A. Basically, a Bond usually in the '60s was represented and documented in physical form, and it would be--I would say--

Q. My question was whether those are bonds or not.

A. No.

Q. They are not. Okay.

MR. PANOPOULOS: You can take it off.

BY MR. PANOPOULOS:

Q. You don't see them as shackles, huh?

A. You asked me whether I see them as Bonds.

Q. Okay. Do you know that a Bond could mean a shackle, something that ties your hands? In fact, you say that in your Report when you go over the etymology of a Bond. You say it used to be called a band in medieval times because it binds; right?

A. Is that the question or statement? If it's a question, I would say basically it binds the person who made the obligation, which is the acknowledgment

over debt and the subsequent obligation that derives from there.

Q. But there's two sides to a transaction. It doesn't only bind the obligations on both sides, both to the issuer and to the person who receives the Bond; right?

A. Yes. But for the--usually it's an upfront obligation which commits to repay the money that it receives today in exchange over payment they have to do tomorrow.

Q. Right. But the problem I have with your Report is that it's from the focus of just the issuer, and you don't really take into account the point of view of the person who received the Bond, but we'll get to that.

Now, in your First Report, you state that you're an Expert on debt instruments in general and sovereign debt, in particular, and you just said that in your direct; right?

But with that background, you purport to address two key topics in your Report. The first is whether the Land Bonds are protected investments under

the U.S.-Perú Trade Promotion Agreement; right?

A. What I tried to do is explain and give context to the ordinary meaning of the terms that are included under the definition of the Treaty.

Q. And on this issue, you principally respond to Professor Reisman of Yale University; right?

A. Not only him, but, yes.

Q. And so, if you were to turn to Paragraph 17 of your First Report. Let me know when you're there.

A. Yes, I'm here.

Q. You'll see you say there--and I'll just read it--"as an Expert on debt instruments in general and sovereign debt, in particular, I opine that the Land Bonds clearly are Bonds and meet the definition of investment under the U.S.--under the Treaty"; right? That's what you say?

A. Yes, that's correct.

Q. Right. And you make this opinion in several other places in your Report, which I won't go to for the interest of time.

And my question to you is, you're not an Expert in international law, are you, in public

international law, are you?

A. No, I am not, and this is something how qualified as you--because if you read this paragraph in context, you will see that from Paragraph 16, and then I do this, again, for the Report, for example, Paragraph 69, 77, 81.

So, I'm not claiming an expertise on public international law, and I said that from the outset on my presentation and at the beginning of my Report as well.

Q. So, if you go to Paragraph 19 at the bottom.

A. Yes.

Q. You state: "As an Expert on debt instruments, et cetera, et cetera, I conclude the Land Bonds clearly meet the Treaty's definition of investment according to the ordinary meaning of its terms as they are used in the fields of finance, economics, and law"; right?

So, there, you're interpreting the Treaty. You're interpreting what the Treaty means in terms of ordinary meaning, aren't you?

A. I think that basically what you are trying to

do there is to twist my words in the sense that basically as it clearly says, as an Expert on debt instruments and sovereign debt, in particular. And as I said before, and it's also included in that line, it says "according to the ordinary meaning of its terms."

I will not try to interpret the Treaty because basically that's what we can call my main area of expertise. And besides that, that is a competence which is reserved for the Tribunal.

Q. Okay. Let's move on.

The second key topic in your Report focuses on Peruvian Bondholder process; is that right?

A. That's right.

Q. And on that topic, you principally respond to Dr. Wühler; is that correct?

A. That's correct.

Q. And on this topic, you admit in your Report, in Paragraph 95 of your First Report, that you're not an Expert in these kinds of claims procedures, right, meaning claims compensation procedures; correct?

A. Correct. Sorry. Can you remind me which paragraph you're referring to?

Q. 95 of your First Report.
A. 95. Give me one second. Let me have a look at it. Yes.
Q. Good. Now, you understand that the definition of "investment" in a Treaty requires--means that assets that have the characteristics of investment--now I'm reading from the Treaty, but if you want to read with me, it will be in Tab 1, which is Exhibit RA-1--that "the definition of investment in the Treaty means assets that have the characteristics of an investment"--
A. Sorry, one second, please. I'm turning the page, trying to find 10.28.
Q. Sure.
A. Okay. Yes.
Q. "The characteristics of an investment, including the characteristics as the commitment of capital or other resources, the expectation or gain of profit, or the assumption of risk."
Do you see that?
A. Yes.
Q. And, of course, that requires looking at the

facts that are relevant to those characteristics, doesn't it?
A. Can you repeat the question again, please?
Q. And that, of course, understanding what an "investment" is--right?--requires looking at the facts that are relevant to those characteristics; right?
A. Correct.
Q. Good. And understanding the characteristics requires context, doesn't it?
A. Correct.
Q. So, if we were to look at your slide, if you were to go to the picture of the two cars--you're there?
A. I don't have--
MR. PANOPOULOS: Picture of the two cars, can you please put it back up?
THE WITNESS: I remember the picture of the two cars.
MR. PANOPOULOS: Right. I think it would benefit if the Tribunal were to see it too.
ARBITRATOR DRYMER: Slide 8. Don't take my Camaro away, please.

(Comments off the microphone)
MR. PANOPOULOS: That's exactly my point.
BY MR. PANOPOULOS:
Q. One is a Camaro SS, a 1969 Chevrolet Camaro--right?--and the other is a Tesla Model 3. Yeah? Have you ever driven a 1969 Camaro SS?
A. No, I have not.
Q. Right. So are you aware that the Camaros were known as the muscle cars in their time, especially in 1969?
A. No, I'm not aware of it.
Q. That the engine was a 400-horsepower engine and it was used for racing?
A. No, I am not, but--
Q. Right. So the difference in the two cars makes a difference. The difference in the characteristics of the two cars makes a difference to the buyer. If you want to buy a muscle car, you'll get a Camaro. If you want to buy a Tesla, you know, an electronic car, you are going to buy a Tesla, not a Camaro; right? It informs your decision, your purchasing decision, doesn't it?

A. But we are discussing about two cars, aren't we?
Q. We are.
A. Okay. That's the point I was trying to make, that basically they are two of the same kind with different characteristics.
Q. Oh, you said one doesn't have an airbag. That's what you said. And that's what you say in your Report. You're saying that the difference between the two Bonds is like a '69 Chevrolet Camaro that doesn't have an airbag. But there's more of a difference than just that, especially in this picture between these two cars, which is what you showed us on your direct; isn't that right?
A. Yes, but I think basically what you are doing, you can claim there are two different tones of red, but, again, I don't think that that undermines the essential underlying characteristics of both of them.
And that's what I tried to point out with the Slide 4, where I was referring to the menu of Bonds, where basically in my Reports I also refer to some of

the contemporary Bonds or historical Bonds that share the same characteristics.

Q. Right. And that's my point. We can talk about the essence of a Bond. A Bond is a Bond is a Bond or the ontology of a Bond.

(Overlapping interpretation and speakers.)

Q. But the adjectives describe characteristics that are important; isn't that right? That's all we're saying, and I think you agree.

A. Can you repeat that statement, please?

Q. The question is that the characteristics of an item, of a Bond, are important.

A. If there are characteristics that will make the instrument something different, yeah. If they will not alter the essence, and it will not convert it from something into something different, I would say no.

Q. Okay. So, your Report focuses directly on the Agrarian Reform Bonds, or the Land Bonds as we're calling them; is that right?

A. But I also address issues of contemporary Bonds as well.

Q. Right. But we're talking about the Land Bonds. You're comparing the contemporary Bonds to the Land Bonds; right?

A. Right.

Q. In your list of documents that you relied upon, in Annex 2 of your First Report--right?--that doesn't include Gramercy's Bond purchase contracts with the people who sold the Bonds to them, does it?

A. No, it doesn't.

Q. Right. And you haven't reviewed those Bond purchase contracts, have you?

A. No, I have not.

Q. And you're not aware of the language in those contracts, are you?

A. If I have not reviewed the contracts, I'm not aware of the language.

Q. And, therefore, you're not familiar with the fact that the funds used to pay these purchase contracts for the Land Bonds came from third parties, are you?

A. Again, I have not seen the contracts, so, basically, I cannot determine what the origin is of

the funds.

Q. And you're not a Peruvian lawyer, either, are you?

A. No, I'm not.

Q. And you didn't review the Peruvian law documents related to the Land Bonds, did you?

A. What do you refer by the Peruvian law documents related to the Land Bonds?

Q. The Decree--the Supreme Decree of 2001, the Decrees in 2014 and after, and the Regulations related to the Bondholder process.

A. What I have looked at was basically the law Decree that issued the Bonds, and I have gone through some of the aspects of the MEF process.

Q. The MEF process. So we can call it the MEF process or the Bondholder Process, which there will be--Bondholder process.

And your list of documents relied upon also doesn't include Gramercy's contracts with clients.

You haven't reviewed those either?

A. No, I have not.

Q. Okay. And, in fact, your Report is driven by

your assumption about Gramercy's interpretation of Peruvian law, and I'll just give you one example. If you were to turn to Paragraph 97 of your First Report.

You say there in the one, two, three--four lines down, "unlike," right? "Unlike the international claims commissions," you say, "there is no doubt here as to the existence of a legal obligation or the principles or the principles that guide how to value that obligation as this was determined in the 2001 Constitutional Tribunal Decision."

Do you see that?

A. I see that.

Q. Now, I'm going to give you another example. If you go to the paragraph--

A. Excuse me, excuse me. But basically, this is an example of what? I don't--

Q. It's an example of your assumption of Gramercy's interpretation of Peruvian law.

Your Statement--your Statement that there is "no doubt here as the existence of a legal obligation or the principles that guide how to value that

obligation as this was determined in the 2001 Constitutional Tribunal."

That's an assumption on your part. That's one of the very issues in dispute here, isn't it?

A. Counsel, as I have explained from my presentation, the fact that the Government of Perú issue Land Bonds and basically that obligation has not been honored, for me, that is a valid, legal obligation. In addition to that, in 2001, the Constitutional Tribunal Decision reinforced, in my opinion, the view that it is outstanding, that obligation.

Q. Right. But see, if you--see, you're talking about the value of that obligation, and that's the very thing that is in dispute.

Go to Paragraph 96. You say it again there. In the middle--right?--after your citation to CE-275. You say: "I further understand that there is no dispute between the Parties and the Land Bonds continue to be valid and that the Government has an obligation to pay them at 'current value'"; right?

Do you see that?

A. I see that.

Q. All right. So, again, how did you come to understand that they have to be paid at current value?

A. First thing, I don't know if you notice it's between the inverted commas what I meant with this is basically it has to be the value bring up to today's value, so that's the way in which I use current value.

And how do I conclude this? Basically, there is a Court Decision from 2001, and even besides that, there are multiple newspaper articles and academic papers on the subject area. There is also a report by Moody's that different sources that confirm the view that we are talking about value of the obligation. Besides that, my understanding is that--and that's what I have been witnessing in the previous days. We are not discussing the validity of the claim. What is being discussed is what would be the Actual Value of that claim.

Q. And did Moody's say--right?--that the value of the claim is $1.8 billion.

A. Is that document on one of the tabs here? The Moody's Report?

Q. Did Moody's say that? You mentioned Moody's. I just said did Moody's say the value their claim is $1.8 billion?

A. I don't have the Report with me. What I remember from the top of my head, if that is useful for the Tribunal, is that they were doing two calculations, two possible calculations, and they were concluding that under any of the two, Perú will face difficulties honoring that obligation.

Q. So, the last point on this questioning, go to Paragraph 111.

A. Sorry? Please? Which paragraph?

Q. Paragraph 111 of your First Report. You there?

A. Yes.

Q. So, you say: "Perú's treatment of the Land Bonds is, therefore, unique"--right?--"in that it is the only debt restructuring in Perú's history." Although you've just said on direct that this is not a debt restructuring. But anyway--"that has not involved creditor participation and that has imposed such substantial reductions in the value of the debt."

Do you see that? Right. So, the substantial reductions is in relation to your assumption of the value of the debt, isn't it? Or to put the question another way--right?--you wouldn't say "substantial" if you thought the value of the debt was something less than what the Claimants say; isn't that right?

A. You are right in that respect, and I can explain very easily why.

Q. You answered my question, and on your counsel's time, they can ask you on redirect and you can tell them, unless the Tribunal wants to hear the answer.

All right. So, as we move on, right, please open your binder to Tab 3, which is C-120, CE-120, which is a copy of a Land Bond.

(Comments off microphone.)

Q. You can just take a Land Bond here. And if you were to open your tab to Tab 3, which is Exhibit CE-08, which is the Perú Global Bond 2033. It's a U.S. dollar-denominated Bond. So, if you were to keep both in front of you.

A. Thank you very much.

Q. You don't need your binder. You can follow that, if you'd like.

MR. PANOPOULOS: CE-08, Mr. President. I thought I could make copies for the Tribunal, but I was honoring your decision to go electronic.

PRESIDENT FERNÁNDEZ ARMESTO: No problem. Just give me one second. The Prospectus of the Contemporary Bond. Yes. Very good.

BY MR. PANOPOULOS:

Q. So, you have in front of you the Global Bond and the Agrarian Reform Bond, yes?

A. Correct.

Q. Okay. First of all--right?--the Land Bond is a physical bearer instrument, yeah?

A. Correct.

PRESIDENT FERNÁNDEZ ARMESTO: No. It's not bearer. It's not a bearer instrument. It's nominative. It's a nominative instrument.

BY MR. PANOPOULOS:

Q. It's a physical instrument.

A. Correct.

Q. Okay. Secondly, the Agrarian Reform Bond was

given to landowners as compensation for the land expropriation. It wasn't purchased by the landowner; correct?

A. Correct.

Q. Now, in contrast--right?--the Global Bonds are purchased by investors?

A. Not all of them. Some of them are given us in exchange for the swap, for example.

Q. That's your debt swap.

A. Yes.

Q. Right. But normally, typically, generally--right?--they're purchased?

A. Yes.

Q. Right. You know, the majority of offerings in the markets are not debt swaps; right?

A. Yes.

Q. Okay. By the way, are you aware if Gramercy has any interest in any of the Peruvian Global Bonds?

A. I don't know.

Q. And are you aware that Gramercy's own brochure emphasizes the focus on contemporary instruments with the characteristics of Global Bonds?

A. Sorry. Can you repeat that, please?

Q. Are you aware that Gramercy's own brochures--right?--emphasize and focus on contemporary financial instruments with the characteristics of Global Bonds?

A. No, I'm not aware of.

Q. Now, the Global Bonds are marketed through investment banks and other financial institutions; right?

A. Mostly that, yes.

Q. And they are placed in the primary and well-established secondary markets as well, aren't they?

A. No. They are placed in the primary market and then subsequent trades take place in the secondary market.

Q. Right. That was my point, yes.

So, if you were to turn to Page 164 of 202 of the Global Bond. 164. You will see at the top right are the page numbers. The PDF page is a little off. I think it's the same as the PDF page.

ARBITRATOR DRYMER: It is the same thing.

THE WITNESS: 164.

BY MR. PANOPOULOS:

Q. 164, yes. Right. And here you see the plan of distribution.

A. I haven't reached there yet, sir.

(Comments off microphone.)

A. Mine doesn't have--

Q. Yes, the page numbers show up. If you look at the binder, it has the page numbers.

A. Okay. Apologies. Finally. Yes.

Q. No, that's okay. We apologize for the copy that doesn't have the page numbers on the top.

So, the plan of distribution, essentially you would agree, shows how the Bonds are going to be distributed, primary market and then resold in the secondary markets on Page 164 and 165; correct?

A. I have not read everything, I'm reading just the overview. It says: "Perú may sell securities in one of the three ways."

If you want me to read the whole page and the following one.

Q. No, I don't because you are an expert on debt

and bonds like this, and you've probably seen a thousand of them, and so you know that they have pretty much cookie-cutter sections, plans of distributions, et cetera, et cetera; right?

A. Let me disagree with that. As an expert in sovereign debt, we have just seen that Argentina has been dragged through 15 years of litigation with only an award in a clause.

But let's take for purposes of this hypothetical exercise that this a template clause and, then, eventually we look further into it.

Q. Okay. And you'll just see--if you turn to Page 1, you'll see who the distributors are--right?--who the Deutsche Bank and Morgan Stanley; right?

A. Yes.

Q. Who the underwriters are?

A. Yes. Give me just one second. Yes.

Q. Right.

A. I mean, we go to the last page, it is even simpler because you see all the Parties involved in the issuance.

Q. Right. And you see who's involved. Exactly.

And that's not the case with respect to the Agrarian Reform Bond, is it? It's not marketed in primary or secondary markets; right? It was basically given to the landowners as expropriation; isn't that right?

A. No. It's not right. Let me--because there were two questions in the same question.

Q. Very good.

A. The first part you are asking me whether there were underwriters here.

Q. Umm-hmm.

A. And the answer is no. And the reason for that I'm happy to explain, which is basically that these were not offers that were allocated.

Q. Exactly. They were allocated, and they weren't purchased; right?

A. Hold on. Basically, there were two parts to your question. So, basically, that's one, and basically that is one that I have made clear on my presentation as well. So, basically, yes, to your question were there underwriters, no. They are not.

And to your second question where they have been--I think that you were referring to where they were traded in the primary and secondary market. There was--the moment that they were placed, you can claim that that's the primary market.

Between you and me, more from a philosophical discussion, I'm not a greater believer on the existence of primary market because the primary market exists for just a nanosecond, but that's more of a philosophical exercise for one of my lectures.

On the second issue whether there has been--during the secondary market where you were expecting me to say that I have not, the answer is yes, they have traded in the secondary market. There was--I can recall two instances. One was in a final--if I'm not mistaken, it was in 1979 that was the Decree that allowed the profitability of these securities and, then, as I mentioned also from my presentation, basically there was a secondary market, which is the one that created by Gramercy when they were acquiring these instruments in--

Q. Right. And that's--just to refresh your

memory, that's in Paragraph 98 of your First Report.

A. Yeah.

Q. Do you see it there? You say that "there is some evidence."

A. Give me one second.

Q. Ah, 79. I'm sorry.

A. 79.

Q. Where you reference the "mesa de negociación." Excuse my Spanish. It's not one of the languages I learned.

PRESIDENT FERNÁNDEZ ARMESTO: Very proper pronunciation.

BY MR. PANOPOULOS:

Q. Very good. Are we there?

A. We are there.

Q. All right. So, let's look at one of the exhibits you cite. We don't have a handout for this because I wasn't--we didn't know if this would come up. It is CA-87.

PRESIDENT FERNÁNDEZ ARMESTO: CA.

MR. PANOPOULOS: C-A. C-A, alpha.

BY MR. PANOPOULOS:

Q. If you would pull it up on screen. We'll watch it on screen. We'll watch it on screen. Is it up? Is someone putting it up?

MR. CUEVAS: Yeah, it's loading.

MR. PANOPOULOS: Let's go. We want to be out of here by 7:00. No, we won't do it by then.

PRESIDENT FERNÁNDEZ ARMESTO: "Vademecum Bursátil '84."

MR. PANOPOULOS: Yes.

BY MR. PANOPOULOS:

Q. So, if you were to turn to Page 61 of this document--

A. I don't have 61.

Q. I'm talking to the person on the screen.

PRESIDENT FERNÁNDEZ ARMESTO: 61, internal.

MR. PANOPOULOS: 61, internal. Yes, thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: 61.

MR. PANOPOULOS: And if you were to blow it up, please, enlarge it. No, that's not it. The one on the bottom right-hand corner, bottom right. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: There.

Exactly.

MR. PANOPOULOS: Can you enlarge it more for the Witness?

PRESIDENT FERNÁNDEZ ARMESTO: "We see that there was some small market."

BY MR. PANOPOULOS:

Q. You can see it? You can see it?

A. Yes, I can see it.

MR. PANOPOULOS: I'm sorry. I missed what you said, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: No. There was actually in 1983 a small market "bonos del agraria."

MR. PANOPOULOS: Right.

BY MR. PANOPOULOS:

Q. And, in fact, if you look to see what the nominal value is--do you see it? It is 1.4 million de soles--right?--out of a total market of 12 billion de soles; right?

Do you see that?

A. Yes, I do.

Q. And then the effective payment on them was only .2 million soles or 200,000 soles; is that right?

A. That's correct.

Q. And the analysis says "NS," which is "not significant"; is that right?

A. I don't know but I take--

Q. You know what an "NS" is--

A. --your word for that.

Q. Right. So, this secondary market, so-called, "was not only miniscule but deemed not significant." So, it wasn't much of a secondary market; was it?

A. I am delighted that you are referring to this as the secondary market. So, you acknowledging it's a secondary market, an insignificant one, but there is a secondary market.

Q. I'm saying this "secondary market" because those are your words. In any event--right?--it was not significant, and we're talking about 1983 before the hyperinflation and the devaluation of the currency. Isn't that right?

A. I don't know.

Q. It says 1983 right there, doesn't it?

A. If I can finish, I don't know precisely when the hyperinflation started. My only point was trying

to clearly establish that there was a secondary market, and this is something that confirms my argument that there has been a secondary market. I didn't say there was a--the biggest secondary market in history. I just said there was a secondary market, and this confirms that statement.

Q. And in any event, the hyperinflation was in 1988, the devaluations occurred, and there was no secondary market after the mid-1990s, you would agree, in the soles--in the Land Bonds?

A. I will disagree because I think that the purchases made by Gramercy created a secondary market after the 1990s.

Q. Exactly. Not until Gramercy purchased the Land Bonds do you say in your Report that--you say they revived the secondary market?

A. Correct.

Q. Okay. Now, a secondary market has certain characteristics, wouldn't you agree?

A. I'm not sure what you are referring to.

Q. Okay. So, I'll be more specific; right? In a secondary market--a secondary market is transparent,

would you agree?

A. It depends what type of secondary market, because not all secondary markets are--

Q. Well, I'm not talking about a black market.

(Overlapping speakers.)

MR. PANOPOULOS: I'm sorry. I'm sorry.

PRESIDENT FERNÁNDEZ ARMESTO: You must let the Expert finalize.

MR. PANOPOULOS: I apologize.

ARBITRATOR DRYMER: You have until 7:01, Mr. Panopoulos. Not to worry.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry. What?

ARBITRATOR DRYMER: I said he has until 7:01 p.m. So, he can relax.

PRESIDENT FERNÁNDEZ ARMESTO: No, no, it's fine. Let's go on.

THE WITNESS: What I was referring is that it depends on the actual secondary market, because if we are looking at the secondary market of current extremely liquid Global Bonds, it would be a different secondary global market because they are traded in an actual Stock Exchange.

BY MR. PANOPOULOS:

Q. Exactly. And in the Global Bond secondary markets, you have bid/offer quotations, you have transparency, and you have extremely large volumes of trading, don't you?

A. In a private placement, bonds have not been offered to the general public. There are different characteristics of, but that doesn't, in my view, alter the essence of the underlying obligation.

Q. Let's move on.

The last point, if you were to go to--in the bond, in the Global Bond, if you were to go to the use of proceeds?

PRESIDENT FERNÁNDEZ ARMESTO: To the Global Bond.

MR. PANOPOULOS: To the Global Bonds, to the use of the proceeds section, which is at 8202.

PRESIDENT FERNÁNDEZ ARMESTO: I think we have touched on them. I think Mr. Hamilton referred to that.

MR. PANOPOULOS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: It says for the

general purposes of the economy or for the general purposes. There is a general clause.

MR. PANOPOULOS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: I remember this.

MR. PANOPOULOS: Good. Okay. Then, we don't need to do anything else about it.

THE WITNESS: Sorry, I'm lost here--

BY MR. PANOPOULOS:

Q. I was just going to say that the use of proceeds in the general bonds is for the financing needs of the country. Right. Okay.

Now, in your Report. Right? You state that in Paragraph 77--

A. First Report?

Q. I'm sorry. Your First Report, Paragraph 77, you state your belief that "the Gramercy's purchases of the Land Bonds contributed to the Peruvian economy."

Do you see that?

A. Yes.

Q. And then in 78, as your first argument under

that?

A. Yes.

Q. Is that you say that "Gramercy's purchase of Land Bonds contributed 30 million to Peruvian bank accounts with multiplier effects."

Do you see that?

A. Correct.

Q. And that the purchase, by the way, relates to the Purchase Contracts that you never looked at; right?

A. Yes, but that appears on multiple documents, including Perú's Response to Claimants.

Q. Yes. So, you're aware that between 2006 and 2008 when Gramercy purchased the Land Bonds, the Perú's GDP was approximately $100 billion? And if you're not aware, would you take my word for it?

A. I will.

Q. So, Gramercy's payments, over 30 million, constitutes .03 percent of Perú's GDP at the time, yeah?

A. Correct.

Q. All right. So, that's a negligible figure,

isn't it, relative to the GDP? Not really a contribution, wouldn't you say?

A. Again, I can agree with that, but I don't see the relevance because there has been a contribution, yes or no. The answer, in my view, is yes. Whether--again, it's like the question before, basically the secondary market, it is the biggest secondary market in the world, no, it isn't. But it is a secondary market. Have they contributed to the economy? Yes, they have. Significantly? That's debatable.

Q. Thank you.

Let's go to the Bondholder Process.

A. Bondholder Process.

MR. PANOPOULOS: I know, Mr. President, you've been waiting for this, haven't you? The Bondholder Process. Wait until tomorrow.

BY MR. PANOPOULOS:

Q. Now, in Paragraph 93 of your First Report, you state that "Dr. Wühler never refers to any debt restructuring process, nor does he explain why the cases he cites bear any similar to the Bondholder

Process." Do you see that? Are you there?

A. No, I'm not there, yet. Here we are. Paragraph 93.

Q. Yes.

A. Yes.

Q. All right. And that's at the bottom; right? Dr. Wühler never refers to any debt restructuring process, nor does he explain why the cases he cites bear any similarity to the Bond.

Do you see that? All right.

(Comments off microphone.)

A. If I see that paragraph, yes, I see the paragraph.

Q. And you see the line?

A. Up.

Q. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: What is the question?

BY MR. PANOPOULOS:

Q. But Doctor --so, the question is, but Dr. Wühler, in fact, does both, if you turn to Dr. Wühler's First--

PRESIDENT FERNÁNDEZ ARMESTO: Can I make a proposal?

MR. PANOPOULOS: Sure.

PRESIDENT FERNÁNDEZ ARMESTO: That we ask this of Dr. Wühler.

MR. PANOPOULOS: Sure. I'm fine with that.

PRESIDENT FERNÁNDEZ ARMESTO: Because he's now referring to an Expert who will be here the day after tomorrow.

MR. PANOPOULOS: Right. The point I was making was he made a statement here that is really contradicted by what Dr. Wühler says, in terms of what he explains. That's all.

PRESIDENT FERNÁNDEZ ARMESTO: I would rather have Dr. Wühler contradict him.

MR. PANOPOULOS: Well, okay. That's fine.

PRESIDENT FERNÁNDEZ ARMESTO: Dr. Wühler, I'm sure, will have the opportunity to explain it and it would be more efficient.

MR. PANOPOULOS: We'll be done even quicker.

BY MR. PANOPOULOS:

Q. Okay. Now, in a--now, in paragraph--so, and

then we'll do the same. You'll see that in the next paragraph, you refer to Dr.--to the claims compensation procedures that Dr. Wühler references as War and Human Rights Claims Commissions.

Do you see that? All right.

MR. PANOPOULOS: So, we can also--the same as with the other question, Mr. President, we can ask Dr. Wühler about that question and save me time as well. Okay? Very good.

PRESIDENT FERNÁNDEZ ARMESTO: If that's agreeable to you, that's fine.

BY MR. PANOPOULOS:

Q. All right. So, and then in Paragraph 95, at the end, at the end of the paragraph--right. You state that when Land Bonds were issued and allocated to specific landowners as compensation for the confiscation of lands. And then you say, "now, all that is left is the Bond itself."

Do you see that?

A. I see that.

Q. And then in 96, Paragraph 96 right below that, you say "the only question should be how to

update the value"--which you assume is the current value--"and what process should be used by Perú to pay that obligation."

A. What I said was update the value. The current value was between inverted commas. It is not saying that it needs to be the current value. Because that's not any field of expertise. That can be discussed tomorrow with Professor Edwards.

Q. I'm sure it will, but I pointed out before where you used the word "current value."

A. And I pointed before--and I pointed before that it was in between inverted commas.

Q. So, in any event; right? So, you agree that the Land Bonds have to be authenticated as a matter of evidence, don't you?

A. Not necessarily, but if Perú wants to go through that process, I assume--this is not my expertise, as I am not qualified to practice law in Perú--that basically which I can draw from other jurisdictions is that, basically, whenever you initiate a legal procedure, and if you submit a document under--if there is any doubt about its

validity, the Court will appoint an Expert to look at the document. But only if--but I'm not an Expert on Peruvian law, so I cannot pass a judgment or opine on this.

Q. All right. I was talking about the process and the procedure. When you have a--thousands and thousands of Bonds, they have to be authenticated. I think you recognize that. But I--

A. No, I don't recognize that. And I said that in my presentation. Out of the many cases, only 10 were rejected, so basically that means that the percentage of the fraudulent cases or alleged frauds were only 2, 3 percent.

Q. Okay. So, let's go to Paragraph 140 of your Report, First Report. So, there you make the Statement at the beginning--right?--the MEF process--right?--the failure of the MEF--right?--to abide by what you say are the international standards--right?--could partially explain why it has made virtually no progress towards its stated goal of resolving Perú's outstanding debt obligations.

Do you see that?

A. I see that.

Q. And then you say "as little as 8 percent of the outstanding Bond Principal even participated in the process at all."

Do you see that?

A. I see that.

Q. And then if you turn the page to Page 49, you'll see in your Table 6 that 8 percent figure.

Do you see that?

A. I see that.

Q. Now, in your handout--well, not quite. Not quite.

A. What--

Q. Okay. I'm asking questions. You don't even know what I'm going to ask. There was a--yes. So, this was slide--the Slides are not numbered.

PRESIDENT FERNÁNDEZ ARMESTO: 15.

BY MR. PANOPOULOS:

Q. 15. So, if you'll see--if you were to look at the handout--right?--submitted through the MEF process, the value is at .220 billion soles. In your chart it is .202. That's the only difference?

Do you see that?

A. Is that a question?

Q. No. Well, I'm leading up to the question. I just need to establish the foundation for the question.

A. Okay.

Q. Do we see it? Mr. President, we're okay. Good. Right.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Is it a typo or--

MR. PANOPOULOS: No, it's not a typo.

PRESIDENT FERNÁNDEZ ARMESTO: --or some more Bonds have been tendered.

BY MR. PANOPOULOS:

Q. And that's what we're getting to.

So, this .202 in your Table 6--right?--is a figure as of November 30, 2018, which were the figures then submitted by Respondents on the amount of Bonds that had been gone through the process, yes?

A. Correct.

Q. And in this chart you've updated that figure to the data submitted by Respondent as of

August 30, 2019. That's why you have Document R-1062 as the reference to this.

Do you see that?

A. Correct.

Q. And so, you agree with that?

A. I agree with that.

Q. Okay. All right. Now, let's stay with Table 6, or we can go with--it doesn't matter--right? It's easier for me if we use your handout. Let's use your handout. All right. So--

A. What is my handout? The table or the slides?

ARBITRATOR DRYMER: Your presentation this morning--this evening?

MR. PANOPOULOS: Your presentation.

THE WITNESS: Thank you.

MR. PANOPOULOS: Right.

BY MR. PANOPOULOS:

Q. Now, in Paragraph 140 of your Report--right?--you state that the figures in your Table 6--right?--which pretty much are the same except for that last figure I noted in the presentation--right?--are derived from a Congressional

Report of a May 2005 Document, CE-12.

Do you see that?

A. Yes.

Q. Now, I'm not going to pull up CE-12, in the interest of time, unless you want me to, to show where the figures came from?

PRESIDENT FERNÁNDEZ ARMESTO: We remember it--

MR. PANOPOULOS: You remember it well. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: --after we have seen it a couple of times.

MR. PANOPOULOS: Very good. Yes.

BY MR. PANOPOULOS:

Q. Okay. So, now, as you explain in Paragraph 145--right?--and as depicted in Table 6, the 8 percent figure--you follow me now--the 8 percent figure is derived by dividing the face value--right?--of the total outstanding Land Bonds, which is 2.522 billion soles de oro, dividing that by the face value of the Land Bonds submitted to the Bondholder process, you have .202 billion SO there, and your presentation is .220.

Do you see that?

A. Yes.

Q. Okay. Now, the baseline that you use for the face value of the total outstanding Bonds, that 2.522 billion figure?

A. Yes.

Q. That does not subtract the face value of the Land Bonds that Gramercy holds and controls and which it will not submit to the Bondholder Process; isn't that right?

A. Yes, that's right.

Q. Okay.

A. I'm referring to the what's been submitted through the MEF process.

Q. Well, but you're starting from a baseline, to get the 8 percent, you're starting from a baseline. Right? The baseline 2.522 is your denominator.

PRESIDENT FERNÁNDEZ ARMESTO: That's clear. Do you know--because it's an interesting number. Do we know what--what is the face--do you know by heart the face value, or do you know that, by heart, the face value of the Bonds held by Gramercy in this case?

MR. PANOPOULOS: That was my next question.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, because there are others, but in this case, do you remember?

THE WITNESS: No, I don't.

BY MR. PANOPOULOS:

Q. It's, according to Mr. Edwards, at his First Report at Paragraph 44--and I think that is in the tab, one of the tabs--that's all right--it is 382 million SO, or .382 million?

A. Sorry, can you repeat that.

Q. .382 million.

PRESIDENT FERNÁNDEZ ARMESTO: .04. So, it would be 2.1 billion, the total Bonds, excluding those which we are dealing with here.

MR. PANOPOULOS: Right.

MR. FRIEDMAN: Excuse me, may I ask, exceptionally, for a very short break.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

MR. PANOPOULOS: No. Wow.

(Overlapping speakers.)

MR. PANOPOULOS: This is a critical point of questioning.

PRESIDENT FERNÁNDEZ ARMESTO: He's not feeling well. Are you not feeling well? He's not feeling well.

MR. PANOPOULOS: Okay. All right. I'm sorry. I thought it was--

(Comments off the microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no. Of course. Of course. Yeah. It has happened to me too. These things happen.

MR. FRIEDMAN: I'm really sorry.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: So, let's take a break.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing, and we give the floor to Respondent, Mr. Panopoulos.

BY MR. PANOPOULOS:

Q. Let's pull up Table 6. All right. This is fine, right?

So just to go back to where we were--right?--you didn't subtract the amount of

outstanding value of Bonds that Gramercy is holding in this Arbitration from your baseline figure; correct?

A. No, I didn't. I just started all the outstanding Bonds because what I was trying to establish was something in a degree of participation, not who has participated and who hasn't.

Q. Right. But the total value of the outstanding Bonds would include the total value that Gramercy holds of the outstanding Bonds.

We're talking about the outstanding value, not who is holding them.

A. Of course. Otherwise we would not be here.

Q. Right. And, further, we learned earlier in this Hearing that Gramercy purchased interest in additional Land Bonds in 2017.

Are you aware of that?

A. That has come up in discussion or that--

Q. In this hearing. In This hearing.

In 2017--

A. I was here on Saturday, so I heard that reference.

Q. You heard that reference. Right.

And you didn't--did Gramercy tell you the total outstanding face value of those Bonds that it purchased in 2017?

A. No.

Q. So, you didn't subtract that figure either from your baseline figure, did you?

A. No.

MR. PANOPOULOS: Anything else we have to say about the Bondholders Process we can wait for Dr. Wühler. I'm done with the questioning unless Tribunal has questions.

THE WITNESS: Can I clarify something on the last comment?

PRESIDENT FERNÁNDEZ ARMESTO: Sure. Of course.

THE WITNESS: I have not subtracted any of those numbers because what I was simply trying to establish was that the participation through the MEF process and clearly Gramercy has not participated, otherwise we would not be here. That is the reason. I don't know what else needs to be said about that, but I'm grateful for the right to clarify that.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman, do you have any redirect?

MR. FRIEDMAN: None. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Do you have any questions, Mr. Drymer? We have to--we have to sit until half past 7:00.

THE WITNESS: This is my moment of glory. That's what I'm here for.

ARBITRATOR DRYMER: Thank you, I appreciate it. I appreciate it, but, no. I think the areas that I might have covered have been well-covered by counsel. Thank you.

ARBITRATOR STERN: Same for me.

PRESIDENT FERNÁNDEZ ARMESTO: So, thank you. Thank you very much also for making a fast cross-examination.

MR. PANOPOULOS: I appreciate the time. It's late.

PRESIDENT FERNÁNDEZ ARMESTO: I apologize to Dr. Jijón that I was pushing him, but it gave us the possibility--or it gave your colleague the possibility to finalize the examination.

And I ask--I thank very much our Expert. It reminds me of when I was a very young professor. It was also my specialty, banking and finance. It brings back nice memories. It's a nice area of the law, international bank and finance. So, thank you very much for coming here.

THE WITNESS: Thank you for listening to my presentation.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good. That was good. Thank you for making the effort of finalizing today.

We are off the record.

(Whereupon, at 7:21 p.m., the Hearing 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

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the matter of Arbitration between:	:	
GRAMERCY FUNDS MANAGEMENT LLC AND GRAMERCY PERU HOLDINGS LLC,	:	
Claimants,	:	
and	:	ICSID Case No. UNCT/18/2
REPUBLIC OF PERÚ,	:	
Respondent.	:	
		Volume 5

HEARING ON JURISDICTION, MERITS AND QUANTUM

Wednesday, February 12, 2020

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

The hearing in the above-entitled matter came on at 9:00 a.m. 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:

On behalf of ICSID:

MS. MARISA PLANELLS-VALERO
Secretary of the Tribunal

MS. KRYSTLE M. BAPTISTA
Assistant to the President of the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
info@wwreporting.com

MR. PAUL PELISSIER
MR. DIONISIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

MR. CHARLES ROBERTS

APPEARANCES:

On behalf of the Claimant:

MR. MARK W. FRIEDMAN
MS. INA C. POPOVA
MR. CARL RIEHL
MS. FLORIANE LAVAUD
MS. BERGLIND HALLDORSDOTTIR BIRKLAND
MR. GUILHERME RECENA COSTA
MS. SARAH LEE
MR. DUNCAN PICKARD
MR. JULIO RIVERA RIOS
MS. MARY GRACE McEVOY
MR. THOMAS G. McINTYRE
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
United States of America

MR. LUIS BEDOYA
MR. FRANCISCO CARDENAS PANTOJA
Rodrigo, Elias & Medrano
Av. San Felipe 758
Jesús María
Lima 15072
Perú

Representing Gramercy Funds Management LLC:

MR. JAMES TAYLOR

MR. JOSHUA M. O'MELIA

MR. NICK PAOLAZZI

MR. THOMAS NORGAARD

APPEARANCES: (Continued)

On behalf of the Respondent:

AMBASSADOR HUGO DE ZELA
Republic of Perú

MR. RICARDO AMPUERO
Republic of Perú

MS. MONICA GUERRERO
Republic of Perú

MS. GIOVANNA ZANELLI
Republic of Perú

MR. ALBERTO HART
Republic of Perú

MR. JONATHAN C. HAMILTON
MS. ANDREA MENAKER
MR. RAFAEL LLANO
MR. FRANCISCO JIJÓN
MR. JONATHAN ULRICH
MR. FRANK PANOPOULOS
MR. JOHN DALEBROUX
MR. ALEJANDRO MARTINEZ DE HOZ

White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005-3807
United States of America

For the United States of America:
MS. LISA GROSH
MS. NICOLE THORNTON
MS. MARGARET SEDGEWICK
MR. JOHN DALEY
Attorney-Advisers
Office of International Claims and
Investment Disputes
Office of the Legal Adviser
U.S. Department of State
Suite 203, South Building
2430 E Street, N.W.
Washington, D.C. 20037-2800
United States of America

MS. AMY COLLINS
U.S. Department of Treasury

C O N T E N T S

PAGE

PRELIMINARY MATTERS.....1555

WITNESSES:

SEBASTIAN EDWARDS

Direct examination by Mr. Riehl.....1564
Direct presentation.....1567
Cross-examination by Mr. Llano.....1631
Redirect examination by Mr. Riehl.....1812
Questions from the Tribunal.....1815
Recross-exam. by Mr. Llano.....1834

MICHAEL REISMAN

Direct examination by Ms. Menaker.....1838
Cross-examination by Ms. Popova.....1847
Redirect examination by Ms. Menaker.....1889

ALFREDO BULLARD

Direct examination by Mr. Recena Costa.....1895
Direct presentation.....1896
Cross-examination by Mr. Llano.....1927
Redirect examination by Mr. Recena Costa.....1987

CONFIDENTIAL PORTIONS:

1.....1626-1628
2.....1660-1679

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ ARMESTO: Good morning to all of you.

We resume the Hearing in this case of arbitration between Gramercy Funds Management LLC and Gramercy Perú Holdings LLC v. The Republic of Perú.

If there are no procedural comments, we will start with the examination of Expert Edwards.

Yes, point of order.

MR. HAMILTON: Thank you very much, Mr. President. On behalf of the representatives of Perú, we are trying to listen to the priorities expressed by the Tribunal as well as the questions, and during the statements provided by Peruvian Witnesses, you mentioned Bondholder Process, interest on coupons, net amount of Bonds, things of this sort. And we understand that, for now, this is not a request that we will be presenting additional documents, or if you'd like to receive additional documents. I don't know if it is part of the Bondholder data, but the Experts of Perú as Mr. Wühler and Quantum Experts will be referring to

those items in their Statement. But I just want to assert that we are doing what the President prefers.

PRESIDENT FERNÁNDEZ ARMESTO: I think that there is one piece of information to follow. There is one data which seems important, which is the best estimate of the outstanding Bonds. Yesterday, we saw that the number given by the Expert was 2.3 billion--2.4 billion--whichever it was, but we saw some numbers yesterday, which come from a commissioned Report in the 2004 or something, and I really would like to know.

You have seen and I have asked both the Vice Minister and the Minister if the Government had any sort of internal calculation, and it was not--it seemed--at least we have none--as far as I know, we have none in it arbitration, and it is important that at some stage we have the best estimate possible of how much the outstanding Bonds are, and what Gramercy's position represents, whether it is really 2-point--whatever it was yesterday, and the number, 2.4 billion, no? Wasn't it 2.4 billion?

MR. FRIEDMAN: May I, Mr. President?

The sources that we're aware of that relate to this--I don't have the exhibit numbers handy, but we can get them for you. In the 148 Report, the 148 Commission Report, which was commissioned in 2001 and concluded its work with the Report in 2004, there is the analysis that we saw yesterday. The numbers are a little higher than 2.4. I think the net amount they come up with is 2.5 billion something, and then there are a small number of Bonds under another law that they--sort of very similar.

The only other--and that number also gets repeated then and picked up by the Agrarian Commission, which did its work in 2005, leading to the 2006 legislation that passed Congress but was vetoed. So, that's been the number that we have been operating under because we have not seen a better analysis, frankly.

We did see one other number, as you will recall, when we were speaking with Ms. Sotelo where more recent documents that the Minister produced had a number in there. This was in connection with the switch to the August 2017 formula from the

February 2017 formula. There is that one page that has an analysis of the impact of the difference between the February formula and the August formula, and you saw on that page an estimate of the total Bond stock of 8.5 billion roughly. It was a more precise number, but it was about that order of magnitude.

Now, I have to say, Ms. Sotelo couldn't answer questions about that, didn't vouch for it and so--and we had never seen it before.

PRESIDENT FERNÁNDEZ ARMESTO: That was the sheet with some--it started with numbers and then it had some--how do you call that in English?--brackets. It had brackets and then it led to smaller numbers. That is the document you are referring to?

MR. FRIEDMAN: Yes. It listed percentages along the right, the right column basically.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. And it did the other numbers than the 2.4, higher.

(Comments off microphone.)

MR. FRIEDMAN: Yes, it had a number 8.5 in it. Yes, as far as I know, those are the source of

information in the record that relate to that question.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank you. It would be at some stage important that we have the position of the Republic, which of the two numbers, if at all, or what the position is by the Republic. There must be some sort of internal calculations. I mean, I'm sure that at some stage someone about the highly sophisticated services of the MEF must have given some thought to how much is outstanding and whether it's more in the 2.3 or in the 8 billion. I mean, it would be interesting to have some information on that.

MR. FRIEDMAN: Mr.--

MR. HAMILTON: Just to--sorry, my turn.

MR. FRIEDMAN: Of course.

MR. HAMILTON: Just to confirm, Mr. President, first of all--and I will be more brief than my colleague was on this procedural point--Perú has produced many documents, has been highly forthcoming with documents on this issue, and what they consistently show is that people don't know for

sure.

And the reason people don't know for sure is because these Bonds, of course, are totally different from the way that people would track Bonds in today's world, either at the time they are issued or at the time that they are restructured, et cetera. And so, you've got a very unique situation here, not only with respect to how many Bonds were given out in the first place, but nobody knows how many still exist, how many have been burned up, thrown away, ignored.

There are many different reasons why with historical documents such as these, they don't have--sitting from the vantage point of 2020, it may not be so clear the way that these things evolve over time and what people do or don't do with these.

There are also, as Ms. Sotelo mentioned, Bonds that were never retrieved at all, and so there simply are not good records. She also mentioned in response to a question by the President, for example, when the Agrarian Bank closed, that also left--that was at a time of economic emergency and major transition in the country around 1992. So, there are

many reasons why the data is not absolute, and there are various--there has been various data shared.

And so, in any event, the bottom line in my procedural point, we will look. We hear what you're saying, and I think that, you know, on these points I mentioned, you may hear Mr. Wühler or the Quantum Experts will do what they can do assist the Tribunal, and then if there is anything else that we need to discuss, we will. And the same, of course, for the Bondholder Process data. That is data that exists and Ms. Sotelo has offered to make available.

Thank you.

MR. FRIEDMAN: And if I may, we, of course, want to be sure that the Tribunal has the information that it needs to decide, but I am concerned also about procedurally. It's been--it was very clear and at Respondent's insistence that the record is closed. We had asked for this very kind of data for a long time. It was in our discovery request. This information, so far as we can tell from having looked through everything, is not in what was produced.

If new data is now going to be produced, I

do have a very--we just want to put down a marker that we would probably have a very serious procedural question. If we just get some numbers or a spreadsheet with nobody to interrogate about it and having had to plead our case up until now on the basis on the record that we have, I think it would be--there's a real risk a great amount of unfairness because now the number could be anything, now that the Parties' positions have become more clear about what the implications would be of such a number.

And I certainly would resist--I'm not saying that Mr. Hamilton suggested this, but he did mention that the Experts Mr. Wühler and Mr. Kaczmarek may address this issue. If they address it, of course, from the evidence that is in the record so far, that's fine, but if they were to address it from information that is not part of the record, we would have a very serious objection to that.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

SEBASTIAN EDWARDS, CLAIMANTS' WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO:

Professor Edwards, you will be deposing in

English or Spanish, Professor Edwards?

THE WITNESS: I will speak in English, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. So, first of all, thank you very much for being here with us. You are here as an expert, and as you know, the first thing we must do is take your oath as Expert. So, would you be kind enough to stand up and take your oath?

THE WITNESS: I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Very good, Professor Edwards. I give the floor to Claimants.

MR. FRIEDMAN: Mr. Riehl will be handling this Witness. Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent. Thank you. And before we start, we are receiving here a presentation, and it is H-8.

MR. RIEHL: Mr. President, if I may, I'm wondering if it would be permissible for Mr. Tom McIntyre, who is a Debevoise legal assistant, to sit with him while--only during Professor Edwards'

presentation in case there are technical issues, he can attend to them very quickly.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. If Professor Edwards does not mind having a bodyguard at his back.

THE WITNESS: If he bothers me, I'll throw him out.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

DIRECT EXAMINATION

BY MR. RIEHL:

Q. Good morning, Professor Edwards.

A. Good morning.

Q. On the table in front of you, there should be your three Reports. Do you recognize those as the Reports that you submitted in this proceeding?

A. Yes.

Q. Are there any corrections that you would like to make to them at this time?

A. Yes, Mr. Riehl. There are two corrections. The first one relates to the date on the Bonds. We found that there were two coupons that were duplicate, and we have now corrected that--only

two--and we have subtracted them, and this changes my valuation by less than $1 million. So, whatever the number was, 1.79 billion minus 1 million. And the second correction--

PRESIDENT FERNÁNDEZ ARMESTO: You must repeat that. What is the correction? There were two coupons.

THE WITNESS: There were two coupons that were duplicated. They were in the data set in two different--appeared under two different--as if they were two different Bonds, and they were not. So, there was one Bond with 14 coupons and one Bond with two coupons, but they were the same Bond. So, those two coupons were already taken into account in the 14, in the one row above. So, those were deleted from the data set.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: Okay. And that has changed the valuation by less than $1 million, by about $800,000.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. It changes the whole valuation?

THE WITNESS: Right. Those two coupons, I had added their value, and now they are not part of the value.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, you will have to give us at some stage the correct set of figures.

MR. RIEHL: Yes.

THE WITNESS: Absolutely.

And the second correction, Mr. President, is that there is one paragraph in my Report where I talk about a particular case in Perú in one of the courts, and I refer to it as updating from date of issuance. And I looked again at the information, and, instead, of looking at the translation as I had originally, I looked now at the Spanish original, and there was a typo.

This is a case that has 25 Bonds, five of which had one clipped coupon, and 20 all the coupons were unclipped. And they were in the courts in the procedure in Perú. They were updated from last clipped coupon and not from issuance. The difference is only one coupon and only five Bonds. But I want

to make clear that once we looked at Spanish original, we realized that as they say in the movies, "It got lost in translation."

PRESIDENT FERNÁNDEZ ARMESTO: And the case, do you have the reference to the case?

THE WITNESS: I think it was the Laredo Case, but I will have to refresh my memory. But it's just for accuracy, it doesn't affect the calculation or anything of that sort.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

THE WITNESS: Do I start?

MR. RIEHL: Yes, we would be ready to proceed with the presentation, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you, Mr. Riehl and Professor.

DIRECT PRESENTATION

THE WITNESS: So, now that we have clear--let me say good morning. With the proceedings, I didn't say so.

Good morning, President Armesto; good morning, Professor Stern; good morning, Mr. Drymer; good morning, Mr. Hamilton, Jonathan; good morning,

the Perú lawyers; and, of course, good morning to the Gramercy lawyers.

What I'm going to do is try to present my two Reports--three Reports, one is an amended version of the first, so it is really two reports. And there is a lot of material here, and I will try to be brief so that we can have enough time for a conversation and to clarify doubt and so on and so forth. But since it's very complex and there are many issues here, if I'm going too fast, I will be very happy to slow down and to explain. And, of course, if I'm going too slow and I'm boring you, I will be very happy to speed up and take up the pace.

So, let me start very briefly with my qualifications. I am a Professor of Economics at UCLA, where I have spent most of my career. I am the holder of the Henry Ford II Chair in International Economics since 1991. Between 1993 and 1996, I was the chief economist for Latin America at the World Bank, and in that position, I had to oversee all the economic and analytical work of the bank with Latin America, and I was a member of the loan committee for

Latin America.

I'm a member of the National Bureau of Economic Research, and I ran their Latin America program for a long time. I was awarded--I was a founder and then later became a president of the Latin America and Caribbean Economic Association, which is an association of professional and academic economists. The association is based here in the United States, but the membership comes from all over the world--from Europe, Greece, France, Italy, Spain, everywhere--the United Kingdom and from the United States.

The Association honored me with a prize which is given every two years to a scholar from around the world to honor his or her research on Latin America on the basis of a lifetime achievement. It's called the Carlos Díaz Alejandro Award, in honor of Carlos Díaz, who was a professor of Cuban origin at Harvard.

I've published a number of books. I've been a consultant to a number of places. I list some of the books in the slide; I don't want to go through

that. My latest book was published in 2018 by Princeton University Press, and it deals with the abrogation of the gold clause in 1933 in the United States, and it is titled "American Default."

So, let me now move to--

PRESIDENT FERNÁNDEZ ARMESTO: I hope your green card is not in danger.

THE WITNESS: I thought about that, so I became a citizen first.

One of the areas in research that I've worked on, Mr. President, is sequencing of economic policy, what you should do before what, and getting the passport was a good step to take before publishing that book.

So, this is an outline of what I'm going do. I'm going to try to cover all of these issues, as I said, in as little time as possible. And let me start with what I think needs to be a clarification, and that is the nature of these Bonds. I was here at the Hearings on Monday and Tuesday. I was unable to be here Friday and Saturday--I was teaching at UCLA--but I think there is still some confusion that

needs to be clarified about the nature of the Bonds. And what we have here are two coupons from the same Bond, and this, I think, will clarify what is going on. This is a particular Bond--08615, I believe. And it's a coupon that is a 5 percent coupon, so that means it's a 25-year coupon--excuse me, Bond.

And we have here the first on the left. This is the 13th coupon. It says there "treceava amortizacíon," 1/25th, un veinticinco," of the face value, which is 10,000 soles oro, and 1/25th of 10,000 is 400, and then it says 5 percent interest annual over, and it says it is annual, and it's 5,200, cincomil doscientos, which is the remaining value of the Bond after having clipped 12 coupons.

So, the interest is on the remaining amount, on 5 percent. It is not 5 percent over the whole coupon and then distributed year by year. It is every year 5 percent, as Vice Minister Sotelo clarified, and it is on the balance. So, in order to make that even clearer, here we have the last coupon of this Bond, so it is veinticincoava, or uno vigésimoquinto yes, I guess it should say.

PRESIDENT FERNÁNDEZ ARMESTO: It's a mistake.

THE WITNESS: (in Spanish) of 1/25th of 10,000, so the amortizacíon, the payment is 400, 5 percent interest annual over the remaining, 400, so it's 20. So, the payment on the 13th coupon is 660, and here it is 420.

So, what that means is that the payment structure of this Bond through its life is given by the blue bars, and not, as the Perú Quantum Expert, Mr. Kaczmarek, claims it's the little green bars here, which are the bars that result from misunderstanding these Bonds and applying the 5 percent to the 10,000 and then dividing that by 25. So, this is a clarification on the nature of the Bonds.

PRESIDENT FERNÁNDEZ ARMESTO: This is important, Professor, because I had read what Mr. Kaczmarek had said, and are you sure that all Bonds are like this one?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Or are there

Bonds and Bonds?

THE WITNESS: Well, they are not all like this, because, as you know, there are some 4 percent, 6 percent, 20 and 30, but all the Bonds are like this in the sense that the payment is on the balance. And the 5 percent, as Vice Minister Sotelo, I think, very strongly pointed out on Monday, that was the nature of these Bonds. And I think it's an important clarification for the reason that you mentioned, Professor Armesto.

So, let me now move to the land value of the Bonds. And we know that, because of inflation, the nominal value of these Bonds was severely eroded through time, and the nominal value started to become very small quite early on, and as the Vice Minister said in her testimony, at one point the nominal value became 1 cent of one Nuevo Sol, which is 1 million. So, it's 1 cent divided by 1 million of the soles oro. So, of course, it was eroded. And the question here is, given the guidance from the 2001 Constitutional Tribunal, given best practices in terms of economics from around the world, given Perú

law, legislation, and jurisprudence, how to obtain or go back or recalculate a full updated value of these ones.

And this implies taking basically two steps. The first step is to update for inflation. In order to get the creditor, the person who--to use the language properly, Mr. President, the person who was forced to take these Bonds in exchange for his or her land--these were not willingly two-side transactions--in order for the purchasing power that they received at the time the Bonds was forced on them to be maintained through time, we have to find a way to updating that value, and I am going to argue that the best way of doing is to use Consumer Price Index. But it gives the individual a command over goods and services of an equivalent basket through time as we move along. And in addition, we have to provide for compensatory interest that takes into account lost opportunity for not having received those monies on time.

So, I have a picture here with different steps that are included in the CPI update. So, the

first thing is we take the Bond and we realize that some Bonds--not all of them, but some Bonds; maybe many of them or most of them--have clipped and unclipped coupons. So, this is a Bond with 25 coupons, five by five. The gray parts were clipped; the blue were unclipped. And my first step is to separate these two. And I'm only going to work on the fraction of Bonds that were unclipped. The clipped ones were paid; the obligation for those ones, I assume, was extinguished. In this case, we are going work with 13 out of 25 coupons, and this is captured by this ratio here in this equation.

So, we have the face value in soles oro at issuance multiplied by the ratio. If all of them are unclipped, the ratio is 1. If all of them are clipped, the ratio is zero, and the calculation ends there because there is nothing to revalue or to calculate.

The next step here is apply Perú inflation all the way from issuance to payment due--payment date, excuse me. The third step, or fourth step, is to provide interest to compensate for foregone

opportunity starting from the last clipped date. So, this date--as you can see, the starting point of the two arrows is different. And then we get the updated value in soles oro, which we have to convert to Nuevo Soles.

So, this process is very simple, very straightforward. It includes separating clipped from unclipped, updating by CPI since issuance, providing some compensatory interest, and then converting back by a ratio that we know has nine zeroes, which always makes me very confused, and I make lots of mistakes with the nine zeroes. But that's reality.

This CPI method is very standard around the world. I think that if you were to ask 100 economists a sort of very short question and you would tell them the story--there is a debt that became--was reduced to zero through inflation; we need to bring it back to some updated value; what would you use?--99, in my view, in my opinion, economists would say, "Well, we would use CPI." And then you say, "Would you do anything else?" And "Well, we would add compensatory interest." And we

will get to that details in a second.

This is normal. It is used in many countries. It is used currently in Chile. When my father died, I inherited a small apartment which I rent in Chile out, and the Contract is nuevos, which is updated daily by inflation. Perú has a daily updating system, which is called the VAC, which is published by the Central Bank every day. You go and say "VAC," and they give you every year daily updating which is based on the inflation data CPI, official CPI published in Perú.

Colombia is famous because they claim they invented indexation and updating using this period. Brazil, of course, used it for a very long time, since the time at least of Roberto Campos, and now his grandson is the governor of the Central Bank. He continues to apply it. It was used in Argentina for a long period of time, and then it stopped being used.

It is used in México. It is called the UDI. The United States has the TIPS. And I could go on and on. I am now working with the Government of

Iceland, and all mortgages in Iceland are indexed to inflation, and it was a very useful tool after the 2008 large, significant crisis that Iceland had.

Now, let's move to interest.

So, you go back to the picture that I showed with the arrows. What we've dealt with until now is the green arrow. Let me now deal with the yellow arrow. And the question is: What kind of compensatory interest should we use? And the logical approach here is that, of course, we don't know what each individual Bondholder would have done if he or she had received the funds that were owed to them.

So, what I assume in my paper is--I say the average Bondholder had the opportunity to invest in the average project in Perú. And this is--I'm not going region by region. I'm saying averages are averages, and we will assume that that is the case.

So, what I'm going to try to do, then, is find: What was the return on capital, any investment that involves capital in Perú during this period? And what I do is I use a technique known as the Harberger method, which refers to Professor Arnold

Harberger, formerly from the University of Chicago, currently retired at UCLA. He's a 95-year-old wonderful man, and his system has been used around the world in order to deal with these kind of issues and issues related to the return on capital.

And the procedure--just I'm going to give a very simple description of procedure. So, what it does is that it takes GDP, which is income received by everyone in a country in a given year, and it separates the GDP according to who receives part of that income. And it separates it between the Government, which receives taxes; labor, which receives its share; and the rest, we attribute it to capital. We deconstruct the thing.

And now, we have what is income, measured in soles, in soles oro, in Nuevo Soles, in yuan, depending on the country, and we have to divide that by the stock of capital, and that will give us the average rate of return.

Stock of capital is calculated by the United Nations through a very well-known system called the Penn Tables, and we get the data from the Penn

Tables, but the stock of capital that the Penn Tables give is only what we call "produced" or "reproducible" capital, which is not the whole capital, because there is also capital that has to do with natural resources, with land, with forest, and so on.

So, if we only use the Penn Tables capital, the denominator is small, and the resulting return is going to be too high. So, we adjust the denominator by adding an imputed amount of capital for agriculture, and we then lower the return. And what we get is a return that we see here for capital in Perú year after year.

And instead of using the data year after year, I use the average, which is 10.95 percent. This is the return that capital as a whole obtained. I decided in my calculations, Mr. President, that I was going to be conservative on every step. So, I said, well, the foregone opportunity at the abstract over a level we can think is capital as a whole. But to be conservative, let's assume that people are foregoing the opportunity to participate in projects

and businesses, that they forego their opportunity to participate in the capacity of passive investments; they are on the passive side, they are not running the business.

So, what I'm going to do is I'm going to deconstruct this 10.95 percent, and I'm going to deconstruct it, and when I do, I'm going to separate the return on equity and the return on debt. And the return on debt, of course, is much lower, and here we have all capital, the same as before, and that's a purple, and the red is debt. And the average, if these people had participated as passive investors in all these different projects--supermarket, un almacén, any emprenimiento (in Spanish), any project, then they would have obtained, on average, 7.22 percent.

Now, I used as long as possible a series, because if you use the assured--and when I get to this, very short periods of time, and you look only at one month or one year, you may be looking at an abnormal year, and that distorts the analysis. So, I look all the way from the 1950 all the way to 2016.

Now, of course, I am aware that the Agrarian Reform Bonds were issued in '69, but look what happens here. If I were to exclude this earlier part, then my average would be even higher, because I would be excluding these lower numbers, and this is another illustration that I'm working at every step trying to be conservative.

So, if you, at every step, tried to be conservative, you know that the final outcome is conservative. If sometimes you're conservative and sometimes you're not, you don't know which way is here. We're going to know what the final outcome is.

And when we use this system, this procedure, CPI, and this rate of return, we get the estimates and the valuation that I pointed out in--point out in my Report.

As I said, the Harberger method which is behind this is universally accepted. When I was at the World Bank, running the economics division for Latin America, we used it all the time. It was the preferred method to evaluate projects. So, of course, when the bank lends money--$3 billion to

build a road, to build a dam, to build a hydroelectric plant--it asks the country to do a project analysis and evaluation, to have a hurdler rate, to see whether those monies are going to be spent wisely, and the hurdle rate is calculated in most of these countries using--including in Perú--using the Harberger method, which is the method that I am using in this particular case, and I am very confident that it is--and I point out in my Report that the number I get, 7.22, is consistent with other estimates from around the world.

So, let me now move to what I think are some flaws in the Constitutional Tribunal Order of July of 2013. And, of course, I don't have to repeat the narrative of how we went from 2001 to the Commissions in between and 2013. And I'm going to deal with four issues: The issue that hyperinflation does not provide a--because of hyperinflation, the CPI is not reasonable, and the other three that I have here, I'm going to try to work you through that rather quickly.

So, the Order, the 2013 Order by the Tribunal--and I quote here, but we've gone through

this several times during these proceedings--points out that: "In times of hyperinflation, there are distortions, and the CPI calculation is divorced from reality." And I'm going to argue that that is an incorrect statement for a number of reasons.

This is in a logarithmic scale, and you will forgive me for that. But when you have hyperinflation, you just cannot draw the picture, the official inflation rate in Perú during this period. And we can see that it is very low starting in 1950. It starts going up in the 19--when the coup takes place, the Velasco Alvarado coup in October of 1968 takes place, and then there is this spike. This is the second Belaúnde. Don Fernando was very upset that he had to deal with two very serious macroeconomic crises. This is the second Belaúnde. And then we have Alan García I, and the big hyperinflation.

Now, let's talk a little bit about hyperinflation. It's an issue that I've studied; I've written about it; I lived through hyperinflation. I was young, but I lived through a

hyperinflation in my country of origin in 1973, a 1,000 percent inflation towards the end, just before the coup and the dictatorship.

So, a hyperinflation is when prices go up simultaneously very, very, very fast, and the main characteristic of hyperinflation is that all prices go up at the same time. That means that the phenomenon that we economists spend a lot of time looking at, which is changes in relative prices that determine whether people eat duck or chicken or geese, is not very important to know, because the price of duck, chicken, and geese are all going up more or less at the same level. And one of the objections to using this data is that we are going to have substitutions that divorces it from reality.

The second point that we have to do is that, even if that happened, there is a counterforce, and that counterforce is that during hyperinflation, governments try to deal with it by controlling prices. And I worked during the Unidade Popular as a young college student in the price control office in Chile. And I know what it is with 1,000 percent

inflation to control prices. And you just say the official price of Nescafé--which is an awful kind of thing, but anyway--nothing against Nestlé, by the way--the official price on Nescafé is cien pesos, and inflation keeps going up, and this Nescafé disappears from the shelves of supermarket. But when the inspector or the official from the statistical office goes to the supermarket, looks at either the one can or asks--writes 100, although the real price in the parallel black market is 500. So, we have a force where, in fact, hyperinflation, in many countries, inflation tends to be underreported, rather than overreported, because of price controls.

And the third point is that, in my calculation, we take the CPI at this point, which is when the Bonds are issued, and then we use it again to see by how much it has increased in 2018, and at that time we have skipped the hyperinflation. Things have come back to normal. Even if the price of chicken, duck, and geese got distorted here, it came back to normality here, and we are not--there is no contagion of this spike in the actual calculations

that we are undertaking. And I'm going to argue that the dollarization method has that contagion. It includes--it introduces the CPI exactly at this point, which is something that I don't do.

The final point that I want to do--

PRESIDENT FERNÁNDEZ ARMESTO: You must repeat that, because instinctively I would have said that if you calculate the 2018 CPI, it takes into account that, in 1992, inflation was 12,800.

THE WITNESS: Of course. Of course it does. But what I'm saying is that the argument of the Perú Report is that, at this point, there is a high distortion, and we are measuring the price of chicken, but everyone is eating duck, or Chinese--"cerdo chino," Chinese pork, which is what we ate in Chile during hyperinflation. And what I'm saying is that this is true here--may be true here; I don't know if it is true--but that is offset by the price controls. But once hyperinflation disappears, the relative prices of all the goods go back to line, and if people did not eat chicken here, they are starting to eat chicken over here. Okay?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, but I would assume that what those--the critics of CPI say is that you are adding 12,800, and the real number could have been 11,000, 14,000; that at these levels, the numbers are meaningless, that it could be 12,800, it could be 15,000, and that you are just taking economic data which are humbug, which are irrelevant. 50, 52, there is still a difference, but 12,800 or 12,900 is a guesstimate. I suppose that that is the criticism.

THE WITNESS: No, no, no. That's not the criticism.

PRESIDENT FERNÁNDEZ ARMESTO: That's not the criticism?

THE WITNESS: No. The criticism is that it's distorted and that relative prices change, and the point is that when relative prices change--so the point is this. Let me go a little bit slowly.

So, the CPI is measured by serving prices, and you send an agent, and in the case of Perú it is about 562, and you go and see what is the price of different things. The criticism is that, if you have

in the basket Nescafé, and if the price of Nescafé during hyperinflation went up by 1,000 percent and the price of tea went up by only 500, people will start drinking tea and not Nescafé. But the index has Nescafé. Okay? That's what they are saying. That's one of the criticisms.

And what I'm saying is that inflation moves both prices in hyperinflation--all prices at the same rate. They are all going--sh, sh, sh, sh. Okay. And in the German hyperinflation, of course, which Phil Kagan from Columbia studied very--they went up from the morning to the afternoon and then to the evening.

PRESIDENT FERNÁNDEZ ARMESTO: I am interested to see what the court reporter has written by "sh, sh, sh, sh."

(Laughter.)

THE WITNESS: That's why we are videotaping it; right?

So, that's the first one. The second point that it is important is that the basket used becomes updated. As I point out in my Report, it is updated,

and you don't stay with the same basket.

And when inflation is very high, what you do is that you start updating at closer intervals, and you send out your survey go out more often. And in Perú, the basket was updated in '88, it was updated in '89, and it was updated in 1990, and once inflation started to subside, then they started again updating it every five years or every seven years.

Okay. So, the Peruvian Institute of Statistics, INEI, they are highly professional people with very highly skilled statisticians, and they understood that what was going on required the basket to be updated. And they did it in '88, '89, and '90. So, I think--and the final point, as I will point out later, is that the Republic of Perú or dollarization method uses the same CPI data.

PRESIDENT FERNÁNDEZ ARMESTO: I know.

THE WITNESS: And so, you criticize it and then you use it.

The next point I want to address is the one also made by the Constitutional Tribunal in its 2013 Order, which says that Perú would have difficulties

servicing the debt if CPI is used, and again, I disagree with that.

We were told yesterday and the day before by Vice Minister Sotelo, by Minister Castilla, how Perú is very strong, and Minister Castilla several times repeated that Perú had the lowest Country Risk Premium in Latin America. I was born in Chile. I'm not going to dispute that at this point, but we know that it's a real strong economy, and we also know that the Republic of Perú has very low debt at this point over GDP, one of the lowest in all of Latin America, around 25, 26 percent of GDP.

So, what I do in my Report--so this is GDP. The green line is GDP, and--the bar, and the pink bar here is government expenditures. And what I did in my Report is I assumed that there was a valuation for the whole package of bonds that was $12 billion, which is using my valuation for the Gramercy Holdings as about 15 percent, 16 percent, but we don't know exactly, but I used 16 percent. I tend to be on the conservative side.

And then I said, well, let's assume that

using the rates that were prevailing in late 2017, early 2018, Perú were to issue a 30-year Bond to deal with that $12 billion. And what I calculated is that that would require payment every year of around $800 to $900 million, which represented less than one-half of 1 percent of GDP, which is totally manageable.

Remember that Perú's debt is 25 percent.

PRESIDENT FERNÁNDEZ ARMESTO: One second. You're exchanging this Bond dollar for dollar?

THE WITNESS: You are exchanging them dollar for dollar at face value, 30-year bonds with a coupon of 6.8 percent.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. You are not making any sort of Present Value of the Bond.

THE WITNESS: No. No.

PRESIDENT FERNÁNDEZ ARMESTO: Just dollar for dollar.

THE WITNESS: Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: So, now, let me make two additional points here, Professor Armesto.

The first one is that Perú, of course, is

very proud of its economic achievements, which are significant, and we saw that--this is growth in Perú, which, as Mr. Castilla pointed out yesterday, is now one of the fastest of Latin America, probably the fastest of South America, second only to Panamá, which has become the superstar in Latin America. It's a very small country, but a superstar.

So, Perú is doing very well, and it is investment grade. So, yesterday when Minister Castilla talked about Moody's, he very proudly said we are investment grade, and investment grade has been granted to us. And Perú has 25 percent or 26, 27 percent of GDP as debt.

México has about double, a little less than double, 46 percent. It still is Triple B Plus. It still is investment grade. So, there is a lot of room, if you look around the region, for Perú to maintain its solvency, its rating, its reputation, and absorb this debt that would come from the exchange if they were to do that using my valuation.

The third point I want to do--to make is a very fast one, which says that updating the Bonds

from the last clipped coupon, as opposed to from issuance, does not restore the original purchasing power. It doesn't give back to the investor a command over goods and services of a basket that is equivalent.

And this is in this graph. What we have is the same Bond we were talking about before, the one I showed the clips on, and I'm thinking of just the principal, not the interest, the 400 divided by 25; right?

So, if we update at issuance the payments of the 13th and the 14th or the 15th, every coupon will have the same purchasing power, but if we update only for clipping, given the inflation that we observed in Perú during the life of this particular Bond, by the time we pay the first unclipped coupon, what we would be restoring is almost zero. It is not zero, but in this picture, it's so small that we cannot actually see it.

The reason being, that there was a lot of inflation that eroded the value of this Bond. So, if one thinks that "deuda de valor" and the "teoría

valorista" means that you have to restore the purchasing power of an equivalent basket, that means that if you update since clipping, you're not doing that.

So, let me now move to my fourth point on the elements of the 2013 Constitutional Tribunal Order, and what you can see there is that they also say that foregone opportunity should be dealt with U.S. Treasuries, one-year U.S. Treasury, the short Bond or the short bill, and here we have real Rates of Return.

And just for illustration purposes for different periods, I have the Treasuries in real terms is less than 1 percent, so this is what we are compensating. This would be, according to the 2013 Constitutional Tribunal Order, the compensation for foregone opportunity. This is the return of a passive investment on average in Perú during this period at the 7.22 that I mentioned. This would be the Standard & Poor's in the U.S., and this is capital in Perú during this period. So, we can see that it's a very, very small period.

PRESIDENT FERNÁNDEZ ARMESTO: Professor, what would be--this is a 25-year Bond. Let me start with the obvious question. There are long-term U.S. Bonds.

THE WITNESS: There are long-term Bonds. In the 1990s--so there are 5, 10, 20, 30.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. If I take a 20- or this was a 25-year Bond--

THE WITNESS: From the top of my head--I would say it would be about 4 percent, but from the top of my head, I--but significantly higher. So what we have--

ARBITRATOR DRYMER: I'm sorry, so that the record ends up being clear, that's an answer to what question? That would be the rate on a 30-year--

THE WITNESS: U.S. Bond.

ARBITRATOR DRYMER: U.S. Bond, right. As of what year? Issued when?

THE WITNESS: Well, they are underrun and overrun. So they are 30-year bonds that have one month left and there are 30-year bonds that were issued last week. And when we look at the 30-year

bonds in the U.S., there is a gap because Treasury Secretary Larry Summers, during the Clinton administration, for a while stopped issuing the long bond.

PRESIDENT FERNÁNDEZ ARMESTO: The logic here would be to take the 1985--to assume that the investor, converting the principal into dollars, would have invested into a long-term dollar bond, so it would--is there--let me ask this in a neutral way: Would there be financial logic in looking at the long-term U.S. Bonds at the time of conversion to dollars?

THE WITNESS: The answer is complex, and I will give it in parts.

The long bond existed, and you could have--someone around the world could have invested in the long bond. The long bond, the 30-year Bond, we can have one that still has 30 years to go and the new one is--so most of time there is a 30-year Bond that is available, except for this gap when they were not issued, so the oldest 30-year Bond then was 29, 28, 27, until it got to around 24.

So, then we could substitute for 20-year bonds; right? So there is a long bond. But that's the first part of your question, first part of my answer.

The second part is that there is, of course, a yield curve, which gives you the yield of different bonds or different maturities, and the longer under normal circumstances, not always, but under normal circumstances the long bond has a much higher yield than the short bond. The data, I don't have it from the top of my head, but, of course, it could be found very easily. Two clicks on the computer and we get it.

The third point that I want to make, which I think is important, Professor Armesto, is that at the time we were talking, Peruvian nationals could not have done this.

PRESIDENT FERNÁNDEZ ARMESTO: Could not have?

THE WITNESS: Could not have done this, could not have bought a treasury because there were exchange controls. There were capital controls. And

there was a parallel market for the exchange rate. So, you receive your Bond for a thousand--1 million soles. Let's assume that you have an uncle that is willing to buy it from you at face value. Now, you have a million soles oro in cash, a beautiful note. You go to the bank and say, I want to buy dollars at 38.7, which was the official rate, and they say, you cannot buy dollars, unless you want to buy medicine or you want to--the very short restricted list.

Why do you want it? I want to buy Treasury Bonds. They would laugh at you. That's capital flight. It's impossible. You cannot do that. You cannot.

So, now if a little old lady that has now a stack of Nuevos Soles wants to actually do this, she would have to change them in the black market--she wants extra pay. They're now in the black market--carry them in her purse to Miami, find a broker in Miami, breaking the Peruvian law because she cannot do that.

So, the answer is that it could be done internationally because the Bonds were there. It

could not be done in Perú.

ARBITRATOR STERN: But Gramercy could do it.

THE WITNESS: Well, I'm talking about '69 to--what would have happened to those who received the Bond at the time they received it.

In 1990, President Fujimori is elected. He has a team of economists and a cabinet that reforms the economy, and they go through what is known as the "Fujishock," a team led by Minister Carlos Boloña, which liberalizes the Peruvian economy and transforms this country, which has become very dormant, as it were, and growing very slowly and with a lot of problems with terrorism, hyperinflation into the superstar that it is today.

So, everything that--Gramercy could only do this because of the liberalization. So Professor Stern, the point I'm making is that in '69 through '81, when the Agrarian Reform Bonds were issued, that option was not open for a Peruvian national, for anyone in Perú. There were severe exchange and capital controls.

When Fujimori came--excuse me, President

Alberto Fujimori and Minister Carlos Boloña and his team, and Minister Apsara, and the whole group, things started changing and then we had the reborne--the rebirth of the Peruvian economy that Mr. Castilla spoke about yesterday with great pride.

Let me now move to MEF Formula, which is a complicated subject, President Armesto. But we have to deal with it.

So, the notion here is that there is an alternative, at least on paper, way of updating the Bonds, and that is dollarization. So, let me give you a very brief overall, some very high-up description--of course, you are aware of this--of how dollarization could be done, and I'm going to call this the proper way of doing dollarization.

So, you have an instrument that is denominated in soles oro, and you transform it using an exchange rate. I want to be very clear here: I'm saying "an exchange rate," "one exchange rate," which I'm going to call the Parity Exchange Rate, and it's going to play a key role in our conversation, because what you have are soles and which you are

dollarizing, and you're going to carry the accounting in dollars. You have to transform the soles in dollars. So, you have to divide the amount you have in soles by the exchange rate.

And once you have the value in dollars, then you have to separate the clipped from the unclipped.

PRESIDENT FERNÁNDEZ ARMESTO: And you have the same discussion we had before whether you use the Parity Exchange Rate at issuance or at the last coupon.

THE WITNESS: I'm just telling you what the proper way would be in my view, at issuance.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But it depends, you could here use--you could use two Parity Exchange Rates.

THE WITNESS: We get to that as the MEF does it at different points.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

THE WITNESS: So, you use the exchange rate and you separate the clipped and unclipped. You update using a consistent--with the other method using CPI in the United States. Why? Because we now

have dollars. So you update CPI within the States.

PRESIDENT FERNÁNDEZ ARMESTO: No, because this is hard currency, and the inflation is taken care of in the interest rate. You would not--I mean, no, no, no. You would never, in U.S. dollars, revalue using the inflation rate. If we award an amount in dollars valued in 1989, we will add an interest rate that brings you to 2020, but I will not do this type of revaluation, which I would do if I award monies in reales or in México pesos where you first make the indexation and then you add. But in U.S. dollars, this is not the financial practice, Professor.

THE WITNESS: Well, you are absolutely right, President Armesto, and you and I are in complete agreement because what comes next is that the interest rate that I use is real. I stripped inflation. I broke down the interest rate into the inflation component, which is here, and the real interest only. Okay? And that is something that you could do.

We have in the U.S. the TIPS, as you know,

Treasury Inflation-Protected Securities, which are treasury securities that provide interest above inflation. So, you're absolutely right, that if I use the nominal interest rate in a dollarization case, I'm taking care of inflation, but if I am using the real interest rate, which I'm stripping inflation, I have to put inflation somewhere, which, in order to compare the two methods, I put it outside. But you and I are in absolute 100 percent, 1,000 percent agreement.

ARBITRATOR DRYMER: Hyper-agreement.

THE WITNESS: Hyper-agreement, right.

Now, why do I want to do this and break it up, President Fernández-Armesto, Professor Stern, and Mr. Drymer? It is because the two arrows start at different points. So, once I break it down, the inflation part I'm going to start from issuance date, and the real interest, which is only real, I'm going to start from last clipped coupon. Okay?

And once I get here, now I have dollars in my account, but I am in Perú. I have to pay even to anyone, even to Sebastián Edwards from Chile, if I

come and claim one of these, which I don't own, so I cannot. They would pay me in soles.

But accounting is in dollars, so they have to transform it back to pay me. The payment will have to be done in Nuevos Soles.

PRESIDENT FERNÁNDEZ ARMESTO: And do you usual the official rate because you now accept that now parity and the official rate is the same?

THE WITNESS: We're going to get to that in a minute because there are lots of inconsistencies with that.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: And I'm going to argue that if you use parity rate, you should use parity rate here. I'm going to make that point, which you are anticipating my presentation.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry.

THE WITNESS: Okay. So the MEF Formulas don't quite do that. They do something else, as we were just discussing. And I don't want to go through the details.

First, the parity rate--let me make a

general criticism or comment to why I think they are flawed. First, the parity rate that they use is questionable. And I'm going to talk about the--I'm going to talk only about the three--2014, February 2017, and August 2017. So the parity rate--

PRESIDENT FERNÁNDEZ ARMESTO: We will need at some stage an education on how economists calculate Parity Exchange Rates. That is also for Mr. Kaczmarek. It is not in--say, in European economies, it is not an economic term which is frequently used, and we would really like to understand what it is about and how it is a standard way of calculating it.

THE WITNESS: I will do my best today to do that, and I have written very extensively on the subject. I wrote a lot about it when I was at the IMF, to the point that the Managing Director of the IMF called the President of the World Bank, the two sister, but rival, institutions, and told him exchange rate is part of the IMF work. Tell that guy Edwards to stop writing about exchange rates.

So, I was told by Mr. Preston, the

then-President of the World Bank, stop writing about exchange rates, and I said, but, Mr. President, it's very important. Call it something else, he said, which we did not.

So, I will try to explain to you what it is, because it's a complicated point; okay?

So this is what the MEF does is that instead of doing--separating and breaking down inflation, U.S. inflation, and the real interest rate, they amalgamate them and they only have one arrow, but that has--if it were only what you said, President Armesto, that you break them down, it would be unimportant. But in doing that, they change the length of the blue arrow. See the blue arrow here is long? Here is short.

And here is the exchange rate that the 2014 MEF Supreme Decree has, and I'm going to work you through the formulas. I'm going to talk about what the parity rate is in a second.

MR. HAMILTON: Excuse me, can we just get an estimate of time? We are at about 50 minutes right now.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, I have interrupted also.

How long do you have to go, Professor Edwards?

THE WITNESS: Well, it depends on how much you want to know about the parity rate.

MR. HAMILTON: It depends on the Procedural rules actually.

PRESIDENT FERNÁNDEZ ARMESTO: No, I know.

Can we agree on the following: Can we give the equivalent time to Expert Kaczmarek, because this is helpful? I mean, this is helpful to the Tribunal. It's going very slowly.

THE WITNESS: I can speed up.

PRESIDENT FERNÁNDEZ ARMESTO: It's going slowly, but I am making a lot of questions, and it's been helpful.

So, let's do a middle term. Let's try to speed up, and I will try to shut up, and so that we--but as much time as you use, Mr. Kaczmarek, whom I see there in the back, you, of course, have exactly the same time.

MR. HAMILTON: We had reduced time yesterday when we would have liked to use, but we understand.

PRESIDENT FERNÁNDEZ ARMESTO: But Mr. Kaczmarek--this is very difficult. I mean, if we don't have the explanation, I'm sure that I will be exactly--as Professor Edwards is educating us, it will be very, highly, highly interest and educational when Mr. Kaczmarek makes his presentation, and to which I look forward.

It is not really in the interest of the Tribunal that we shorten this part of the--because it's something which is very difficult for us on our own to work us through this, and it is so much easier if it is explained to us while we can work ourselves through Peruvian law, which at the end is very similar to French law or to Quebecois law. So, let's do both.

MR. HAMILTON: We understand your point of view.

THE WITNESS: I'm asking for more coffee, if that's okay, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of

course.

THE WITNESS: So, let me try to speed up. This is a 2014 formula, and the point I make in my Report is that there is a gross mistake here. And the mistake is that it ends up saying that any unit in soles oro is equal to some unit in soles oro squared.

The first thing that we learn about arithmetics is that if you have inequality, the units have to be the same on the same side. There's a saying, you cannot compare pears to apples.

This is the MEF 2015 exchange rate, the green one. This is the parity rate calculated if you use that rate. The blue line is the official exchange rate, and the red line is the Parity Exchange Rate that I calculate.

And, as you can see, Members of the Tribunal, the green line is always higher--this is algorithmic scale, so not only higher, a lot higher, than the official and the other parity rate.

Remember, that to produce initial value that we are going to be updating through time, we divide

the value in Nuevos Soles by the parity rate.

PRESIDENT FERNÁNDEZ ARMESTO: The higher the parity rate, the lowest dollars you obtain.

THE WITNESS: The lowest dollars you obtain.

So, let me give you a brief example. In 1969, the official rate was, if I remember correctly, 38.7 soles oro per dollar. Let's round it to 40.

The parity rate in the Supreme Decree of 2014 is 1,000, 40 to 1,000. So, if you get a million--a bond with a face value of a million Nuevo Soles, at the official rate you said I got $25,000. At this rate you got $4. So--excuse me, 2.5--$4. So, we are reducing it to 1/25th, not to 1/4th, not to 1/10th, 1/25th. We transform $25,000 into $1,000. So, it is an order of magnitude.

And the second point, members of the Tribunal, that I want to make is that the parity rate at the end here it's much higher than the official rate. So, this formula expropriated for a second time the Bondholders, hereby transforming the value of soles into dollars at a very high rate. But when it came to pay back in soles, instead of

using--because now everything is carried in the accounts in dollars.

Instead of using this exchange rate, which is, I think, 18 trillion or quadrillions or quintillions--I don't know. They use 3.5. So, it's expropriating here, it's expropriating here. There are mistakes. So, this is the 2014, and I'm moving quickly.

The February 2017 tried to be a precision or a clarification, and it made things more complicated because it was very cryptic, and the cryptic aspect of it is that the CPI Index should be expressed in soles oro. That's what the proposal said. And as we said earlier the CPI Index is an index, it is 100, 110, so it cannot be expressed in any currency.

Now, one could try to interpret that in many different ways, and when I try to do that, just for illustrative purposes, you can see that there are--and I have them in my Report--many different interpretations that go from as little as 5 million to 2.6 billion. And when you have this kind of disparity, you are, or you suspect that there is

something wrong, and that means that, instead of clarifying, it muddled the water even more.

And that brings us now--and now I'm moving very fast to 2017. In 2017, August, it's a completely different rate than before--

PRESIDENT FERNÁNDEZ ARMESTO: A completely different?

THE WITNESS: Different rate, different system, a different approach. Instead of issuing a clarification or saying, our formula, it really should be interpreted this way, either one that can, they--it's a completely different one, which they obtain by asking the Central Bank to produce a real exchange rate since 1969. And we have--

PRESIDENT FERNÁNDEZ ARMESTO: A real or a parity?

THE WITNESS: They asked for a real from which they can get the parity. And so, the Central Bank--so, we have the letter from Minister Thorne, one of the lawyers called him yesterday "Thorne." His name is Thorne--they pronounce it Alfredo Thorne--to Julio Velarde, who is the governor of the

Central Bank asking for that, and we have the Reply when the Central Bank writes back, and what the Central Bank produces and what you can find in their website is the real exchange rate but not the parity rate.

But the Supreme Decree provides the equation to get the rate, and you can get all those data from the website. And what is remarkable, this--and now we are going to talk about the--what the parity rate really is, Mr. President. I would hope it is not very long--that it uses one month as the base, January of 1969.

Without explanation why it was used, without explanation why it made sense, but it determines in a very important way what kind of real exchange rates you use. And if you use the--and what kind of parity rate you get. And if this number is very big, the parity rate that you get is going to be very big. The parity rate is big, since it counts into the nominator to calculate the original or initial value of the claim, it becomes too small. So, let's go--

PRESIDENT FERNÁNDEZ ARMESTO: Because--let

me understand. And this is on my time. When you calculate a Parity Exchange Rate, you take a basis, some real exchange rate which you deem to be a fair real exchange rate, and then you update that with the CPIs of the Perú and the United States. Is that how you do it?

THE WITNESS: That's almost 100 percent.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, you give me a C grade.

THE WITNESS: No. No. A. A. You get an A, but not an A+ yet.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: So, let me tell you what the parity rate is. It's an old concept, and I am not surprised that it is not used that often in Europe, only in academic circles, maybe, and the reason for that is that in Europe, the official rate is considered to be a parity. It moves and it doesn't deviate from parity very significantly.

The notion of the--why does the parity rate come about? It's because there is a notion that official rates, at times, especially in emerging

markets, are out of line with exactly what you said, equilibrium. So, the parity--the Purchasing Power Parity Theory says what we have to do is find the value of the real exchange rate, which is the exchange rate that drives international trade.

It's the one that drives exports and imports, is the one that drives--so, when the real exchange rate was in equilibrium, and in a sustainable long-term equilibrium, we find that period and we fix that period, which I'm going argue that has to be multi-years because of fluctuation, you say that is my equilibrium, Fair Value, balance value, tranquility.

The country is moving at what economists call at a "steady state." And then you say what we need to do is, for the rest of the period, find nominal exchange rates in every period that would render the real exchange rate of that period equal to that equilibrium. And this is where we come to this adjust--what you said, Mr. President, you adjust by the two inflation.

But the first step is to determine what is

the equilibrium period, and using January of 1969 is, first of all, it is wrong to use one month. You want equilibrium, and equilibrium from month to month, things move around. This also 1969, it's three months after the October 1968 coup where Perú was in turmoil. It is when they were going through significant structural and political changes. There was no Legislative Power in the way that we understand it.

Parliament had been closed. The military were in charge. They were undertaking very deep reforms, Quechua was about to become a co-official language in the country, which is a marvelous thing, but what I'm trying to illustrate is it's not a period of tranquility and of balance. And the--there were exchange controls. There were capital controls. There were black markets for currency. So, under no circumstance would you use that period as the base.

Now, why did they use the base? I don't know. One explanation, which I don't want to presume that there was here bad faith, one explanation is that when Minister Thorne writes to Velarde and asks

him from '69, the technicians at the Central Bank just say, well, January '69, let's put in 100. And it carried on.

It was just carried on without thinking, without reflecting, and what I'm going to argue is that that is a mistake, and that what one should really look at is a long period of time of tranquility, a long period of time of progress, of moving towards prosperity, no capital controls, the balance of payments not out of whack, and that's why I use in my Report 1999 to 2015, or '16, I forget exactly when it is.

And I take a long average when, as you saw in my previous graph here, the market. So, now here I say Perú is becoming like maybe like Portugal, like a normal European country, and the parity rate is not deviating a lot from the official rate.

PRESIDENT FERNÁNDEZ ARMESTO: And you are then working backwards.

THE WITNESS: So, now I--this is my parity rate is around here, and then I have to find out what is the nominal rate that will satisfy the parity

rate, the real exchange rate would be equal to the parity rate. That's the procedure that we use in this process. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: And you work back on the basis of inflation, of comparing inflation.

(Overlapping speakers.)

THE WITNESS: On the basis of inflation. So, this is a point where we can go back to something I said earlier, and I tried to be very brief, President Armesto, two things. This is a clipping of the methodological note, "nota metodológica," that the Central Bank sent back to the Ministry when they did this calculation, and they made the point, which cannot be read here because it is very blurred, but they made the point the parity rate depends on the base you use.

So, they are completely aware of it, and they say, careful, we are giving you this base, but if you change the base, these things are going to change. And there is no comment on where that's a right base or not.

But here is what the formula, the 2017 Formula does, and here is the "value hoy," the value today of the claim of the--so, it's the original sol oro, divided by the parity rate, and then this is the interest adjustment, and tipo "de cambio hoy," and I'm arguing that if you use a parity rate, you have to make sure that it is true that your parity rate is giving you that tipo "de cambio hoy," official market is the parity.

If not, you have to use parity on both ends; right? It's only logical. And here we have, then, the tipo "de cambio de Paridad," which enters here in the denominator, and what you can see--and I'm going to skip the details, we can go through them after I finish, if you want, is that the IPC Perú enters here, and this is, Members of the Tribunal, very important.

This is the CPI in Perú from the year of issuance, relative to January of 1969. So--excuse me, last clipped coupon. So, the last clipped coupon was in 1989, we are contaminating straight the equation with that spike of 12,000 percent. We

haven't allowed the system to go back into equilibrium.

We haven't allowed the price of chicken, duck, and geese to go back to the regular prices if they did ever get out of line. So, this is an additional problem that this system has.

PRESIDENT FERNÁNDEZ ARMESTO: But let me understand this. If I do a dollarization, if I make a revaluation of a historic amount, using dollarization at parity exchange, through the formula for calculating the parity exchange, the CPI will always creep in.

THE WITNESS: Always creep in.

PRESIDENT FERNÁNDEZ ARMESTO: Because it is in the very definition of how you calculate a parity rate.

THE WITNESS: Parity rate. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: There is no other way of calculating a parity rate except through--

THE WITNESS: There are other ways.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: I wrote a whole book. And it may be famous.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: But it's--

PRESIDENT FERNÁNDEZ ARMESTO: It's the standard way of doing that.

THE WITNESS: No. It is a way of doing it. It's a simple way of doing it. It is easy to understand. The other ones require modeling at a level that it's a little more complicated, and as I said, I published a whole book, MIT Press in 1989, where I go through that process. But the parity rate, if you'd use parity rate, there is no way to get rid of the CPI creeping in. All right.

So, I'm about to finish now.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, please.

THE WITNESS: I'm moving pretty fast.

PRESIDENT FERNÁNDEZ ARMESTO: And that was--you must put that on the Tribunal's time. Yes.

THE WITNESS: So, let me go back to--so, I argue in my Report, and I argued in the--in my testimony here now that the dollarization system used

by the Supreme Decree of August of 2017 is flawed for a number of reasons, but I think that, if one wants to stay within that framework and wants to produce a better system that stays within the framework, there are several aspects where one can work and try to improve.

After all, we economists, our job and what we teach students of economics is, is optimizing, subject to constraints, legal constraints, environmental constraints, cultural constraints. So, if one wants to stay within this framework, we can make things much better by using a parity rate that makes sense, not an arbitrary 1969 rate, and I argue that the rate that I use is one that makes sense.

We can add compensatory interest if we think that the interest rate that is used, the Treasury bill, it's for one year. It is only a proxy for inflation. And we can use a Parity Exchange Rate on the back end, at the end, unless we prove that our parity rate is equal to, at the back end, is equal to the market rate. So, there are ways of improving, and here I am proposing three ways that we can do it

if one stays within the framework.

Let me now move, finally, as you'll see I'm coming to an end, to the Fair Market Value discussion, and what I'm going to argue is that, of course, Fair Market Value is different from Full Updated Value.

Full Updated Value is the intrinsic value of these obligations in case that the adjustment was made according to best practices in the economics profession, and that means adjusting by loss of purchasing power in order to provide the right type of command over goods and services, or an equivalent basket, and providing a compensatory interest that takes into care the foregone opportunity.

And I argue that the foregone opportunity is the average opportunity.

Now, Fair Market Value is intrinsic value adjusted by a number of risks, the most important of which is probably nonpayment risk. And I think that it's important to understand that, for illiquid assets, the first step to do Fair Market Value is to have inherent value, intrinsic value, which is what I

do in my Report.

So, I think now that we're going into confidential mode. I'm going to show some data that was already shown in the confidential mode.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

THE WITNESS: So, let me now conclude very quickly, Members of the Tribunal. The four points that I want to make, current value has an objective meaning and can be calculated easily and reliably by using CPI and using an estimate of foregone opportunity, which I take to be the average opportunities open to the average Peruvian citizen during this period in a conservative way, because I assume that they are acting in as passive investors.

There are a number of flaws in the July 2013 Constitutional Tribunal Order, which I explain in four different issues, and it lacks economic rationale.

The MEF Formulas are arbitrary, contradictory--soles cannot be equal to soles square, they produce this incredibly large--when the nominal rate was 38, the parity rate is 1,000, and then, of course, destroys the value of the claim, and when properly calculated, the updated value of the Land Bonds in my--as I point out in my Report was $1.8 billion.

So, I want to thank the Tribunal for their patience. I want to thank Dr. Hamilton for his patience, and I thank you so much.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Professor. Let us get a time check, so we know exactly where we stand. How long has the Professor really--

SECRETARY PLANELLS-VALERO: One hour.

PRESIDENT FERNÁNDEZ ARMESTO: One hour.

SECRETARY PLANELLS-VALERO: And the Tribunal asked questions for 20 minutes.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, Mr. Kaczmarek, you can adjust and I'm happy--I'm sure you're happy to hear that you have one hour to present your case.

We will now break for--it's now--what it is now--

MR. HAMILTON: We are ready to continue.

PRESIDENT FERNÁNDEZ ARMESTO: Not me. I need a break.

MR. HAMILTON: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: It's now

10:40--no, 10:34--let's come back at 10:45.

You know the Rules, and please--

THE WITNESS: I know the Rules, yeah.

PRESIDENT FERNÁNDEZ ARMESTO: And I know that counsel knows the rule. Thank you.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing, and I give now the floor to Mr. Hamilton.

And take your time, Mr. Hamilton. It has been a long deposition. Take your time and I will not press you at all on time issues.

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: You have the floor.

MR. HAMILTON: Thank you very much. We've coordinated over the break, and Mr. Llano is going to handle the questions now.

PRESIDENT FERNÁNDEZ ARMESTO: Oh, very good.

CROSS-EXAMINATION

BY MR. LLANO:

Q. Good morning, Mr. Edwards.

How are you?

It's a pleasure, sir. We haven't dealt with each other before; right?

A. That is correct.

Q. Let's pass out the binders, if we can.

Mr. Edwards, in the meantime, you mentioned you're a Chilean citizen, or national, sorry--

A. By birth.

Q. --at least?

A. Yeah. I have a dual passport, yes.

Q. Right. So, I have a very important threshold question for you, which I hope you can clarify, and we are, of course, in a case against the Government of Perú, so my question is: Pisco is Peruvian; correct?

A. Yes.

Q. Good.

(Comments off the record.)

BY MR. LLANO:

Q. Okay. Let's talk economics, sir.

A. Yes, sir.

Q. In this arbitration, Gramercy is seeking relief with respect to its holdings in some 9600 Land

Bonds; correct?
A. Yes.
Q. And those Bonds do not all have the same issuance date; correct?
A. Yes.
Q. They were issued on different dates to different Bondholders; right?
A. Yes.
Q. And in the case of the Gramercy-held Bonds, they have dates ranging from 1970 to 1981; correct?
A. Yes.
Q. And about 94 percent of these Bonds were issued between 1970 and 1976. Does that sound about right?
A. Yes.
Q. And these Bonds were issued as compensation for the expropriation of lands; correct?
A. Yes.
Q. But the Bonds themselves do not indicate on their face when the expropriation took place; correct?
A. Yes.

Q. So, in your Reports, when you calculate, for example, inflation as of the date of issuance, that date may not necessarily coincide with the date of the expropriation; correct?
A. It may not coincide, but my understanding is that each expropriation required a Supreme Decree and that the Bonds were handled to the landowners, or then land--former landowners at the time the Supreme Decree of expropriation was signed.
PRESIDENT FERNÁNDEZ ARMESTO: Sorry. Can we--because it was--I was looking at the Transcript, and it is also not clear in the Transcript. These are important dates. The Bonds were issued between?
BY MR. LLANO:
Q. My question--my prior question was that 94 percent--around 94 percent of the Gramercy-held Bonds were issue between 1970 and 1976.
PRESIDENT FERNÁNDEZ ARMESTO: 1970--
MR. LLANO: And 1976.
PRESIDENT FERNÁNDEZ ARMESTO: So, that's the bulk, that is 96 percent.
MR. LLANO: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Or 94 percent.
MR. LLANO: 94 percent. And that, of course, is Tranche 1--right?--just to be clear?
PRESIDENT FERNÁNDEZ ARMESTO: Yeah, of course. Of course.
MR. LLANO: Tranche 1.
PRESIDENT FERNÁNDEZ ARMESTO: This is the only one we really know some details.
MR. LLANO: That's right. For now.
PRESIDENT FERNÁNDEZ ARMESTO: And can you give us the dates when the last coupon--of the last coupon so that we see the difference between issuance date and the dates of last--when the last coupon was clipped.
MR. LLANO: I don't have that.
PRESIDENT FERNÁNDEZ ARMESTO: You don't have it. You did not refer to it now?
MR. LLANO: I did not refer to that--
PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank you.
BY MR. LLANO:
Q. So, Mr. Edwards, you do not list, for

example, in your Report the specific tracts of land that were expropriated; correct?
A. Correct.
Q. Nor do you put a monetary value on those lands; correct?
A. Correct.
Q. Nor did you attempt to establish whether the Bonds at issue in this Arbitration were fair compensation against the Actual Value of those lands; correct?
A. I did not attempt to do that, no.
Q. Right. So, it is irrelevant for purposes of your assignment whether the value of the Bonds reflects now or ever reflected the value of the expropriated lands; correct?
A. I don't know if it's irrelevant, but I did not attempt to estimate the value of the land.
Q. Okay. And Gramercy, of course, does not suggest that it was one of the expropriated Peruvian landowners from the 1960s and 1970s; correct?
A. Correct.
Q. Now, there were three classes of Land Bonds;

right?
A. Yes.
Q. A, B, and C, yes?
A. Yes.
Q. And each class had a different coupon rate and term; right?
A. Correct.
Q. They had 6, 5, and 4 percent coupon rates respectively; correct?
A. Yes.
Q. And terms of 20, 25, and 30 years respectively; right?
A. Yes.
Q. And according to your Reports, Gramercy, in its Tranche 1 holding, holds Bonds in each of these classes: A, B, and C.
Right?
A. Right.
Q. Now, it's also correct, is it not, that about 87 percent of the Gramercy-held Bonds in Tranche 1 were Class B?
A. Yes.

Q. And for the record, again, this is the class, Class B with a 5 percent coupon rate and a 25-year term; correct?
A. Correct.
Q. Okay. Now, coupon payments included both portions of principal and interest; is that right?
A. Right.
Q. And I think you testified to that in the direct presentation; right?
A. Yes.
Q. Now, the coupons were redeemable on a yearly basis; right?
A. Right.
Q. The coupons could not be redeemed before their respective maturity date; right?
A. That's my understanding.
Q. Right. So, if a Bondholder sought to redeem a coupon before its maturity, the State had no obligation to make payment on that particular coupon; right?
A. That's my understanding, yes.
Q. And some of the coupons in the Gramercy-held

Bonds--again, we're talking about Tranche 1--were redeemed or clipped; right?
A. Right.
Q. And for the record, I think this is just a statistical piece of information, but out of the 96--I'm sorry 9,656 Gramercy Land Bonds in Tranche 1, 2,653 are Bonds with fully unclipped coupons.
Does that sound about right?
A. That sounds about right.
Q. So, that's about 27 percent of the total Bonds in Tranche 1.
A. Sounds about right.
Q. Good.
Now, clipped coupons are the coupons that were redeemed by the former Bondholders; correct?
PRESIDENT FERNÁNDEZ ARMESTO: Can you be slow, slightly slower.
MR. LLANO: Okay.
PRESIDENT FERNÁNDEZ ARMESTO: I am not even able to make notes.
MR. LLANO: I'm sorry.
PRESIDENT FERNÁNDEZ ARMESTO: If you don't

mind.
MR. LLANO: Yes.
PRESIDENT FERNÁNDEZ ARMESTO: A little bit of pause between question, and I take note of all the data you are giving. Thank you.
THE WITNESS: Yes.
BY MR. LLANO:
Q. Okay. Good.
Now, Gramercy is not making a claim in respect of the clipped or lost coupons, for example; right?
A. Right.
Q. Are there any claims that you are aware of by any other Bondholders, Bondholders other than Gramercy in connection with clipped coupons, sir, that you know of?
A. I don't know of any.
Q. Sure.
Now, during the 1970s and particularly in the 1980s, there was severe inflation in Perú; correct?
A. Correct.

Q. And that became hyperinflation in the late 1980s; correct?
A. Correct.
Q. And the Land Bonds did not contain an explicit textual adjustment for inflation such as a reference to an inflation index; correct?
A. Correct.
Q. The Bonds also did not contain a textual acceleration clause; right?
A. Right.
Q. And so, in the 1980s, the value of the Bonds, the Land Bonds, plummeted; right?
A. The nominal value plummeted.
Q. Sure. And they became virtually worthless as the Peruvian currency lost value; correct?
A. In nominal terms, they became virtually worthless, not zero, but very low nominal value.
Q. You do say in your Report that the Bonds became virtually worthless as the Peruvian currency lost value; isn't that right?
A. In terms of nominal value, they became virtually worthless, yes.

Q. Sure.
And many Bondholders during that time simply stopped redeeming coupons; correct?
A. That's what it seems if you look at the Bonds, yes.
Q. In fact, many Bondholders stopped redeeming coupons since around the mid-1980s; right?
A. I don't have off the top of my head the exact date, but that sounds about right.
Q. And you will agree that a decision by a Bondholder to not redeem a coupon for whatever reason is not the same thing as the Peruvian State refusing to pay on that coupon; correct?
A. Yes.
Q. And ultimately, in May of 1992, Perú shut down the Agrarian Bank which was the entity in charge of making payments on the Land Bonds; correct?
A. Yes. Banco Desarrollo de Agropecuario, yes.
Q. That's the Spanish name. The Banco Desarrollo de Agropecuario; correct?
A. Si, Señor.
Q. I'm Paraguayan, you're Chilean; we're doing

this in English.
Now, you don't state in your Report how much Perú would have needed to pay out in May of 1992 to redeem the Gramercy Bonds in Tranche 1; correct?
A. Correct.
Q. Do you agree, disagree, or have no comments on Mr. Kaczmarek's and Ms. Kunsman's calculation that the Gramercy Bonds were worth 48 cents of one U.S. dollar in May 1992?
A. I think that it's important to separate the nominal value from the intrinsic value, and the intrinsic value is--they are different. So, the nominal value, as I point out, became very low. The Vice Minister said it is less than one centavo. So, I didn't do the calculation, but I think it's--I take it at face value at 48 cents--
Q. I'm sorry.
A. I take it at face value the number you read.
Q. 48 cents?
A. Yeah. In nominal terms.
Q. And that's for all of the Gramercy-held Bonds in Tranche 1; right?

A. I didn't do that calculation, but, again, I read it in the Report.
Q. It sounds right?
A. More or less, yes. More or less.

(Overlapping interpretation and speakers.)
Q. I said you mentioned intrinsic value, and we will come back to that.
Now, Perú, in 1992, could have paid off all of the Gramercy held Bonds with less than $1; correct?
A. I don't know. It's--I mean, I don't know.
Q. You just accepted my representation, or, rather, Mr. Kaczmarek's and Ms. Kunsman's representation, that the value, the nominal value of those Bonds in 1992 was 48 cents.
So, my question is: In 1992, a Peruvian official could have come over to the houses of these individual Bondholders and paid it off with 48 cents, all of the Gramercy-held Bonds in Tranche 1; correct?
A. I'm going to stand by my answer, Mr. Llano. I don't know. I'm not a lawyer. It is logical that

if they had tried to do that, they would have encountered a legal pushback. So, that was the value in the books, I assume, before the records of a State-owned bank were destroyed apparently. But what I'm saying is that I don't know if they could have paid at that point if the payment would have been accepted. That, I cannot tell.

Q. You're not saying that there was a Tribunal, Constitutional Tribunal Decision in 1992 ordering a revaluing of these Bonds; correct?

A. I'm not saying that, no.

Q. Right. And so, in 1992, in the absence of any such Decision, Perú could have paid off all of the Gramercy-held Bonds in Tranche 1 with 48 cents; correct? It's a simple question.

A. No. I think that there is a legal aspect in that question, and I'm not a lawyer.

Q. All right. From an economic standpoint, not legal, you will agree that an inflation adjustment like CPI or any other method doesn't add value to an asset. It just prevents value from being eroded; correct?

A. Correct.

Q. Now, Mr. Edwards, just to be clear on your overall position, you're saying that Bonds that were worth less than $1 in 1992 are now worth $1.8 billion; is that correct?

A. I think that you are conflating here different values. You are taking the nominal value in 1992 and comparing that to my calculation of intrinsic value in 2018, but there is also an intrinsic value using my method in 1992. You can use my method to any date, and if you use my method to value the Bonds in 1969, one month after they were--the first batch was issued, you will get the face value.

Q. Right.

A. And if you started moving along, and for the clipped coupons, you will get zero, for the clipped Bond--with all the Bonds clipped. But in 1992, or 1988, for that matter, there was an intrinsic value which you can get through my method.

So, I think that the right comparison would be my method in 1992 to my method in 2018.

Q. And, of course, you were not available in 1992 to do that exercise for the Bondholders that existed at the time; correct?

A. I was available, but they didn't ask me.

Q. They didn't ask you. That's good.

All right. So, in fact, you say in your Report--Reports, plural--that you have been conservative in coming up with that $1.8 billion figure; correct? You said it this morning as well; right?

A. I made an effort to err on the conservative side, and, again, as I pointed out this morning, the principle there in economic valuation of macroeconomics is that, if you want to err, you want to err in every step on the same side because you don't want--the items--you are conservative on one, you are not conservative on the other. You don't even know what it adds up. So, I made an effort, every time I had a doubt, to be conservative.

Q. So, in your view, a nonconservative number would be much higher than the $1.8 billion figure that you come up with; right?

A. Yes.

Q. Now, Mr. Edwards, you mentioned in your direct testimony that obligations for clipped coupons are extinguished. I think you used the word "extinguished"; correct?

A. I may have. Yeah.

Q. Right.

A. But let's see where we go. I may have to look back, but let's proceed, yeah.

Q. All right. Just--apologies for this. I should have asked in the beginning, but you are, of course, compensated for your services as part of this arbitration; correct?

A. Yes.

Q. And is your compensation linked in any way to the outcome of the dispute?

A. No.

Q. You perform consulting services in Perú; is that right?

A. No.

Q. You don't consult for other clients in Perú?

A. No. I have given speeches, speaking

engagements, which is different from consulting. I have addressed groups of industry, academic groups, but consulting in Perú, I have not done.

Q. Private companies?

A. No.

Q. Have you or are you currently advising other Land Bondholders in Perú or outside the Perú?

A. No.

Q. And you're not getting paid with Land Bonds, I take it.

A. No.

Q. That would be a great retirement strategy, by the way, wouldn't it?

(Comments off microphone.)

Q. Apparently. I can download this off of eBay for 49 cents in 1992, if it existed, and get $1.8 billion 25 years later; correct?

A. I have no opinion on what you just said.

Q. Fair enough.

Now, you understand that Gramercy purchased the Bondholders at issue in this arbitration in 2006 and 2008; correct?

A. Yes.

Q. And the actual Gramercy entity that made those purchases is Gramercy Perú Holdings LLC; correct?

A. Yes.

Q. Now, you don't mention, for the record, in your Reports where the money to purchase the Bonds came from; correct?

A. Yes.

Q. You don't; right?

A. "Yes" means correct, yeah.

Q. Okay.

You don't mention, for example, whether those funds were raised by Gramercy from third-party investors prior to the purchase; correct?

A. Correct.

Q. And you don't know or you have not stated in your Reports whether Gramercy Perú Holdings was acting as a mere pass-through for those funds; correct?

A. Correct.

Q. But you do know how much Gramercy paid to

the sellers for the purchase of the Land Bonds; correct? You mentioned it in one of your slides this morning; right?

A. Yes.

Q. And that was about 33.2 million; correct?

A. Correct.

Q. Now, you did not include this amount in any of your three Reports; correct?

A. I'm not 100 percent sure, but probably I did not.

Q. Right. And you did not see the actual purchase contracts behind that number; correct?

A. Correct.

Q. Now, I want to take you to that slide. It was--oh, I'm sorry, let's do this in a minute because it's confidential information, so let's table that for a moment.

In your Reports, you do not reference any contemporaneous evidence of Gramercy's due diligence prior to the acquisition of its Land Bonds; correct?

A. Prior to the acquisition, no.

Q. Right. Did you ask Gramercy or their

counsel for such due diligence documents and were rebuffed, or did you not even ask for such documents?

A. I asked for photographs of some of the Bonds. I--the first thing I wanted to do was to see the Bonds. So I Googled "bonos reforma agraria Perú," which I'm sure you've done too, and there's a little old lady holding a bond in her hands.

And then I asked Gramercy if I could see some photographs, which I did. And then I asked them, "How do we know that these are the Bonds?" And they told me that these were--have been audited by one of the Big 4.

And then I asked, "Are you sure that that's the number?" And they said yes.

And then they made a correction of a different number, and I said, "What is the correction?"

They said, "Well, we audited again and that's number."

But I did not go and count the Bonds one by one. The only original Bond I've seen is the one the President has.

You still have it, no?

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Not the original.

(Overlapping speakers.)

BY MR. LLANO:

Q. Now, since you mentioned Google searches, sir, are you aware that there is a fake Wikipedia page concerning the Land Bonds at issue in this arbitration?

A. I was not aware of that.

Q. Well, I hope you were not misled by such information is my point.

A. I've never read that page. I did not know there was one.

Q. It was a manipulated page, in any event.

A. Since I haven't seen it, I wouldn't be able to comment on what you just said, or not.

Q. Got it.

Now, you did not actually answer the question that I asked you, which is: Did you ask for due diligence documents by Gramercy? I wasn't asking about your due diligence as part of your Report. I

understand you did some due diligence. I was asking if you asked to see the Gramercy due diligence documents, any due diligence documents, prior to their purchase in 2006 to 2008, and were denied those documents or whether you did not even ask for them. That was my question.

A. Oh, okay. I asked about the process that they went through, how did they find out about the Bonds, and how did they find them. So, I asked general questions. I didn't ask for any documents, which is part of your question.

You said, "Did you ask for documents?" I didn't ask for documents, so I was not rebuffed. And when I was asked, how did this happen and how--there are lots of old Bonds, and someone who has dealt with emerging markets debt, there is the Cuban debt, and how did you find it? And they told me a story, which I don't remember the details now, but I didn't ask for documents, no.

Q. Okay. Thank you.

Now, you also do not reference in your reports Gramercy's internal financial model from

2009; correct?

A. I think it's correct.

Q. Did you see it?

A. No.

Q. You didn't ask Gramercy for this document either; correct?

A. Correct.

Q. You didn't think this document might be relevant to assess Gramercy's understanding of the applicable rules and standards in Perú to calculate the value of its Bonds; correct?

A. Let me elaborate a little. My assignment was to calculate according to my methodology what was the intrinsic value of these Bonds.

Q. Right.

A. And I thought that what Gramercy did was completely independent, so it was not relevant for me to ask for those, for that data.

Q. Mr. Edwards, you're a pro. You've been in other ICSID and investment treaty arbitrations; correct?

A. In some. Not in many, but in some.

Q. In some. Right.

A. Yeah.

Q. And you understand that in an investment treaty arbitration, it is important to understand what the investor expected at the time it made its investment; right?

A. That is correct, but that was not my assignment. My assignment was to calculate using the best practices in economics what the intrinsic value of these Bonds were and not the Market Value or what model the investor was using.

Q. Thank you.

Now, you also do not reference Gramercy's financial statements in your Reports; correct?

A. I don't remember offhand, but probably not.

Q. And you do mention or at least you obliquely alluded to the financial statements in one of your slides, and we'll come back to that slide in a moment, but you do make a reference to Gramercy's financial statements in the last slide or the penultimate slide in your presentation from today; correct?

A. Yes.
Q. Have you seen those financial statements, sir?
A. I've seen them.
Q. You've seen them.
A. Yeah, and I've looked through them, yes.
Q. Right. So, you chose, you made an affirmative option not to reference those financial statements in any way in any of your three Reports; correct?
A. Incorrect.
Q. You did not make a choice not to cite to them?
A. So, there is an issue of time; right? The First Report is mid-2016, the Second Report is late 2018, and the Third Report is a Reply Report from May 2019. And at that time, I had not seen them. So, I cannot--I could not have referenced them if I had not seen them until--so, I saw them after--
Q. I see. When?
A. I forget, but very recently.
Q. How recently?

A. I don't know. Six months, six weeks. Recently. Very recently.
Q. In what context?
A. I was preparing for the Hearings.
Q. Right.
A. And I asked to see them.
Q. You asked to see them. And, at that point in time, for the first time since your engagement four years ago, you saw those financial statements for the first time; correct?
A. Correct.
Q. Okay. When were you first engaged, Mr. Edwards?
A. In 2016.
Q. When exactly, or month?
A. I don't know. January, maybe. I forget.
PRESIDENT FERNÁNDEZ ARMESTO: When you speak about the financial statements, it's the financial statements of the funds who invest in Gramercy Perú Holdings?
THE WITNESS: Right. I'm trying--I mean, what I tried to understand is how there were--how

Gramercy was valuing these Bonds, and I think that I now have somewhat of a picture.
I know that they used first start cost, and then they used models, and then scenarios, but I have never met with anyone from Gramercy to talk about this. It was not part of my assignment.
MR. LLANO: Now, as I mentioned, we will very briefly move to confidential session.
(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

BY MR. LLANO:

Q. Okay. Now, you are aware, are you not, that a Gramercy affiliate purchased additional Land Bonds in 2017, the so-called "Tranche 2"; right?

A. I found out about that on either Sunday or Monday, reading the Transcript.

Q. You did not know about that before?

A. No.

Q. And so, you had no opportunity of factoring this information into your valuation of the Gramercy Land Bonds; correct?

A. Correct.

Q. You don't know, for example, what price was paid for Tranche 2; right?

A. I know nothing about that except what I read in the Transcript.

Q. Right. And, you know, I apologize in advance, but I have to ask you some questions. I can anticipate what the answer will be, but I need to get them on the record.

ARBITRATOR DRYMER: As any good

cross-examiner, you know the answer before you ask the question.

MR. LLANO: I try to.

BY MR. LLANO:

Q. You don't know what representations were made between the Sellers and Gramercy for Tranche 2; correct?

A. My answer will be--as you know what it will be--all I know is what I read in the Transcript.

Q. You don't know the valuation that was given to Tranche 2; right?

A. Right.

Q. Are you curious to see that valuation, sir?

A. I would not object to seeing it. I would not reject looking at it. And I'm very curious about many things, yes.

Q. Good.

So, you don't know also what expectations, considerations, risks, haircuts, or other factors were taken into account in this 2017 purchase of Tranche 2; correct?

A. Correct.

Q. And you, therefore, have no idea how this actual information would have measured up against your own valuation; correct?

A. No idea.

Q. Because you were not provided this information by Gramercy, even though you issued two Reports after these purchases took place; correct?

A. Correct.

Q. Now, you've testified and you mentioned this before in other investment treaty arbitrations; correct?

A. Correct.

Q. Including in arbitrations dealing with issues of expropriation; right?

A. I'm not sure. You are the lawyers. Is Argentina considered an expropriation from a legal point of view?

MR. HAMILTON: We're not going to answer that.

PRESIDENT FERNÁNDEZ ARMESTO: Good lawyers.

(Comments off microphone.)

THE WITNESS: But I--so, Mr. Llano, I

couldn't tell you. As Mr. Hamilton knows, I did testify in a number of the Argentina cases. So, my main experience are those cases. And I think there were quite a few of them; one as them, as I pointed out earlier, working with your fine law firm.

BY MR. LLANO:

Q. Right. And of course, just for the record, that case involved global sovereign bonds; correct?

A. That is correct.

Q. Right. Now, I'm not asking you about legal standards, but purely from my commercial standpoints, you have a general notion about what an expropriation is; right?

A taking; right?

A. I have a general notion, yes.

Q. So, if an asset still has value today, by definition, it cannot be an expropriation in a purely commercial sense; right?

A. I disagree.

Q. The asset still has value?

A. I disagree. The value may be a fraction of the commercial value, of the Fair Value, of the

intrinsic value ahead of time.

Q. Right.

A. So, I--I'm not a lawyer. Sometimes I wish I were, but I understand that taken without appropriate compensation is, in your profession, a no-no; right?

Q. And, of course, we don't know--you don't know what the valuation for Tranche 2 was. Gramercy knows that; right?

A. Tranche 1 or Tranche 2?

Q. 2.

A. I know Tranche 1.

Q. That's my point. We don't know what the valuation was for Tranche 2. If that valuation shows that those Bonds had value, by definition there cannot have been an expropriation. The measures by the State of Perú could not have destroyed the value of the asset; correct?

A. Mr. President, I think I'm going to excuse myself from opining on Tranche 2, since--as I pointed out, I learned about Tranche 2--I'm trying to remember if I learned while I was at 30,000 feet in the air flying from California or after I landed

here, but I read that very difficult format where they have the four pages, and you get very confused.

The first time I learned about that tranche was trying to figure out how to go--it's not even counted. It is up, down, up, down.

So, I'm going to excuse myself, if the Tribunal agrees with it. I know nothing about Tranche 2, and I understand this is not about Tranche 2 either.

Q. But I have to ask you because you said before that you are curious to see those numbers. So, my question--

A. Say that again? That I'm what?

Q. Curious.

A. Oh, I'm curious about so many things, Mr. Llano.

Q. Let me finish my question, sir, please.

Now, since you're curious about that information, are you bothered by the fact that Gramercy withheld relevant and material information from you in connection with this exercise that you were performing?

A. No.

Q. You're not.

A. No.

Q. Okay. Now, let's go to Tab 8, please. Tab 8 is Claimants' Statement of Reply dated May 21, 2019.

ARBITRATOR DRYMER: If I may ask just one quick question to follow up on Dr. Llano's last question.

Would that information, the valuation information--excuse me, information on how Gramercy valued Tranche 2, could it affect your own calculations?

THE WITNESS: No.

ARBITRATOR DRYMER: No.

THE WITNESS: No.

ARBITRATOR DRYMER: Thank you.

THE WITNESS: As I pointed out, Mr. Drymer, I'm very confident and proud about my method. I'm very confident, so it would not have affected my valuation.

BY MR. LLANO:

Q. Thank you. And the reason it would not affect your valuation is because you are not doing a Fair Market valuation assessment in your Reports; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, because he's doing a valuation just taking the CPI from the date of issuance until 2018.

THE WITNESS: I'm doing intrinsic--

PRESIDENT FERNÁNDEZ ARMESTO: And I am sure that the valuation done by Gramercy would be based on different criteria.

MR. LLANO: Point made. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: That's the point. So, it probably has no impact on his intrinsic value.

BY MR. LLANO:

Q. Okay. Now, we're in Tab 8, Claimants' Statement of Reply dated May 21, 2019, and it's not--the whole Brief is not there, but I wanted to just refer you to one paragraph. It's on Page 201. There's the section called "Request for Relief."

Do you see that?

A. Yes.

Q. And there is Paragraph 612 and below that, on the next page, is item D, as in delta.

A. Yes.

Q. Do you see that?

A. I do.

Q. And that items reads: "In the further alternative to the requests set out at items (b) and (c), ordering Respondent to pay monetary damages equal to the Fair Market Value of the Land Bonds as of immediately before Perú's breaches, which is approximately 550 million plus interest at commercial annually compounding rates, such as the rate of the real return on debt in Perú, on that amount from the date of the breach through the date of the award."

Do you see that?

A. I do.

Q. Now, you did not validate or were asked to validate this calculation in any of your Reports; correct?

A. Correct.

Q. You were not asked to assess this supposed

quantification of the Fair Market Value of the Land Bonds as at the time of Perú's supposed breaches; correct?

A. Correct.

Q. And you did not perform a Fair Market Value valuation of the Gramercy Bonds as at the time of Perú's supposed breaches; correct?

A. I don't know what the exact answer is. I will go back to the fact that I provided a model that will give you the estimate intrinsic value at any point in time that you ask the model to do it.

So, it could give you the amount at the date of the breach or at any date that you ask it. So, I was not asked specifically "go forward to the date of the breach and give me that number," as I recall, but I was asked to do it to a certain date, and it's a rolling number. In the 2016, it's up until that date. In the 2018 Report, it's until May of 2018.

Q. Are you aware that the phrase "Fair Market Value" does not appear in the first two of your three Reports, Mr. Edwards?

A. Yes.

Q. Moving on. Let's go to Tab 1. That is--sorry. Hold on. Don't go anywhere.

A. I'm very curious, so I won't.

Q. Go to your Second Report.

A. So that's Tab 1.

Q. It is. It is. And Paragraph 37. The last sentence says: "In 2013, the Constitutional Tribunal reinforced its 2001 Decision again stating that the Land Bonds were to be repaid on the basis of value that was to be updated to the present day."

Do you see that?

A. I do.

Q. You reviewed, did you not, both the 2001 and 2013 Constitutional Tribunal Decisions; right?

A. Right.

Q. So, when you say that the Land Bonds were to be "repaid on the basis of value that was to be updated to the present day," you're referring to the application of the current value principle; correct?

A. Yes. Let's say yes for now. Let's see where we go. Yes.

Q. So, it is your understanding that the 2013

Decision confirmed the applicability of the current value principle to the Land Bonds; correct?

A. Yes.

Q. Now, in the next paragraph, Paragraph 38, you mention that the Constitutional Tribunal rejected applying a CPI method to adjust for inflation; correct?

A. Correct.

Q. Instead, the Tribunal held that the appropriate updating method was a dollarization approach in which the unpaid principal balance of the Land Bonds would be converted to U.S. dollars and accrue interest; correct?

A. Correct.

Q. Now, the MEF August 2017 formula applies interest based on the coupon rates on one-year U.S. Treasury bills; correct?

A. I think it applies the yield on the Treasury bill, not the coupon, but the yield.

Q. Sure.

A. Those are two different concepts.

Q. Right. And the yield includes an interest

component; right?

A. It does.

Q. Right. So, those coupon rates are nominal interest rates; yes?

A. Right.

Q. So, this means that there is both an inflation component and an interest component; right?

A. That's a conversation I had earlier with the President, Professor Fernández Armesto, yes.

Q. Exactly.

A. It's called a Fisher equation that decomposes into a real component interest rate and an inflation component.

Q. And the interest component is called a real interest rate; correct?

A. That's correct. And I calculated in one of my slides that the implicit real interest rate in the one-year Treasury is 0.77 percent, which I find to be extremely low, as I point out, and does not cover lost opportunity.

Q. Right. And I think you mentioned this. You are proposing a longer term for U.S. Treasury bills

if such bills were to be adopted as a measure of interest in the formula; correct?

A. I wouldn't say that I'm proposing that. I think that what I pointed out is that if one were to be constrained by certain framework, and I think I added that we economists, that's what we do. We optimize, subject to constraints, and I think I said legal, environmental, cultural, and other.

And if we want to make corrections to the MEF Formula, which, as we know, was completely messed up in 2014 and in February of 2017--if we were to make corrections, one possible correction--and I had a conversation there with Professor Armesto--would be to use longer rates, and we talked about 30 years, and there was a gap when they were not issued and all that, yes.

Q. And you mentioned in your direct testimony that long bonds--you called them the long bonds--have a much higher yield; correct?

A. That's correct.

ARBITRATOR DRYMER: He said usually.

THE WITNESS: I said usually, yeah.

BY MR. LLANO:

Q. Yeah.

A. Right. Which is the best predictor of a recession coming, and it failed only once, and this was last year.

Q. But, of course, if you're given a bond today, that's different from knowing retroactively how much those Bonds yielded; correct?

A. That's correct.

Q. So, if you were given a bond today, a long bond, as you call it, 20 years, for example, there is some risk associated with that. The longer the term, the higher the risk; right?

A. Let's say yes for now. Let's see where you are going.

Q. Well, that's it.

A. Okay.

Q. Now, let's go to Tab 11. This is your Third Report, which is dated May 21, 2019. Paragraph 15, please. The last sentence reads: "Indeed, the MEF, as well as independent experts retained by the MEF, Peruvian Courts, and others who have considered the

value of the Land Bonds all agree that the Land Bonds' value today encompasses both of these components: Inflation adjustment and compensation for the cost of foregone investment opportunities."

Do you see that?

A. Yes.

Q. You mentioned two components here, inflation and interest; right?

A. Yes.

Q. So, now that we've seen what Perú did in the MEF 2017 formula, let's look at your opinions on inflation and interest, and I'd like to start with interest. Okay?

A. Yep.

Q. All right. Just one paragraph above that, Paragraph 14, in the last sentence, which begins on the fourth line, you mention your assignment.

A. Excuse me. I thought you meant Paragraph 14. Which paragraph?

Q. Same Report.

A. Yeah.

Q. Right. And Paragraph 14.

A. Yeah.

Q. Fourth line says: "In carrying out that assignment."

Do you see that?

A. I don't see that.

Q. We're in your Third Report, Tab 11.

A. Tab 11, yes.

Q. Yes. Paragraph 14.

A. It starts "as I described"?

Q. Yeah.

ARBITRATOR DRYMER: Next sentence.

THE WITNESS: Oh. Okay. Yeah, right.

BY MR. LLANO:

Q. Right. And you mention your assignment, and then you mention in that same sentence two different understandings that you have in this respect.

Do you see that?

A. Yes.

Q. And the first understanding has to do with the current value principle.

A. Yes.

Q. And you note here that this principle

relates to adjustment for inflation.

Do you see that?

A. Yes.

Q. And we will discuss inflation later.

Now, separately in Point 2, you say that "under Peruvian law, the total amount owed under an obligation of value includes interest to compensate the creditor who did not receive timely payment for the loss of use of money."

Do you see that?

A. Yes.

Q. So, this point relates to interest; right?

A. Yes.

Q. Now, let's go to Page 35. Same Report. Page 35.

A. Yes.

Q. There's a heading there for a Section B. And it is entitled "the August 2017 MEF formula incorrectly accounts for inflation."

Do you see that?

A. Yes.

Q. So, this section obviously deals with

inflation and your application of the current value principle; correct?

A. Yes.

Q. Now, if we move to Page 37, there's another heading there for Section C, which is entitled "the August 2017 MEF formula incorrectly accounts for Bondholders' foregone investment opportunities."

Do you see that?

A. Yes.

Q. So, this is a section in this Report that deals with interest; correct?

A. Yes.

Q. Now, Paragraph 118, just below the heading, says: "In addition to--in addition to being inconsistent with the current value principle, the August 2017 MEF Formula also employs a Rate of Return that does not reflect the foregone investment opportunities of Bondholders."

Do you see that?

A. Yes.

Q. So, in addition to the issue of the application of the current value principle, you

question, in this section, the way that the MEF August 2017 formula applies interest; correct?

A. No.

Q. Go on?

A. Pardon me?

Q. Do you have anything else?

A. Yeah. As I read the sentence, it says: "The August 2017 MEF formula employs a Rate of Return that does not reflect the foregone investment." And I think that your question is that I object to the method. There's a difference.

Q. I see. Good.

But my point was a different one. What I was asking is you seem to have two boxes. You have the issue of the application of the current value principle, and that relates to inflation, and then in addition to that, you have another issue, which is the foregone investment opportunity to Bondholders; correct?

A. Correct.

Q. Okay. Because--

A. But that method is different from--the only

point I want to make clear for the record is that the method is different from the value of the Rate of Return.

Q. Fair enough.

Now, the reason why you make this distinction, the "in addition to" language, is that the 2001 Constitutional Tribunal Decision does not relate to the issue of interest--correct?--or the current value principle; correct?

A. You are taking me, Mr. Llano, to, I think, legal terrain, and I'm not a lawyer. Let me say that for now, and let's see where you go.

Q. Right. So, perhaps another way of putting it is as follows: Current value principle, column on the left, that's inflation. Interest, column on the right, that's a different thing; yes?

A. Yes.

Q. Good.

Now, the 2001 Constitutional Tribunal Decision, as far as you know, does not discuss interest at all; correct?

PRESIDENT FERNÁNDEZ ARMESTO: It doesn't. I

mean, let me represent that, to the Expert. He's a Professor of Economy. They are still leaving the law so that we can live with that. Don't give him an idea that economy is now started. We have already law in economics, so they are intruding into our field. Don't give him the opportunity that they absorb the law. Don't agree.

MR. LLANO: Good.

BY MR. LLANO:

Q. Paragraph 49, same Report, please.

A. Yes.

Q. It says: "As a further critique of my calculation of the real Rate of Return, the Quantum Report"--by that you refer to the Report by Mr. Kaczmarek and Ms. Kunsman--"observes that interest accounts for over 91 percent of my $1.8 billion estimate of the value of the Gramercy Land Bonds. Insofar as the Quantum Report intends to suggest that a high proportion of interest indicates a flaw in my updating methods, it is incorrect."

Do you see that?

A. Yes.

Q. You do agree that about 91 percent of your quantification of the value of the Gramercy Bonds in Tranche 1 is represented by interest; is that right?

A. Let's say yes. I don't want to check the math. But let's assume it's okay, yeah.

Q. Okay. And that is approximately $1.55 billion; correct?

A. Right.

Q. Now, the MEF August 2017 Formula applies interest, as we've discussed, based on the yields on one-year U.S. Treasury bills; correct?

A. Yes.

Q. And the MEF Formula applies that interest on a compound basis; correct?

A. That's my understanding, yes.

Q. And that's compounded yearly; is that right?

A. Yes.

Q. So, on the one-year U.S. Treasury bills, what happens is that you get rolled over every year; is that right?

A. That's the definition of compounded interest rates, yes.

PRESIDENT FERNÁNDEZ ARMESTO: When you roll over, you add it to the capital and it accrues interest from that date on.

THE WITNESS: Yes, that's compounded interest, yes.

BY MR. LLANO:

Q. Excellent.

Now, let's see what you propose.

So, in Paragraph 31, same Report, Paragraph 31. Second sentence says: "An appropriate measure of that loss"--

(Comments off microphone.)

Q. The second sentence says: "An appropriate measure of that loss is the Rate of Return that Bondholders could have earned had they been able to invest the unpaid principal balances of the Land Bonds in the Peruvian economy."

Do you see that?

A. Yes.

Q. And you propose a real interest rate of 7.22 percent, which you describe as the real Rate of Return on debt in Perú; is that correct?

A. That's correct.

Q. Debt.

A. Let me clarify--

PRESIDENT FERNÁNDEZ ARMESTO: No, it was--why don't you clarify it. I thought it was in capital.

THE WITNESS: So, let me clarify.

So what I did, Mr. President, is I take income arrears, and I decompose it into what goes to the Government, what goes to labor, and what goes to capital. And what goes to capital is the income of capital in soles oro, in (in Spanish) Nuevos Soles three times, and that income is divided by an appropriate measure of the stock of capital, and that gives you the Return on Capital on average. That's 10.9--

PRESIDENT FERNÁNDEZ ARMESTO: 10.9 something.

THE WITNESS: 10.97. And then I say that capital invested in Perú, on average, which according to the Harberger method, yields 10.97, and, which according to the MEF application of the Harberger

method, is 11.26, if I remember correctly.

That 10.97, I can decompose it into what goes to those who are the active investors. That's equity. And what are--of the passive investors, from capital, I divide it into two. One is going to be higher. The active investment equity is going to have a higher return. I choose the lower return.

So, it's the passive investment component of the Return on Capital. So, it's Return on Capital, but assuming that--I'm not assuming here, Mr. President, that people who would have received this money would have gone out prospecting for copper in Perú. There is lots of copper in Perú. They would not be the active investors, but they would have the opportunity to participate in the average investment, which yielded the average return.

They would have been able to participate on a passive--from the passive side. And using those data, that number is 7.22 percent.

I hope that that clarified the way I do it.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

BY MR. LLANO:

Q. Thank you. Now, in your dollarization approach in your Reports, you add an inflation component to this real interest rate of 7.22 percent; correct?

A. You ask inflation because we are carrying now on the accounting in dollars.

Q. Right.

A. So may I clarify? So, the way I think about this, and I think this is a proper way to think about this, is that in this exercise, we are carrying the accounting in dollars.

We are not assuming that every individual who received the Bonds got on a plane and went to Detroit to buy, or wherever it was--to buy the Treasury Bonds.

We assume that they, most of them, stayed in Perú and tried to go on with their lives, except they didn't have their land. So, but what we are carrying out in this exercise, the accounting is in dollars. So, we are transforming the original value, Nuevos Soles--excuse me--soles oro, into dollars using that parity exchange, and I explained it is very important

which parity exchange we use.

And then we carry the accounting in dollars. And at the end, as I pointed out, and as you pointed out, at the end we have to reconvert this accounting in dollars back into soles because the payment, when it happens--and I think that--I read that maybe 400 people or 25 people have been paid. They were paid soles.

So, this is the process. So, these are people in Perú--

MR. LLANO: Mr. President--

THE WITNESS: And I'm answering your question now, Mr. Llano.

MR. LLANO: I'm sorry, but it is really not.

And this was for his Direct Presentation, in any event, not for answering a simple question.

THE WITNESS: Well, I don't know if it was simple.

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you repeat the question because I'm now getting slightly lost. What is the question?

BY MR. LLANO:

Q. That's my question. So, my question, very simply put, was in your dollarization approach, you add an inflation component--let's call it U.S. CPI--to the real interest rate of 7.22 percent; correct?

A. That is correct. And that's why--that was my--because I'm assuming that these individuals still have the opportunity of investing in Perú.

Q. Okay.

A. That's the 7.22 percent.

Q. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: But the dollarization is not the one which yields 1.8 billion, because the 1.8 billion is just--you just do the CPI in local currency.

THE WITNESS: May I clarify that?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, please. This is fundamental.

THE WITNESS: So, I do--I argue that dollarization is not the right method.

PRESIDENT FERNÁNDEZ ARMESTO: Correct.

THE WITNESS: And a flawed method, but I

say, but if you do it right, it will deal 1.6 or something.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. It gives you a somewhat--

THE WITNESS: I don't know--200 million, I don't know if it's slight, but it gives you--so, I'm doing it correctly using what I propose as a parity rate, which coincides in the recent years with the market rate and the 7.22 percent, and the adjustment for U.S. inflation, not for Peruvian inflation, of course, because we are now dealing with dollars.

PRESIDENT FERNÁNDEZ ARMESTO: But that is a backup calculation. That is not--

THE WITNESS: No. My principal calculation is 1.8 using CPI. This is a backup that says that if you do dollarization properly, you get 1.6. I forget the number, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: This is why I was now slightly lost. This is the backup. We are now speaking about the backup calculation. Please.

We will have to make a new break at some stage, because I think we are all getting tired.

THE WITNESS: I'm doing fine.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, but you are enjoying this.

THE WITNESS: I am.

PRESIDENT FERNÁNDEZ ARMESTO: But you are the only one who is enjoying this. This is off the record.

(Comments off microphone.)

BY MR. LLANO:

Q. All right. Now, Mr. Edwards, you seemed not to recall the quantum that results from your dollarization model.

Does $1.72 billion sound about right?

A. Yeah.

Q. Okay. So, in your dollarization model, the nominal interest rate that you apply comes to about 10.5 percent; is that correct?

A. That seems to be correct, yeah. About 7.2 plus 3. No, probably it is lower because inflation in the U.S. is lower than 3 percent.

Q. I did a calculation, I represent to you, you can agree or disagree, and it came out to an average

of about 10.5 percent. But I'll leave it at that.

A. I mean, this is--

PRESIDENT FERNÁNDEZ ARMESTO: 7.22 plus inflation.

THE WITNESS: 7 plus 3 is 10, so, yeah, approximately, yeah. "Mas o menos."

BY MR. LLANO:

Q. That seems to be a running theme, "mas o menos," right, Mr. Edwards?

PRESIDENT FERNÁNDEZ ARMESTO: That was not a question. Let's go on.

BY MR. LLANO:

Q. Okay. Now, you have been proposing an interest rate based on a real Rate of Return on debt in Perú since your very First Report; correct?

A. Correct.

Q. Let's go there. And it's at Tab 13. That's your First Report, and may I direct you to Paragraph 10, please.

A. Paragraph?

Q. 10.

A. 10.

ARBITRATOR DRYMER: This is the First or the Amended First?

MR. LLANO: No, it's the First.

ARBITRATOR DRYMER: Thank you.

MR. LLANO: Unamended.

PRESIDENT FERNÁNDEZ ARMESTO: Slightly.

ARBITRATOR DRYMER: Yes.

MR. LLANO: It's on the screen, also.

PRESIDENT FERNÁNDEZ ARMESTO: We'll have it. It is easier to follow it on the screen because--since there are various Reports.

MR. LLANO: Right.

BY MR. LLANO:

Q. So, if you start from the third line from the top, it says: "To compensate for this lost opportunity, it is necessary to apply an interest rate to the outstanding amount of the Land Bonds and compound that interest from Perú's default through the present day."

Do you see that?

A. I do.

Q. And then you wrote: "This interest rate

should be a real, rather than a nominal, interest rate because the CPI and Dollarization Methods separately account for the effect of inflation. Furthermore, this real interest rate should reflect Bondholders' foregone investment opportunities in Perú."

A. I do.

Q. Now, Mr. Edwards, will you agree as a starting proposition that this case is not really about whether it is CPI versus some other thing. It is about--the big chunk of money is on the real interest rate, is it not?

A. Interest is a very important--many years have passed. So, the last--may I?

Q. Sorry. Sorry, please.

A. The last Bond was issued in '81. As you pointed out, clipping stopped around that time. So, we have to--1973 inflation goes to double digits. 1983, it goes to triple digits, and it's moving towards hyperinflation, so at some point you say the mid-'80s. I would say earlier. Clipping stopped. So, let's say from '81 until now, there are many,

many years, and if you apply 7.22 percent, plus inflation, of course, it adds. Inflation is very important. Of course.

Q. Right. Because--just to give you an example--if we were to take the nominal value of--I'm sorry, the exchanged dollar value of the Gramercy Bonds as of, let's say, 1992, and applied CPI plus 7.22 percent, you would get about four dollars; right?

A. I am not sure I'm following your calculation, but the right way of doing it is apply--not from 1992. What you are doing is you are leaving out all of the inflation.

Q. And we'll come back to that, but I just want to lay out the parameters of the discussion here, and it seems to me that the two biggest things that this Tribunal needs to be concerned about is, do we go all the way back and do we apply a huge real interest rate. Those are the two big items in the room, are they not?

A. I don't know if they are "the" two big items, but certainly they are very important items,

and I think that on both cases I've taken the best practices approach for an economist, which is to update since the issuance of the obligation, and to maintain the original intent, which was that there--those people who had to--had to accept these Bonds would maintain a purchasing power through time over an equivalent basket and to compensate them for foregone opportunities.

So, those are two components, and I stand by my model, and I think that updating from 1992 after hyperinflation has happened is totally--I'm going to use strong language, I say, yeah--totally and completely incorrect.

Q. Got it.

Now, still on Paragraph 10, you say: "I estimate"--this is on the sixth line from the bottom. "I estimate a conservative real interest rate in Perú by first calculating the real Return on Capital in Perú and then, based on that measure, deriving estimates of the real Rates of Return on debt and equity in Perú."

Do you see that?

A. Yeah.

Q. Now, there is no footnote in Paragraph 10 of this Report; correct?

A. Correct.

Q. There is no reference to Peruvian law for your proposed interest rate in this Paragraph or anywhere else in this Report; correct?

A. I am not a lawyer, Mr. Llano.

Q. Right. And, in fact, there is no reference to Peruvian law anywhere in this Report for the specific interest rates that you propose, which results in a quantum of $1.5 billion; correct?

A. So, let's be clear. I think that in my Second Report, there is a reference.

Q. I asked about your First Report, the one that we're looking at now.

A. You said in any of your Reports.

Q. No, I said in this Report. In fact, I said, I will read the question again--there is no reference to Peruvian law anywhere in this Report for the specific interest rate that you propose that results in a quantum of $1.5 billion; correct?

A. I think I answered that, that you're right, and that's--
Q. Yes.
A. I did answer that before.
Q. Good. Now, you don't state in this Report--this Report--that your proposed interest rate is mandated by any provision of Peruvian law; correct?
A. I'm not a lawyer, Mr. Llano.
Q. You didn't say in this Report that any particular interest rate was mandated by the 2001 Constitutional Tribunal Decision; correct?
A. That's correct. I'm not a lawyer. I'm using best economics practices.
Q. You didn't cite in this Report to any evidence to the effect that when Gramercy purchased its Bonds between 2006 and 2008 it expected an interest rate of 7 percent plus CPI; correct?
PRESIDENT FERNÁNDEZ ARMESTO: Dr. Llano, I think he quotes in his next Report, Professor Castillo.
THE WITNESS: Castillo Freyre, yes.

(Overlapping speakers.)
THE WITNESS: In the next Report.
MR. LLANO: That's my point--
PRESIDENT FERNÁNDEZ ARMESTO: This is why--
MR. LLANO: This is where we are headed, sir.
(Overlapping speakers.)
THE WITNESS: Okay. May I make a clarification? So, this--I need--
(Comments off microphone.)
PRESIDENT FERNÁNDEZ ARMESTO: Not to confuse you--
THE WITNESS: No, but June of 2016 is before 2019 or 2018, which is when Mr. Castilla Freyre wrote his Report. I cannot quote a Report that has not been written.
BY MR. LLANO:
MR. LLANO: Right. Exactly.
A. So, of course not.
Q. Yeah.
A. I don't know where you're going, but yeah, the answer is of course not.

(Overlapping speakers.)
A. We'll find out.
Q. Now, I'm moving on from Peruvian law. I'm asking you now, you didn't cite in this Report to any evidence, factual evidence to the effect that when Gramercy purchased its Bonds between 2006 and 2008, it expected an interest rate of 7 percent; correct?
A. No. I don't cite it.
Q. Or any other percentage; correct?
A. Correct.
Q. Now, you don't cite to any such evidence of Gramercy's expectations of a specific interest rate in any of your Reports; correct?
A. I don't talk about Gramercy's expectations because that is not my assignment. My assignment is to value the Land Bonds in Gramercy's possession, and by extension all Land Bonds that were issued under the Agrarian Reform Law. So, no, I don't, because that is not part of my assignment.
Q. Now, Perú could have adopted the interest rate on the face of the Bonds, could it not?
A. They could have done anything, I assume, I

could have. Yeah.
Q. And that would have been a reasonable application of interest rate; correct?
A. I'm not going to opine on the word "reasonable." I'm going to stand by my Report, which, as I repeat, is assuming that investors' average recipient, average individuals who were forced to receive these Bonds could have enjoyed the opportunity that was available to an average investor in Perú, and I was conservative. I didn't assume that these were the guys that went out and prospected. They are passive.
And when you do that calculation--this is very simple--you go out and you do it, as the MEF did it in 2011. You get a number like the one I got. And then you apply it, and you say to the square, to the third power, to the fourth power, and then you do it many years to the many powers, and this is the number that comes up.
Q. But you would agree, would you not, that we are acting, all of in us this room, are acting under certain constraints, including Peruvian law; correct?

A. Yes.
Q. Okay. Now, let's go to Tab 14, Please.
And this is Mr. Castillo's PowerPoint presentation from yesterday?
A. Okay.
PRESIDENT FERNÁNDEZ ARMESTO: Why don't you blow it up.
THE WITNESS: Yes.
PRESIDENT FERNÁNDEZ ARMESTO: Instead of looking it up.
MR. LLANO: I am told it will take a moment, sir, let--
(Comments off microphone.)
PRESIDENT FERNÁNDEZ ARMESTO: Okay. Then I can get it in paper. Let's not lose time. Here it is.
(Comments off microphone.)
MR. LLANO: 7.
PRESIDENT FERNÁNDEZ ARMESTO: It is H-6.
BY MR. LLANO:
Q. And I'm referring to Slide 7, sir. Are you with me?

A. Yeah.
Q. And this is in Spanish, of course. And the second bullet point is entitled "implicit consequences."
Do you see that?
A. Yeah.
Q. And the third subbullet says: "The Bondholders are entitled to compensatory interest:"
Do you see that?
A. Yeah.
Q. And then there are two options. And the first one is rates of 4 percent, 5 percent, and 6 percent indicated in the Bonds?
A. Yeah.
Q. Right?
A. I can read that, yeah.
Q. And the next option is compensation for the opportunity costs.
Do you see that?
A. Yes.
Q. And, of course, you went for opportunity costs, which is Option 2; right?

A. No, I didn't go for anything. This is first time I've seen this. I was not here for Mr. Castillo Freyre's presentation yesterday, and I have never seen this. I did not read his Report because it didn't exist before I went for any methodology.
Q. Exactly.
A. My methodology starts and then it coincides with Peruvian law, and I can see here, but I went to--I'm happy that he says this, being a "letrado de importancia," that he says this.
But I am acting according to best practices, the kind of thing that we would have done at the World Bank, or that they still do at the World Bank, the type of calculation that the MEF did in 2011 in the paper that is in the record, and I am happy that he says that there are these two options, and I think that the correct option is the Number 2, so the compensation for the opportunity cost, real interest rate.
Q. So, you would agree that, according to Mr. Castillo, whom you relied on in your next Report,

there is at least one--at least one other option in addition to the option that you chose in your First Report; correct?
A. Yes.
Q. Okay. Now--
PRESIDENT FERNÁNDEZ ARMESTO: We saw it in this graph.
THE WITNESS: Yeah. The yellow points. No.
PRESIDENT FERNÁNDEZ ARMESTO: His numbers go around the top and the--
THE WITNESS: The middle ones.
PRESIDENT FERNÁNDEZ ARMESTO: And the middle ones are those which reflect these.
THE WITNESS: Right. That is correct, Mr. President.
BY MR. LLANO:
Q. Now, at the time that you wrote your First Report, June 2016, you were not given this instruction that we see on the screen; right? That you have these two options; correct?
A. I was never given any instructions. I was asked to use the best--my best judgment and to apply

best economic practices--and I, of course, was given to read the Constitutional Tribunal Decision, which of course I did.

Q. Umm-hmm. Now, let's go to your Third Report please. And it's at Tab 11.

PRESIDENT FERNÁNDEZ ARMESTO: That's the Reply Report.

MR. LLANO: Yes, correct. For simplicity, I'm calling them First, Second, and Third.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

BY MR. LLANO:

Q. Paragraph 14, please.

A. 14? 1-4?

Q. Yes.

A. Yep.

Q. The very last part, which is Number 2.

PRESIDENT FERNÁNDEZ ARMESTO: Let's read it together, and then you put the question.

BY MR. LLANO:

Q. Yes. So, you can read it to yourself. Okay?

A. Yeah.

Q. Now, there is a footnote at the end of that portion of the sentence; right?

A. Yeah.

Q. And it cites to the Report by Mr. Mario Castillo, Paragraph 63.

Do you see that?

A. Yeah.

Q. So, let's go there. And it's at Tab 15. This is the Report by Mr. Mario Castillo, whom you rely on. And let's go to Paragraph 63, the paragraph that you cited. And you can read it to yourself again.

A. Yes.

Q. Right. So, there is no mention in this paragraph to the words "foregone investment opportunities;" correct?

A. It says "interés compensatorio," but not "foregone investment opportunities."

Q. Right. And as you will recall, because we just saw it, the presentation from Mr. Castillo from yesterday included foregone investment opportunities as the second option of his two options; correct?

A. I would have to look again.

Q. Right.

A. Which tab?

PRESIDENT FERNÁNDEZ ARMESTO: It does.

THE WITNESS: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: It gives to--

THE WITNESS: I will always take your word, Professor Fernández-Armesto.

PRESIDENT FERNÁNDEZ ARMESTO: Don't, but he says that the "interés compensatorios" can be either the 4, 5, or 6 percent, or "indemnizacion por la costa de oportunidad", Paragraph 63.

BY MR. LLANO:

Q. Now, Mr. Edwards, are you aware that Gramercy adopted the stated interest rate on the face of the Bonds in its own internal model in 2009?

Are you aware of that?

A. I think I am. I'm getting confused on what I know and what I don't know, but I think I am.

Q. Right. So, you, just to clarify, I'm talking about the Gramercy internal Valuation Model from 2009, and my question is, are you aware that

Gramercy adopted the stated interest rate from the face of the Bonds in that model?

A. Yes.

Q. Okay. So, even as late as 2009, after Gramercy had concluded all of its Bond purchases, it was still calculating interest on the basis of the stated rate in each Bond; correct?

A. Yes.

Q. So--

A. Let me rephrase that. That's my understanding.

Q. Right. And Gramercy, of course, had no reason to undervalue its investment at the time, as we know very well; right?

A. Of course.

Q. So, wouldn't you agree, Mr. Edwards, that these differences reflect the fact that there was no certainty at the time when Gramercy made its purchases of Tranche 1 as to the applicable interest rate to these Agrarian Bonds?

A. I cannot answer that question. All I know is that they used the coupon rates. I don't know if

they ran a model or looked at different options. I don't know.

Q. But you will agree, at least, that even Gramercy did not consider this rate, the stated rate on the face of the Bonds, to be inappropriate at that point in time; correct?

A. "Inappropriate" is a word that I have a lot of problem with. I, of course, agree that that's what they used.

Q. They used it.

A. Yes. Right.

Q. Now, Perú also could have adopted the default legal interest rate in Perú, for example; right?

A. I suppose so. I don't know.

Q. Or--

A. I'm not an Expert in bankruptcy or in commercial law, or I don't know if that was possible, but I assume so. Yeah.

Q. You're aware that there is such a thing in many countries as a default legal interest rate; right?

A. I don't know exactly what you have in mind, but there is a "tasa de interés máxima convencional." I don't know if that's what you have. That is conventional maximum interest rate. Is that what you have?

Q. No. I'm saying that some civil codes, for example. I'm not asking a legal question. I'm just asking, conceptually, if you know, that many countries in the civil law system, for example, you can find in the Civil Code, you know, the default rate will be whatever, 4 percent, 5 percent, whatever it is. Are you aware--

A. Yeah, I'm aware of that, but--okay. Let's see where you go.

Q. But you're not aware of what Perú's default legal interest rate is; correct?

MR. RIEHL: Mr. President, this Witness has not expressed Opinions on legal matters, and we did have an Expert who addressed these matters. This is very far beyond the scope of his Reports.

PRESIDENT FERNÁNDEZ ARMESTO: What is the--where are you going to? That he did not apply

the--he could have applied the Peruvian default rate, but he applied the 7.22 rate. That's his professional Opinion as an economist.

MR. LLANO: We're going through the menu of options, and I want to understand within that menu what ingredients he knew about for each dish. Okay.

BY MR. LLANO:

MR. LLANO: So, we're talking about default interest rate. Simple question on this: Did you know or do you know what the default legal interest rate in Perú is?

A. I don't know.

Q. Okay. And Perú also could have adopted, as it did, the yield on one-year U.S. Treasury bills; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Well, it depends. It depends if the debt is in soles, no. It depends on what the debt is expressed in.

MR. LLANO: Good addition.

BY MR. LLANO:

Q. So, we're in the dollarization method.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. The

dollarization, method, yes.

MR. LLANO: All these questions are in the dollarization world. Good point.

ARBITRATOR DRYMER: And just so, I'm clear, when you say "Perú could have," you mean in its calculations in this case? Is that what you're--

MR. LLANO: Yes.

ARBITRATOR DRYMER: Okay. Fine.

MR. LLANO: Yeah. Right. Sir?

THE WITNESS: Could you repeat the question please. Is there a question?

PRESIDENT FERNÁNDEZ ARMESTO: Well, that in--when you have a debt in dollars, you can apply up to the debt in dollar the--

THE WITNESS: Yeah, you could apply--

PRESIDENT FERNÁNDEZ ARMESTO: Any reasonable--the rate of the U.S. Treasury bills.

THE WITNESS: They can--I mean, I think that at one level the right answer is they can apply any rate they want. The question, what is the correct rate, which is the one that satisfies a condition of compensating for foregone opportunities, which, from

an economic point of view, from a financial point of view, from a professional point of view, is the right thing to do.

So, yes, the answer is yes. They could use that rate or two years or the three-month Treasury bill or the 20 years or the 12 years, anything they wanted.

BY MR. LLANO:

Q. Right. So, you say that the question is what is the correct rate, which is the one that satisfies a condition of compensated for foregone opportunities from an economic point of view.

That's what you just said, and so my question is, that's not the only option; right? Under the parameters of Peruvian law, is it?

A. That is correct. I could have used 10.97, which is capital as a whole. I could have used 14.6, which is the--when you decompose--remember, my calculation, which coincides with the MEF of the Rate of Return of capital in Perú is roughly 11 percent. And you decompose it into the passive investments, 7.22. The only way to get to 7.22 for the passive,

the active has to get around 14 to get to 11 on average. Right? I could have used 14. I could have used 11.

I went conservative, and I think that that I've repeated that enough times, Mr. President, and the model and the methodology is very simple. We're dealing with a country. I decided that the proper way to do is to assume that average opportunities to average investors in Perú during this period as reflected by the rate of return on capital were available to average people who were forced to receive the Bonds.

And I want to strongly stand by that methodology, which I think is very robust. Now, of course, they could have used other methodologies, and used a different interest rate including 14 percent, which would have resulted in higher return--higher valuation; right?

Q. Right.

MR. LLANO: Mr. President, I think that this is a good time for that break.

PRESIDENT FERNÁNDEZ ARMESTO: How long do

you have to go?

MR. LLANO: We're about halfway through.

PRESIDENT FERNÁNDEZ ARMESTO: We are off the record.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Very good. 12:36 to 1:45.

(Whereupon, at 12:36 p.m., the Hearing was adjourned until 1:45 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing, and I will ask the Secretary for a time check.

SECRETARY PLANELLS-VALERO: So far, the Respondent has used 1 hour, 33 minutes in the cross-examination. So, at this point, Claimants have 6 hours and 17 minutes left, and Respondent has 5 hours and 21 minutes left.

MR. LLANO: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

(Comments off microphone.)

MR. LLANO: Okay. Good.

(Comments off microphone.)

BY MR. LLANO:

Q. So, Mr. Edwards, you mentioned this morning in your presentation, and you also mention in your Report, that the Gramercy Land Bonds represent between 15 and 20 percent of all outstanding Land Bonds; is that correct?

A. That is a very rough estimate. As the President pointed out this morning, and what I heard

yesterday, we really don't know.

Q. And why is that a rough estimate and not a fixed percentage?

A. For the reasons explained by the Vice Minister yesterday and by Minister Castilla. The--apparently there are even Bonds that were never claimed by the Banco de la Nación. And I don't know, by the way. I don't know. The answer is, no one knows.

Q. No one knows?

A. Apparently no one knows, I said.

Q. You don't know; right?

A. I don't know for sure, no.

Q. Okay. Now, going back to our interest discussion, let's turn back to Tab 1, which is your Second Report, please.

(Comments off microphone.)

Q. Please turn to Page 42.

A. Yes.

Q. And you'll see there a heading for Section VI, entitled "The Real Interest Rate in Perú."

Do you see that?

A. Yes.

Q. And that section runs--or there's a discussion that runs through Page 52; right?

A. Yes.

Q. Right. And between Page 42, where Section VI begins, and Page 52, in that 10-page range, I counted a total of 12 different formulas that you developed to come up with your proposed interest rate; correct?

A. I'll take your word for the number of formulas, yeah.

Q. And you also mention some gaps in the available information to resolve those formulas or to produce those formulas; correct?

A. Yes, Paragraph 129.

Q. Right. And let's look at some of these gaps, just to have them in the record.

You mentioned Paragraph 129. Let's go there. In the second line, you say, "Due to severe inflation, political instability, terrorism, and economic meltdowns, there are no reliable sources of

clean and straightforward data, as would typically be available in more stable or developed countries with which real Rates of Return in Perú can be estimated."

Do you see that?

A. I do.

Q. Now, Paragraph 142, first sentence: "Perú lacks reliable historical economic data."

Do you see that?

A. Yes.

Q. And here in this paragraph, you're talking about the lack of data on the proportion of the Peruvian economy that is funded with equity versus debt; correct?

A. Correct.

Q. Now, Paragraph 150, first sentence.

A. Yes.

Q. "Due to the lack of reliable historical data, precise measures of the real return on equity and the real return on debt cannot be directly estimated."

Do you see that?

A. Yes.

Q. Paragraph 158, third line, you say: "In contrast, data on Perú's debt risk premium for the relevant period are unavailable."

Do you see that?

A. I do.

Q. Paragraph 161, fourth line: "I am unable to find reliable data with respect to the equity risk premium for earlier years."

Do you see that?

A. Why.

Q. Now, each of these gaps in information that we have just talked about needs to be resolved in order for your proposed formulas to work; correct?

A. I think that the way I discuss this in my Report, Mr. Llano, I don't use the word "gap." I don't think there is the words "data gap" anywhere in the Report. I did use it when I was talking to the President about the availability of the 30-year Bond yield in the U.S., and I said there was a period when Secretary Lawrence Summers decided not to float the--so, what I'm saying is that--and this is customary with emerging markets--there are no

reliable data for the whole period.

We are dealing here with a very long period starting in 1969, and for some of the calculations I go back to 1950, and most of these countries developed more reliable data as they went along. Originally, they had reliable data on a small subset of variables, and as they moved along, they developed a better capacity. National income accounts were developed early on with the help of the United Nations and the Economic Commission for Latin America, CEPAL. Price indices were developed early on. So, a number--lots of payments with the help of the International Monetary Fund.

But the lack of reliable data on early periods is a very common occurrence, as you know, and there are customary solutions which have been developed by practitioners, by scholars, by the IFIs, international financial institutions, and what I do is in the absence of all this data, I do the best work that I can, and this is very customary. It's nothing surprising. But, of course, there are assumptions, and as I pointed out earlier--and I

finish my answer with this--every time I faced a fork on the road, as it were, I took the conservative line in an effort to under rather than overestimate the value.

Q. Right. So, let's use your fork in the road analogy where you encounter yourself with a fork in the road. You have to pick one road, right?

A. And I pick the more conservative one, yes.

Q. Right. But you have to determine what substitute information you will use to replace the unreliable data for purposes of your formula; correct?

A. Let me give you a conditional yes and let's see where we go.

Q. Okay. As a general matter, we can agree that you are trying to value Bonds; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

THE WITNESS: I am trying to value Bonds, yes.

BY MR. LLANO:

Q. And Bonds are contracts; right?

PRESIDENT FERNÁNDEZ ARMESTO: You are

getting me on my old hat of professor of commercial law. That looks like a question for students in a test on securities.

BY MR. LLANO:

Q. From a commercial standpoint?

A. That's a question on commercial law, and I'm not a lawyer.

Q. Okay. And Bonds have terms; right?

A. They do.

Q. And the value of a Bond derives from those terms; correct?

A. Correct.

Q. You can't just make up the terms that you like; right?

A. That's correct.

Q. But it's also true that we're not just valuing Bonds; instead, we are valuing Bonds at a specific point in time which is, for purposes of an expropriation, the moment right before the expropriating measure took place; correct?

A. We are--let me state it in my words, what we are doing. We are calculating the intrinsic value of

Bonds that, due to an act of the issuer, where the issuer has responsibility, the creation of hyperinflation, we have lost their nominal value, and we have to value them at a given point in time in which we are now valuing at the current time, or at the time of this Report, May of 2018.

Q. Now, in your Reports, you don't express any particular understanding or notion or position as to what exactly is or are the expropriating measures at issue in this case; correct?

A. Could you clarify your question? When you talk about expropriatory measures, are you talking about the loss of the value of the Bonds or the expropriation of the land?

Q. That's my question. What do you understand is the expropriatory measure?

A. There is a long discussion on background of the Peruvian Agrarian Reform. There is reference to Peruvian economic history. There is a reference to Don Fernando Belaúnde being elected in '63. There is a reference of the 1967 devaluation. There's a reference to the October 3 coup d'état that ended

democracy in Perú. So, there is reference to the Agrarian Reform and to the expropriation. So, there is a very clear background.

Now, the Bonds were issued and the holders of the land, as I explained here, were forced to take them. And inflation, as the different discussion that we had here, eroded the nominal value in a significant way. And we--I am taking as a valuation point, for inflation, the issuance, and for interest, the moment the coupons became unclipped. So, they are very--there are several variables going on, so my answer is complex, because the question--I think it merits that kind of answer.

Q. Now, you mentioned events in 1963, the 1967 devaluation. You mentioned a coup, and Mr. Belaúnde. You will agree that that's a long history. We're talking about a 50-year history here, are we not?

A. The Bonds were first issued in 1969.

Q. Right. And so, my question, coming back to it, is: What is the expropriatory measure, in your understanding?

MR. RIEHL: Mr. President, this is, again,

beyond the scope of his testimony, and counsel seems to be looking for a legal opinion and he's not a legal scholar. That's not the capacity in which he's here to testify.

MR. LLANO: I'm not asking for a legal opinion. I'm asking for the understanding of what the expropriation is, in his view, because that is a driver for the quantification in a treaty case.

PRESIDENT FERNÁNDEZ ARMESTO: I think he simply calculated the intrinsic value as of 2018. He has to decide whether that value has or not any relevance for an expropriation.

To the best of my understanding of his expertise, he's not saying there was an expropriation, and I am valuing that--the Bonds as of the date of expropriation. He is just saying the intrinsic value--he has developed a model for establishing the intrinsic value of all Land Bonds in Perú at any moment in time, and it could be used for these Bonds, for the second tranche, for some other Bondholder. It is just a general model.

Professor, is that--

THE WITNESS: That is correct, Mr. President.

MR. LLANO: But in assessing that model and that quantification, perhaps it might be helpful for the Tribunal to understand if he has any notion or position on what the expropriation was, and that could assist you in considering all the menu of options that are available in his Report.

THE WITNESS: I think that that's a legal opinion, and that is beyond my competence.

MR. LLANO: Okay.

MR. HAMILTON: Mr. President, if I might, we heard from Mr. Edwards for an extended direct talking about chickens and geese and all sorts of other stories. This is directly pertinent and material to the issues that Quantum Experts deal with in a Treaty claim.

PRESIDENT FERNÁNDEZ ARMESTO: Yes--yes and no, because he is not--we are used to seeing a Fair Market Value of a--whatever, of a mine or something. He has not made a fair market valuation of Bonds. He has made a model for the intrinsic value of Land

Bonds in Perú. So, it is not exactly comparable to most models we have seen.

MR. HAMILTON: That's true.

MR. FRIEDMAN: May I make just one brief procedural point? I believe we're dealing with one lawyer per Witness. I have not spoken. I just would suggest that we stick with that model.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Let's go on.

BY MR. LLANO:

Q. Now, whatever the expropriation date is or could be, you do not state in your Reports that at that specific point in time, whenever the expropriation might be, that right before those measures there was an unequivocal provision of Peruvian law or a judgment of a Peruvian Court that would be applicable to all Land Bonds saying that interest rate must be exactly X, Y, or Z; correct?

A. I'm not a lawyer.

Q. You do not state that in your Report. I'm not asking for a legal position; correct?

A. I'm not a lawyer, and it's not in my Report.

Q. Okay. Instead, you calculate what you think should be the appropriate interest rate; correct, Mr. Edwards?

A. I use the best practices, or the World Bank uses, and what the MEF in Perú used in 2011, which is the Harberger model, to calculate the foregone opportunities of people who were denied payment or did not receive payment, and it's an acceptable model.

We used it at the World Bank. It was used by the authorities in Colombia. It was used by the Project Valuation Office in Chile. It is used in Perú. It's an accepted model that--I'm not going to explain it again. It composed of--we know all of that. And it's a nice standby model, and it makes a lot of sense.

Someone obtained 10.97 percent under capital, and if you were passive, you obtained 7.2. This is historical data, and someone obtained it, and it's obtained on average, and I'm saying the average person that was subject to these situations--to this situation, it's very reasonable to assume that they

obtained that--on a conservative side, that return.

Q. And instead of starting from a position of, what is the understanding of Peruvian law and what are the parameters to which you are constrained, you start from your own set of 12 formulas with a bunch of gaps that you chose how to fill; correct?

A. I did not choose my own system. This is--I will go over it again. This is accepted best practices. This is what--Mr. President, do you want me to repeat this again and again?

PRESIDENT FERNÁNDEZ ARMESTO: No. I'm almost able now to repeat it myself.

THE WITNESS: Yeah. Shall we use a shortcut and say "the Harberger method" going forward? And with an understanding that the MEF has used it as recently as 2011, yielding a rate that is higher than the one that I use?

BY MR. LLANO:

Q. Okay. Now, you do not cite in your Report to any evidence--evidence to the effect that there was certainty at the time before the measures at issue in this case that these 12 formulas, with these

particular fillers and this particular output of 7.22 percent, was the law of the land for all of the Land Bonds; correct?

A. I am not a lawyer. I don't know. That is beyond my expertise.

Q. You do not cite to any evidence to that effect; correct?

A. I am not a lawyer, so I don't cite detailed legal precedent.

Q. Right. Now, let's look at your formula a bit more in depth. Your calculation of interest, Mr. Edwards, begins with an estimate of the Return on Capital, including both debt and equity across the entire Peruvian economy; correct?

A. That's correct.

Q. And your calculation of the real Return on Capital is equal to the real income earned by capital divided by the real total capital stock; correct?

A. That's correct.

Q. And the Tribunal can see this equation at Paragraph 132 of your Report; correct?

A. Yes. Yes.

Q. And in that equation, the numerator--that is the real income generated in Perú--is GDP less adjustments for labor and taxes; correct?

A. That is correct. That is customary. That is what we do. GDP is income accrued to everyone, and we are attributing one part to capital, one part to labor, one part to the Government.

Q. Right. So, you are subtracting labor and taxes, just to be clear; right?

A. Yes.

Q. Right. Now, GDP is like a measure of total value of all goods and services produced in an economy; correct?

A. Yes. Let's say yes for now.

Q. Now, as to the denominator in the formula, which is capital stock, you don't provide a definition of capital stock in this Report; correct?

A. No. I think I do.

Q. Where, please?

A. It's in--Footnote 106 gives us--says that it's the Penn World Tables, and I think that in my not amended Report, the First Report, it's a detailed

discussion and in Paragraph 136, it says the Penn World Table provides annual estimates of capital stock for Perú in 2005 dollars. That is the source, the Penn Tables.

Q. Right. That's the source. It's not a definition of capital stock, is it?

A. Well, I guess it's not a definition. I don't define GDP either. It doesn't say that GDP is consumption, plus investment, plus Government, expenditures, plus export, minus imports.

Q. Okay. Now, is it fair to say that capital stock is essentially the value of all income-producing assets in the economy?

A. Yes, but--let's say yes for now. Let's see where you are going.

Q. So, assets in the economy would include things like the street out there, electricity wires, bridges, infrastructure, and the like; correct?

A. Yes.

Q. And the result of this equation, which you have in Paragraph 132, is a 10.97 percent Return on Capital in the Peruvian economy; correct?

A. We obtain the return year by year, and I showed in my--I don't want to show it again--in my direct--the date on the year by year, which starts with lower as the economy was highly distorted, and subject to protectionism measures and regulations, and that grows through time. So, I have it year by year, and then I take an average of all these years, and I get 10.97.

Q. Okay.

A. And, again, to make clear, to be on the conservative side, I include the earlier part when the return is lower. If I have a (in Spanish) starting in '69, maybe I'll get back to the MEF number, which is 11.26.

Q. Okay. So, the average is 10.97 percent; is that right?

A. That is correct.

Q. Okay. Now, you then take the result of that equation, the 10.97 percent, which is the real Return on Capital in the Peruvian economy. You apply some Algebra to that, and you split it between returns to lenders on all of these assets and return to equity

on all of these assets; correct?

A. Yeah. So, let me give you some context.

And I'm repeating myself, Mr. President. I'm sorry because of the questions.

I am now--I say it, we have 10.97, and I'm really looking for compensation for foregone opportunity. That 10.97 includes entrepreneurs, the active and the passive. And I could say, well, on average, these people whose land was taken and received these Bonds, could have been some active and some passive, and I say, well, let's go conservative. Let's assume that they are going to be passive.

MR. LLANO: Mr. President, this is really not my question. I'm just breaking down the formula. I'm not asking for the reasons. The reasons are in his Report. The Tribunal can read the Report.

BY MR. LLANO:

Q. I just said, you split the Return on Capital between returns to lenders and return to equity; is that correct?

A. I'm giving you context, Mr. Llano. I--

Q. I didn't ask for context.

(Overlapping speakers.)

THE WITNESS: I cannot answer the question, Mr. President, if I don't get to give you the context.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I mean, we have been through this. You are welcome to continue, the answer is--I think it is--

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: --yes, and he was explaining that. And let's go on.

BY MR. LLANO:

Q. Okay. Now, you find in your Report that the estimated ratio of equity relative to all capital in Perú is 45 percent and the estimated ratio of debt relative to all capital is 55 percent; is that correct?

A. That is--I think is correct.

Q. It is in Paragraph 144 of your Report, last sentence.

A. Yeah, the reason I say that I'm not sure is the previous sentence says 49 and 51. So, we are doing--

Q. 50/50--
A. Yeah, 50/50.
Q. Okay. Let's do 50/50.
(Overlapping speakers.)
A. By 50/50, again, conservatively. I'm lowering, I'm going from--you remember the First Report, 749 and I'm going down, I'm getting to lower and lower numbers. I am not saying--I'm not going to use 10.97. Let's be conservative.
Q. All right. Now, with your Algebra--and we don't need to get into the details of how you get there, but you end up saying that the return on lending to construct all assets in the Peruvian economy is 7.22 percent?
A. Yes.
Q. And the return on equity investments to construct all assets in the Peruvian economy is 14.72 percent; correct?
A. That's--I seem to remember--7.22 I know is the number. The equity, I think, that that's the right number.
Q. Right. So, let's look at Paragraph 138.

The first sentence says: "This real Return on Capital is a reasonable estimate of the return that Bondholders could have earned had they been able to invest the unpaid principal balances of the Land Bonds in the Peruvian economy."
Do you see that?
A. No.
Q. First sentence.
A. Which paragraph?
Q. 138?
A. Okay.
Q. Are you with me?
A. Yep.
Q. All right. So, I read the first sentence of Paragraph 138, which ends with "had they been able to invest the unpaid principal balances of the Land Bonds in the Peruvian economy."
Do you see that? Third line, 138. Yes?
A. Well, that's not--okay. Let's see. Yes.
Q. That's what it says.
A. No. The--that doesn't matter. Okay. Go ahead.

Q. Now, in this Report, you do not cite to any kind of Peruvian security or other Peruvian investment in which a Peruvian Bondholder could have invested to generate a specific lending return based on all assets in the country; correct?
A. I do.
Q. Where?
A. Footnote 108. Fernández Baca, Ministry of Economy and Finance, April 17, 2011.
Q. What is the specific security?--let me finish. Let me finish. What is the specific security or investment that a Peruvian Bondholder could have invested in that will generate a specific lending return that is based on all assets in the country?
You do not cite that in this Report; correct?
A. I don't--I don't cite that because I am not talking about a specific bondholder. I am talking about someone who received the Bond. That's not a bondholder. That is not a bond investor. These people did not acquire these Bonds.

Q. Yeah.
A. These people had to take these Bonds. So, no, I don't talk about a bond investor who has, by being a bond investor, established a preference for bonds. I talk about the average for the economy.
Q. You're talking about foregone investment--sorry, foregone opportunity costs, yes?
A. Yes.
Q. Okay. What is it? What specific type of asset, security or otherwise, could have--could a Peruvian Bondholder have invested in that would yield a specific lending return based on all assets in the country, sir?
A. We are getting--we are getting the average here of the return. So, the average person has--financial opportunity to invest in the average investment.
As the Professor said, the division of capital are all income-producing assets. And this is the average. And if you read Document CE-158, you will find the breakdown in their assets that yielded 16 percent in real terms and so on and so forth. Of

course, this is not a memory test. I don't remember all the numbers in the Fernández Baca Report, but it's in the record, and we can look at it, I assume.

Q. You certainly do not attest in any of your Reports to the existence of a security or other investment in Perú in the 1970s, 1980s, and 1990s, that included a specific lending return that is based on all assets in the Peruvian economy; correct?

A. That's correct. I don't mention a security because there was none.

Q. Right. So, this is a return that is measured on a theoretical investment that is not really possible to make in practice; correct?

A. I don't know if it is possible to make it. On average, people obtained it. There were people that made more. There were people that made less, and we are working here with an average. It was obviously available to Peruvians because these are ex post data. This is what happened.

Q. Yep.

A. This is not an invention. It is not taken out of thin air. It is not a magical number. It is

the reality of Perú.

Q. Yeah. Now, you criticized this morning in your presentation the use of the one-year U.S. Treasury bills, and you had this analogy of a person, a Peruvian flying to Miami to buy a one-year U.S. Treasury Bill.

Do you recall that?

A. I do.

Q. And I know you don't think Bondholders could or would make such an investment, but an investment in one-year U.S. Treasury bills is actually possible, such a security exists; right?

A. It is--it was not legally possible for Peruvians during most of that period, if not all of the period under consideration.

Q. Okay.

A. There were exchange controls, there were capital controls. I'm not a lawyer, but it was an offense that was legally punishable to go beyond a certain amount of dollars or any other foreign currency. So, that's the reality.

Q. And you also mentioned in your presentation

that the World Bank uses the--what is it?--the Harbinger approach?

ARBITRATOR DRYMER: Harberger.

BY MR. LLANO:

Q. Harberger. Okay. Harberger approach.

And they use that when they lend money to States--

A. No, I didn't say that.

Q. What does the World Bank use the Harberger approach for?

A. We're going to go back, Mr. President. I'm sorry. I'm forced to do this.

What I said was that when the World Bank lends money for a hydroelectric project, for a highway, for an infrastructure investment, it has to make sure that the client, which is a sovereign government, invests those monies wisely. I think I used the word "wisely." In order to do that, it has to calculate a hurdle rate, and that hurdle rate is in economic theory known as the opportunity cost of funds. It is how those funds--would those funds, if they had been introduced into the economy would have

yielded--we are now instead of introducing it into the economy, we are going to use them to finance the hydroelectric project.

That's the hurdle rate, which is not very different from hurdle rates that companies use as a concept. And the hurdle rate, I said, at the World Bank for a long period of time has been calculated using the Harberger approach. And I added--now it's going to be like the 10th time--that the MEF in Perú has used same model as recently at 2011.

Q. Thank you.

And we happen to be sitting in the World Bank, and we can agree, can we not, Mr. Edwards, that the World Bank does not lend to individual investors, including to Peruvian Bondholders; correct?

A. Complicated answer.

PRESIDENT FERNÁNDEZ ARMESTO: As a general norm, I think no.

THE WITNESS: No. Well, there is the arm of the World Bank that does; right? The World Bank is a group. This is the Bank of International Reconstruction. I mean, we are going to

get--Mr. President, we can get in depth at any level the lawyers want. This is the World Bank rule. The World Bank Group includes as a branch as the IFC. The IFC does lend to individual companies in the private sector. The international bank, the IBRF does not, but at the same time, the methodology that we use is what it is opportunity cost, and the opportunity cost comes from extracting a dollar from a country and devoting it to a government project. That dollar is extracted, comes partially from foregone investments, partially from postponed consumption. We have to use--I'm going to get here into the details because this is what--he is asking for that, Mr. President.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no. He's definitely not. No, but he is definitely not, Professor.

THE WITNESS: If he needs it, I'm available.

BY MR. LLANO:

Q. Great.

So, you cite in your Report to no evidence,

contemporaneous to Gramercy's purchase of Land Bonds indicating that Gramercy expected a theoretical approach in setting an interest rate under Peruvian law for a Peruvian instrument; correct?

A. Correct.

Q. Okay. Now, you're calculating foregone opportunity foregone opportunities costs on an opportunity that never existed and that no Peruvian could actually forego; correct?

A. No, not correct.

PRESIDENT FERNÁNDEZ ARMESTO: No. No.

THE WITNESS: I don't know.

BY MR. LLANO:

Q. You don't mention anything, do you?

A. Someone got that return, and that someone is the average. So, of course, there are lots of people above the average and below the average, and there are people on the average.

Q. We just established that you cited no specific investment that is based on the lending return to all assets in the economy, and I'm asking you how could someone forego an opportunity that you

cannot buy. There is no such security, no such title; correct?

A. Mr. Llano, I've said a hundred times now that this is the average. We are estimating--I am estimating the average foregone opportunity for an average investment in Perú, and I think that was available because this is on the passive side. You didn't have to put on your boots and get the boots on the ground.

On the passive side, it was available for the people who originally received the Bonds. It's an average. Of course, it's an average. And there were no EPFs at the time. There was no Vanguard 500 or equivalent at the time. Of course not.

Q. Right.

A. But the average individual obtained--the average capital obtained in Perú, 10.97, and that number that I calculated is confirmed by a number of other estimates which I cite in my Report.

Q. Okay. Now, let's go to your Third Report, Tab 11.

A. Yeah, I have it.

Q. Sure. And at Paragraph 67, please. You mention here valuation of Land Bonds by an association called ADAEPRA.

Do you see that?

A. Yes.

Q. And ADAEPRA is an association of Peruvian holders of these Land Bonds; correct?

A. Yes.

Q. And ADAEPRA performed this valuation in December 2006; correct?

A. Yes.

Q. So, that was around a time that Gramercy started purchasing the Land Bonds; right?

A. That's my understanding, yes.

Q. For Tranche 1, I mean. Yeah.

A. The only tranche I know, yes.

Q. So, would you agree that ADAEPRA has an interest in maximizing recovery on the Bonds, sir?

A. Yes.

Q. And they are unlikely to want to undervalue these Bonds; correct?

A. I think that they would try to value them

fairly so that they, in their legal claims, they will be--if they get awarded the amount they are claiming there. I don't think--but I don't know. I've never met the ADAEPRA people. I don't know what they are doing.

Q. Just based on pure common sense, they wouldn't want to undervalue; right?

A. They would want to value them fairly so that the Courts would agree with them.

Q. Right. So still on Tab 11, your Third Report, and still on Paragraph 67, in the fourth line, you say: "ADAEPRA did so by adjusting the outstanding face value of the Bonds by the increase in Perú CPI between the issuance date and present and applied interest on a simple basis at the stated coupon rates of the Bonds from the years of the last clipped coupons."

Do you see that?

A. I do.

Q. And you then mention the differences between your approach and the ADAEPRA approach in the Report; correct?

A. Yes.

Q. And the first difference is that ADAEPRA used an interest rate that was equal to the stated coupon rate on the face of the Land Bonds, rather than your rate of 7.22 percent; correct?

A. Yes. Yes.

Q. And the second difference is that ADAEPRA applied a simple, rather than compound interest, and did so from the year of the last clipped coupon rather than from the date of the--from the year of the last clipped coupon rather than from the date of the last clipped coupon; correct?

A. Yes.

Q. Paragraph 68, short paragraph.

A. Hold on. I also applied from the date of the last clipped coupon, both. So--so I think that the difference there is compounded as opposed to simple interest.

Q. Right. So are you aware of connections between--or payments by Gramercy to ADAEPRA?

A. The answer is no, but with that no is that I may have read in the Transcript that there was a

connection between Gramercy and ADAEPRA. So, I don't remember the details. So, it's a no that I don't know. It is not like the clear, but I seem to remember something, and if you want me, we can read the Transcript.

Q. We don't need to. But just to try to refresh your recollection, do you recall testimony by Mr. Joannou in connection with their costs incurred or expenses incurred and payments to ADAEPRA in that connection? Do you recall that?

A. This is what I'm just telling you. I seem to have read in the Transcript while I was on the plane a connection between the two. But I don't remember the details, and if you say that there was payments, there must have been payments later on.

Q. Now, Paragraph 68 in your Report says that this different approach between ADAEPRA and yourself leads to a valuation of the Gramercy Land Bonds of $330 million.

Do you see that?

A. Which--there are several bullet points.

Q. Paragraph 68.

A. But there are several bullet points; right?

ARBITRATOR DRYMER: I think you're in the wrong Report.

THE WITNESS: Wrong Report?

MR. LLANO: Tab 11?

ARBITRATOR DRYMER: It's in your Reply Report.

MR. LLANO: Yes, Third Report.

THE WITNESS: Reply Report. It's easier to handle these. But now I go to the wrong one. 68?

BY MR. LLANO:

Q. Yes.

A. Maybe that's why we were disagreeing. Maybe we'll go back to agreeing, Mr. Llano. I was looking at the wrong booklet.

Q. We were becoming fast friends already.

A. Yes.

Q. So, Mr. Edwards, Paragraph 68?

A. Yes, I can see it now.

Q. Right. It's a short paragraph.

A. Yeah.

Q. It's two lines and you say--

(Interruption.)

Q. I will just repeat the point for the record. The point is that the different approach between ADAEPRA and yourself leads to a valuation of the Gramercy Land Bonds of 330 million; correct?

A. Yes.

Q. And that is about 20 percent of the 1.8 billion at which you value the Gramercy Land Bonds; correct?

A. Yes.

Q. So, in addition to Gramercy itself in its 2009 model, the local Bondholders association also applied the stated interest rate on the face of the bonds; correct?

A. Well, I understand that there are other instances where other interest rates were used, like 6.7 percent in the--I think it was Agricultural Commission. Yeah, but this was--there is a difference here in the interest rate between what they are using and what I am using.

Q. Right. And ADAEPRA specifically is applying the stated interest rate on the face of the Bonds;

yes?

A. Yes.

Q. And so it would be fair to assume that ADAEPRA also considered the stated interest rate on the Bonds to be fair and appropriate; correct?

A. I don't know if they considered it to be fair and appropriate. My guess--or maybe you don't want my guess.

Q. Well, we started this discussion by saying that ADAEPRA would try to get to a fair outcome that the Tribunals would uphold. That was your testimony.

A. Yes.

Q. So, it would be fair to assume, on that basis, that ADAEPRA considered the stated interest rate on the Bonds to be fair; right?

A. I think that they did not have the expertise to look at the--at a technical analysis of those foregone opportunities, but I don't know.

Q. So, those contributions by Gramercy did not help to get them the expertise that was necessary to make this calculation; correct?

A. I cannot answer that question.

Q. All right.

PRESIDENT FERNÁNDEZ ARMESTO: I'm surprised that the compounding implies $510 million.

THE WITNESS: It's called the magic of compounding. So think that--

PRESIDENT FERNÁNDEZ ARMESTO: It uses annual compounding.

THE WITNESS: But remember the Rule of 72; right? The Rule of 72 says that at 7.2 percent per year you double in 10 years.

Now, when I tell that to my daughter, who is a lawyer, she says, no, it increases by 72 percent. And then I explain to her compounding. When you do this over time--and I haven't done it, but if we do it--I'm sure that it's right.

PRESIDENT FERNÁNDEZ ARMESTO: I'm looking at your numbers.

THE WITNESS: Yeah. So, this is magical. This is what compounding does when you do it for 30 or 40 years. It blows out.

And the first way to think about it is the Rule of 72, which doubles in 10 years, although

people that use simple interest say, no, you need 10 percent to double in 10 years, not 7.2.

MR. LLANO: May I proceed, sir?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course.

MR. LLANO: Thank you.

BY MR. LLANO:

Q. In fact, the heading right above Paragraph 67 refers to approaches that are based on "simple interest at the original coupon rate."

Correct?

A. Yes.

Q. And you don't cite in this Report to any changes in Peruvian law between 2009 and 2013 that would justify a higher interest rate or, in fact, any particular rate for all Land Bonds; correct?

A. Correct.

Q. Now, leaving these particular numbers aside for a moment--the Gramercy model, the ADAEPRA model, the Castillo model--we can agree that all of these options show that at the time when Gramercy bought its Land Bonds, there wasn't a fixed rule that

everyone knew and everyone had a consensus about as to how interest should be calculated on all Land Bonds; correct?

A. I would qualify that saying, I would say that if you ask economists, there would be a consensus on the procedure and the method to use, although, before doing it, you would know what the value--the actual number was.

Q. I will repeat my question: Can we agree that the fact that we have all these models--ADAEPRA, Gramercy internal model, Castillo model, the fact that we have a menu shows that at the time when Gramercy purchase its Bonds, 2006 to 2008, there wasn't a fixed rule as to how interest should be calculated on all the universe of Land Bonds; correct?

MR. RIEHL: Mr. President, again, this is calling for a legal conclusion, and this is not a legal Expert.

PRESIDENT FERNÁNDEZ ARMESTO: No. No. I think it's a fair--well, to the extent--

(Comments off microphone.)

THE WITNESS: I answered it, and the answer is that--I think that in the first time you asked the question, the word "consensus" was included. And my answer was that, I think that if you assemble a group of top economists, they would come to a rapid consensus that the way to do this is--the methodology, not the number, but the methodology is to look for foregone opportunity, and that the Harberger method is a very highly respected and proved method to be used, which is what I did.

BY MR. LLANO:

Q. But I'm not just talking about ADAEPRA, sir. I'm talking about Gramercy. Their own internal model, your client, they came up with a model that said stated interest rate. Mr. Castillo, a Peruvian law Expert, gave a menu of options. Can we agree, sir, that there wasn't a fixed rule as to how the interest should be calculated on all Land Bonds at the time that Gramercy purchased the Bonds? Simple question.

A. I'm going to answer that--again, not a fixed rule, but I think we could have reached a rapid

consensus.

Q. Okay. Got it.

Now, let's go to Tab 17. Tab 17 is CE-339.001. These are the Bond contracts.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. LLANO: The Bond purchase contracts, and I am referring to the first contract.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Which is 001.

THE WITNESS: I'm lost here.

BY MR. LLANO:

Q. Tab 17 on your binder, sir.

A. I have like an Excel.

Q. Yeah, it's many pages, and we'll go through it.

A. Okay.

Q. You have not seen this document before, have you?

(Comments off microphone.)

Q. You have not seen this document before; correct?

A. Not the way it is presented here, but I've

seen some of the contracts, yes.

Q. You have seen some of the purchase contracts.

A. I think so, yes.

Q. You cite to none of them in your Reports; correct?

A. I don't remember.

Q. So, is it fair to assume that you saw these purchase contracts in the context of your hearing preparations in the same way as you saw the financial statements, sir?

A. No. If I did see them, it was earlier.

Q. What do you mean?

A. Well, when I saw the scan of one of the Bonds. So, if I have seen them. I frankly don't remember if I've seen them or not.

Q. So, you saw these before your First Report; is that correct?

A. I am telling you, I don't remember.

Q. Okay. But sometime during the preparation of your three Reports, you saw one or more of these Contracts?

A. They look familiar, but I don't remember. They look--the pages, everything in caps, they look familiar.

Q. Okay.

A. But I frankly don't know.

Q. All right. Now, you see on the very first page of the PDF of the document, there's a number 1?

A. Yes.

Q. With a circle on it; right?

A. Yes.

Q. If you turn the page--

A. Hold on. Yes.

Q. Yeah? On Page 2.

A. Yeah.

Q. The second page of the document.

A. Yeah.

Q. There is a number of unclipped coupons.

A. Yeah.

MR. LLANO: I'm sorry, Mr. Edwards. Hold on one second.

PRESIDENT FERNÁNDEZ ARMESTO: We are waiting for Professor Stern.

ARBITRATOR STERN: Okay. I'm here.

BY MR. LLANO:

Q. Okay. We were on Page 2 of the document.

A. Yeah. Yes.

Q. And on the fifth column, starting from the left side, you see a Column called "unclipped coupons."

Do you see that?

A. Yes.

Q. Then if you turn two pages, there's a cover letter from the Muñiz law firm.

Do you see that?

A. Yes.

Q. And on the second page of that cover letter, which is Page 5 of the full document, there is a reference to Annex 1-D.

Do you see that?

A. Yes.

Q. And that is the amount paid for the Bonds at issue; correct?

A. I would have to read the whole Report. I don't know--the whole letter.

Q. Okay. No, but just read with me. It says Annex 1D is a copy of the check for $11,500.

Do you see that?

A. Yeah. I thought that that was the fee Mr. Muñiz was getting.

Q. No, it's not.

A. The lawyer.

Q. I represent to you that it's not. It's the purchase price.

A. Okay. I will take your word for it, of course.

Q. Okay. Now, let's go to Page 9. So, I want to go to Clause 1.7 of the Purchase Contract?

A. Yeah.

Q. And to assist you, the page numbers are also--

A. I'm there.

Q. On the bottom right. Okay. Good.

Clause 1.7, you see that there's a face value, a face value in the narrative--not in the table--of 193,546.66 soles oro.

Do you see that?

A. I do.

Q. And below that there are a list of the Bonds that are covered by the Contract; right?

A. Yes.

Q. And just below the table, there is a reference to an Annex 3?

Do you see that?

A. No.

Q. "Sin perjuicio," right below the table.

A. Yeah, I see that.

Q. And at the end of that same line, there's a reference to Annex 3.

A. Yeah, I see that.

Q. Okay. And that Annex 3, if you keep reading, contains the summary provided by ADAEPRA of the current value calculation for those Bonds.

Do you see that?

A. Yes.

Q. And according to ADAEPRA, if you just scroll down visually, you'll see that ADAEPRA calculates a current value of, including interest, of 232,037.56 Nuevo Sol.

Do you see that?

(Interruption.)

A. Yes.

Q. And are you aware that the other Purchase Contracts, the other Bond Purchase Contracts by Gramercy contain a similar reference to the ADAEPRA valuation?

A. That's my understanding, yes.

Q. Okay. So, this is the--these are the numbers, the--in terms of valuation, that Gramercy decided to reference in its Purchase Contracts; correct?

A. Let's say conditional, yes.

Q. Well, there no reference to another alternative valuation in these Contracts; correct?

A. You want me to read the whole Contract?

Q. Well, you told me that you saw some of them.

MR. RIEHL: Mr. President, I'm not--

PRESIDENT FERNÁNDEZ ARMESTO: It is not, really. Mr. Riehl, let me. I don't know where you are aiming as regards Professor Edwards' Expert Opinion. Where do you want him--to take him?

MR. LLANO: Well, I can tell you the bottom line. Gramercy relied on these numbers in these Contracts and no other numbers.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sure that it is true.

MR. LLANO: Yeah. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: And the numbers they relied upon are those which are in these Contracts. I'm sure. They could not have relied on Professor Edwards' numbers because they were inexistent.

BY MR. LLANO:

Q. Right. They are in this arbitration, though; right? They exist in this arbitration, helpfully for Gramercy; right?

So, Mr. Edwards, I'll move on, Page 10, next page.

A. Yes.

Q. There is a clause third, "conditions for sale."

Do you see that?

A. Yes.

Q. And subsection 6, VI--

PRESIDENT FERNÁNDEZ ARMESTO: "Derecha expectaticio," you are there.

BY MR. LLANO:

MR. LLANO: Yeah. So, there's a reference to an expectation right here; right?

A. Hold on. You have to--where is that? Number 6.

Q. Yeah.

A. "La posibilidad de cobro efectiva."

Q. Umm-hmm?

A. Are you talking about the possibility of effective collection?

Q. Do you see that?

A. Yeah.

Q. And do you see the reference to an expectative right?

A. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: We have seen that somewhere, sometime in this week.

BY MR. LLANO:

Q. Good. So, it was explicitly stated in these

Contracts that what Gramercy was buying was an expectation right, and that it took the risk that it would receive that expectation; correct?

MR. RIEHL: Mr. President, that calls for legal conclusions and these documents obviously speak for themselves. We don't even know that he has seen these documents before.

PRESIDENT FERNÁNDEZ ARMESTO: I mean, what is the relationship with his Expert Report?

MR. LLANO: The relation is what was Gramercy buying.

PRESIDENT FERNÁNDEZ ARMESTO: He is not. He is--he has--I have said that. He developed a model with which we can agree or disagree, maybe right or wrong, on valuation of Land Bonds in Chile at any time--in Perú at any time since they were issued to 2018, based on CPI. This was the purchase of a bond by Gramercy. This is for us. It may be highly relevant for us, but it is--I wonder if it is relevant for the Expert.

MR. LLANO: Umm-mmm.

PRESIDENT FERNÁNDEZ ARMESTO: I see the

relevance, and we have gone through this document, I have a note here on this, and I perfectly remember, and it says in Spanish, "derecho expectaticio," is also an unusual expression in Spanish, so I have it in mind. But I wonder if Professor Edwards can actually help us with that.

MR. LLANO: We can move on, Mr. President. Thank you very much.

BY MR. LLANO:

Q. Let's talk about inflation, Mr. Edwards.

A. Yeah.

Q. Let's go to--one second.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Let us take--let us take--because I think we all need a break. It is now--let's come back at 3:00.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume, and we give the floor to Dr. Llano.

MR. LLANO: Thank you, Mr. President.

BY MR. LLANO:

Q. Mr. Edwards, let's go to your--hold on.

I'll tell you which Report. It's your First Report, Tab 13.

A. Yes.

Q. And you provide an example about a car purchase in this paragraph.

A. You didn't give me a paragraph number.

Q. Oh, 41. Sorry. Paragraph 41.

PRESIDENT FERNÁNDEZ ARMESTO: 41.

MR. LLANO: Yes.

THE WITNESS: Yes. It's not the amended one. It's the other one. First First.

BY MR. LLANO:

Q. It's on the screen now as well.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

BY MR. LLANO:

Q. Okay. Good. Mr. Edwards, you see the example about a car purchase.

A. Yes.

Q. Now, let's consider that example. And it starts on the third line from the top. You say: "Consider the following example. Suppose that Perú had given a landowner 100,000 soles oro in cash

in January 1970 when the earliest of Gramercy's Land Bonds were issued, in exchange for his or her land."

PRESIDENT FERNÁNDEZ ARMESTO: Can we read it to ourselves?

MR. LLANO: Absolutely.

PRESIDENT FERNÁNDEZ ARMESTO: I mean, I think the Court Reporters have promised me a coffee if I can convince counsel not to read into the record.

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: Let's read it, and then you put your question.

MR. LLANO: Great. So, please read Paragraph 41 to yourself, Mr. Edwards.

BY MR. LLANO:

Q. Okay. At the end of that paragraph, you say that: "The landowner would need the equivalent of roughly 103 trillion soles oro to purchase a new car today."

Do you see that?

A. Yes.

Q. And then you give a formula for that. Do

you see that?

A. Yes.

Q. And then in Paragraph 42, you start by acknowledging that Perú did not make a cash payment but instead gave Bonds to these landowners; correct?

A. Right.

Q. And in the third sentence in Paragraph 42, you write that: "If he"--the landowner--"would be paid now, many years later, he would have to receive not the nominal amount of 100,000 soles oro but the amount of money that would allow him to purchase the same car."

Do you see that?

A. No, it doesn't say that. It says "the same kind of car."

In the previous paragraph, it says: "Setting outside technological factors," in--since '85 until now, it is not going to be the same model of car because it's not available.

I'm trying to be careful in this Report. It says there are technological factors and it's the same kind of car, not the same car.

Q. If you look at the sixth line from the top, it says "same car" not "same kind of car"; correct?

A. I'm reading--

Q. It's highlighted on your screen in front of you as well. It says "same car"; right?

A. Yeah. And in the four lines down, it says "same kind of car."

Q. Yeah, I was reading--

A. I mean, that's fine. I mean, that portion.

Q. Now, you conclude this paragraph by saying: "In other words, adequate compensation"--I'm referring to the last sentence now--"adequate compensation for the effects of severe inflation is the amount of money that would allow the landowner to purchase the same kind of car today that the face value of the Bond would have allowed the landowner to purchase in January of 1970"; correct?

A. Yeah.

Q. Now, if we turn down to Paragraph 43, there's a reference there to Article 1236 of the Peruvian Civil Code.

Do you see that?

A. Yes.

Q. And there's a quotation to that Article, which I will not read, but you do quote the Article in that paragraph; correct?

A. Yes.

Q. Now, Article 1236 does not say, according to this quotation, that the value of an unclipped coupon on a Bond should be restored as of the date of the underlying Bond issuance as opposed to the date of the maturity of that coupon for principal and interest; correct? It doesn't say that?

A. It doesn't say that, that's correct.

Q. In fact, in the previous paragraph, which we just quoted, Paragraph 42, you mentioned the words "adequate compensation" twice, but you never say here "compensation in accordance with the current value principle under Peruvian law"; correct?

A. It doesn't say that, I agree.

Q. And for the record, there is no reference in this Report, dated June 2016, to a legal opinion or other Peruvian law authority for the proposition that Article 1236 requires updating value all the way back

from the date of issuance of the Bond and not just from the date of maturity of each coupon; correct?

A. It doesn't say that, no.

Q. All right. And you don't say in this Report, dated June 2016, that the 2001 Constitutional Tribunal Decision says that coupons should be adjusted for inflation as of the date of issuance of the Bond all those years ago as opposed to the coupon maturity date or the date of the last coupon payment; correct?

A. I believe that that's correct.

Q. What you do say in Paragraph 43 is: "This reasoning reflects the fact that in the absence of an appropriate adjustment, the economic value of an obligation at a point in the past--at a point in the past--may differ dramatically from the economic value of that same obligation at the present day."

Do you see that?

A. I do.

Q. You don't reference in this paragraph or anywhere else in this Report a provision of Peruvian law or advice that you received on Peruvian law

saying that the words "a point in the past" means exactly the date of issuance of the Bond and not the date of maturity of the coupons for principal and interest. You don't reference that; right?

A. I don't.

Q. And you don't cite in this Report to any evidence as to Gramercy's understanding of the start date for calculating inflation adjustments at the time when it purchased its Bonds in between 2006 and 2008; correct?

A. Correct.

Q. Let's go to Paragraph 155. Second sentence says: "The MEF Formula calls for the face value of the Bond to be converted to U.S. dollars at the Parity Exchange Rate at the date of the first unclipped coupon."

Do you see that?

A. I do.

Q. And by "MEF Formula" you mean the formula that the MEF implemented to compensate Bondholders in August of 2017; correct?

A. Incorrect.

Q. What's the MEF Formula in this paragraph referring to?

A. I think that we are referring to my First Report?

Q. I'm sorry?

A. We are referring to my First Report?

Q. Yes.

A. It was produced on June of 2016. It cannot refer to a formula that was produced in February of 2017.

Q. True. True.

Now, in that reference that you make to the previous formula, to the existing formula at the time, you are talking about the date of the first unclipped coupon as a description of that MEF Formula; correct?

A. Yeah. The paragraph starts--it is "fatally flawed" that formula, and I explain that in my direct.

Q. Sure.

A. Which part are you referring me to?

Q. Well, the second sentence says, again: "The

MEF Formula calls for the face value of the Bond to be converted to U.S. dollars at the Parity Exchange Rate at the date of the first unclipped coupon," and you even have that phrase in italics; right?

A. I do. I do.

Q. Right. And then you go on to say: "This has the result of failing to compensate the Bondholder for any inflation from the date of issuance to the date of the first unclipped coupon, which for some clipped Bonds was significant"; right?

A. I do.

Q. So, it is your position that Perú must compensate Bondholders for inflation that occurred even during periods of time when those Bondholders voluntary redeemed coupons; correct?

A. Yes.

Q. And then you give an example, which I think is helpful. And we're still on Paragraph 155. You say, for example--

Following the Tribunal's instructions, just read Paragraph 155.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Why

don't you? I think it's more efficient.

(Comments off microphone.)

BY MR. LLANO:

Q. Okay, Mr. Edwards.

A. Yeah.

Q. In this example, the Bondholder chose to clip and collect on coupons between 1972 and 1984; correct?

A. Yes.

Q. And you note that inflation during this period increased by about 20,000 percent; correct?

A. Yes.

Q. And so, the 12 clipped coupons on this Bond also underwent this inflationary effect; correct?

A. Not all of them. It depends on when they were clipped.

Q. Well, we're talking about a limited window of time during which there was inflation of 20,000 percent?

A. At the end.

Q. Sure.

PRESIDENT FERNÁNDEZ ARMESTO: So, since it's

annual, it goes from zero to 20,000.

BY MR. LLANO:

Q. Right.

A. And we can assume that they were clipped one year at a time. We don't know in reality if people for one year didn't clip and then they submitted two. There is no accelerated payment.

Q. Right.

A. But there is, of course, recourse to delay payment. They can bring three coupons in a year. So, we don't know when they were clipped.

Q. But one or more of these coupons would have suffered this inflation--right?--during that period of time?

A. Not necessarily, but let's say yes.

Q. Okay. And we know, of course, from economic downturns, that this is what happens sometimes to investments; right?

A. No.

Q. Well, sometimes investments make losses, don't they?

A. Sometimes we have hyperinflations. Very few

times we have hyperinflations. When we teach hyperinflations, we count them with maybe four hands; right? We start with the German hyperinflation; we go to the Austrian hyperinflation; we go to Hungarian hyperinflation; we go to Perú, we go to Argentina, Chile at the end of the Allende--the beginning of the dictatorship. We go to Zimbabwe. It is not--we go to Venezuela now. So, no, it's not--I wouldn't say it is common.

Q. I didn't say "common."

A. No--well, could you repeat, then, your question?

ARBITRATOR DRYMER: You said "sometimes."

BY MR. LLANO:

Q. I did say "sometimes."

A. Well, very often. Let me specify. Very--excuse me, on the contrary. Very seldom do we see this situation of 20 percent inflation.

PRESIDENT FERNÁNDEZ ARMESTO: 20,000.

THE WITNESS: 20,000 percent inflation.

BY MR. LLANO:

Q. Right. You will agree, as a general

proposition, that sometimes investments make losses; right?

A. Yes, I agree with that.

Q. Right. And now Gramercy is not making a claim to the effect that the clipped coupons were underpaid; correct?

A. The point that I make is that even the clipped coupons suffered significantly from inflation erosion, and that the intrinsic value should be calculated on the inflation component from day of issuance, because that is the only way this debt, under the current value principle, principio valorista, maintains the purchasing power and equivalent basket of the original obligation.

Q. Thank you. Now, my question was more specific than that.

Gramercy is not making a claim in this Arbitration--right?--to the effect that the clipped coupons were underpaid; correct? They are not claiming for that; right?

A. I think that that has a legal connotation, and I am not comfortable answering that.

Q. Well, you are not quantifying in your Report any alleged damages to Gramercy for the clipped coupon component; right?

A. I--the clipped coupon, as I in my direct, has two components: The body of the coupon, and the--I'm sorry, you are right. Yeah. That's a gray part that separates. Yes.

Q. Yeah. So, Gramercy is not asking this Tribunal to go back, unravel those 12 coupon redemptions, and pay the Bondholders more; correct?

A. That is correct.

Q. Right. And for the record, you are not quantifying such a claim, either; correct?

A. That is correct.

Q. Now, therefore, that means that clipped coupons are gone--I think you said "extinguished" in your direct examination--and they are not the subject of this arbitration; correct?

A. That's my understanding. They are not.

Q. Now, in your three Reports, you don't reference any cases where a State went back and paid more for coupons that were redeemed decades ago;

correct?

A. No.

Q. Because clipped and paid coupons are presumed to be settled obligations--again, extinguished; right?

A. Correct.

Q. So, for Bonds with at least some coupons clipped--okay? We're talking about the universe of Bonds with some clipped coupons--for those Bonds, it would never be the case that the Bondholder would be able to buy the same car now as in 1972, because you don't get to revalue the coupons that were already paid; correct?

A. That sounds correct, yes.

Q. Now, going back to your example on Paragraph 155, you wrote that the last coupon in that example was clipped in November 1984; correct?

A. Correct.

Q. So, if that Bondholder, that hypothetical Bondholder, had shown up at the Agrarian Bank in November of 1985, the following year, they would have received another payment that would be similarly

affected by inflation; correct?
A. Yes.
Q. And that Bondholder at that point in time--
A. Hold on. Could you remind me of the paragraph we're talking about now?
Q. 155.
A. 155. Okay.
Q. And that hypothetical Bondholder would not have received a revalued payment for the inflation of the prior 13 years; correct?
A. For the clipped coupons, no.
Q. Or for the unclipped ones?
A. Oh, if he had shown up in '85?
Q. Yeah.
A. No.
Q. Same thing in 1986; correct?
A. Correct.
Q. And same thing until at least November of 1991, given that the Agrarian Bank closed in May of 1992; correct?
A. I'd say yes for that time. Yeah. Okay.
Q. And so, that Bondholder chose not to show

up, or maybe became unavailable; right?
A. Or maybe thought that he didn't--it was not worth his while, given that the nominal value, due to the hyperinflation generated by Perú, had eroded the value of his Claim.
Q. We are on the same page.
A. Okay. Excellent.
Q. Either way, you're not alleging in your Report that between 1984 and 1991, the Agrarian Bank refused payment on these outstanding coupons; correct?
A. No.
Q. So, under the explicit terms of the Bonds, of the Land Bonds, if the Bondholders were paid duly and on time in 1984, 1985, '86, and so on, there was no mandate back then to make a revaluation for past inflation; correct?
A. I think that this is taking me to a legal terrain, which I'm not very comfortable with.
Q. You're not aware of any such mandate, yes?
A. I'm not aware of any such mandate, no.
Q. Right. Now, in the established Peruvian

Bondholder Process--I'm switching gears now--from that period to the current Peruvian Bondholder Process--and I'm talking about the August 2017 MEF Supreme Decree--the adjustment for inflation is made as of the date of the last clipped coupon, as we know, and in your example, that would be November 1984; correct?
A. Let me--give me a second to look at something here in my--
THE WITNESS: Mr. President, can I look at my own--
PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course. You can look at anything you want.
THE WITNESS: This will be very short.
Okay. Could you ask--Mr. Llano, could you ask your question again?
BY MR. LLANO:
Q. Yeah. So, under the August 2017 MEF Formula, the adjustment for inflation is made as of the date of the last clipped coupon?
A. That's correct.
Q. And, in your example, that would be

November 1984; correct?
A. Yes.
Q. Now, Perú did not set the start date as the date of maturity of each coupon; correct?
A. That's correct.
Q. It also did not set the start date as of when the Agrarian Bank closed; right?
A. That's correct.
Q. In fact, it went further back, and set the date when the Bondholders last cashed in on a coupon; correct?
A. That's correct.
Q. And in the case of Bonds with fully unclipped coupons, that would be the issuance date; correct?
A. That's correct.
Q. And in the case of the Gramercy Bonds, you confirmed earlier that about 27 percent of those Bonds are fully unclipped; correct?
A. Yes, 27 percent.
Q. Sure. And whoever left their Bonds fully unclipped, whoever saved it as a token or put it away

in a vault or chose not to do anything, could have shown up at the Agrarian Bank and cashed in on their coupons until 1992; right?

A. They could have after the value had been eroded.

Q. I'm not talking about the value being eroded. I'm literally talking about day one, the first coupon. They chose not to collect; right?

A. Well, let's say yes.

Q. Okay. And had those Bondholders shown up, until 1992, they would not have received an inflation-adjusted payment like the one that you propose in your Reports; right?

PRESIDENT FERNÁNDEZ ARMESTO: I'm not quite sure that it is true that they could have collected, because I have a feeling from--that they were so worthless that they would not even get--there was nothing to collect, because--so I am not quite sure that your question--we may have to look into this. But from what the Vice Minister told us, I think that they actually had no value, that you could not pay in money because they were--there was no fractional

money to pay them. But it may be wrong.

MR. LLANO: Thank you, Mr. President. Thank you. I was talking about the period before hyperinflation, let's say 1971; right?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I was speaking shortly before the Land Bank disappeared.

MR. LLANO: Fair enough.

PRESIDENT FERNÁNDEZ ARMESTO: When you ask, "Why did Bondholders not go?" And I think one of the reasons was that what they got was nothing. I mean, there was no possibility of paying them the nominal value, because the nominal value was so eroded that there was no physical means of giving them a coin.

BY MR. LLANO:

Q. I think we can cut to the chase, so to speak. And my point wasn't why they didn't show up. I understand there may be multiple reasons. My question was: Had they shown up, had they shown up, they would not have received an inflation-adjusted payment like the one that Mr. Edwards proposes in his Report; correct?

A. That's correct.

Q. And you certainly would not have suggested that Gramercy should now recover lost value on those paid coupons; right?

A. Right.

Q. So, what Gramercy is asking for in this Arbitration is, effectively, more than what the original Bondholders would have received at the time; correct?

A. That's obviously correct.

MR. LLANO: Mr. President, I have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you, Dr. Llano.

Mr. Riehl, do you have any questions, any redirect?

MR. RIEHL: I do. Could I request a short break to get my thoughts in order, please?

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Yes.

Let's then--how long would you need?

MR. RIEHL: It should be about five minutes, I believe.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Five minutes.

(Brief recess.)

MR. RIEHL: Mr. President, we are ready.

PRESIDENT FERNÁNDEZ ARMESTO: Whenever you are ready.

REDIRECT EXAMINATION

BY MR. RIEHL:

Q. Professor Edwards, this morning President Fernández Armesto asked you about the relationship between CPI in 2018 and CPI in 1992.

Can you please describe how CPI was measured in 2018?

MR. LLANO: Mr. President, I'm sorry to interrupt.

PRESIDENT FERNÁNDEZ ARMESTO: Dr. Llano, please. Let's finish this, please. It will not help if we start--please. Let's move on, and I may or may not have asked about that, and it's a redirect question. Let's move on.

THE WITNESS: CPI is measured in Perú as in any other country. There is a basket that comes from a survey of people's preferences. The basket is

updated with some frequency in order to incorporate changes and dates and preferences and technological changes, and every month there are functionaries. There are officials from the statistical office that go around and that sample goods and write down the prices.

In the old times, it was in a little black book. Now, maybe they take iPads. That, I don't know. And you value the basket in 2018--in 2018 May, and then you value the same basket in June, and the difference is the monthly inflation.

BY MR. RIEHL:

Q. And what relationship, if any, would there be between the CPI measurement in 2018 and the CPI measurement in 1992?

A. Well, what the CPI does, as I said, it has--it starts with a survey of what people--the typical household purchases, and that survey then is, as I said, adjusted with some--with some frequency, and the effort that is made is that it is maintained as equivalent.

I've used the word "equivalent" throughout

my testimony because, of course, the goods that we have today, including iPhones, were not around in 1992. So, what they do is they change sometimes occasionally and sometimes frequently. As I explained, during the hyperinflation in Perú, there were surveys in '88 and '89 and '90.

Traditionally, it is every 10 years or so, and we use what is known as an overlap system, where you do value the same--the old basket and the new basket, one particular or maybe two or three particular months, at the same time, and you get what in Spanish is called "con catanal" to build a chain between the different indices.

So, in 1992, the index would have reflected the prices of goods and services, the typical basket at the time, and then we follow how much you pay in soles every time. And when you change the basket, then you have the overlap. You have the chain index, and then you continue.

So, it's a typical basket of a typical household, how many soles first, Nuevos Soles oro (in Spanish), you buy differences across time, inflation.

MR. RIEHL: We have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

Professor Stern or Mr. Drymer, any questions for Professor Edwards?

ARBITRATOR DRYMER: Give me one second, please.

No, none for me, sir. Thank you.

Again, thanks to counsel for their assistance in this process.

PRESIDENT FERNÁNDEZ ARMESTO: Professor Edwards, two questions for you.

QUESTIONS FROM THE TRIBUNAL

PRESIDENT FERNÁNDEZ ARMESTO: I want to go with you through the two systems of dollarization which have existed officially in Perú, and I want to have your opinion, as an economist of the implications. The first is in your Reply, which would be 3; no?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: It's your Expert Report Paragraph 3, Paragraph 71. And that is the Emergency Decree. Do you remember that? You

wrote about it.

THE WITNESS: Paragraph 71.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, sir.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Now, under this Emergency Decree, can you explain to us how that Emergency Decree proposed the dollarization be made?

THE WITNESS: It's not the most clear thing in my mind, the 2000 Emergency Decree. It is clear the actual Supreme Decrees from 2014 and 2017.

What I do know is that in the Emergency Decree, there was no specification on when interest should have begun with respect to the clipped--either it was last clipped or not.

PRESIDENT FERNÁNDEZ ARMESTO: Can I--sorry to interrupt.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Because the first thing which drew my attention is that in 71, at the end, you say that this here, the calculation is made using the official exchange rate.

THE WITNESS: Right.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And this is what I wanted--this is my first question to you, and that is because we saw then that afterwards it is the other exchange rate.

THE WITNESS: Parity.

PRESIDENT FERNÁNDEZ ARMESTO: Parity Exchange Rate. What is the difference? From an economist's point of view, how can in 2004 be a proposal to do it using the official exchange rate, and why is it then in 2013 a proposal to do it using the Parity Exchange Rate? I would like to--that you explain to me the difference.

THE WITNESS: Yeah. So, I can only speculate, but I can give you what are the economic reasons for that thinking. I did not talk to the MEF officials. I did not talk to Dr. Seminario or anyone there.

The reality, as I said, in Perú from '69 to 1990, a little bit into 1990, is one of a highly distorted economy where there is not one official exchange rate. I wrote my Ph.D. dissertation on the Peruvian economy, and the question that I was asking

is floating market determination exchange rates, would they work in emerging countries, but Perú had that system, but it had a dual system between 1950 and 1954.

So, throughout this period, there were multiple exchange rates, and the official rate that we are talking about, 18.7, 38.7, and 19, and then it becomes 43, and then 45, and then 75, and today, after many changes, the floating rate of around 3.4.

The official exchange rate originally was one of many exchange rates and was one that was used to transform the dollars, say, that the mining companies produced by exporting back into soles oro, and was an exchange rate that was accessible to certain importers, mostly of first necessity items. So, if you need magazines and so on.

But for normal people, and if you wanted to import a watch or some nice eyeglasses or a nice tie, you had in general--and it varies through time--access to a different exchange rate.

So, under those circumstances, the official rate does not capture the reality. So let me add one

more thing. In many cases, what we have done in the past is take that rate, the black-market rate, and then take an average. That is--Governments don't do that because doing that means that they recognize that there was a black-market rate which they, of course, don't want to do.

So the parity rate, the change that someone recognizes--this is the good-faith assumption. And I'll finish with that, I promise. Someone recognized that, well, there is this theoretical issue, let's go for parity. Another theory is that they did official, and they found out, wow, we're getting too high of value. Let's get higher--of the valuation. Let's get a higher denominator to divide the original value to determine dollars. Let's find--and there you see how the MEF 2014 produces that enormous values that just by dividing make poof.

PRESIDENT FERNÁNDEZ ARMESTO: But my point to you is, if you use the official exchange rate, the amount of dollars which result is higher.

THE WITNESS: I assume so. It depends on which parity you use.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: And the parity--you have to do it carefully and you have to select the period, as I explained in the morning.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And if you take the official exchange rate and you take a 7.5 percent compound interest, Gramercy Bonds are valued at USD 157 million.

THE WITNESS: I don't remember the figure.

PRESIDENT FERNÁNDEZ ARMESTO: It is in Paragraph 73.

THE WITNESS: Yes. This is what it says.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Now, if we go now to the other system, which is the Constitutional Court, the 2013 Decision, and you have that on Page 34 of your handout, very nicely done.

THE WITNESS: Yeah. In 34, I talk about potential adjustments to that, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, for the first difference we see here, it is a Parity Exchange Rate.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Now, if I ask you, Professor, where can I--where I do find a series of parity exchange rates of Chile, is there any international source--

THE WITNESS: No.

PRESIDENT FERNÁNDEZ ARMESTO: --which gives you the parity exchange rates of Chile?

THE WITNESS: No.

PRESIDENT FERNÁNDEZ ARMESTO: Is there any source where I can find the international--sorry, the parity exchange rates of Perú?

THE WITNESS: No, not easily. Some investment banks publish the real exchange rate in an effort to know if the observed rate is close or not to the equilibrium rate, and the basic--the most basic, basic, basic approximation is the parity rate.

But as I said earlier, modern approaches are much more sophisticated. The notion is that sometimes the exchange rate gets out of line, by a little bit. You may have heard yesterday that the Government of the United States said that it was

going expand its analysis of whether other countries were currency manipulators. That requires that they have a judgment on what should be the fair value of the exchange rate, so the Treasury will have to do that. But you cannot find it. If you Google "Parity Exchange Rate of Iceland," it doesn't pop up at all.

PRESIDENT FERNÁNDEZ ARMESTO: It doesn't pop up?

THE WITNESS: No.

PRESIDENT FERNÁNDEZ ARMESTO: Because there is no standard way of making that calculation. Is that the reason?

THE WITNESS: Because it is very difficult to choose the base that you have to apply, and when you do it, it is complex. And that's what I did in an effort and in my Report.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, each economist will calculate a different parity exchange because there is a judgment of decision in which is the base period you take.

THE WITNESS: I wouldn't say that that is exactly the case. There are some basic rules that we

all would agree on. One of them is that you never use one month. You use a longer period of time.

The second one is you don't use an extraordinary month. In my country, 1973 where there was a coup d'état, where the freely elected President Allende was toppled, as you know. We never would use '73 as the parity rate. We would never use '82 when there was a big crisis. We would not use '79, which was the second oil shock.

So, we get together, we talk, and we could come easily to our conclusion. So, it is not that everyone and it is totally arbitrary. No, it requires a prior conversation, and it requires looking at things like "what is the current account balance?"

The parity rate should be defined as that rate that is consistent with sustainable, external equilibrium. The country is not going towards crisis, and it is not going towards recession. So, we can agree on that. It is not too difficult. We did it at the World Bank sometimes.

PRESIDENT FERNÁNDEZ ARMESTO: But the World

Bank does not publish?

THE WITNESS: No.

PRESIDENT FERNÁNDEZ ARMESTO: I cannot go to the database of the World Bank and download the parity exchange rate of Perú.

THE WITNESS: No. No. And let me just add that that's why the Central Bank--that's my reading. The Central Bank of Perú, when asked by Minister Thorne, sends the inputs but does not send the parity rate itself and does not publish it in its web page because it is reluctant to go so far.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. So, if we apply the Decision of el auto from the Constitutional Court of 2013, we have to take a parity exchange rate and we convert the face value of all the outstanding coupons and we do it to the date of the last clipped coupon date.

THE WITNESS: That's my understanding, the "auto" says.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. I heard you, and under your system, which was based on CPI, that you said: "I have to take the CPI to the date

of issuance, although I calculate interest from the date of the last clipped coupon."

Now, here you seem to agree that it is--that when you do the dollarization, to go back to the date of the last clipped coupon you agree that that is, in a dollarization procedure, that is the proper way of doing it?

THE WITNESS: Not quite. My preferred dollarization is on Page 25 of my Report--of my Slides in the morning and we had the discussion in the morning when you properly said that we cannot double count. The interest rate in the U.S. does include inflation. So, that's when I told you, Mr. President, I break down the interest rate in the U.S. into a real component.

PRESIDENT FERNÁNDEZ ARMESTO: But I'm now here only speaking about the date of conversion.

THE WITNESS: Yeah. Look at 25.

PRESIDENT FERNÁNDEZ ARMESTO: 25.

THE WITNESS: The green arrow starts from issuance, but only for inflation.

PRESIDENT FERNÁNDEZ ARMESTO: I know. I

know. For inflation it is clear to me.

But my question here is since--I know that for inflation you go back to issuance. My question is, is the factor that you advocate going back to the date of issuance, is that specific for the CPI method--

THE WITNESS: No.

ARBITRATOR STERN: --or is it also in your opinion applicable to the dollarization method?

THE WITNESS: In the ideal dollarization method, what I want to do is break down the interest rate that is applicable to the U.S. dollar into two components: the inflation component and the real component, and apply the inflation part in U.S. dollars, because now we have dollars in our accounts, since issuance.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: And interest only since last clipped.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. But the Constitutional Court says we have to go to the date of the last clipped coupon.

THE WITNESS: Right. And in 34 then, Mr. President, I say there are ways of--within that framework of constraints, there are ways of improving it, and it would be--instead of using the short term, using the long term, using--

PRESIDENT FERNÁNDEZ ARMESTO: Let me go step by step, Professor.

THE WITNESS: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Then step two is the proportion between unclipped and clipped coupons.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: That's clear.

And then we get the Supreme--no, the Constitutional Court says applying interest of dollar-denominated Bonds. I do not think that it gives any time period. Now, you--

THE WITNESS: It may say "treasury." I don't know it says "corporate" or "treasury."

PRESIDENT FERNÁNDEZ ARMESTO: I must get. No, no, this is important.

THE WITNESS: It may say "treasury" but we

can read the--

PRESIDENT FERNÁNDEZ ARMESTO: But the--plus the interest rate of U.S. Bonds.

THE WITNESS: It does say Treasury, Treasury bonds. "Del tesoro americano."

PRESIDENT FERNÁNDEZ ARMESTO: Interest rate of U.S. Treasury Bonds. What is your opinion "bonos del tesoro Americano"?

THE WITNESS: Those are Bonds that are issued by the U.S. Treasury, and as we said, they issue very short-term bills, three months, which are 90 days, one year, five--and the most popular one is five years. There's a seven year that was very popular. 10 year, 20 year, 30 year.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: It doesn't say, so one could apply 20 years, one could apply 30 years.

PRESIDENT FERNÁNDEZ ARMESTO: That is my question to you. What is from the--an economist's point of view, what would be the appropriate bond to apply?

THE WITNESS: If I am operating under

constraints--and this seems to be what you are asking me--stay within the framework of the Constitution.

PRESIDENT FERNÁNDEZ ARMESTO: "Bonos del Tesoro Americanos." That's--

THE WITNESS: I would say 30 years, and there is a gap when the 30 years were not issued. So, I would use the longest surviving 30 years, which the first year when they were not issued was a 29 year--a bond with a 29 year life. And I would use the longest bond as a rate. That would be--

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Now, let us understand how this works. These Treasury--long-term Treasury Bonds have coupons.

THE WITNESS: Some do. Some, no. Some are zero coupons.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But some are clear.

THE WITNESS: But the yield--the yields are similar. What we do is we calculate. We--I don't do it, but investment banks and brokers--and we can get it. That we can get on the internet. You press click and, (whistling sound), they jump at you. You

can download them. You get the yield, which is the embodied return of the bond, and that changes hourly.

PRESIDENT FERNÁNDEZ ARMESTO: So, you could look up in Bloomberg--

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: --the yield of a 30-year bond in the year--

THE WITNESS: You could do several things. You could find 30-year bond of constant maturity, which is always the 30-year, the newest 30-year bond. Or you could take a particular bond that had 30 years at issuance and follow it through life. So, then you would have 29, 28, so on. But that will come from Bloomberg instantaneously and at every minute, more than that. Every second you will get it.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And that leads to us an amount in dollars. If I do that up to the date of when I'm revaluing the bond I will get an amount in dollars.

THE WITNESS: Yes. Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: And now I have to put that amount back into soles, of--in present

soles.

THE WITNESS: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: And that--there, the proper way of doing it is to apply the Official Exchange Rate.

THE WITNESS: If the Official Exchange Rate is now equal to the parity rate. If they diverge, if the parity that you chose at the beginning, after doing all your calculations and getting your economists together and choosing--all of that, it gives you at the end a value that is not the official rate to be consistent. You need apply the parity right.

So, it's parity on both ends, and the feature of my parity, the parity I calculated with a very long base, '99 to 2016, is that it is very similar to the official rate at the end. So, I have no problem, when I did my calculation, using official at the end, because I calculated the parity that was--that had that feature, but if you have a parity like we saw in that green line. I don't know if you remember from the 2014--

PRESIDENT FERNÁNDEZ ARMESTO: There should not be a gap between parity and--

THE WITNESS: Right. If there is a gap at the end, you have to use, and to be consistent, if you use the parity at the beginning, you have to use the parity at the end as well.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. And coming to the interest, we saw the importance of interest--how did you call--the 760-

THE WITNESS: Rule of 72.

PRESIDENT FERNÁNDEZ ARMESTO: Rule of 72.

THE WITNESS: At 7.2, it doubles every 10 years, which means that approximate--3.6 is 20 years to double.

PRESIDENT FERNÁNDEZ ARMESTO: My point to you is, if you use a long-term bond, do long-term bonds accrue as simple interest or as compound interest?

THE WITNESS: Compounded interest.

PRESIDENT FERNÁNDEZ ARMESTO: Because the price is calculated--because they are probably--they are written to accrue simple interest, but the market

price calculates them at compound rate?

THE WITNESS: Right. Because you get--you clip your coupon and you invest it back into the same bond, which is very, very liquid. It's the most liquid asset in the world.

PRESIDENT FERNÁNDEZ ARMESTO: And you have--you told us that applying the 2004 Decree you had reached 157 million.

Do you remember that?

THE WITNESS: I don't remember that. Applying which Decree?

PRESIDENT FERNÁNDEZ ARMESTO: The 2004 Emergency Decree.

THE WITNESS: 2000 Decree, yes, I see that in Paragraph 73.

PRESIDENT FERNÁNDEZ ARMESTO: Do you remember that?

THE WITNESS: I see it in Paragraph 73 of my--

PRESIDENT FERNÁNDEZ ARMESTO: And you have not done a calculation. If we apply the--auto, the Resolution of the Constitutional Court, literally,

you have not made a calculation of the amount which--

THE WITNESS: I don't remember if I did. I focused on the ones I did, but I will be happy to do whatever you want me to do, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Is there any follow-up question?

MR. RIEHL: No, Mr. President. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course.

RECROSS-EXAMINATION

BY MR. LLANO:

Q. You were asked about Decree 88. Do you recall that? Just now.

A. I was asked about so many things.

PRESIDENT FERNÁNDEZ ARMESTO: About what?

MR. LLANO: Decree 88.

(Overlapping speakers.)

THE WITNESS: The Emergency of 2000.

MR. LLANO: Yes.

BY MR. LLANO:

Q. And that Decree provided for a bond swap, right?

A. It allowed for a bond swap, yes.

Q. And that bond--the substitute bonds, the replacement bond was a 30-year bond; correct?

A. That's what I remember. I don't remember the details, Mr. Llano.

Q. And it's a zero coupon bond; right?

A. It rings a bell, yeah.

Q. So, that person would not get anything for 30 years--

A. No, no.

Q. Right?

A. We just said that after Perú came back from wherever it was, from "Sendero Luminoso" and "President Gonzalo," this has been an amount--an incredible amount of progress, as Minister Castilla suggested. The secondary bonds that trade daily, very liquidly for Peruvian Bonds. That person could trade that bond instantaneously in the market.

And right now the--Perú issued a bond in dollars, in June 2019, at a 2.8 percent coupon rate,

and it has--Minister Castilla said yesterday, 50 basis points currency, the full swap, CDSs. So, Perú is in a situation with a very liquid market if there is a bond swap.

The owners of these Bonds, the families of the people, the campesinos, and the hacendados can immediately market it and sell it. There are no controls. You can get dollars in and out of Perú easily. So, that would be--that could happen instantaneously.

Q. And, of course, the purchaser of that bond in that secondary market would take into account the fact that that's a zero coupon bond; right?

A. I assume. Of course, I assume, of course.

Q. Thank you.

MR. LLANO: I have nothing further.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Professor Edwards, thank you very much. It has been a long examination. Thank you for your help.

THE WITNESS: You're welcome.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: And we will now--thank you. And we'll break the--we will speak five minutes off the record, because--so, that our court reporters have some time to relax.

(Comments off microphone.)

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing and we do so in order to examine Professor Reisman.

MICHAEL REISMAN, RESPONDENT'S WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Professor Reisman, thank you very much for being here with us. And you are here as an Expert, and as an Expert, you have a duty--you have the duty to take your oath as Expert. And so, could I kindly ask you that you stand up and that you take your oath?

THE WITNESS: Thank you, Mr. President.

I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you very much.

Professor, you are here as an expert designated by the Republic of Perú, and I will give the floor now to the Republic.

Mr. Hamilton?

MR. HAMILTON: Ms. Menaker?

PRESIDENT FERNÁNDEZ ARMESTO: Ms. Menaker?

MS. MENAKER: Thank you.

DIRECT EXAMINATION

BY MS. MENAKER:

Q. Good afternoon, Professor Reisman.

You should have before you your two Expert Reports that you submitted in this Arbitration, the first dated September 4, 2018 and the second dated September 6, 2019.

Can you confirm that those are, indeed, your Reports?

A. I confirm they are my Reports.

Q. And do you have any corrections to make to either of the Reports?

A. No.

Q. And for the record, we've also placed in front of Professor Reisman a clean copy of excerpts

of the Treaty, just the preamble and Chapter 10.

So, Professor Reisman, you've opined that the Bonds that are at issue in this Arbitration are not investments within the meaning of the Treaty. Can you please explain how you drew that conclusion?

A. As a matter of Treaty interpretation, I applied Article 31 of the Vienna Convention on International Treaties and examined the text and the context. Context includes the provisions of the Treaty that are not directly under scrutiny, the rest of the body of the Treaty, as well as the preamble.

I was struck by this particular Treaty in its reiterated use of the word "characteristics," and the definition of "investments." The definition imposes on the interpreter the need to take account of the text, and also to look beyond it to consider the objects and purposes of the Treaty, and my Application to which I will refer in both the First Opinion and the Supplementary Opinion led me to the conclusion that the question was "investment" and its required reference to a variety of factors that are ordinarily referred to as the "Salini factors."

And the composite of all these considerations, which I'm happy to expound, led me to the conclusion that the Agricultural Bonds were not within the contemplation of investments in the Treaty.

Q. Claimants' Expert Ambassador Allgeier has argued that the United States insisted on using a "negative list" approach to the definition of the term "investment," and because these Bonds were not specifically excluded, they are included within the definition of "investment."

Can you please respond to that?

A. I find it difficult to believe that the negative list limited the intentions of the Parties to conclude that some matters that might be on the list and other matters that are off the list would not qualify or would qualify as investments.

If I may draw your attention to--I'm sorry. I've asked someone to help me. My fingers are not very nimble. I found particularly compelling the United States' Submission as one of the State Parties to the Treaty indicating that the enumeration of the

type of an asset in Article 10.28, however, is not dispositive as to whether a particular asset owned or controlled by an investor meets the definition of "investment." It must still always possess the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

Moreover, I would include in these criteria the question as to whether or not the transaction in question, which is trying to qualify as an investment as a term of art, contributes to the development of the Host State, a point that is raised in the preamble part of the Treaty, subject to interpretation, and something that is one of the latent purposes of this entire genre of treaties.

Q. Thank you, Professor.

Now, you just referenced the United States' Submission, and in your Supplementary Opinion, you discuss the Contracting Parties' Agreement on certain aspects of Treaty interpretation. And can you explain the relevance of any agreement between Perú

and the United States under the Vienna Convention?

A. What I say in the Opinion is there is "agreement," not "an agreement." I didn't say that there is "an agreement." The Vienna Convention instructs us in interpreting to take account beyond-the-text context and objects and purposes, any subsequent agreements that have been reached by the Parties.

In this instance, I noted that positions taken with respect to ratione temporis jurisdiction and ratione materiae jurisdiction expressed by the United States in its submission and expressed by the Government of Perú in its written pleadings were congruent, and that seemed to me to be something that the interpreter is entitled, if not mandated, to take account of.

Q. Thank you. Can you please explain why you consider Claimants' Claims before this Arbitral Tribunal to be an abuse?

A. The jurisprudence of international investment law has recognized that some uses by a putative Claimant of an investment treaty with

respect to a particular Respondent are abuses of process. I think that there should be a high threshold for this, whether it's reasonable certainty that changes are made in the structure or the design of an investment in order to take advantage of an investment treaty without a corresponding creation of a benefit for the counterparty, or whether the standard is near certainty.

I think there's a common recognition that the international legal concept of abuse of law, abus de droit, is a factor which can lead to the refusal to recognize an otherwise good argument for jurisdiction. And in this case, my opinion was that the ratione materiae and ratione temporis positions with respect to jurisdiction failed, but I think that Abuse of Process is an independent ground which, in my view, would lead to the refusal to allow a case to proceed for want of jurisdiction.

The reasons for this, I would summarize as follows: The Claimant in this case acquired Bonds over 50 years long since in defunct, and seeks to bring those Bonds as a claim for remuneration without

a corresponding benefit accorded by the action to the Respondent Perú.

Q. Now, during the course of this Hearing this weekend, I know that you were not present, but Perú has learned that Claimants purchased additional Bonds in 2017 after this Arbitration had been commenced.

Is this relevant to your Opinion that Claimants purchased claims in a preexisting dispute and did not make an investment, and therefore, their arbitration claim is abusive?

A. I don't know the facts to which you are referring, and they may be in dispute, but on the basis of what you say, yes, that would be abusive. It would also run afoul of the temporal requirement of Article 1, 10.1.3, and Article 10.13.

Q. And even if they are not bringing claims with respect to those Bonds in this Arbitration, is it--let me move on and ask you a similar--another question about these later purchased Bonds in 2017.

So, Claimants argue that the Bondholder Process that Perú established is unfair, and they point to the allegedly low participation rate as

evidence of that. Now, had you been aware of the fact that Gramercy purchased additional Bonds after they filed this arbitration, while the Peruvian Bondholder Process was ongoing, would that fact have been relevant to your abuse analysis?

A. If I understood you correctly, the Claimant would have been holding forth that these Bonds are valueless because of action by the Peruvian Government, while the nonpublic fashion of acquiring the Bonds themselves, and I suppose its acquisition of Bonds would necessarily lose the--reduce the number of Bonds by Peruvian--acquisitions by Peruvians, which would be doubly misleading. Without knowing the details of the action, I would say that that would be abusive.

Q. Thank you. And, Professor, you remarked before that you have opined that the Claimants here lack jurisdiction ratione temporis. Can you--you said that that is on two separate grounds: First, as a matter of general international law and as set forth in this Treaty in particular, the Treaty does not apply retroactively to any act or fact that

existed before the Treaty's entry into force; and, secondly, that Gramercy's claims run afoul of the Treaty's three-year prescription period.

Can you just briefly explain your views on both of those points?

A. Law is prospective, not retroactive, unless it explicitly says that the intention of the legislature or the Treaty Parties intended to make their instrument retroactive. Article 1.3 says explicitly that the Parties did not want to empower Tribunals to rewrite history, ancient history, and they say that acts or facts which occurred--with respect to acts or facts which occurred prior to the entry into force of the Treaty, each Party will deny the application of the Treaty to them.

Q. Thank you, Professor.

MS. MENAKER: And Members of the Tribunal, I have no further questions on direct.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much, Ms. Menaker.

Is there any question?

MR. FRIEDMAN: Yes. Ms. Popova will do the

questioning.

PRESIDENT FERNÁNDEZ ARMESTO: Dr. Popova, please.

MS. POPOVA: Thank you, Mr. President.

CROSS-EXAMINATION

BY MS. POPOVA:

Q. Good afternoon, Professor Reisman.

It's a pleasure to see you again. Thank you for joining us today.

You can leave it on. I think that might be easier for our interpreters and the rest of us.

A. It's a generational thing.

Q. I understand.

I'm going to be asking you some questions about the two Opinions you submitted in this proceeding, and unfortunately, we don't have the time today that I believe either of us would like. So, while I would very much enjoy discussing these issues with you in greater detail, we might have to save that for another forum. So, I will try to make my questions as short and direct as possible, and I would be very grateful if you could try and do the

same with your answers.

Needless to say, Ms. Menaker will be able to come back if she believes that any additional detail would be helpful.

Would you agree to proceed on that basis?

A. To the best of my ability.

Q. That's all any of us can do. Thank you, Professor.

Professor Reisman, your two Opinions are based on the text, context, and object and purpose of the Treaty, as well as principles of international law that are reflected in the jurisprudence; is that right?

A. Yes.

Q. And all of those things, would you agree with me, are within the expertise of this distinguished Tribunal?

A. Yes.

Q. And factual--

PRESIDENT FERNÁNDEZ ARMESTO: Some members have more expertise than others.

MS. POPOVA: Certainly.

PRESIDENT FERNÁNDEZ ARMESTO: I always am the one who has the coming from--I come from commercial law, Professor Reisman, and have entered international law in later years of my experience. So, I never dare to say I have the same expertise as fully bred international law specialists.

MS. POPOVA: We are, indeed, all of us, learning.

BY MS. POPOVA:

Q. Factual matters, Professor Reisman, are also within the scope of the mandate of this distinguished Tribunal; correct?

A. Yes, of course.

Q. And those factual matters would include things like Gramercy's investment strategy; right?

A. Yes.

Q. And Gramercy's experience in facilitating historical debt claims?

A. I'm not sure that I would call that a relevant factual matter to the question of whether or not a transaction conducted by Gramercy qualifies as an investment under the Treaty.

Q. But it is a factual matter; correct?

A. It's a factual matter, but you slipped it in that it's something that is relevant to my discussion of jurisdiction ratione materiae.

Q. I was simply asking whether you agree that certain factual matters are within the scope of the mandate of this Tribunal, and I'm talking about what those factual matters include.

Another one of those factual matters, Professor, is the question of whether Gramercy has provided enough evidence about how it bought the Bonds; correct?

A. The Tribunal will have to decide that.

Q. Indeed.

And also, the Tribunal will have to--

A. Excuse me. May I correct that answer?

Q. Yes.

A. If the decision of the Tribunal is based on temporal jurisdiction, it will not get into those issues, so this is just a minor.

Q. Understood. Gramercy's motives for investing in the Bonds are also a factual matter;

correct?

A. They could be.

Q. And Gramercy's state of mind at any particular point in time is also a factual matter; correct?

A. I suppose.

Q. Okay. You would agree with me, would you not, Professor Reisman, that the investment chapter of the U.S.-Perú TPA forms part of a special series of treaties for the benefit of third parties which here are investors?

A. Yes.

Q. And so, in those treaties, there is a special concern not to undermine the rights and expectations of those investors in the way in which we go about interpreting them; correct?

A. I fear that I would not be able to answer that with a single word, "Correct." The determination of whether or not there are expectations depends upon the scope and what the Treaty promises.

If the Treaty has promised something and

then the Parties refuse to--together, refuse to let it materialize, that would be a violation of the third parties that would have been--would have relied. But you can't say that a third party's reliance is something that a third party itself, in its subjective universe, decides. This is something that has to be determined by the Tribunal.

Q. Yes. I agree with you on that. My point was a little bit different, I think. My question is: The investment chapter of the U.S.-Perú TPA is part of a special--part of a species of treaties, forgive me, for the benefit of third parties in which there is a special concern that interpretation by one or both of the State Parties not undermine the rights and expectations of those third parties; correct?

A. It is certainly a treaty in favor of third parties, but the final part of your statement, I think, introduces some things that may not be valid expectations by the third party purporting to rely on the treaty, such as this genre of treaty.

Q. Well, I was quoting an Opinion that you had given in the--

A. I recognize it.

Q. I thought so. That's why I was surprised that we weren't in agreement.

In any event, let me move on.

In particular, Professor Reisman, would you agree with me that it would not be reasonable to rummage about in documents outside of the four corners of the Treaty for something to support a litigating position when the applications of the canons of the Vienna Convention would lead to a result that is neither unreasonable nor absurd?

A. Yes.

Q. And that's because States express their consent to the Treaty and investors rely for their rights and obligations on the Treaty's text; correct?

A. If the entity purporting to be an investor qualifies under the Treaty and its transaction qualifies as an investment. If you don't make that clear, then any investor--any putative investor can simply say that it had a legitimate expectation and it would not have been granted in the Treaty.

Q. In any event, you would agree with me that

one should not interpret the text of the Treaty based on extra-textual subjectivities of one of the Contracting Parties; correct?

A. The Contracting Parties, you mean the State's Parties?

Q. Yes, sir.

A. That's right.

Q. And the observation would be especially valid in a treaty that was negotiated in a multilateral fashion where searching for the shared objectivities of the State Parties would be akin to a pursuit of the ignis fatuus; correct?

A. Could you repeat that?

Q. Yes. That observation would be especially valid in a treaty that was negotiated in a multilateral fashion where searching for the shared objectivities of the State Parties would be akin to the pursuit of the ignis fatuus?

A. I'd need more of the context of that quotation to respond to it. The Vienna Convention is the 204, the interpretation of bilateral, plurilateral and multilateral instruments, and in all

of them, the text is the indicator of the shared expectations of those who are making the Treaty, whether they are just two States, three or four States, or a multitude of States. This is one of the reasons why we look to the text and treat it with great respect.

Q. Indeed, and because the text is the indicator of the shared expectations of the States that subscribe to it, it would not be faithful to the Vienna Convention framework for us to use instruments or communications within just one of those contracting Parties to counter the results that would otherwise apply under the Vienna Convention; correct?

A. I would agree with that, subject to the caution that the expectations of the Parties, the State's Parties may be expressed in the Agreement and subsequent behavior in Submissions, in actions under a Free Trade Commission, if the Treaty provides for it.

Q. Yes. Let's talk about that for a moment.

Now, just because investment treaty Tribunals frequently admit and review materials like

the travaux préparatoires of a treaty, that simple practice does not necessarily mean that the way in which they are using those materials is legitimate. Would you agree with me on that?

A. Certainly, even resort to the travaux under Article 32 of the Vienna Convention requires that the text itself under application of Article 31 is producing either an absurd or--an absurd outcome, at which point one resorts to Article 32.

So, certainly it would be improper to resort to the travaux, whatever they consist of, unless the condition in 31, which is either no answer or an absurdity, has resulted from the application of Article 31.

Q. And the same applies for submissions made by the Contracting Parties; correct? You would only look at them if the answer produced under Article 31 would be absurd, to use the term you just described?

A. No. If the Treaty itself provides for them to express their views, then that is permissible.

Q. Now, when you say provides for them to express their views, do you mean a joint

interpretation of the Free Trade Commission that you just mentioned?

A. No. I think you're referring to a unilateral statement by one party, and there are international investment treaties that provide for the Party that is not the Respondent in the case or the parties that are not Respondents in the case to make known to the Tribunal their interpretation of issues of law having to do with the interpretation of the Treaty. That is different than the Free Trade Commission.

Q. Do you believe, Professor Reisman, that the legal Briefs submitted by the Republic of Perú and the submission of the United States as a Non-Disputing Party should be taken to constitute an agreement of the Contracting States on the interpretation of the Treaty within the meaning of the Vienna Convention?

A. I did not say that there is an agreement, but if there is substantial agreement, the views are expressed by both States with respect to a common problem, then I think that that is something that the

interpreter should take account of.

Q. And would they only take account of it if the interpretation under Article 31 of the Vienna Convention is absurd?

A. No. It would be subsequent behavior of the Parties.

Q. Now, Professor Reisman, are you aware that there is, to my knowledge, not a single investment treaty Tribunal that has held that Briefs submitted by a disputing Party and a non-disputing Party taken together constitute an agreement of the Contracting Parties on the interpretation of that bilateral Treaty?

A. I'm not aware of it, but it doesn't shake my conviction that this is right in the circumstances. Certainly, a Tribunal may make its own decision, and a Decision that didn't take account of submissions by other States might be--might have been caused by a variety of other factors.

But I think that it's perfectly appropriate for a Tribunal not to ignore this interpretation of a Treaty--the congruent statements, one, in the course

of a pleading, the other in a submission under the Treaty, into the interpretation.

Q. Is it your Opinion, Professor Reisman, that the legal Briefs submitted by disputing and Non-Disputing Parties constitute a subsequent agreement--subsequent practice of the States in the application of the Treaty?

A. I think there can be--you can view it as that.

Q. Are you aware that several investment Treaty Tribunals have expressly rejected that proposition?

A. I'm not, but I'm not daunted by that.

Q. Well, do you disagree with them?

A. If you will explain the facts and the considerations, I might, but I, offhand, don't know them. I don't know what you're referring to.

Q. I appreciate that. Are you familiar with the International Law Commission's Draft Conclusions on Subsequent Agreements and Subsequent Practice of States in Relation to the Interpretation of Treaties?

A. Yes.

Q. Are you also aware that in that document,

the ILC has stated that subsequent agreement must be reached and presupposes a deliberate common act or undertaking by the Parties?

A. I think the reference there was not to congruent positions taken by both States with respect to a common problem but the need to make something part of the Treaty for general purposes.

Q. Let's turn now to another topic, if you will.

Professor Reisman, is it your Opinion that Bonds and public debt have a different meaning in the U.S.-Perú TPA than they do in any other context?

A. Could you say that again, Ms. Popova?

Q. Yes. Is it your Opinion that the terms "bonds" and "public debt" have a different meaning in the United States-Perú Trade Promotion Agreement than the ordinary meaning in any other context?

A. You could make your question a little more precise. The reference to "ordinary meaning" brings in quite a large range of views.

Q. Yes, I'd be happy to.

Do you accept, Professor Reisman, that one

can arguably construe the Land Bonds at issue in this Arbitration as falling within the scope of public debt in this Treaty?

A. With respect, the question is not whether these Bonds are like some other Bonds. The question is, are they an investment for which there's a methodology in the Treaty, which looks at a variety of different factors, which I reviewed.

I think it's very misleading to say this instrument is--fulfills the requirements of a Treaty, and this other instrument is like it, therefore, it does as well, when the Treaty in question, the one that we're discussing, requires a constant reference to the characteristics of the Treaty of the term and the use it's being put to.

Q. My question was not comparing different instruments, but do you accept, Professor Reisman, that one could arguably construe the term "public debt" in the United States-Perú Treaty to cover the Land Bonds that are at issue in this Arbitration?

A. I suppose one could.

Q. But you believe that one shouldn't; right?

A. That's correct.

Q. And the reason why I believe--or it seems that you believe that is you say it would sit uncomfortably with two things; right? The first is what you call the common understanding of "public debt" in the investment context.

A. Umm-hmm.

Q. And the second is what you call the United States' long-standing understanding of the meaning of "public debt"?

A. Umm-hmm.

Q. Sorry, just for the Transcript, is that a yes?

A. Yes.

Q. Let's talk about those two concepts. Professor Reisman, in support of that proposition in your Reports, you rely on four sources. The first is an undated article from an unknown author found on an unmoderated blog in September 2018. The second is the summary of functions of an internal United States agency that no longer exists. The third is a January 2019 academic working paper surveying the

history of sovereign debt over two millennia. And the fourth is a screenshot taken in September 2019 of a web page on the website of the United States' Central Intelligence Agency.

Does that sound familiar to you?

A. Yes.

Q. I'd like to spend a little bit of time looking at some of those. We can't go through all of them today, but let's begin with the--what you describe as the commonly accepted understanding of public debt in the investment context.

Is it your testimony, Professor Reisman, that the commonly accepted understanding of "public debt" in the investment context is to be found in an undated article by someone that you identify as Ritika Motley from a web page that you identify as "economicsdiscussion.net" which you say was last visited in September of 2018?

A. I supplied four different Statements. One was the ordinary use of the term, and I looked at the internet for that. Another was the use by a governmental agency, and another was a paper prepared

under the aegis of the IMF. And I think I had a fourth that I can't recall at the moment.

So, I think I established that this is a common understanding, looking at four different sources. One can mock the internet, but if one wants to know what's being said on the street, where else does one look?

Q. Yes. So, when you went to the internet to find what you said the ordinary use of the term was, that's where you found the entry by Ritika Motley?

A. Yes.

Q. Okay. Now, Professor Reisman, could you tell me who Ritika Motley is?

A. I don't know.

Q. Do you know what his or her professional affiliation is?

A. I don't know.

Q. Do you know if he or she has published any other academic scholarship on this issue?

A. I don't know.

Q. Do you know if he or she has published anywhere else, other than the website

economicsdiscussion.net?

A. I don't know.

Q. Professor Reisman, you said that you looked on the internet to find this article, and can you explain to me how exactly you found it?

A. It popped up as I was working very late at night.

Q. Do you remember what you searched for that made it pop up?

A. I don't.

Q. I ask because I've tried to find this article, and it's actually very difficult unless you find it--search for it by the name of Ritika Motley.

A. I have tried, again, to find it, but where it is, I don't know.

Q. And did you succeed when you tried, again, to find it?

A. I did not.

Q. You did not.

In your Report, you provided the original web page link where you found this article. You don't provide an exhibit number, but I would like us

to look at that web link together, with my colleague's cooperation.

So, do you see at the top there, there's a--I'll represent to you that that is the link that you provided in your Reports.

Do you recognize this as the article that you found, Professor Reisman?

A. Yes, I do.

Q. So, you recognize this website?

A. I don't remember.

Q. Well, you see we have a title here "Public Debt meaning classification method of redemption" and it says it is being shared by Ritika--it says "Motley." And I know in your Report you say "Muley," but is this the article that you intended to cite in your Report?

A. I wish I could be certain.

MS. MENAKER: Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think that it takes us much further. I wonder if it takes us much, much further if we start, to here, looking at what. It is just--as we all do sometimes in the

internet, things come up, and it's like Wikipedia. Sometimes it is very valuable and sometimes it is less valuable. I don't think it will help us too much, and in the interest of time, maybe we can just accept that it is one of these documents which pop up late at night in the internet.

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

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you, Dr. Popova. I don't think it really helps us.

MS. POPOVA: If you would just bear with me one more minute, Mr. President. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

BY MS. POPOVA:

Q. Professor Reisman, have you ever used--

(Comments off microphone.)

BY MS. POPOVA:

Q. Have you ever used this website for your scholarship before, Professor Reisman?

A. No.

Q. Do you know what this website allows you to do?

MS. MENAKER: Mr. President, he did answer these questions.

PRESIDENT FERNÁNDEZ ARMESTO: We can leave this point.

MS. POPOVA: Fair enough, Mr. President.

BY MS. POPOVA:

Q. We can take that down, but let me ask you this, Professor Reisman. Is it your Opinion that the scope of coverage of the investment chapter of the Free Trade Agreement signed between the United States and Perú on the 12th of April 2006 is to be determined by reference to the website that we just looked at?

PRESIDENT FERNÁNDEZ ARMESTO: No. I think the answer is--it is what it is. It is just a reference, among others, to an article in the internet.

Dr. Popova, I don't think the Tribunal gives too much--I don't think the Expert gives too much value to this quote, and I don't think it is--we should devote much more time to it.

MS. POPOVA: Point taken, Mr. President, but

I--given that this is the only Article that he quotes in Paragraph 29 of his Report, I believe that it was fair to put it to him. But I will move on.

MS. MENAKER: Although, in fairness, he quoted other sources.

MS. POPOVA: Which I am getting to.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

BY MS. POPOVA:

Q. Now, let's talk about the other sources that you quoted, Professor Reisman.

The second thing that we saw earlier was what you call the United States's understanding of the meaning of the term "public debt."

Do you remember that?

A. Yes.

Q. And for that, in your Report, you cite a description of an agency that is called the Bureau of Public Debt in the United States Department of the Treasury; correct?

A. Yes.

Q. This agency, needless to say, is a domestic agency of the United States; correct?

A. Yes.

Q. And it no longer exists; correct?

A. Yes.

Q. So, let me ask you, since do you quote that also in Paragraph 29 of your First Report, Professor Reisman, is it your opinion that the scope of coverage of the investment chapter of the United States-Perú Trade Promotion Agreement is to be found in the mission statement of the United States's Bureau of Public Debt, which no longer exists?

A. No.

Q. Thank you. You would agree with me, would you not, that interpreting the Treaty is fundamentally an exercise in understanding what the Contracting Parties agreed together under the Treaty and not the domestic legal framework of any one of them?

A. Yes.

Q. And it would be misguided, in fact, to devote considerable attention to only the United States's perspectives in interpreting the Treaty; correct?

A. Yes.

Q. And you would agree with me that, at a minimum, if the United States's perspective were relevant, then Perú's perspective would also be relevant; correct?

A. Correct. But, of course, above all of the text of the Treaty.

Q. Indeed. And in your Reports, Professor Reisman, you do not consider what Perú's understanding of the term "public debt" might have been; correct?

A. Correct.

Q. Thank you.

MS. POPOVA: In the interest of time, Mr. President, I'll move onto another topic.

PRESIDENT FERNÁNDEZ ARMESTO: Please.

BY MS. POPOVA:

Q. Professor Reisman, you have mentioned in your Reports and, again, this morning in response to questioning by Ms. Menaker, that the Treaty expressly mentions three characteristics of an "investment": the commitment of capital or other

resources, the expectation of gain or profit, and the assumption of risk; correct?

A. Correct.

Q. And you would agree with me that no one those three characteristics alone is decisive; correct?

A. Nor are they together the only factors that I've taken into account.

Q. And the age of the asset is also not a characteristic that is expressly identified in the Treaty; correct?

A. Correct.

Q. In fact, the Treaty expressly covers preexisting investments; correct?

A. Correct.

Q. Now, to these three nondecisive, noncumulative, as you said, characteristic, it is your opinion that the Tribunal must added the fourth--what you call the fourth element of Salini; is that fair?

A. That's correct.

Q. And that fourth element would also not be

decisive whether standing on its own or taken together; correct?

A. That's correct. It is a consideration of all--for example, Abuse of Process, it's the interdependency of many of the different factors in order to determination of whether or not a particular transaction qualifies as an investment.

May I say, just to clarify one point, let's not be misunderstood, Dr. Popova, the Treaty talks about existing investments, but it doesn't talk about existing transactions that don't qualify as investments.

Do you follow me?

Q. I do indeed.

And I must just correct for the Transcript one item, which is the President very kindly promoted me to Doctor, but Ms. Popova will be just fine.

A. Sorry, I misspoke.

ARBITRATOR DRYMER: "Doctora" in Spanish.

THE WITNESS: We say that equity views as done what ought to be done.

BY MS. POPOVA:

Q. Professor Reisman, is it your Opinion that Salini is controlling law?

A. In Salini, in my Opinion, is not controlling law. I've been critical of Salini, particularly when it's been moved to PCA cases, UNCITRAL cases.

But Salini is--in ICSID, is widely used by Tribunals, and the reason why I think that Salini is appropriate and its jurisprudence is relevant for illuminating the Treaty in question is that the definition of "investment" explicitly cites the three criteria of Salini and, hence, where else to construe them but an examination of the jurisprudence.

Q. You're aware, are you not, Professor Reisman, that this is an UNCITRAL proceeding?

A. Yes, I am.

Q. So, you said you've been critical of Salini, as have many others. Do you agree, then, that without Salini, uncertainty would be introduced into the realm of international investing which could chill the flow of capital?

A. Without Salini?

Q. Umm-hmm.

A. I'm sorry, I don't mean to dodge that question, Ms. Popova, but--

MS. MENAKER: Ms. Popova, are you quoting from something?

MS. POPOVA: Well, I'm asking him whether he agrees, so can we hear the answer first?

PRESIDENT FERNÁNDEZ ARMESTO: Is it a quote from him? Because it is a strange statement.

MS. POPOVA: All right. It is, in fact, a quote from Paragraph 44 of his Report, but in the interest of time, I'll just move onto the next question.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Because--yeah. It is nicely worded, but it looked like an argument more than a fact.

BY MS. POPOVA:

Q. Yes, indeed.

The reason I raise that, Professor Reisman, is because in your Reports you cite statements like that from a journal article which was published in the Chicago Journal of International Law by someone called Alex Grabowski.

Does that ring a bell for you?

MS. MENAKER: Could you please guide him to where in his Report?

MS. POPOVA: Yes. It is Paragraph 44 of his First Report.

PRESIDENT FERNÁNDEZ ARMESTO: So, that I can deflect something to Professor Stern, she reminds me that I said that we should devote approximately an hour to each Expert. Just so that you have that in mind, Ms. Popova.

Sorry for. I really thought you were Doctor.

MS. POPOVA: I'm very grateful, but did not want to disabuse--I thought I should disabuse you of that promotion before it continue. But I'm, nevertheless, grateful.

BY MS. POPOVA:

Q. Paragraph 44, Professor Reisman of your First Report, do you see that?

A. Yes.

Q. Yes. And what I had in mind was the very last sentence of that Statement, of that paragraph

which says: "Without it, uncertainty would be introduced into the realm of international investing," and there you quote "which could chill the flow of capital."

Do you see that statement?

A. Yes, I do.

Q. So, do you agree with that statement?

PRESIDENT FERNÁNDEZ ARMESTO: If I may give some hint, to be very frank--and I stand to be corrected here by my colleagues, but I don't think that either applying or disapplying Salini will either chill nor increase the flow of capital in the world. That is given to a single judgment in a Moroccan case of construction, really some world-shattering relevance which I think we all agree is only in our world.

Let me tell you, Professor, that we asked Ambassador Allgeier. I don't know if you know him.

THE WITNESS: I don't.

PRESIDENT FERNÁNDEZ ARMESTO: He was the chief negotiator of the U.S. Trade Agreement, whether--I think it was you. You asked him or some

of the lawyers asked him Salini, and he said, Sorry, what is Salini? And he had no idea. So, it just proves that even the negotiators, the U.S. negotiators, did not even know what Salini is.

So, I think we should--we are very self-centered in our world, and we think that Salini is everything, but probably merchants and investors will continue to do their business, whether we think that Salini is very important or less important.

MS. MENAKER: Although, Mr. President, I would say that Mr. Allgeier--Ambassador Allgeier did say that the lawyers, of course, were involved who, of course, know Salini and put its text into the Treaty.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. That the U.S.--even added that U.S. trade lawyers were excellent lawyers and that they probably knew all about Salini. I think that is a fair statement.

I don't want to prejudge your opinion whether you agree or not with Grabowski's statement that uncertainty would be introduced into the realm of international investing, which could chill the

flow of capital.

THE WITNESS: I think it's an overstatement. My Application of Salini factors to this interpretative exercise is simply because the Treaty itself indicates the three factors, as I said earlier.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. It is evident that these factors come--or are related to Salini.

THE WITNESS: Thank you.

BY MS. POPOVA:

Q. Yes. Again, precisely because you have been very critical of Salini in your writings, that I was surprised by this statement in Paragraph 44 and, again, wanted to give you the opportunity to address it, Professor Reisman.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

BY MS. POPOVA:

Q. Let me move on.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. We must move on. Yes.

MS. POPOVA: I'm trying, Mr. President.

BY MS. POPOVA

Q. Professor Reisman, do you know who Alex Grabowski is?

A. I don't.

Q. Would it surprise you to learn that he wrote this article when he was a law student on the staff of the journal that published it?

A. Absolutely not. Absolutely--

PRESIDENT FERNÁNDEZ ARMESTO: There are some brilliant law students. Maybe he had been your student before.

THE WITNESS: I wish he had been.

If I may say, Mr. President, one of the unusual things about legal research in the United States is that it's given to law students to control rather than the dead hand of the past, and sometimes this produces some absurd results, but very often it reintroduces the extraordinary vigor and excitement of American legal thinking.

So, my answer, again, is "absolutely not."

BY MS. POPOVA:

Q. And I would venture to suggest that if he

had been your student, he might not have written something like that "the fact that arbitral boards regularly use Salini as the starting point from which to base their analysis demonstrates that the test has gained no small degree of legitimacy"?

A. I would still be very proud of him.

PRESIDENT FERNÁNDEZ ARMESTO: Do we have any further questions for Professor Reisman?

MS. POPOVA: One moment, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sorry.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: I'm the voice of conscience. I'm sorry.

MS. POPOVA: One minute to confirm, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Do take some more time if you need.

MS. POPOVA: Thank you, Mr. President. Another voice of reason is encouraging me to proceed more swiftly. So, I believe I have maybe seven more minutes, with your indulgence. Thank you.

BY MS. POPOVA:

Q. Professor Reisman, you say you've been very critical of the way in which Salini has been applied, and some of the ways in which you've described Salini's progeny include that "those cases were puzzling, nominalistic, incoherent, strikingly state-centric, remarkably inconsistent, and regulent of the long defunct NIEO," the New International Economic Order; is that right?

A. I don't remember.

Q. And some of the cases that--

A. It is certainly very colorful language.

Q. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Very well drafted.

BY MS. POPOVA:

Q. I couldn't agree more, Professor Reisman, but some of the cases that you have described that way are the Decisions on Jurisdiction in Joy Mining against Egypt and Jan de Nul against Egypt and also the Annulment Decision in Mitchell and the Democratic Republic of the Congo.

PRESIDENT FERNÁNDEZ ARMESTO: The good point

is none of them is mine. That's a good point. If you had to use that--objectives regarding mine, I would have some comments to make, but since they are--are they yours?

(Comments off microphone.)

MS. POPOVA: None of them are yours, Professor.

ARBITRATOR STERN: Well, one of them.

MS. POPOVA: Yes.

BY MS. POPOVA:

Q. And the only point there, Mr. President, is those three cases, Professor Reisman, are the ones that you cite in your First Report in support of the--your application of the Salini test; correct?

A. Correct.

Q. Now, despite all of that, your testimony to this Tribunal is that in this particular case, this UNCITRAL Tribunal should retrofit into the State Party's definition of an investment the fourth prong of the Salini test; correct?

A. No. That's not correct. The Treaty in Chapter 10, in defining "investments," which is

critical to a determination of material jurisdiction mentions the three prongs of Salini is to be taken into consideration, and I think that an interpreter has no choice, whatever it is his or her view of Salini in general to apply these criteria, because the exercise must, in fact, give full effect to the wishes of the State's Parties.

State's Parties say that they wanted this to be part of the consideration and, therefore, it seems to me appropriate, and it would be inappropriate when everyone's view otherwise--to ignore them.

Q. And you say that the State's Parties say that they wanted this to be part of the consideration, does "this" include the full settlement of Salini?

A. Which is?

Q. Contribution to the economic development of the Host State.

A. That comes from the preamble.

Q. Yes. That's what I had thought.

So, the reason why you believe that this Tribunal should incorporate the contribution to

economic development of the Host State prong of Salini is because of what the preamble of the United States-Perú Trade Promotion Agreement says?

A. That's correct.

Q. Okay. And you say in your Reports that some elements of that preamble are relevant to this exercise; correct?

A. Correct.

Q. The one, in particular, that you rely on is the Statement in the preamble that the Parties intend to promote broad-based economic development in order to reduce poverty and generate opportunities for sustainable economic alternatives to crop production?

A. I cite that, yes.

Q. Okay. Can I ask you this? Why some?

A. You may.

Q. Why just some of the provisions of the preamble? Why not all?

A. If all of them were relevant to the interpretive exercise, I would have done so. There was a provision--if I may consult the preamble.

Q. Of course.

A. Paragraph 6 of the preamble says the Parties are resolved to: "Agree that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investors' rights under the domestic law equal or exceed those set forth in this agreement."

I didn't think this was relevant. I think it is relevant to the construction and examination of Merits issues, but it was not jurisdictional.

Q. Well--

A. And I think--I don't mean to waste your time, so I'm not going to read others that are equally--are not relevant to a jurisdictional inquiry, but I selected the one that was relevant to a jurisdictional inquiry in response to the clear indication by the Parties in the text that this is what they wanted.

Q. And I will accord you the same courtesy. Trust me, I do not intend to go through all of them, but on what basis are you suggesting that one aspect

of the preamble is more relevant than other aspects of the preamble? I mean, is the part of the preamble--you see, for example, the preamble also says that the Parties "resolve to ensure predictable legal and commercial framework for business and investment."

There is no textual basis, at least, would you agree with me, in this preamble to say that one provision is more or less relevant than another provision to particular aspects of the Treaty?

A. I will concede that there are other provisions that are relevant to the interpretation of the Treaty. The one that you cite, certainly.

Q. Can we take a look at that, actually?

MS. POPOVA: Tom, would you show the one.

BY MS. POPOVA:

MS. POPOVA: So, the one--the second one, I believe, that you rely on, "promote broad-based economic development."

A. I'm looking at it.

Q. Yeah? Great. Do you see that--actually it says that: "The Parties have resolved to promote

broad-based economic development in order to reduce poverty and generate opportunities for sustainable" alternatives--"sustainable economic alternatives to drug-crop production"?

A. Yes.

Q. But you would agree with me that whether or not an investment is an alternative to drug-crop production is not one of the characteristics of investment that one should read into the investment chapter of the Treaty?

A. I would say that it is not one of the requisites.

Q. Thank you, Professor Reisman, just one final, hopefully, question for you.

In all cases, however one uses the preamble, you would agree with me, would you not, that one cannot use the Treaty's object and purpose to arrive at a meaning that contradicts or displaces the clear meaning of the Treaty's text; correct?

A. Yes, I do.

Q. Thank you, Professor Reisman. I have no further questions for you and I'm grateful for your

time.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you, Ms. Popova.

Ms. Menaker.

MS. MENAKER: Thank you, Mr. President.

I only have a few questions.

REDIRECT EXAMINATION

BY MS. MENAKER:

Q. First, Professor Reisman, Ms. Popova--opposing counsel asked--excuse me--pointed you to some language where you had been previously critical of the Salini Case.

In any of those cases, did the Treaty at issue contain language incorporating the Salini factors into the definition of "investment"?

A. No.

Q. Okay. Ms. Popova also pointed you to some, but not all, of the sources that you cited in support for your definition of--or your understanding of "public debt," so we did not look at, for instance, the CIA fact sheet or the IMF paper, but was--in reaching your conclusion that these Land Bonds are

not investments covered by the Treaty, did you depend upon the fact that the Bonds were not Bonds within the ordinary meaning of the word, or were not public debt within the meaning--within the ordinary meaning of the word? Was that--were those exclusive determinants for your analysis?

MS. POPOVA: Sorry. Apologies, that's a very leading question. I don't object to you rephrasing it, although the objection--point of the objection has now been lost. Andrea, please.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think that Professor Reisman is easily led by anyone. I'm sure he has his own Opinions. Feel free to answer it in the way you want, Professor.

THE WITNESS: I understood the question, didn't find it leading, and I'm very happy to have the opportunity to clarify what may have been a misapprehension.

The criteria for determining whether or not a transaction in this case, the expropriation of land and the provision of Bonds for repayment at a nominal interest were not, in my view, Bonds in the same

sense as the Bonds that are ordinarily used, for example, in Abaclat. These Bonds did not have a Willing Buyer. These Bonds were simply paper that was given to people for their land.

So, to view these as Bonds in the sense of investment, to view these as somehow or other "investment," overlooking for the moment the anachronism of applying the 2016 Treaty--2016 Treaty--2019, I think it was.

BY MS. MENAKER:

Q. 2009.

A. 2009. So, it would be, I think, to me, wrong to take those standards and apply them to a transaction that I would not have thought was Bonds and which was in no sense an investment within the meaning of the TPA.

Q. Thank you. And, finally, Professor Reisman, you were asked a number of questions about supplementary means of interpretation under Article 32 of the Vienna Convention, where supplementary means can only be resorted to in limited circumstances to confirm the ordinary meaning under

Article 31.

Or if that meaning leads to a result that is unreasonable or absurd, and then you were asked a number of questions about subsequent agreement between the Parties regarding the interpretation of the Treaty or subsequent practice in the application of the Treaty.

And the provision of the Vienna Convention that tells a Tribunal--or tells an interpreter that they must take into account the subsequent agreement, or subsequent practice, is that under Article 31 or under Article 32 of the Vienna Convention?

A. 31.

Q. Thank you.

MS. MENAKER: I have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Professor Stern?

ARBITRATOR DRYMER: Thank you, no.

PRESIDENT FERNÁNDEZ ARMESTO: Professor Reisman, thank you. You have come from New Haven to help us.

THE WITNESS: I have, sir.

PRESIDENT FERNÁNDEZ ARMESTO: So, is that very far away? Probably less than Lima in Perú, I would assume.

THE WITNESS: Considerably.

PRESIDENT FERNÁNDEZ ARMESTO: Considerably. Anyway, I know it's an effort. We thank you for having come from New Haven and to have helped us to better understand this case, and with this we now finalize your examination. Thank you very much, Professor Reisman.

THE WITNESS: Thank you, Mr. President. It was an honor to be before you at this Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: So, we will break for 10 minutes, and then we continue with Professor Bullard. Very good.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing.

And now we will be examining the Legal Expert of Claimants, Mr. Alfredo Bullard.

Mr. Bullard has been with us throughout the week.

ALFREDO BULLARD, CLAIMANTS' WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Good afternoon. First of all, we need to have you read the Expert's declaration.

THE WITNESS: I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much, Mr. Bullard.

Mr. Friedman?

MR. FRIEDMAN: Yes. Mr. Recena Costa will present Professor Bullard.

MR. RECENA COSTA: Thank you very much, Mr. President. I will be speaking in English because I speak Portuguese--

DIRECT EXAMINATION

BY MR. RECENA COSTA:

Q. Good afternoon, Professor Bullard.

A. Good afternoon.

Q. Do you have in front of you the Report dated May 21, 2019?

A. Yes, I have.

Q. Are there any corrections that you wish to make to this Report?

A. Yes. There are a few. I have prepared a chart, so most of them are very, very small mistakes in writing. The only one that is--not really, but is important is the one that is in Paragraph 141 to 142. As you see, after Paragraph 142, there is a sort of scheme of a norm which were supposed to go in Paragraph 141, not in Paragraph 142. So, we have to move that to the other paragraph.

All others are only very small typos.

Q. Thank you. And other than for these corrections, you are content for the Tribunal to rely upon your Report as your Expert Opinion?

A. Yes.

MR. RECENA COSTA: So, Professor Bullard has prepared a presentation. With the Tribunal's indulgence, I would invite him to deliver it now.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

Thank you very much, Mr. Recena Costa. I will not make you a doctor, just in case I get it

wrong again.

MR. RECENA COSTA: I actually do have a Ph.D., for the record.

PRESIDENT FERNÁNDEZ ARMESTO: Okay, then. So, Doctor. I'm sorry, I was misled.

MR. RECENA COSTA: But I go by Mr. Recena Costa. That is totally fine.

PRESIDENT FERNÁNDEZ ARMESTO: I was misled by Ms. Popova, so, sorry for that, Dr. Recena Costa. And we acknowledge with thanks the Report on Peruvian law and we give it H-9.

Dr. Bullard, you have the floor.

DIRECT PRESENTATION

THE WITNESS: Good afternoon. I will be speaking in Spanish, but I do not have any problem in answering the question in either language, in English or in Spanish.

I will be presenting my Report that is basically divided into two sections. Here, we have a summary of my conclusions. The first one is that Gramercy acquired validly the Bonds under Peruvian law; and the second one is that, under Peruvian law,

the four Supreme Decrees that governed the payment of the land debt are illegal, unreasonable, and, in my opinion, automatically inapplicable.

Let's start with the first point that has to do with Gramercy acquiring validly its Land Bonds under Peruvian law. There is no dispute between the Parties that the Constitution of 1979 and also Law 22749 of 1979 determined the free transfer of those Land Bonds and also eliminated any limitations. They were freely transferable. However, these rules did not establish the transfer, the way they should be transferred. Since it was not provided for, the applicable rules for the transfer of the Bonds after 2000 and after 1994, when the securities law came into effect, was the Securities Act of 2000 and the Civil Code. And these laws do have regulations to allow for an explanation of how to transfer the Bonds.

The Civil Code established--or the securities law establishes that the Bonds are established by an assignment of rights, and the law of securities, too--on securities, too, also

indicates that you need to indicate the name of the assignee and the assignor. So, as you can see in the following slide, the transfer of the assignment document that I was able to review are in writing, and here you have the name of the assignor and the assignee that are requested or provided for under the law.

What is it that was assigned under the Peruvian law? We have here in the next law that the object of the assignment is at Clause Number 3. It is clearly established that this assignment of rights comprises all of the Assets, and "Assets" is capitalized. During the hearing, I have heard reference to Clause 3.2 under contract, and 3.2, in my opinion, should be read as a whole from the heading where we see that the assignor declares and guarantees that, to the date of signing of this Contract--at the date of signing of this Contract, once again, the assignor declares and guarantees that there are a series of guarantees such as the one that we see here at Subparagraph 4, and it recognizes the possibility of collecting the compensation accrued by

the assets, and this is an expectative right that is to be performed by the assignee.

This is referring to the possibility to collect, to the expectation, not the existence, of the right. The right is reflected in the first clause. The first clause defines that the Bonds and also the rights to any loans that are indicated at 1.3 of this contract. Under here, there is a listing of all the Bonds, including--in here we have the Bonds, and also the rights to those--to the Loans, includes all the supplementary rights or the rights to sue, and also the expectative rights, and here it says they will be considered the assets as a whole. And then you remember that, at 3.1, you define the meaning of assets. 3.2.6 establishes, in fact, to the possibility to collect. This is a guarantee who has the risk that it will not be collected.

The Bonds were validly acquired, in my opinion, and the purpose and the object of the transfer was--and this was included also in the accessory clauses to this, and this is a short comment to the rebuttal by Mr. Hundskopf. And in

connection with the transfer of the Bonds, he indicates that the Law-Decree of 1979 provided for the transfer, and that the transfer was valid, and he also indicated that these conditions included for the Bond to be also registered with the holders of Land Bonds under the Agricultural Development Bank Registry. I have not found any reference to that, and I understand that Mr. Hundskopf is referring to Article 7 of this Decree-Law that empowers the MEF to issue some regulations, but I have not found any regulation to that end--that is to say, the regulation to require the recording of the Bonds. There is no legal provision, in my opinion, that imposes registration as a validity requirement.

In Perú, Registries are declarative, not constitutive of rights, unless otherwise stated in the law, and there is no law that establishes that.

Now, this is also explained on the Securities Law, Article 29.2, for to be able to enforce these rights, it is necessary to record this, to be able to inform the debtor who should be paid. This is a protection of the debtors' right. If the

debtor is not notified that there has been a payment, the debtor could be paying the--rather, he could be paying the wrong creditors. So, the debtor should know who the creditor is, and otherwise there couldn't be any--the Claim on that payment could not be presented against third parties.

So, in my opinion, Gramercy did notify the Peruvian Government. We have some letters that show that the State was informed that the Bonds were transferred, and they said, "You need to record that." But there was no register that had disappeared with the bank that was in charge of it.

So, as a conclusion, these Bonds were validly acquired, and the lands were transferred with the right--with their rights to the--the associated rights.

Now I am going to move to the fourth.

PRESIDENT FERNÁNDEZ ARMESTO: So, you're saying that the endorsement is not necessary or was irrelevant?

THE WITNESS: It was agreed. It was agreed that, under the Contract, that there would be an

endorsement.

PRESIDENT FERNÁNDEZ ARMESTO: So, the endorsement is not a requirement?

THE WITNESS: Well, it's not a requirement under the legislation to be applied in this case. It was not established. It was not a requirement.

Now, if the President doesn't have any further questions about the first item, I am going to move on to the second one, and that is that the four Supreme Decrees are illegal, unreasonable, and automatically inapplicable under Peruvian law.

So, the Peruvian Constitution establishes some limitations to the public power, and also the possibility to act that are reflected in two central principles or key principles, the legality principle and the reasonableness principle.

These principles act as limitations to be able to avoid the arbitrary actions vis-à-vis the State--vis-à-vis the citizens and the companies in Perú. This pyramid that I am showing you is intended to briefly explain to you, and also in a very systematic way, the meaning of "legality" and

"reasonableness." These are two basic principles that are used to build up on Decisions, legislation and regulation to the left, and also jurisprudence to the right. Clearly, I have not included all of them, because we have a very high number, but here we see different blocks to understand reasonableness and legality under Peruvian law.

We have more than 6,000 Decisions by INDECOPI on regulatory activities, and also administrative proceedings, where we assess--where they assess these two principles. And different regulations have established standards to be followed by the State to comply with these principles, and they are very specific, as we are going to see. They are not abstract principles. They are quite concrete, specific, and they are defined accurately.

If we removed some of these elements, the system is still standing. There are many standards, many regulations, that are applicable to all of these.

I would like to start from the beginning itself. This is a decision of 1997 that is widely

known, that is the Yellow Taxi Case. This Decision was issued when a company, a taxi company, that had painted their taxi cars gray were asked by the municipality to have them painted yellow. So, they claimed that this Decision was not legal and was not reasonable. They presented the case before INDECOPI. They were told--what is the reason, members of the municipality? And they said, because of security reasons. They could not prove that the color of the vehicle was related to security; therefore, the Administrative Decision was declared illegal.

Why is this important, something that is so far away from the Land Bonds? If you move on to the next page, the chart to the left is not a demonstration that I have prepared. It's part of the Resolution. The Resolution establishes a sequence of steps, and they are the ones to be followed to analyze whether the requirements of legality and reasonableness are met. And it is interesting to review this, because here we see the four principles that will be discussed today: Legality--that breaks down into the jurisdiction and compliance with the

main requirements--and reasonableness; that means adequacy, necessity, and proportionality. And we are going to see their meaning.

MR. RECENA COSTA: Mr. Bullard, I'm not sure that everything is getting picked up by the Transcript.

THE WITNESS: I will try to speak slower.

PRESIDENT FERNÁNDEZ ARMESTO: You are being--you are being interpreted into English. And we also have court reporters who are making an effort, but the truth is that you are going very fast.

THE WITNESS: Then I will try to speak slower.

So, on the next slide, I have just shown one example as to the Decision by this administrative body in connection with these cases, and this is very important because the Yellow Taxi Case dates back to 1997. It has an impact on the regulation that came, the subsequent legislation, because that followed the principles established under that Decision. This is not the Decision of the Yellow Taxis, but it is a

different one that is quite clear. This is a case on buses, and they were being required to install a terminal in all of the towns that they went through.

PRESIDENT FERNÁNDEZ ARMESTO: But we need to translate it. Why don't we read it to ourselves and then you continue?

THE WITNESS: Yes. You can read it and then I can explain it to you.

Here we see, first of all, as you can see, that the--based on the Decision by the State entity to approve a Regulation, it needs to study the precedent or the background to that, so they need to establish that the underlying analysis was carried out before the issuance of the law. So, there is no reverse engineering whenever I issue the Regulation and then I justify it. First, I need to analyze, and then I need to be able to pass that Regulation, and INDECOPI rejects any ex post analysis. And also, at Paragraph 48, there needs to be, among other elements, a cost-benefit relationship, and we are going to see how that is complied with in this Regulation.

Next, we have a CT Order that, after the Yellow Taxi Case, had the same analysis--that is, they also showed adequacy, proportionality, and necessity, after analyzing the legality principle.

And more recently, and this is already 2016, this Legislative Decree was passed, Number 1310, which is quite interesting, and it established an ex ante control in a sunset law system. How does it work? This law was passed, and even though there were some control mechanisms with INDECOPI, there was a previous control mechanism that were established for the Decisions, and it works in both ways.

First of all, the in stock clause that already existed when the Regulation was passed had to be presented and supported before a commission that evaluates the three principles--four: Legality, adequacy, necessity, and proportionality. And if they are not approved, the Regulation is passed, and if it is not presented, it is passed. So, every year it needs to go through the same study, through the same analysis, to analyze the context in which it was applied. And all of the previous Regulations need to

go through the Commission before they are issued.

So, there is a system that--we call it "sunset." The sunset comes to an end if there is an expiration, if it has not been renewed through the cost-benefit analysis that I just mentioned a minute ago.

In this chart, I am trying to sum up the analysis of a Peruvian law that also includes the sunset law that I just mentioned, but also the principles that I have explained.

And now specifically we're getting to Supreme Decrees, and I have only included two, the first one and the last one. And these are the documents that were used to support them. In the first case, we have a total of 27 pages, and this is all of the documents supporting this. Some of them were the draft law, and this would be the analysis. And here I was able to identify, as part of a very quick exercise, 36 paragraphs that contained an analysis of the first Decree, four pages. In the case of the legislative--or the last Supreme Decree, the one that would be still in force, we have 12

pages of support, 93 paragraphs in all, and I would say that there are 22 paragraphs on analysis, more or less two pages. But the number is not that important. It could be relevant, just to have an idea, but also the quality of the work done.

And the Peruvian regulation also requires, as I just mentioned, not only through jurisprudence of INDECOPI, but also through specific Regulations, how to conduct that analysis. First, there is an analysis that I called the cost-benefit analysis that is also mentioned at 31. And here we see that the cost-benefit analysis is a method to get to see in quantitative fashion the impact and the effect of the regulatory proposal. And at the end, it says that the need of the law needs to be justified, given the nature of the problems, the costs and benefit probable, costs and benefits and also alternative mechanisms to solve them.

And this is also related to what I heard during the presentation by Vice Minister Sotelo, when you asked her whether this is the paragraph that showed everything they had to do. And she said yes.

And then you told them you will need to be more sophisticated in your analysis, because this is what we will have in the future. This has been enforced since the '90s--not this one, but the other one--and it does require an analysis, and this Regulation does refer to this quantity of analysis. And not only this provision; I've listed below a number of provisions that derive from the need for this analysis, and in passing, I could note that they are not they only ones. There are others.

This is the paragraph of which mention was made in the--what I commented on a moment ago. It says in that regard, there is no additional cost other than that which is represented by the Agrarian Bonds at their current value. And this is the paragraph that upholds the cost-benefit analysis. It actually has an additional paragraph.

Now, it's interesting there is a guide for a cost-benefit analysis that has been issued by the Ministry of Justice, and I believe it has had four editions. They are all more or less similar, and it does cite examples of how a cost-benefit analysis is

not done, and that down and to the left. The adoption of this bill does not represent any expenditure whatsoever by the public treasury and, to the contrary, will be useful for better and more efficient administration of justice. That is incorrect, and if you realize it in a few more words or a few less words, it's the same logic as the paragraph above.

Indeed, this was sent to the Ministry of Justice in consultation with the Ministry of Economy. And the Ministry of Justice answered that it had not undertaken the cost-benefit analysis in keeping with the standard which was applicable in its view. And I might note in passing that this was not binding for the Ministry of Economy. It was just a matter of reference. The opinion of the Ministry wasn't binding. The legal provision, of course, was, and the Ministry of Economy answered that it was not necessary to make any adjustment to the cost-benefit analysis that had already been performed. That is in R-690.

Now, I've identified Reports--I've not

identified Reports, rather, in which where there has been a solid establishing with an explanation of a statement of grounds containing the cost-benefit analysis. So, there is no evidence that this process of analysis was carried out.

The Peruvian law also requires a consultation stage. This is one of the examples of the several provisions--there are several that are mentioned below--that make reference to the need to have a prior consultation through the prepublication of the provision, Article 14. It says, "Without prejudice to what is established in Article 2"--

PRESIDENT FERNÁNDEZ ARMESTO: We can read it, and that will be that.

THE WITNESS: So, as you have seen, the provision says that the provision must be prepublished and there must be consultation with 30 days' lead time. This is a binding provision, and I understand that from--that the Report of García-Godos indicates that it should not be published. I think that is quite clear.

And these Decrees were not prepublished.

Then in this framework, it is required that legal reviews be undertaken--that is to say, the lawyers evaluate the provision, evidently, not just the technical people, but also the lawyers. And it's interesting, because I've drawn paragraphs that are in the Reports that underlie the Supreme Decrees or that support them regarding the formulas, and what their legal analysis says is that they are not going to issue any opinion on the formulas because that's a technical matter, but if you go to the Report of the Office on Indebtedness, nor do they say anything. They put a formula, but they don't analyze it. So, they leave everything in sort of no man's land, where the supposedly technical office says, "I'm not going to say whether or not what the Constitutional Court did fits with the formula or not, because it seems to be a legal matter," and when it goes to legal, they say, "I'm not going to analyze what it says because it's a technical matter." So, no one does say whether or not it is in compliance.

Now, what should we do? I think what the Ministry should have done, it should have answered

three questions, and here we are at the analysis of adequacy, necessity, and proportionality.

First, one must ask whether the administrative process is adequate to achieve the public interest at stake. And you'll recall that there is a mandate in the Constitutional Tribunal to take stock of how much must be paid, the possibility of payment. That analysis has not been done, with which there is no evidence that adequacy was examined. Adequacy is that the public purpose can be met with the procedure that's been established.

The second question is the question having to do with the analysis of necessity. That means comparing several alternative measures and seeing why this is the best one, the least costly one. That is necessity. Nor was that analysis undertaken. I have not identified in the Reports any alternative analyses. One analyzes only one of them, and so there is no evidence that this formula met with compliance and the proportionality analysis and cost-benefit, well, you've seen the paragraph that was included. I cite the Article of Supreme

Decree 008. Once again, it requires a quantitative cost-benefit analysis, and I recommend that the Tribunal read the guide for the preparation of the legal provisions of the Executive Branch. This is, if I'm not mistaken, the Fourth Edition. There, there are three pages that explain how the cost-benefit analysis is to be performed.

Just by way of example--and I'm not going to read it; it is there for you to take a look at it--this is also an INDECOPI resolution that rejects and explains why it rejects. And, if you realize, it asks that an evaluation be undertaken of the number of companies, market conditions; once again, the bus stations; number of land terminals that exist; cost of investment required to install terminals if there is not a possibility of leasing them.

So, in other words, they establish the need to bring data into the analysis prior to issuing the provision, or a justification that the three steps of reasonability analysis, reasonableness analysis required by the legislation have been performed.

In my view, the proportionality analysis was

not done in the case of the Supreme Decrees. I haven't seen it. There is no analysis taking stock. And another example, of the many that we can cite: There is no explanation of why one-year U.S. Treasury Bonds are selected. There are several alternatives. One would have had to have undertaken the economic analysis which was most appropriate or the most adequate; that was not done. Accordingly, my opinion is that the analysis of proportionality was never conducted.

To conclude, I go back very quickly to Legislative Decree 1310, which I mentioned a moment ago, which has ex ante control and a sunset law system. It establishes the stock for the existing provisions with analysis every three years of the entire existing stock, and it establishes the need for prior approval, and if you realize it, this provision has the same four principles: Legality, necessity, effectiveness, and proportionality.

And this must go to a Commission to be validated before they come into force, or even before they are issued by the system, and the consequence is

regulated by Article 2.5. Those provisions that do not pass because they don't carry out the analysis, or they simply are not presented for analysis, are automatically derogated. And those that are new do not enter into force, if they don't undergo this analysis.

PRESIDENT FERNÁNDEZ ARMESTO: And this Legislative Decree was prior to the Supreme Decree?

THE WITNESS: That's a good question. The first two Supreme Decrees are prior to this provision. Accordingly, they are in the field of the stock. They should have gone through, but because of stock and--and the three and four are new Decrees, because they are new. Being new, they should have gone through prior approval.

PRESIDENT FERNÁNDEZ ARMESTO: They should have gone through the Commission? Any Supreme Decree now has to go through this Commission?

THE WITNESS: Any Supreme Decree that creates an Administrative Procedure with some exceptions that are set forth in the provision.

Now, anticipating the comment on one of the

points of discrepancy with Mr. García-Godos, Mr. García-Godos indicates, and in effect the provision says, that--and not just Supreme Decrees; there could be other kinds of legal provisions, which are general in scope, is what it says, and what Mr. García-Godos says is that this is a provision of specific scope. In my opinion, it is not of specific scope, but rather, it is of general scope, because it regulates an indeterminate category: All persons who come forward to claim having a Bond acknowledged for purposes of payment, and that is an indeterminate category.

Consequently, for me, it is a general provision. There are other exceptions; for example, the rules of regulatory agencies of the sectoral agencies, Telecom--there are exceptions for its application. There are several exceptions. The Supreme Decrees, in my opinion, do not fall under any of the exceptions.

Accordingly, given that they have not undergone this analysis, these Decrees are automatically inapplicable, and if these provisions

had not existed, I don't think there would have been an analysis before INDECOPI with subsequent oversight.

Now, just very briefly, my comments on the Report by Mr. García-Godos. He makes reference to one of the instruments that I've mentioned, which is the MEF guide. There is an MEF guide for undertaking this analysis, and he says it doesn't apply because it's a matter of indebtedness. In effect, there is a reference to laws tied to indebtedness.

First of all, I think they were applicable because this Administrative Procedure aimed at paying the Agrarian Reform Bonds, and if you see the Supreme Decrees and the support that was set forth, none of them cites any provision on indebtedness. And had they done so, it would have been more complex, because the laws on indebtedness, because the laws on indebtedness require that one undergo a much more technically complicated procedure, and that procedure would have included review of the budgetary impact. They would have included precisely review of the possibilities of payment in the following years, and

so on.

In other words, they would have had to have gone through these steps, which are even more sophisticated than those that are subject to the regular provisions. The second discrepancy--

ARBITRATOR DRYMER: Pardon me. If I may just ask a question following up on the theme that the President raised, thank you, because I was curious about the retroactivity of certain of these instruments. This guide you mention is dated 2018, is it not?

THE WITNESS: Which one are you referring to?

ARBITRATOR DRYMER: The--well, I'm looking at Slide 42. This is the legislative technical guide for preparation of normative drafts.

THE WITNESS: Oh, yeah.

ARBITRATOR DRYMER: And, actually, it comes under CE-653, which is dated 2018, after the dates of the four Supreme Decrees at issue.

THE WITNESS: You are absolutely correct.

ARBITRATOR DRYMER: Yes.

THE WITNESS: I make two comments.

ARBITRATOR DRYMER: Yes. I want you to, please.

THE WITNESS: The first one: This is the Fourth Edition. There are four--I quoted here the last one, but there were editions that were before the Supreme Decrees. Second--

ARBITRATOR DRYMER: Yes?

THE WITNESS: Second is a guideline. Really, the basis of the guideline are all the norms. The guideline is a reflection of the best practice that were supposed to be followed by the public offices to comply with all these norms.

ARBITRATOR DRYMER: All right. Fair enough. Thank you. And for the rest, the President addressed the questions on that that I might have asked, and I'm sure the Parties would have gotten to it themselves as well.

THE WITNESS: Only to finish my comment about the annulment issue--

ARBITRATOR DRYMER: Please feel free to continue in Spanish, notwithstanding me.

THE WITNESS: Sorry. The provisions that are down in the box are all of those that would be applicable, other than the guide that I just mentioned, which is not the same as the one we just discussed, because there is a guide from the Ministry of Economy, and there's another general one for all State offices. The one that Mr. García-Godos refers to is the one that applies to the Ministry of Economy only.

The second point is that Mr. García-Godos indicates that there's strict compliance, that there was no necessity to carry out a reasonableness analysis because it abides strictly by what the Constitutional Tribunal says. I've listened closely in recent days, and I've studied this for my Report. There are a number of aspects that have been supplemented and modified by the Supreme Decrees with respect to this Decision that had to undergo a reasonableness analysis. The first is to see whether they justified or fit within the public purposes that the Judgment of the Constitutional Court had. Under the argument by García-Godos, the Supreme Decrees

should have matched what the Constitutional Tribunal said, and that's not so. There are several additional elements that must be verified.

Then it is said that the sunset law system, the ex ante sunset law, it does not apply--I already said this in response to a question by the Court, because it's not a general provision--I believe that it is--the Supreme Decrees are defined as being general in nature. Some are specifically; the general rule is that they are general in nature.

And with that, I conclude. This is the table that summarizes. It's in my Report. It summarizes my analysis on compliance with the requirements established, and here I think it is very simple to take into account beyond this legal framework, which is better explained in the provisions that I cite in my Report.

What you can note clearly is that there is a principle of prior justification that must be abided by--otherwise, it cannot come into force--an ex post control phase through INDECOPI or other judicial entities that can review what's done, and now there's

an ex ante system, which was established precisely to have better control over any excesses that the State might commit as regards the principles of legality and reasonableness.

My opinion is that the Supreme Decrees did not satisfy this sequence. And I am available to the Tribunal and the Parties for any questions.

PRESIDENT FERNÁNDEZ ARMESTO: Before giving the floor to the Parties, I have a commonsense question. This has been published in El Peruano--the official gazette of the State is called El Peruano. This has been published in El Peruano, and, therefore, it has an appearance of validity.

So, my question is--these are internal provisions of the administration that somebody would have to implement, a judge or INDECOPI; I don't know. So, my question is: I assume that the laws and regulations, once published in El Peruano, have a presumption of validity and must be enforced so long as an authority with the power does not declare them to be derogated.

THE WITNESS: That's an excellent question,

and there are various angles from which one can answer. The first, the sunset law itself, which is Decree-Law 1310--it's explained in my Report--it establishes that if these steps are not carried out, one may file a complaint with INDECOPI, precisely to secure a Declaration of Nonapplication or to leave it without force. INDECOPI can strip a Supreme Decree of force if what's been violated is the principle of legality.

If the principle of legality has not been violated, but the principle of reasonableness has, then it doesn't have--then it can be declared that it doesn't apply in a given State, but that doesn't have ergo omnes effect.

Now, the second thing is if I don't send the Supreme Decree to the Commission and El Peruano is not going to ask if I have complied with that requirement, and it will publish the Decree. And that Decree is exposed to the legal questions being asked about it, be it at INDECOPI or before the regular courts, regarding its validity.

So, it's not that the Commission--it's not

really the Commission. The thing is the Commission, when it approves, it works in the President's--in the Office of the Prime Minister, and that Commission periodically publishes Supreme Decrees with a full description of the procedures that continue to be in force and authorizes--and all of this is through IT.

The requests are filed through a web page. You can go in, seek authorization, and theoretically it can be published.

Now, I could note in passing that failing to comply with these provisions gives rise to administrative liability, even economic liability, because INDECOPI can impose fines on public servants when they don't comply, for example, with the mandates that INDECOPI has issued saying that the provision cannot be applied.

So, there is a whole system that has been constructed in Perú, beginning in the late 1980s, but it began to be constructed in a firmer manner in the late 1990s. This whole system has gradually been established, and I feel a bit bad when they say you're going to have to get used to--well, one thinks

that this system is quite primitive.

But actually I think it's one of the most sophisticated ones I'm familiar with, and it's a system that has all these mechanisms. And just as Minister Castilla explained Perú's prestige, because of its management of macroeconomic policy, I believe that these administrative mechanisms have made a great contribution to more efficient operation of the State.

Now, unfortunately what happens in this case is I see that they were not abided by.

PRESIDENT FERNÁNDEZ ARMESTO: Very well.

Sir, any additional questions?

MR. RECENA COSTA: No questions from us.

PRESIDENT FERNÁNDEZ ARMESTO: So we give the floor to the Respondent, Mr. Hamilton.

MR. HAMILTON: It's a temptation, but I'll give the floor to Mr. Llano.

CROSS-EXAMINATION

BY MR. LLANO:

Q. I'll ask my questions in English since your Report was in English and I understood that you were

going to testify in English this afternoon. So, I hope that's okay with you.

A. That's okay. The only thing is if I feel to explain any kind of text in Spanish, it is better to switch to English. I think it is better because sometimes the translation could miss the real sense of the word.

Q. Thank you.

A. I will try avoid to do that. I will do that only if it's strictly necessary.

Q. We'll take it one step at a time.

A. Okay.

Q. Perfect.

Now, Mr. Bullard, you and I have--you and I have known each other for quite some time as reflected in some of the cases that you list at the start of your Report; correct?

A. Sure.

Q. And I was curious, I've got to say, was there any particular reason to reference individual attorney names, including me, by name in your Report?

A. No. It's a standard I use to follow when I

make that kind of declaration.

Q. Right. But, for example, when you cited to work that you're doing with King & Spalding, you didn't say, you know, I'm working with Ed Kehoe or the like; right?

A. Yeah. But they are not involved in this case.

Q. Okay. Did you know that I was involved?

A. I was not sure at that time.

Q. Okay. Now, you also mention in your Report that you are acting as counsel for the Claimants in an ICSID Arbitration against the Republic of Perú; correct?

A. That's correct.

Q. And that is the case of Kuntar Wasi v. Perú; correct?

A. That's correct.

Q. And that's obviously an investment treaty arbitration; correct?

A. Correct.

Q. And in that case, you, on behalf of your client, have filed a memorial last September;

correct?

A. That's correct. I don't remember the precise, but it should be.

Q. And so, you're expecting a counter-memorial from the State at some point in the near future; correct?

A. I assumed it.

Q. Well, you must know the Procedural Calendar. You're counsel; right?

A. Yes.

Q. Okay. Good.

And in that case, you allege that certain measures taken by the Peruvian State were in breach of the expropriation provision in the Perú-Argentina Bilateral Investment Treaty; correct?

A. That's correct.

Q. And you also allege on behalf of your investor clients that Perú violated the fair and equitable treatment provision in that case; correct?

A. That's correct.

Q. Including through administrative measures taken by the Peruvian State, my client; right?

A. That's correct.

Q. And, among other things, you argue in that case that those measures that were taken by Perú were unreasonable and arbitrary; correct?

A. Correct.

Q. And in addition to the Kuntar Wasi Case, you are also acting as counsel for other clients in disputes against Perú; correct?

A. Other clients against Perú as counsel. Not that I remember.

Q. Are you not acting as counsel for a client in the oil-and-gas sector in a case where you have filed a Notice of Claim against the Republic of Perú?

A. Yeah, that's correct. Yeah. The Notification of Controversy; that's correct.

Q. Right. And so that's another investor-State dispute that you are acting on behalf of the investor; correct?

A. Sure.

Q. And so--and that Notice of Dispute was filed when?

A. Sometime two or three months ago. No. Yes.

No, more because it's about five months ago.

Q. All right. So around September of last year; is that correct?

A. Yeah, more or less.

Q. So, while you were acting as an independent Expert in this case, you agreed to take on additional representations against the Republic of Perú; correct?

A. That's correct.

Q. And, to be clear, in this matter, the Gramercy v. Perú matter, you argue that several acts of the Peruvian State were illegal and unreasonable; correct?

A. I make that analysis about the Supreme Decrees, and in the way I have just explained.

Q. Yes. And the Supreme Decrees are Administrative Acts; correct?

PRESIDENT FERNÁNDEZ ARMESTO: Legislative acts.

BY MR. LLANO:

Q. Supreme Decrees?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. It is

legislative acts.

THE WITNESS: Yeah, that's correct.

BY MR. LLANO:

Q. Okay. Fine.

PRESIDENT FERNÁNDEZ ARMESTO: Not Administrative Acts. It's the legislative branch of the public administration.

THE WITNESS: All right. Switching to Spanish. They are regulations.

BY MR. LLANO:

Q. But the distinction is not really pertinent to my question. My question is you are arguing that these acts by the Peruvian State were or are illegal and unreasonable; correct?

A. In this case.

Q. Yeah.

A. What I explain in my Report is that I understand that they don't comply with Peruvian law.

Q. Right.

A. Because they break the legality principle and the reasonability principle.

Q. Correct. And so the main takeaway is that

these acts by the Peruvian State that you discuss in your Report are illegal and unreasonable; right? Slide 53 of your presentation.

A. Sure. Of course.

Q. Yes. As you do in these other cases where you're acting as counsel for Claimant, the Claimants, plural; correct?

A. There are important differences between both things. First, the facts are totally different. Second, the kind of analysis that I'm making in that case, in those cases are related to the application of international law and the application of the Treaty.

Here I'm talking about municipal. I'm talking about reasonability and legality inside Perú and inside Peruvian regulations. So, I understand that it's a totally different standard, totally different rules, totally different statutes, totally different norms.

Q. Got it.

Are there any other matters where you act as counsel against the Peruvian State, either in

domestic or international arbitration?

A. There is only one more against the Ministry of Energy.

Q. And what is that case?

A. It's a commercial case.

Q. Commercial case. And your opponent, your counter-party, is the Minister of Energy of the Republic of Perú; yes?

A. Yes.

Q. Right. And if you can reveal it, who is your client?

A. I cannot reveal it.

Q. Okay. Fair enough.

A. It is confidential.

Q. Okay. Now--

A. Until the award. When the award is come out--

(Comments off microphone.)

THE WITNESS: Okay.

BY MR. LLANO:

Q. Now, I want to, since you come to the conclusion that several acts of the Peruvian State

were "illegal" and "unreasonable," I want to discuss some of your writings at a time when you were not counsel for investors--for foreign investors against the State.

And you have now a binder in front of you, and I want to direct you to Tab 16, please. RA-302.

MR. RECENA COSTA: May we please get a second binder. I think the practice of the Parties has been to share two binders. We requested one but we did not receive it yet.

MS. POPOVA: It is also in Procedural Order 10.

(Comments off microphone.)

BY MR. LLANO:

Q. Okay. So we're at--this is the award in Convial?

PRESIDENT FERNÁNDEZ ARMESTO: That was definitely off the record, but you are there.

THE WITNESS: And I remember her.

BY MR. LLANO:

Q. This is the award in the Convial v. Perú Case, and you're familiar with that award; correct,

sir?

A. I read it many years ago, but, yeah, I'm familiar with it.

PRESIDENT FERNÁNDEZ ARMESTO: Your name is also there, Dr. Llano.

MR. LLANO: Indeed.

PRESIDENT FERNÁNDEZ ARMESTO: We keep it in family.

BY MR. LLANO:

Q. Good.

So can you turn to Paragraph 149, please, Mr. Bullard. 149.

PRESIDENT FERNÁNDEZ ARMESTO: Of the Award.

MR. LLANO: Of the Award.

BY MR. LLANO:

Q. And I would ask you, in the interest of facilitating the work for our transcribers, that you read to yourself Paragraph 149, please. Let me know when you're done.

A. Yes.

Q. So, you see there that there was a question or a claim, rather, by the Claimant in respect of

certain actions taken by the Peruvian State and, in particular, the justification that was given to those actions; is that correct?

A. That's correct.

Q. And you submitted Expert Reports in the Convial case on behalf of--as an expert on behalf of the Republic of Perú; correct?

A. That's correct.

Q. You were a legal expert in this case as well; correct?

A. Yeah.

Q. And in your Reports in that case, which are in the record in this case, you came to the conclusion that the municipality of Callao had acted reasonably in reaching its decision to terminate the contract at issue in that case; correct?

A. That's correct.

Q. Now, let's look at that Report, and it's at Tab 15.

Exhibit Number RA-355.

ARBITRATOR DRYMER: Thank you.

BY MR. LLANO:

Q. Let's turn to paragraph 105, please.

A. Sorry, which paragraph?

Q. 105.

(Comments off microphone.)

MR. LLANO: 105.

BY MR. LLANO:

Q. Before we do that, just to confirm, Mr. Bullard, this is a Report that you submitted on July 22, 2011, in the Convial v. Perú matter; correct?

MR. RECENA COSTA: Sorry, this document is marked "confidential."

MR. LLANO: It is marked "confidential" by Perú. We don't mind sharing this information at this point.

THE WITNESS: Sorry, can you repeat your question, the date?

BY MR. LLANO:

Q. Yes. It is July 22, 2011.

A. Correct.

MR. RECENA COSTA: Sorry to interrupt again. So, the cover page to this document says it has been

designated confidential by Gramercy. So that's an inaccurate statement?

MR. LLANO: It is. It's an error.

MR. LLANO: Okay. I doubt that Gramercy cares about Mr. Bullard being in the Convial Case.

ARBITRATOR DRYMER: Okay. Which paragraph again?

MR. LLANO: 105.

BY MR. LLANO:

Q. Right. And you say in this case--I'm sorry--in this paragraph that the provincial municipality of Callao declared the termination of the Concession Contract.

Do you see that?

A. Yes.

Q. And then you quote the termination from the termination letter.

Do you see that?

A. Yes.

Q. And the entire quote--the entire analysis by the municipality of Callao is four paragraphs long.

Do you see that?

A. Yes.
Q. And in Paragraph 106, you say--and I'm translating freely at this point--you say: "As can be seen, the municipality decided to exercise its power to declare the termination of the Concession on the basis of public interest."
Do you see that?
A. Yes.
Q. And then on the next page, you consider adequacy, necessity, and proportionality, among other things?
Do you see that?
A. Correct.
Q. And these are the same three criteria that you considered in the case of the Supreme Decrees in your Report in this case, the Gramercy Case; correct?
A. That's correct.
Q. You concluded in the Convial Case that all of these three criteria were met; right?
A. That's correct, but it's a totally different situation. This is an act by the municipality where they terminated a contract. They are not subject to

all the rules that I have just explained. These rules are referred to regulations or "reglamentos," and they have to comply and (in Spanish) as some sort of a specific reglamentos, (in Spanish).
So, the standard is very clearly defined in that Peruvian law about that kind of facts that are object of my opinion, and it is totally different than this one, where you are exercising the power of the municipality to terminate a contract under--under a contractual clause like that was what happened here.
So, the analysis of interes publico is subject to what the contract defines or applied--the definition is applied--to the Contract, not to an act of Government or sovereign.
As a matter of fact, if I'm not wrong, in this case what happened is finally the Tribunal says that this is a contractual case, because it was not a sovereign act to terminate a contract.
Q. We'll see what the Tribunal said in a second, but before we get to that, you are discussing in your Gramercy Report--rather, in the Reports that

you submitted here in the Gramercy Case, you discuss the reasonableness principle; correct?
A. Yes.
Q. And the reasonableness principle is a principle that is driven by a number of different factors that you set out in your Report; correct?
A. That's correct.
Q. Right. And among those things are court decisions, INDECOPI awards, and the like; yes?
A. Yes.
Q. And these are not criteria that are defined in any statute in Perú; correct?
A. I understand your question. These are not--they are defined in anything--
Q. Statute, not an INDECOPI Decision or some other random award. I'm talking about a statute. You don't reference in your Report a statute--
A. Yes.
(Overlapping speakers.)
PRESIDENT FERNÁNDEZ ARMESTO: You are going very fast.
MR. LLANO: Well, we have very little time.

PRESIDENT FERNÁNDEZ ARMESTO: No, let's take as much time as you need. Let's go. "Haste makes waste."
Apparently, the correct way of saying what I said yesterday, the (in Spanish).
Let's go slowly.
THE WITNESS: Can you repeat your question because I think I missed--
PRESIDENT FERNÁNDEZ ARMESTO: I think the question was whether the standards of reasonableness are set forth in the law.
THE WITNESS: Yes, they are.
BY MR. LLANO:
Q. Where?
A. They are. There are different statutes that I quoted in my Report, in the Report in this case, related to my Opinion in this case.
Q. Yes. Okay. And we'll get to that. We'll get to that.
A. Okay.
Q. But for present purposes, let me just confirm with you that this analysis that you set out

at Paragraph 107 in your Convial opinion has to do with the issue of reasonableness; yes?

A. In this Report?

Q. Yes.

A. Yes. Yes.

Q. Good.

Now, you are aware that the Tribunal--the arbitral tribunal in that case agreed with you, agreed with your position in this paragraph; correct?

A. I understand that, yes.

Q. And agreed with the Republic of Perú; right?

A. Agreed in this case with the Republic of Perú, correct. Correct.

Q. Yes. Now, let's look at that. Let's go back to Tab 16.

A. I want to say something about that. They agreed with the standard I used for a contractual case in the analysis of the termination of the Contract under a contractual clause.

It is very different about what I was talking some minutes ago about the standard that is applicable to Peruvian regulations.

Q. Are you saying that the municipality of Callao could be any less reasonable than the Ministry of Economy and Finance in reaching its Decisions?

A. Reasonable depends on how you are exercising powers. In the case of giving regulation, those powers, have limited--limitation established in different statutes that are very specific about what you have to do. In this case, that kind of standard was not applicable.

Q. Okay. Let's go back to the Award, please.

A. Okay.

Q. It's Tab 16, and, again, this is RA-302. And I would like to direct you to Paragraph 617.

PRESIDENT FERNÁNDEZ ARMESTO: At the end.

BY MR. LLANO:

Q. It is on Page 178. Page 178. It's on the screen as well.

Now, I'll just read the first sentence. You can take a look at the rest afterwards: "In addition, this Tribunal emphasizes that the arbitrariness of an act of domestic law to reach the level of an international violation must affect both

the reasons that motivated the act as well as the procedures that were carried out to take it, and in the present case, it is proven that the declaration of termination was not taken arbitrarily."

Do you see that?

A. Yes.

Q. So the Tribunal agreed with the Republic of Perú, and with your Report, that that four-paragraph letter was sufficient to show that it had not acted arbitrarily; correct?

A. That's correct, but that do not mean that a four-paragraph document can be used to justify a Supreme Decree in Perú.

Q. Okay. Now, in Paragraph 618, the very next paragraph in the award--

ARBITRATOR DRYMER: Let me just ask you this question because clearly this is a family affair.

Both of you know--both of you know what happened in that case, but it's not apparent on the face of this particular--

PRESIDENT FERNÁNDEZ ARMESTO: And Professor Stern.

ARBITRATOR DRYMER: I mean--

PRESIDENT FERNÁNDEZ ARMESTO: This is a trio.

ARBITRATOR DRYMER: All right. You know the answer to this question. Was that the only evidence of the--that's sufficient to prove the reasonability?

MR. LLANO: More importantly, Mr. Drymer, the question is, is it the only evidence that Mr. Bullard relied on in making his conclusion in that Report?

ARBITRATOR DRYMER: But you're also referring us to the Award here, to standards which apparently have been--you're going to tell us have been applied elsewhere.

So, you can interpret my question any way you want. Was that the only evidence you're telling--that Mr. Bullard relied on? The only evidence before the Tribunal?

MR. LLANO: It was the justification that the municipality gave to terminate the Contract.

ARBITRATOR DRYMER: That four-paragraph reason (in Spanish).

MR. LLANO: Yes.

ARBITRATOR DRYMER: There was nothing else. Thank you.

BY MR. LLANO:

Q. All right. Good.

Now, in your Report, Mr. Bullard, you reference the July 2013 Constitutional Tribunal Decision; right?

A. You're going back to the Report in this case.

Q. We're back to the present, back to the future.

A. Okay. Perfect.

ARBITRATOR DRYMER: It's rare to see an Expert or any Witness being cross-examined with such a big smile on his face as he is in this case.

BY MR. LLANO:

Q. July 2013 Decision, you're familiar with it; right?

A. Yes.

Q. And, in fact, you include it as an exhibit to your Report; correct?

A. Yes.

Q. Let's go to that document, please, sir, and it's at Tab 8.

(Comments off microphone.)

Q. Yes. It's C-17.

A. Tab 8.

Q. Yes.

A. Paragraph.

Q. Paragraph 19.

A. 19.

Q. Yes. And I think there's a translation here. Yes, there's a translation after the blue page, and I will read from the translation.

PRESIDENT FERNÁNDEZ ARMESTO: Let's try not to read, Dr. Llano.

BY MR. LLANO:

Q. Okay. Can you please read Paragraph 19 to yourself, Mr. Bullard.

A. I will read from the Spanish one also.

PRESIDENT FERNÁNDEZ ARMESTO: To yourself.

THE WITNESS: Yeah, by myself. Yeah.

BY MR. LLANO:

Q. Okay. Just to be complete, if you can look at the last sentence in Paragraph 17, it says--it's short, so I'll just read it. It says: "Instead, this Tribunal determined that the Constitution required a valuation and updated payment of a debt; even though it did not specify what the criterion was for determining said current value."

Okay?

A. Correct.

Q. So, the Constitutional Tribunal stated that the object of this Decision was to enforce the March 2001 judgment of the Constitutional Tribunal; correct?

A. That's what I say.

Q. And the Tribunal said that it, therefore, needed to establish the valuation and updated payment criteria for this debt; right?

A. Yes.

MR. RECENA COSTA: Objection. Mr. Bullard is not tendered as a Witness on civil law. Mario Castillo Freyre was here yesterday, so these questions should really have been directed to him, I

believe.

MR. LLANO: This is the support for the necessity of the Supreme Decrees. It is more than relevant.

PRESIDENT FERNÁNDEZ ARMESTO: But what is the question? I mean, we have all read a couple of times this auto. What is the question for Expert Bullard?

BY MR. LLANO:

Q. You're aware the Constitutional Tribunal in its analysis adopted a dollarization method; right?

A. Yes.

Q. And the Tribunal--the Constitutional Tribunal also directed the conversion of the unpaid principal into U.S. dollars; correct?

A. Yes, that's what it says.

Q. And that was as of the date of default on the payment of the coupons on the Bond; correct?

A. That's the text of the Decision, yes.

Q. And it also ordered the use of the interest rate in U.S. Treasury Bonds; correct?

A. Yes.

Q. And it ordered the Executive Branch within six months from the issuance of this ruling to issue a Supreme Decree governing the procedure for the registration, valuation, and payment of the Land Reform Debt Bonds; correct?

A. That's correct.

Q. And it ordered also obviously to comply with the parameters that were set out in the Decision in respect of the formula for valuation; correct?

A. Correct.

Q. That included dollarization as of the date of default--

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Yes. We know it all by heart. What is the question for Dr. Bullard?

BY MR. LLANO:

Q. Yes. In Decree--Supreme Decree 242, 2017, that's the August 2017 Supreme Decree. You remember that?

A. I'm sorry. Can you repeat the number?

Q. 242.

A. 242. Yes, the last one, the TUA.

Q. The TUA.

A. Right.

Q. Of the four Supreme Decrees that you discuss in your Report, that is the only one that remains in force today; correct?

A. Correct.

Q. Now, you analyze the reasonableness of the Supreme Decrees under three tests: For adequacy, necessity, and proportionality; correct?

A. Correct.

Q. So, let's try very briefly to get to these tests, or at least to a few of them.

Now, you write--let's go to Paragraph 114 of your Report, Tab 1.

A. 114?

Q. Yes. Tab 1, Paragraph 114. For the record, this is where you describe the adequacy test.

Do you see that?

A. Yes.

Q. And I won't read that. I'm assuming that you know what the adequacy test is, but let's go to Paragraph 193.

A. 193. The same Report.

Q. Yes. And here you apply the adequacy test to Supreme Decree 242; yes?

A. Okay.

Q. And you write that: "The MEF failed to show how Supreme Decree 242 effectively contributed to solving the Agrarian debt issue."

Do you see that?

A. Yes.

Q. Now, the Constitutional Tribunal ordered payment to the Bondholders; correct?

A. That's correct.

Q. And we saw that it ordered dollarization. But my next question to you is that you do not mention anywhere in your Report that the Constitutional Tribunal also included a requirement or an instruction to start dollarization from the date of the last coupon payment.

You did not mention this specific instruction in your Report; correct?

A. I don't remember, but I take your word.

Q. And you also do not mention anywhere in your

Report that the Constitutional Tribunal ordered the use of U.S. Treasury Bonds to assess interest. That particular instruction is nowhere to be found in your Report; correct?

A. I take your word.

Q. Now, I think this is obvious, but the MEF was required to comply with the Constitutional Tribunal ruling; right?

A. That's correct.

Q. So, it wasn't for the MEF to assess whether the Constitutional Tribunal's instructions contributed to solving the Agrarian debt issue; correct?

A. Of course, but that has to be done in a way that complies with what the Constitutional Tribunal has said and in a reasonable way under all the standards I have explained.

Q. Okay.

A. If you see, for example, that--you talk about the Bonds--sorry--the American Treasury Bonds. There is no selection in that decision of which one of that kind of Bonds will be used. What that means

is somebody has to take that decision. That decision is subject to, for example, the reasonable analysis. There is nothing about how you are going to balance the budget with the need to pay. Somebody has to say that. Who? That MEF. To which procedure? Through the procedure that I have just explained.

I don't say that they don't have to comply with what the Constitutional Tribunal said. What I'm saying is that to comply with that, they have to follow the procedure that is established in the law. For me, there are no main difference between giving a Supreme Decree in this case and giving a Supreme Decree to regulate what the law said, a law statute. There are gaps in the statute that have to be fulfilled by the Regulation, and to fulfill that gaps and to explain and to develop, you have to comply with the law, to comply with the rest of the legal order, and to apply the reasonable--the reasonability principle, together with the legality principle.

So, unless have you the capacity to--and I will use a word in Spanish because I don't know how to say it in English.--calcar (in Spanish), to make

up exact copy of that Constitutional Tribunal is the only way of saying something without taking all the words of the Constitutional Tribunal. Somebody have to fulfill, and that's the reason why the Constitutional Tribunal delegate to MEF to take all these Decisions.

Q. Now, you mentioned the term of the U.S. Treasury Bonds as an issue of concern. Any other issues that the MEF was charged with looking at that was under its own discretion?

A. The most important one is the formula. There is--I understand that there is a very general statement about what--how the dollarization has--they only talk about dollarization using an interest rate of the American Treasury Bonds. Nothing else.

If the Constitutional Tribunal had mentioned formula in the Decision and they copy the formula in the Supreme Decree, I have nothing to say that they cannot change the formula.

As a matter of fact, if they change the formula, they will break Peruvian law because they are breaking the interest that was defined by

Constitutional Tribunal, but that is not what happened in the case.

Q. I'm asking within the formula, within the formula, the formula incorporates dollarization and it also incorporates U.S. Treasury Bonds, yes?

A. Yes. But that's why you use reasonability.

Q. Yes.

A. Because reasonability means to use a formula that reasonably compensate, taking into account--according to the Constitutional Tribunal, taking into account that equilibrium in the budget. That's what I understand.

(Interruption.)

A. That equilibrium in the budget, in the Peruvian budget.

Q. Do you know how many Bondholders there exist that hold Land Bonds in Perú or outside of Perú?

A. No, I don't know.

Q. Right. And do you know what the outstanding value of such available Bonds might be?

A. No, I don't.

PRESIDENT FERNÁNDEZ ARMESTO: He would be a

magi if he knew that. Because we have been discussing this a week.

BY MR. LLANO:

Q. So, would we. So, would be the Republic of Perú, would be magi in order to guess that; right?

A. No. But there is a big difference, and the difference is that if you want to have an economic analysis, you can use different scenarios. You use the data that you have, and you can project different scenarios, and analyze each scenario, and say, well, this is reasonable, this is not reasonable, and try decide how you are going regulate that.

What you cannot do is go blind. You cannot, as a professor in the States say, in God we trust, but all others bring data. You need data and explain the data to show how it have to be complied with what the Decision of the Constitutional Tribunal said.

What I understand is what the reason that the Constitutional Tribunal did not put the formula here and did not give more details is because they don't have data. And the reason why they encharge the MEF to give the Supreme Decrees is because they

are expecting the MEF doing the work that they cannot do, and that's the reason.

It's a very strange Decision because they say that one of the Parties have to fulfill, which it has not been defined in the Decision. And that's another reason to think that it is very important to have a reasonable analysis and complying with all the rest of the Peruvian legal framework. So, reasonable in the analysis have to be achieved.

ARBITRATOR DRYMER: I think the original expression was, in God we trust, all others pay cash.

BY MR. LLANO:

Q. It wasn't for the MEF to say, for example, we need to assess whether dollarization will fairly compensate Bondholders; correct?

A. Sorry. I don't--

Q. It was not for the MEF to say, to analyze, to consider, we need to assess whether dollarization will fairly compensate the Bondholders because that was an instruction from the Constitutional Tribunal; correct?

A. No. But they were supposed to choose a

method of dollarization that is reasonable.

PRESIDENT FERNÁNDEZ ARMESTO: I think the position of the Expert is pretty clear. I mean, he says that--that certain Decisions should have been reasoned and explained that--which were adopted by the MEF in the Decree.

BY MR. LLANO:

Q. Right. And so let's go to that analysis by the MEF. All right.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

BY MR. LLANO:

Q. So--but before that, just one more point. Paragraph 197.

A. 197 of my Report.

Q. Yes. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Let's read it. We will read it each for oneself.

THE WITNESS: Yes.

BY MR. LLANO:

Q. So, here you apply the necessity test to the Supreme Decree 242; correct?

A. That's correct.

Q. And this section is three paragraphs long?

Do you see that?

A. Yes.

Q. And you write: "The Peruvian Government failed to explain why the changes being implemented to the Bondholder Process are the most effective and least invasive regulatory option available to solve the Agrarian debt problem."

Do you see that?

A. Sorry. In which part?

Q. 197.

A. 197. Okay. Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: What is your question?

BY MR. LLANO:

Q. Yes. So, this paragraph is referring to the point that you were making earlier about whether sufficient analysis was made of this issue; correct?

A. One part of the Decision.

Q. Right.

A. It is referred that you have to analyze on the options. It is not enough to make only a

cost-benefit analysis, showing that the benefit is over the Cost is not enough. You have to see for an option which has the less cost with the most benefits. So, for doing that, you have to analyze different possible alternative of the Decision that you are going to take.

Q. Understood. Now, in the very next paragraph, you mention one example of this concern that you have. You say, "for example."

PRESIDENT FERNÁNDEZ ARMESTO: We will read it.

MR. LLANO: Okay.

THE WITNESS: Yes.

BY MR. LLANO:

MR. LLANO: Yeah. So, you mention a new Parity Exchange Rate in this paragraph.

Do you see that?

A. Yes.

Q. And let's go to the document that you reference in this paragraph, which is Report Number 731.

A. Report.

Q. You see in the--in Paragraph 198, you reference a Report Number 731; right?

A. Yes.

Q. So, let's go to that. It's at Tab 10, and it is Document CE-631.

So, if you go to Page 5, you'll see that this document is signed by a lawyer; correct?

A. Javier Chocano.

Q. Yeah. And--

(Interruption.)

A. Javier Chocano. The answer is yes. Javier Chocano.

Q. And that person is a lawyer; right?

A. Yes.

Q. That that person is--belongs--sorry, to the MEF legal counsel's office; correct?

A. That's what I understand, yes.

Q. So, this is a legal Report; right?

A. Correct.

Q. And in your analysis of the--in the three-paragraph analysis of the necessity test, you did not mention the technical Report that underlies

that Decree; correct?

A. Sorry. Which technical Report?

Q. That's my question. That's my point.

A. Which technical Report?

Q. Let's go to that. Page 1 of the same document, there is a reference, it says "referencia."

Do you see that?

A. Sorry. I got lost.

Q. Same document. Page 1.

A. Oh, Page 1. Okay.

Q. And there is a "referencia."

Do you see that?

A. Yes.

Q. And that "referencia" cites to Report Number 124.

Do you see that?

A. Correct.

Q. And then Paragraph 1.1, just below that, also references that same Report.

A. Yes.

Q. And that Report, according to this paragraph, was issued by DGETP, which is the

Indebtedness Department of the MEF; right?

A. Correct.

Q. Let's go to that document. It's at the very next tab, Tab 11--

A. Yes.

Q. --and that is CE-630?

A. Yes. 6--that's before.

Q. Yeah. And if you go to the last page, which is Page 7 or so, you'll see that the document is signed by the Head of the Directorate of Indebtedness and Public Treasury.

Do you see that?

A. Correct.

Q. Mr. Valentin Cobeñas.

Do you see that?

A. Yes.

Q. Do you know him?

A. No.

Q. Okay.

A. No, I don't remember.

Q. Okay. So, paragraph--I'm sorry. Page 3--Page 3, there is analysis.

Do you see that?

A. Page 3, I don't have the numbers of the pages here.

Q. Yeah, the third page of the document.

A. Analysis, yeah. Okay.

Q. Right. There's a heading entitled "analysis."

Do you see that?

A. Yes.

Q. And on the next page, the very next page, there's a Paragraph 3(b).

Do you see that?

A. 3(b). Yes.

Q. And it says: "The information for the updating of the BDA"--that is, the Agrarian debt Bonds--"include:"

Do you see?

A. Sorry, which paragraph?

Q. 3(b)?

A. 3(b). Okay.

Q. "The information for the updating of the BDA includes."

Do you see?
A. Yes.
Q. And then the first item says that "the Parity Exchange Rate will be obtained from the Central Bank of Perú," and a website is provided.
Do you see that?
A. Yes.
Q. And this is the Parity Exchange Rate issue that you mentioned in your Report; right?
A. Yes.
Q. Now, you don't state in your Report what the nature is of the adjustment in the Parity Exchange Rate that is at issue in this Report and in Report 731 that we saw just now; right?
A. I don't issue that, because that's not something that I analyze. What I analyze here is that there were not other alternatives that were analyzed.
Q. Okay.
A. Because about the necessity principle means that you have to analyze different alternatives and not only mention alternatives, you have to analyze

each alternative, compare them, and explain why this one is better than this one, under which basis, in data, and in analytics of what we are--you're doing.
Q. Okay. Now, this Tribunal will consider whether the information that the MEF came up with was sufficient to justify its Decisions, but we'll leave it at that.
Do you see on the last page of the memo--I'm sorry, the Report, that there's an Aide Memoire?
A. Yes.
Q. "Ayuda memoria."
Do you see that?
A. That's correct. Sí.
Q. And Paragraph 5, second bullet, says: "The Parity Exchange Rate shall be obtained from the Central Bank source instead of the MEF calculation, as established in Annex 1 approved by Supreme Decree 017-2014."
Do you see that?
A. Yes.
MR. LLANO: There we go. Next. Next page there. There we go. So, Paragraph 5, second bullet,

Mark.
BY MR. LLANO:
MR. LLANO: Okay. Yeah. So, now that we got here, let's go back to Page 4 of the document, which was, again, the Paragraph 3(b) that we were just looking at before.
A. Okay.
Q. And we were looking at 3(b)(i); right? Just now. And you'll see that there is a Footnote 10 right after that little (i); right?
A. It's a document that is on the screen? No.
Q. No. It's on your document. Page 4. We were looking at Paragraph 3(b) earlier, in the main body of the Report?
A. In the--okay. Okay.
Q. 3(b), under 3(b), there's little (i).
A. Yes.
Q. At the end of that is a Footnote 10.
Do you see that?
A. Yes. Correct.
Q. And Footnote 10--
PRESIDENT FERNÁNDEZ ARMESTO: We have read

that.
MR. LLANO: You have read that.
PRESIDENT FERNÁNDEZ ARMESTO: Dr. Bullard is reading it right now.
MR. LLANO: Good.
THE WITNESS: The footnote.
BY MR. LLANO:
Q. Yeah. Please.
A. Yes.
Q. And you'll see that there's a reference to the Central Bank; right?
A. There is a reference to the Central Bank, correct.
Q. And to the functions of the Central Bank; right?
A. Yes.
Q. And it has been deemed pertinent to clarify the source for the Parity Exchange Rate.
Do you see that?
A. Yes.
Q. So, in fact, are you aware, Mr. Bullard, that the Report that you reference in Paragraph 198

of your Report, the Report 731, let's call it, was not talking about, as you put it, a "new Parity Exchange Rate." It was talking about a simple switch in the source of the rate to the Central Bank data.

Were you aware of that?

A. That's correct, but without any explanation of that cost benefit of shifting that to another rate.

Q. Right. So, before--are you aware that before this switch, the prior MEF Decree was relying on MEF data as the source for the Parity Exchange Rate? Were you aware of that?

A. No.

Q. And now, as of this Report, it's relying on Central Bank data, because the Central Bank is the independent, autonomous, regionally renowned institution that preserves monetary stability and provides transparent information.

Do you disagree with that statement?

A. I don't disagree with that statement, but I don't know if that is enough to make a cost-benefit analysis and to decide which of the option is the

better one. You cannot--you have only to give some reason. You have to give a reason that proves that the Decision is reasonable.

So, in my--in my point of view, the switch is not explained without detailed explanation of why you switch. It is only the reference that this maybe is a better one, but there is no explanation of why these options or other options can be better.

Q. Okay. But, just to confirm, you hadn't seen this document before I showed it to you just now; right?

A. No. I have--yeah, I have read this document.

Q. But you don't cite it in your analysis of the necessity test; right?

(Overlapping speakers.)

Q. You do not cite to this document in your three-paragraph analysis of the necessity test in connection with Supreme Decree 242; correct?

A. I read the whole support, and I don't find what I mention in the end of that paragraph, developing any of the Reports, that are in this part.

Q. It's a simple yes-or-no question, sir.

In the three paragraphs, where you analyze the necessity test for Supreme Decree 242, you do not reference these pages that I've just showed you; right?

A. I don't reference, but I analyze them.

Q. Okay. Now--

PRESIDENT FERNÁNDEZ ARMESTO: These are the Reports which form part of the file for approval of the TUA?

THE WITNESS: Every one of the four Supreme Decrees has a file with different documents. This is the one of the third one.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

BY MR. LLANO:

Q. Okay. Now, I'd like to just add one more piece that I think is relevant to this discussion.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. And you must--I mean.

MR. LLANO: Five minutes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

MR. LLANO: Five minutes.

PRESIDENT FERNÁNDEZ ARMESTO: The "potato-sack situation" is approaching.

MR. LLANO: Five minutes.

BY MR. LLANO:

Q. Tab 12.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

BY MR. LLANO:

Q. Tab 12 is R-1072. And--

A. Yes.

Q. And within 1072, you'll see that there are a number of PDFs, and I am referring to the PDF entitled ROP034572.

PRESIDENT FERNÁNDEZ ARMESTO: We have seen that.

MR. LLANO: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: It was somehow difficult to find. I'll rely on the screen.

BY MR. LLANO:

MR. LLANO: Okay. So, on the first page of Tab 12, Mr. Bullard, you can see that this is Supreme Decree 242; right?

A. Correct.

Q. And it is dated August 18, 2017; correct?
A. Correct.
Q. And behind the Decree are supporting materials. You can flip through and check it out.
A. Yes.
Q. And the whole document--I represent to you, the whole PDF is 77 pages long.
Do you accept my representation?
A. The whole? 70.
Q. 77.
A. 77. Yeah, it looks right.
Q. And, in fact, Gramercy's counsel showed parts of this document to Ms. Sotelo the other day.
Do you recall that?
A. I don't remember--yeah, I think so. I'm not sure, I wasn't in the room at that moment, but I think I have seen that.
Q. And I'll just rattle this off because it's simple, and we can finish here.
You do not mention the letter from the MEF to the Central Bank; right?
A. I don't mention it, yeah.

Q. You don't mention the Response from the Central Bank to the MEF; right?
A. No.
Q. You don't mention the Technical Report that incorporates the Central Bank formula; right?
A. Correct.
Q. You don't mention the formula and the discussion of the formula in that Technical Report; right?
PRESIDENT FERNÁNDEZ ARMESTO: Wait. One second. Because this is important. This is the documents which were exhibited in the document production stage?
MR. LLANO: Correct.
PRESIDENT FERNÁNDEZ ARMESTO: But I have a question for Dr. Bullard. And we have seen here the letter to the Central Bank, and then the answer from the Central Bank, and we went at some length through all the charts from the Central Bank and the formula.
And are these documents, which we have seen here, are they in the file of the Royal Decree? Do you see my point? My question.

THE WITNESS: Yes. What I have to see, and I don't remember, I have in my Appendix what I understand was the file.
PRESIDENT FERNÁNDEZ ARMESTO: Yes.
THE WITNESS: To be honest, there are some documents that I have never seen before, so I'm not sure if they were part of the file. That's what I--what I have, what I receive and what I make--for making my analysis, it include not all these documents. I don't remember these documents with all these numbers. I don't remember the chart at the end. I understand that--I check what was supposed to be a file that was used to analyze the Supreme Decree before its annulment.
PRESIDENT FERNÁNDEZ ARMESTO: Then I am slightly lost. Because if we are to analyze the reasonability or--of the Royal Decree of the--Supreme Decree, you must look at all the documents in the file because maybe in the seventh document there is a memorandum which justifies why they are switching from one type of Parity Exchange Rate to another type of Parity Exchange Rate.

I mean, you can only evaluate the reasonability and the correctness of the legislative procedure if you really review the whole file.
THE WITNESS: Well, what I see here are some documents at the end with data, with--what I don't see is how this data was used to justify the Supreme Decree.
What I read in that Report, that I have check, is that there are not specific mention to many of these Reports. There was no mention to this one, to this one, to this one, that are at the end. So, I assume that they were not evaluated, or were discarded because they don't think they are relevant. What I read are what the Reports mention. And what the Report mention do not contain the kind of analyses that I assume has to be made to have this Supreme Decree approved.
MR. LLANO: I have a practical suggestion, Mr. President.
PRESIDENT FERNÁNDEZ ARMESTO: Yes.
MR. LLANO: I would like to, simply in the interest of time, invite the Tribunal to read for

itself this document and see the progression of how one document leads to the next, the next, to the next, to the formula. I think that would be a more practical way of going about this then doing it through--doing it through--

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, yeah, yeah. I just want to understand the following. In Page 28 of your presentation today, Dr. Bullard.

THE WITNESS: 28 of my presentation.

PRESIDENT FERNÁNDEZ ARMESTO: You presented this chart.

THE WITNESS: Yeah, correct.

PRESIDENT FERNÁNDEZ ARMESTO: And in this chart you said, that is the complete File 4. One Supreme Decree and for the other Supreme Decree. One for the 2014, and one for the 2017, and you said--I have just taken the first and the last.

Do you remember?

THE WITNESS: That's correct.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And my question to you is reasonably simple. Have you--is this the complete file? Or was the--did the official

file comprise more documents?

THE WITNESS: These are the documents that I understand were part of the file. The complete file.

PRESIDENT FERNÁNDEZ ARMESTO: No, that's not my question.

THE WITNESS: The complete file. That's what I understand when I check it.

PRESIDENT FERNÁNDEZ ARMESTO: That isn't. Wait. That is--you said this is your professional Opinion is that this is the complete file?

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And now my next question is, you have reviewed every single document in that complete file?

THE WITNESS: Of all the documents quoted here, I check every one.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And is the letter, for example, the letter we saw to the governor of the Reserve Bank, and the answer from the Central Bank, are they in these files?

THE WITNESS: I don't think so. I don't think so. The letter is not.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

(Interruption.)

MR. LLANO: Can I make a quick point of order?

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Of course, of course.

MR. LLANO: So, I think it will assist the Tribunal to--again, and I apologize for reiterating, this is Document R-1072.

ARBITRATOR DRYMER: Yes.

MR. LLANO: And within R-1072, this is ROP034--

PRESIDENT FERNÁNDEZ ARMESTO: Wait, wait, wait. You must--ROP--

MR. LLANO: 034.

PRESIDENT FERNÁNDEZ ARMESTO: 034.

MR. LLANO: 572.

PRESIDENT FERNÁNDEZ ARMESTO: 572. And this is what?

MR. LLANO: And this is the complete file for Supreme Decree 242, including its backup.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

Because--and let me understand. This was a document production exercise?

MR. LLANO: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And the document production exercise was that you--that the whole official file in the Ministry of Economy and Finance.

MR. LLANO: The Republic of Perú, as part of its document production effort, produced this document in its document production prior to Mr. Bullard's Report.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, your point is that for any analysis of reasonability of cost-benefit analysis or proportionality, one has to look at the complete file.

MR. LLANO: This is--Sure. Yes. Yes. And this is the official file for that purpose.

PRESIDENT FERNÁNDEZ ARMESTO: And it has more documents than the files referred to by Dr. Bullard on Page 28?

MR. LLANO: Absolutely.

PRESIDENT FERNÁNDEZ ARMESTO: What do you

have to say, Mr. Bullard?

THE WITNESS: What I received is a file that contains the documents.

(Interruption.)

THE WITNESS: When I received--I received the documents, not all the documents. I received the documents, that Report that I mention here in my presentation, as the file that is used to support that. What I find in that file are the Reports, mainly the Reports that are mentioned here, the Project of the Supreme Decree, the exposicion de motivos(in Spanish), what is mentioned there, and the ayuda memoria (in Spanish). That's what I received, and my understanding and my analysis was on the basis of that.

What I understand is that all these documents are some kind of Appendix. I don't see analysis here. I mainly see--I don't know. I'm only checking in general. There is a chart with comparing text, but I don't know if there is some analysis there. What I saw is this initial file. I made my analysis. I read the Reports. I tried to find the

Reports where the analysis is, and I didn't find the analysis for most of the points that I think are relevant.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you, Dr. Llano.

ARBITRATOR DRYMER: Just again, just on that point so that I understand, the tenor of your Report is that there might be a thousand pages of relevant evidence, but what you were looking for is an explanation by the MEF regarding--

THE WITNESS: That's--

ARBITRATOR DRYMER: --these various criteria--

THE WITNESS: That's correct.

ARBITRATOR DRYMER: --reasonability, necessity, proportionality--

THE WITNESS: That's correct.

ARBITRATOR DRYMER: Thank you.

THE WITNESS: We only have to trust in data.

ARBITRATOR DRYMER: Yes.

THE WITNESS: We have to process the data, analyze the data, and develop conclusions that are

consistent with necessity, adequacy, and proportionality using the data. So, having data is not enough. You need data, plus analysis following the steps that I have described.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. LLANO: I had one more.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. It's the last question, please.

MR. LLANO: No, I just wanted to note.

PRESIDENT FERNÁNDEZ ARMESTO: I thought you had finished.

MR. LLANO: Thank you, Mr. President. I have no further questions on the understanding that there are multiple documents in relation to this Decree that Mr. Bullard never saw. In fact, he said there are some documents I have never seen before. And on that basis I pass the Witness. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Dr. Costa.

MR. RECENA COSTA: Thank you, Mr. President.

REDIRECT EXAMINATION

BY MR. RECENA COSTA:

Q. Professor Bullard, can we go to

Paragraphs 197 to 199 of your Report. You recall that you were taken there by my learned friend.

A. Yes. 197.

Q. 197.

A. I will go to the Spanish version--English version. Okay. I'm there.

Q. And opposing counsel suggested to you that you had never looked at what is marked in this binder that was given to us as Tab 11 or CE-630; is that right?

A. That's right. That's what he suggested.

Q. Can you let us know which document is cited in Footnote 184 or your Report.

A. 1184. Yeah, CE-630.

MR. LLANO: I object because that's not the premise of my question. My question was whether that document was cited in connection with the specific paragraphs that I referenced as part of the one of the tests that Mr. Bullard performed. Not whether he had ever looked at a certain document. Whether that document was referenced in connection with his laconic analysis of that particular test. That was

my question. So I object to the premise of the question. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Let's go on.

BY MR. RECENA COSTA:

Q. Can we take a look now at Slide 28 of your presentation, please?

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

BY MR. RECENA COSTA:

Q. And you'll see that there is--there are two charts, so to speak. Can you explain to us what your understanding of those two charts is?

A. These charts are all the documents that I think are relevant in terms of analysis to understand if that Peruvian law was compliant in respect to legality and reasonable analysis. The Reports in the first case, they are the copy of a Supreme Decree, the ayuda memoria, the exposicion de motivos, and in the other one, the two Reports, the Supreme Decree, the exposicion de motivos, and the ayuda memoria.

Q. Okay. Can you read for us the identification of this exhibit, please?

A. They are down in the--

Q. I mean in the square itself. There is--

A. Ah, oh, yeah. R-317 and R-359.

Q. Okay. Does this suggest to you which Party produced this?

A. Yes.

MR. LLANO: Objection.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: He let him, yes. At 7:20 of the evening, Professor Bullard is excused if he did not catch that an "R" is from the Republic, especially if he has on other occasions acted as Expert for the Republic.

BY MR. RECENA COSTA:

Q. With your permission, Mr. President, can I also ask that we look at Ms. Sotelo's Statement, the First Statement at Paragraph 39, please?

MR. LLANO: Objection.

PRESIDENT FERNÁNDEZ ARMESTO: Oh, come on. Please, please, please, please, Dr. Llano. Let's finish this.

You want to go which place, please?

MR. RECENA COSTA: It's Paragraph 39 of

Ms. Sotelo's First Witness Statement, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Why don't you blow it up?

THE WITNESS: Yeah, because I cannot read from here.

(Comments off microphone.)

MR. RECENA COSTA: Sir, can you blow up Paragraph 39, if we can.

MR. LLANO: Mr. President, what's going on here? Mr. President, it was suggested--

PRESIDENT FERNÁNDEZ ARMESTO: Let's hear the question, please. We don't even know the question. Please.

MR. LLANO: I never showed this document, Ms. Sotelo's testimony.

PRESIDENT FERNÁNDEZ ARMESTO: I know.

MR. RECENA COSTA: It was suggested to the Witness that he's reviewed an incomplete record. We want to establish where the record that the Witness reviewed came from.

MR. LLANO: It's simple. We gave him more documents.

PRESIDENT FERNÁNDEZ ARMESTO: Wait, wait. Please, Dr. Llano.

Dr. Costa, do put your question.

BY MR. RECENA COSTA:

Q. Professor Bullard, I invite you to read this paragraph and then comment on this paragraph, please.

A. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Annex 86. Let's not make it more complicated than it is.

It is your representation that Annex 86 are the same documents which appear here?

MR. RECENA COSTA: Exactly, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. We have to clarify that.

Wait a second, Dr. Llano, because we--to extract this information through the Witness is too complicated.

Your point is that the Vice Minister had an Annex 86,que es el registro del Decreto Supremo, and that registro --your representation is that that it includes these documents.

MR. RECENA COSTA: It not only includes, but

it is exactly that exhibit, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: It is exactly that exhibit.

MR. RECENA COSTA: Yes. That is what--

ARBITRATOR DRYMER: That's a representation.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. A representation.

MR. RECENA COSTA: Subject to confirmation by my learned friend.

MR. LLANO: This is the point. This is creating confusion now, and instead of clarifying a point--

MR. HAMILTON: I'm sorry. I'm sorry, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: No. No. Dr. Llano has the floor, Dr. Hamilton. And Dr. Llano will finalize this cross-examination.

MR. LLANO: Mr. President, I have to reiterate my objection here because the point is these documents were produced as part of Perú's document production effort and were not referenced in full by Mr. Bullard. And it--to cite random exhibit

numbers and suggesting that that is somehow not true is incorrect. The Tribunal must consider what these particular documents that are listed in Slide 28 are and compare that to the exhibit that I showed to Mr. Bullard, and you will see that there are differences. There are many pages in this document that Mr. Bullard does not refer to or has never seen.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. But so that we have the precise references, we now know where these documents come from. Your point is that in R-1072, ROP034572, which is the document production exhibit, that there are a fuller, a more extensive version of the file.

MR. LLANO: Yes. And to just explain the chronology, we gave documents, and then we gave more, and Mr. Bullard did not cite to the "more" part.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Okay. Very good.

MR. RECENA COSTA: Mr. President, just for the record--

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

MR. RECENA COSTA: --I would ask for the

opposing counsel to confirm that this is the full record that was certified by Ms. Sotelo.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, we'll leave this all for argument and we'll see--I understand now where Mr. Bullard's file comes from, which you say is from the Vice Minister, and what you say is that there are additional documents. There is evidently additional documents because we have now established that, for example, the letter to the Central Bank is not in the file which was presented to Dr. Bullard but is in the other documents. There may be other documents because if this is--it must be a very, very big file, and that's as far as we can go on a Wednesday at 7:30 p.m., having started at 9:00 a.m., with one hour for break.

So, with this, Dr. Costa, you have--you look at me as if you wanted to say something. It's the last.

MR. RECENA COSTA: I wish to ask just one final question of the Witness, if I may.

PRESIDENT FERNÁNDEZ ARMESTO: Okay, the very last.

BY MR. RECENA COSTA:

Q. And you remember you were shown Tab 12 in this binder that we received. I would ask you to flip with me to the Bates Number which is ROP034625.

A. Okay. The last numbers are?

Q. The last numbers are 625. So 34625.

PRESIDENT FERNÁNDEZ ARMESTO: Will you please blow that up, if you can.

THE WITNESS: Okay. The letter.

BY MR. RECENA COSTA:

Q. Yes, yes, it's a letter.

A. Okay.

Q. May I invite you just to take a few seconds to read this letter.

A. Okay.

Q. Now that you have seen this document, in your opinion, does it comply with the standards under Peruvian law for reasonableness and legality?

A. By itself, no. It needs to have some kind of additional information and analysis in the context of all the other documents.

PRESIDENT FERNÁNDEZ ARMESTO: I think,

Dr. Costa, we are potato sacks.

MR. RECENA COSTA: Thank you, Mr. President. No further questions.

PRESIDENT FERNÁNDEZ ARMESTO: We will have to leave this for argument after the Hearing. Thank you. Thank you, Dr. Costa.

Very good. Dr. Bullard, thank you very much.

With this, thank you very much to our Court Reporters and Interpreters. And tomorrow, half past 9:00, or do you prefer 9:00?

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: 9:00, and we must be more--thank you, Mr. Bullard.

(Witness steps down.)

(Whereupon, at 7:29 p.m., the Hearing 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

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the matter of Arbitration between:	:	
GRAMERCY FUNDS MANAGEMENT LLC AND GRAMERCY PERU HOLDINGS LLC,	:	
Claimants,	:	
and	:	ICSID Case No. UNCT/18/2
REPUBLIC OF PERÚ,	:	
Respondent.	:	
		Volume 6

HEARING ON JURISDICTION, MERITS AND QUANTUM

Thursday, February 13, 2020

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

The hearing in the above-entitled matter came on at 9:00 a.m. 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:

On behalf of ICSID:

MS. MARISA PLANELLS-VALERO
Secretary of the Tribunal

MS. KRYSTLE M. BAPTISTA
Assistant to the President of the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
info@wwreporting.com

MR. PAUL PELISSIER
MR. DIONISIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

MR. CHARLES ROBERTS

APPEARANCES:

On behalf of the Claimant:

MR. MARK W. FRIEDMAN
MS. INA C. POPOVA
MR. CARL RIEHL
MS. FLORIANE LAVAUD
MS. BERGLIND HALLDORSDOTTIR BIRKLAND
MR. GUILHERME RECENA COSTA
MS. SARAH LEE
MR. DUNCAN PICKARD
MR. JULIO RIVERA RIOS
MS. MARY GRACE McEVOY
MR. THOMAS G. McINTYRE
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
United States of America

MR. LUIS BEDOYA
MR. FRANCISCO CARDENAS PANTOJA
Rodrigo, Elias & Medrano
Av. San Felipe 758
Jesús María
Lima 15072
Perú

Representing Gramercy Funds Management LLC:

MR. JAMES TAYLOR

MR. JOSHUA M. O'MELIA

MR. NICK PAOLAZZI

MR. THOMAS NORGAARD

APPEARANCES: (Continued)

On behalf of the Respondent:

AMBASSADOR HUGO DE ZELA
Republic of Perú

MR. RICARDO AMPUERO
Republic of Perú

MS. MONICA GUERRERO
Republic of Perú

MS. GIOVANNA ZANELLI
Republic of Perú

MR. ALBERTO HART
Republic of Perú

MR. JONATHAN C. HAMILTON
MS. ANDREA MENAKER
MR. RAFAEL LLANO
MR. FRANCISCO JIJÓN
MR. JONATHAN ULRICH
MR. FRANK PANOPOULOS
MR. JOHN DALEBROUX
MR. ALEJANDRO MARTINEZ DE HOZ

White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005-3807
United States of America

For the United States of America:
MS. LISA GROSH
MS. NICOLE THORNTON
MS. MARGARET SEDGEWICK
MR. JOHN DALEY
Attorney-Advisers
Office of International Claims and
Investment Disputes
Office of the Legal Adviser
U.S. Department of State
Suite 203, South Building
2430 E Street, N.W.
Washington, D.C. 20037-2800
United States of America

MS. AMY COLLINS
U.S. Department of Treasury

C O N T E N T S

PAGE

WITNESSES:

OSWALDO HUNDSKOPF

Direct examination by Mr. Jijón.....2006
Direct presentation.....2011
Questions from the Tribunal.....2033
Cross-examination by Ms. Popova.....2037
Redirect examination by Mr. Jijón.....2074

EDUARDO GARCÍA-GODOS

Direct examination by Mr. Jijón.....2077
Direct presentation.....2078
Cross-examination by Mr. Recena Costa.....2098
Redirect examination by Mr. Jijón.....2156

NORBERT WÜHLER

Direct examination by Mr. Hamilton.....2168
Direct presentation.....2168
Cross-examination by Ms. Lavaud.....2199
Redirect examination by Mr. Hamilton.....2259

PABLO GUIDOTTI

Direct examination by Mr. Hamilton.....2271
Direct presentation.....2271
Cross-examination by Mr. Friedman.....2293
Redirect examination by Mr. Hamilton.....2329

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ ARMESTO: Good morning, everyone.

We begin this sixth day of Hearings in the Arbitration between Gramercy Funds Management LLC and Gramercy Perú Holdings LLC against the Republic of Perú.

And we do so, if there is no point of order. Mr. Friedman, nothing?

MR. FRIEDMAN: We can proceed. Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

And Mr. Hamilton?

MR. HAMILTON: Ready to proceed as well.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Then we welcome Professor Hundskopf.

OSWALDO HUNDSKOPF, RESPONDENT'S WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: How are you, sir? I see you are already standing up.

We can all stand up, and if you would be so kind as to read out the declaration.

THE WITNESS: Thank you.

My name is Oswaldo Hundskopf, and I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, Professor Hundskopf. You are here as an Expert on behalf of the Republic of Perú, and I give Mr. Hamilton or Mr. Llano--no, it will be Mr. Jijón. It is Mr. Jijón who will put some initial questions to you.

MR. JIJÓN: Thank you very much, Mr. President, Members of the Tribunal.

DIRECT EXAMINATION

BY MR. JIJÓN:

Q. Good morning, Professor Hundskopf.

A. Good morning.

Q. First of all, could you briefly summarize for us your professional and academic history or background?

A. Yes, I'd be pleased to do. Soon it will be 48 years since I've been working as a lawyer. I have had the opportunity, the good luck, of studying at the

Universidad Católica, which is a major private university in Perú, the leading one at the time. I had class with many persons who were children of persons who'd been expropriated. This is an experience that I had at a very young age when I began university.

As a student--after being a student, I joined the largest corporate group. It was 44 companies from different economic sectors, and we underwent several expropriations: Of course, the agrarian expropriation in 1969; then the expropriation of fisheries in 1963; the expropriation of newspapers in 1974; and of one more sector in 1975. This is an experience that I had in Perú, because I began to work as an attorney. I was selected through a process, and I worked until 1992. This was an excellent opportunity, in addition to teaching in the university, because I had an opportunity, through an agreement that this group had with a son, to undertake a master's degree in foreign trade, a master's degree in law, and then a doctorate in law.

In addition, in the 1990s, when arbitration

began to develop in Perú with the special law, I had the opportunity to be a member of the first list of Arbitrators at the Arbitration Center of the Chamber of Commerce of Lima. At this time, I belonged to all--or rather, to the eight most important arbitration institutions in the country.

To summarize and conclude, notwithstanding this combination, which has made it possible for me to be a part of many working committees that have drawn applause, such as the Law on the Securities Commission, the Law on Incorporations, framework for business, and many others--and that was another law--despite having had many offers to serve in political positions, I never accepted such offers, because I prefer to maintain my independence and my professional practice combined with the academic world. And I never accepted a political position, though I have been close to many authorities for, obviously, professional reasons having to do with consulting and advising.

Thank you.

Q. Thank you very much, Professor Hundskopf.

And I'm calling you Professor Hundskopf, and you just mentioned the academic world. Could you briefly tell us what your academic history has been?

A. Yes. In 1974, Carlos Neuhaus stepped down for health reasons at the University of Lima, and his course was open. They were looking for a professor. I was quite young, and I had already graduated, and so I took it on. I began--that began the 45 years that I worked at the University of Lima.

At the same time, I was offered to join the Graduate School of San Marcos as a professor, where I worked for 15 years. It's a very large public university. And now that I've retired from the University of Lima, because unfortunately there a statute whose Rule 41 says that at age 70, one must step down or retire, my good fortune is that I had two significant offers to serve as Dean or Director of Master's Programs at other private universities.

Q. Thank you, Professor Hundskopf. And simply to clarify, I understand that you were Dean at the University of Lima?

A. For 14 years.

Q. What does that entail?

A. Dean is basically an academic position. In my case--well, this is what the authorities understood--I had to be there from 8:00 a.m. to 1:00 p.m., basically to look at the structuring of programs of study, selection of professors, development of the courses, and so on.

But the Rector gave me to understand--well, understood that I had a law firm and that I was engaged in professional practice and that I could not abandon that. So, I was never full-time in academia. I've always combined the two activities.

Q. Thank you very much. And one final question with respect to experience.

In your Report, I see that you say you are a member of--a full member of the Peruvian Academy of Law. What does it mean to be a full member?

A. Well, there are 30 who are called "miembros de número," or full members according to the statute of the academy, and, of course, there must be a proposal put forward and supported by five members of the academy. It is a very difficult, demanding

process. Everyone aspires to that, and clearly, from an academic standpoint, it is very gratifying.

And one of the reasons that comes into play a great deal is not only--they take into account not only one's teaching work, but also one's written work. I have had the opportunity to be the author of 23 books. Some are, say, a manual of corporate law in five different traditions.

Q. Thank you very much. I understand that you've prepared a presentation for the Tribunal.

A. Yes. No doubt about it. I simply wanted to say that I've been invited to prepare a report, 14 December 2018. I delivered it 14 months ago, in December--September 2019. These are two complete Reports that are in the record before the Distinguished Members of the Tribunal and everyone.

Nonetheless, since it is a very lengthy Report in the two parts, I have made a very brief presentation with respect to Agrarian Bonds.

DIRECT PRESENTATION

THE WITNESS: For me, it's important to clarify with respect to Legislative Degree 17716 of

1969, which was issued as one of the most important laws of the Peruvian military Government that was in place from 1968 to 1980, the main obligation was compensation for land expropriations.

These are not the first expropriations. The military Government came in in 1968, expropriating the refineries and the oil companies, IPC especially. The compensation was paid by distributing Agrarian Bonds. Of course there was a process with respect to each of the properties, especially in the coast, excepting Casa Grande, which covered jungle regions, but there was anywhere from 50 hectares to 50,000 hectares. We're talking about 20,000 properties, and clearly it was a complicated process in which one had to designate an evaluation committee or assessment committee with respect to each property, and then, of course, issue the Bonds, and--as a final phase, after Ministerial Resolution.

Evidently, in the cases that I've become familiar with, the process takes one, two, three, or four years. I have persons very close to me who have received the Bonds in 1972 and 1973, and as

payment--final payment of the valuation, well, this was a debt and as a result of the Agrarian Reform. There were annual obligations. Once you knew the amount, you had to take Series A, Series B, or Series C. A was 20 years, B was 25 years, and C was 30 years. A, 6 percent interest, B with 5 percent annual interest, and Series C with 4 percent annual interest.

But the important thing is that the Bonds are constituted not only by the nominal amount, which could be 10,000, 20,000, 30,000, up to 500,000 soles, because, if my memory serves me well, some had coupons that would mature annually, and each coupon would incorporate the value that resulted from the division plus the interest rate, 6 percent, 5 percent, or 4 percent. It was a very large document. I have seen any number of such documents.

And the State had the obligation to pay each coupon on the maturity date. So, here, it's not a question of one having to pay the entirety of the Fair Market Price at the moment of the valuation or the payment of the debt. No, each coupon had to be paid

on its maturity date. And the maturities were annual.

Yesterday I had the opportunity to hear the presentation by Alfredo Bullard, a friend and colleague, who referred to a contract for assignment of rights related to the Bond. I don't want to explain the origin or the history of the Agrarian Development Bank. What is important is that the original Bonds of 1969 were personal obligations that were nontransferable. The Decree-Law 22749 which made the Bonds really transferable required that they be registered with the Bank of Agricultural Development, paid in 1992, which created--which was liquidated in 1992, which created the uncertainty. There's a very--assignment to contract cited by Bullard shows that it was not guaranteed that one could collect the payments for the goods, which is to say--or the property, which is to say the Bonds.

No, it's the possibility of collecting compensation stemming from this property constitutes an expectative right whose maturization is on account of and at the risk of the assignee.

So, what does this mean? It's a gamble.

It's an option. It is something that could be remotely possible, even. So, it is not like the circulation of securities in general. And in that regard, I want to be very clear. In Law 16587 of '67, there's two Articles. One is Article 210, which clearly says that securities issued by the State are governed by their own laws, and on a complementary basis by the law on the securities.

PRESIDENT FERNÁNDEZ ARMESTO: Excuse me, Professor, but you are being interpreted into English, and you are going very quickly.

THE WITNESS: Thank you very much. I apologize for that. I have tried to stay calm.

This presentation leads me to analyze the two securities laws that have been in force in the country.

PRESIDENT FERNÁNDEZ ARMESTO: Let me ask you a question, because I'm getting a bit lost, Professor.

Is it your Opinion that the Peruvian State did not have an obligation to pay these Bonds and that it was an option? You use the word "option," clearly. So, did you understand that there was not an

obligation on the Peruvian State to pay?

THE WITNESS: No. Perhaps the word "option" was not the most accurate, and I apologize. I'd like to withdraw that.

Actually, it is no doubt an obligation of the State to pay the Bonds. There is no doubt about it. There is on obligation of the State to pay the Bonds, independent of the prior valuation that had been done of the properties.

And, recapitulating the legislative history, Decree-Law 22749, which is the second securities law of 2000, says in Article 275 that the securities issued by the central Government are governed by their own laws and--in all aspects not covered by the Law on Securities, which means that the Agrarian Reform Bonds are unique, exceptional securities. They are unique and they are exceptional.

PRESIDENT FERNÁNDEZ ARMESTO: But they are securities. And on a subsidiary basis, they are subject to the Law on Securities.

THE WITNESS: Exactly.

PRESIDENT FERNÁNDEZ ARMESTO: And you said

that there have been two securities laws?

THE WITNESS: Yes. One of 1967, which is 16587, which was in force--obviously, when the Agrarian Reform Law was issued in 1969, it was the applicable law. But later, there's an Article 210 that says that Bonds or securities issued by the Peruvian State evidently are governed by their own laws and, on a supplementary basis, by the securities law.

Same happens with Law 22287, the law of 2000, which--that is Article 275. It has three Articles that refer to those Bonds. It says the same thing, that the special provisions in respect of each of the Bonds apply, and, on a supplemental basis, the securities law.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much.

THE WITNESS: Now, in the next overhead, I'm going to refer to the judgment of the Constitutional Court of 2001. Now, I want to clarify: This is the only Judgment, because the 2013 one is an order of enforcement of this Judgment.

This pronouncement by the CT began with a proceeding brought by the College of Engineers in 1986, and there was a great deal of uncertainty about the criteria to be used. That is why the Resolution of 2001, the Judgment of 2001, is so important. It constitutes the legal instrument of the greatest importance that inspires all others of lesser rank, which confirms that having used Agrarian Bonds as a means of payment was not unconstitutional. Quite to the contrary, it was perfectly constitutional and compatible with the 1933 Constitution at that time.

When the Agrarian Reform law was handed down, the Constitution of 1933 was in force. It was then replaced in 1979, and subsequently in 1993, the one that is currently in force. I don't want to make a comparison as between them. The important thing is to refer to the 1933 Constitution. The ruling by the Constitutional Court found unconstitutional a claim that sought to have a nominal payment made by--because it granted inalterable treatment, unattached to the circumstances of time.

Well, that Judgment did not establish--and I

put this in my Report--how to determine the current value; for example, to apply a particular index or the data of which it should be updated. It doesn't say so, nor does it say with respect to a payment criterion--it didn't refer to the payment procedure.

So, I believe that the 2001 Judgment being of singular importance because it is the highest-level organ for interpretation of Peruvian legislation, well, the starting point after the Constitution for--in the whole legal structure, there's a lack of certainty, clarity, and precision. In my view, there is no legal provision that establishes that one must use solely and exclusively the Consumer Price Index for updating these obligations.

The current value principle is not a synonym of CPI. It does not mean that one must exclusively use the CPI. The Civil Code refers to the theory of current value in Article 1235. The title of the article says "valuation theory," "teoria valorista," which mentions different indicators, indices that are automatically adjusted set by the Central Bank, other currencies, or other merchandise.

Now, Article 1236 does not refer to indicators, nor does it keep the judge from deciding what is the appropriate indicator. In general, one could say that the current value theory is not 1234; rather, it is 1235 and 1236.

The 2001 Judgment, well, nor does it state the date as of which one should calculate the updated value of the Agrarian Bonds, leaving it open that--the possibility of choosing different dates. Now, this is one of the most important aspects of the 2001 Judgment that should be highlighted, because, obviously, there were different dates. The date of issue of the Bonds, the date of payment of the last Bond, the date of payment of the totality of the Bonds; there are all these different possibilities.

Foundation 25 of the 2013 rulings, which I will refer to subsequently, does say that it is to calculated from the last moment the last annual coupon ceased to be paid.

PRESIDENT FERNÁNDEZ ARMESTO: Who was president in 2001?

THE WITNESS: The President of Perú in 2000

was the third reelection of President Fujimori, and that was very much called into question. And then there was a whole scandal that I don't want to get into, but then there was a transition Government that began in November of 2000, and it led up to the 2001 elections. It was President Valentín Paniagua, the Caretaker-President.

PRESIDENT FERNÁNDEZ ARMESTO: So, when the Constitutional Tribunal handed down this Judgment, there was a transition administration?

THE WITNESS: Yes, March of 2001. Elections had been called, and then President Alejandro Toledo was elected in 2001.

PRESIDENT FERNÁNDEZ ARMESTO: One question, Professor: You were in academia at that time. What was the reaction on the part of the legal world when this Judgment was handed down? Was it a secondary issue that wasn't much discussed in society, or was it very much debated in society? Were there different political positions in respect of it? Tell me a bit about the sociology of the decision of the Constitutional Tribunal.

THE WITNESS: It's an excellent question, sir, and it will enable me to clarify that in the 1980s, from '80 to '85, the President was Belaúnde, and then in the last years, there was hyperinflation that reached 7,000 percent. The juncture, the economic and financial circumstances, were very difficult.

In 1990, President Fujimori came in to office. On 5 February 1992, he dissolved Congress. He convened a Constitutional Assembly which drew up the 1993 Constitution, and it's a very good regime--well, the good years were 1992 to 1997. And then from '97 to 2000, once again there were difficulties, various situations leading the situation in Perú to be very complicated; so much so that there was a debate about the famous reelection, whether Fujimori could or could not be reelected, and he ran for reelection. In my opinion he should not have done so, but he did so, and unfortunately, this brought about a major problem.

PRESIDENT FERNÁNDEZ ARMESTO: But with respect--no, but I was asking about the sociology

behind the Decision; in other words, how many landowners were expropriated?

THE WITNESS: I could not tell you an exact number, but around 20,000.

PRESIDENT FERNÁNDEZ ARMESTO: 20,000. And were they a pressure group? Were they protesting because their Bonds had been rendered worthless? Was it a peaceful situation? Was there--were there writings in the university circles? How did the legal doctrine come into play? The social background behind the Decision of the Constitutional Tribunal. First, the College of Engineers that raised the Constitutionality of this provision, upholding principle of nominal value, and then the position of the Constitutional Tribunal saying, "No, you have to apply the current value principle."

THE WITNESS: Thank you very much. In effect, in 1996, the College of Engineers brought the constitutional challenge. There was a new Constitutional Tribunal with a 1993 Constitution.

PRESIDENT FERNÁNDEZ ARMESTO: So, it took five years? From the time the legal action was

brought and the Judgment handed down, five years elapsed?

THE WITNESS: Yes. And from the 1969 Law, well, you can imagine--so many years that went by from '69 to '96. On the part of the persons who had been expropriated, there were many differences. Some were very obedient and submissive and they went through the procedures. Others raised issues. The Agrarian Tribunal, well, it no longer existed in Perú, but there one could go and call into question the valuation that was initially assigned.

So, some took their Bonds, picked them up in a timely fashion, within two, three, or four years, and I would say, with all due respect, there were some persons who never came and actually collected their Bond, never had their Bond.

PRESIDENT FERNÁNDEZ ARMESTO: And the Fujimori administration, in general, what was its position vis-à-vis this social problem? Was it one of maintaining the nominalist criterion, seek a solution? What was the political backdrop?

THE WITNESS: I think the 1984 Civil Code,

while in contrast to other provisions in other countries and the 1936 Code, well, as of 1980, there was a lot of talk about the current value principle in Perú, but there was no interpretation or--specific interpretation or application, and the opportunity to do so that was so great was the Agrarian Reform Bonds, which affected so many families. Who were the persons impacted? Individuals, successions--that is to say, heirs--or groups, partnerships of persons which had developed at that time, and the assignees, those who acquired the Bonds, that persons could do that as of 1979. But the discrepancies as of 1996 were of such a magnitude and the criteria were very much at odds with one another.

So, one could find rulings in one direction and in another, and I can say this based on my professional experience and supporting friends of mine who were not attorneys, and who nonetheless--well, and understood that there was definitely a problem. And so, the Judgment of the 2001 was of singular importance, because it incorporated the current value principle.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you.

So, let's go to the ruling of 2013.

THE WITNESS: The Constitutional Tribunal determined that the 2001 Resolution does not specify what the criterion is for determining said valuation, and that, with the purpose of making possible implementation of the Judgment of 15 March 2001 and of actually making effective the obligation of the Peruvian State to pay the Agrarian Reform Debt, this Tribunal proceeded to establish the criterion of valuization and updated payment of the debt, as well as the procedure that the Executive should follow in order to make said payment effective.

I would like to highlight the case that led to this. It came from the same College of Engineers. It was 0022 of 1996. Now, the Constitutional Tribunal examined various methods for updating, all of them potentially valid, and concluded that one should use the dollarization method. That was the criterion imposed by the Order of 2013. The Decision of the Constitutional Tribunal is also based on the fact that

the method for conversion to dollars had its legal foundation in Emergency Decree 088 of 2000, and because other methods would entail grave impacts on the budget of the Republic. It is totally true that, in the wake of the development of the analysis that I had the opportunity to do of the 29 Foundations of the 2013 Order, I do--I noted that one takes into account as a basis for the Decision on dollarization a number of circumstances having to do.

PRESIDENT FERNÁNDEZ ARMESTO: If you could just go back a moment, please, to 6, this. Let's talk a little bit about the Emergency Decree of the year 2000. This is an Emergency Decree issued by the Fujimori administration?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And it was handed down when the remedy pursued by the College of Engineers had already been in process or before the courts for four years?

THE WITNESS: Four years.

PRESIDENT FERNÁNDEZ ARMESTO: Would you say it was an effort on the part of the Fujimori

administration using an exceptional instrument, which is the Emergency Decree, to resolve this social problem?

THE WITNESS: Yes, that is right, sir. It was an effort; moreover, I know there's a history. President Fujimori was an agrarian engineer. He had been the President of Agrarian University, and he was very close to the issue. So, no doubt whatsoever, in one way or another he supported this initiative.

But I believe the issue went to sleep--that is to say, it wasn't implemented as it should have been done. Had that been done, then the 2001 Decision would not have been necessary.

PRESIDENT FERNÁNDEZ ARMESTO: So, the 2001 Decision ended up supplementing, so it was another basis.

Now, on this I would like to ask you here in this order handed down by the Constitutional Tribunal--you're very familiar with it?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: It analyzes various valuation systems, and it goes with

dollarization. Is there some other example in Peruvian law where the current value principle has been applied through the dollarization method, or is this an exceptional situation, and it has only happened with respect to the Agrarian Bonds?

THE WITNESS: Well, the analysis in the ruling includes different options, including, for example, the Consumer Price Index adjusted; yes, the family income, the impact on the budget.

PRESIDENT FERNÁNDEZ ARMESTO: But that's not my question. My question is--there must have been many situations in which this problem of hyperinflation has affected different persons' legal situations.

My question for you is the following: In this case Agrarian Bonds, did--the Constitutional Tribunal went with the method of dollarization. My question is: Are there other situation, other examples, where either the law or the courts have opted to apply the current value principle using dollarization?

THE WITNESS: Yes. If memory serves, in

2004, there was a Supreme Decree, and there were rulings by the Supreme Court that referred to the implication of dollarization as a method. There were so many cases, so many, and the rulings were so contradictory that it was necessary that--

PRESIDENT FERNÁNDEZ ARMESTO: You're not understanding what I'm asking, sir.

Excuse me. Excuse me for one moment. I forgot to turn this off. Yesterday, Mr. Hamilton had this issue, and now I have it.

Okay. My question is the following: We've seen that one of the ways in which we could apply the current value theory is the Consumer Price Index?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And the other one is the adjusted Consumer Price Index.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And the other one is dollarization. It is clear that the Constitutional Tribunal, in connection with the Land Bonds, said that they opted for the dollarization.

THE WITNESS: Yes, dollarization.

PRESIDENT FERNÁNDEZ ARMESTO: And, for example, in the case of urban leases or in the case of other matters in Peruvian law--I don't know about Peruvian law, you know it. But are there any other situations where the method to apply the current value theory was dollarization, or is dollarization only applicable in the realm of Land Bonds?

THE WITNESS: My personal opinion is that the Application and interpretation of 1235 of the Civil Code applies to all sectors, all activities, and there have been rulings, legal provisions that make reference to this, in one case dollarization, and the other cases in connection with the Consumer Price Index. So, there was a dispute. There was a little bit of a lack of settlement in this case. So, this didn't really have to do exclusively with the Land Reform. This was a general problem in Perú. The problem in Perú is multisectoral.

In connection with ruling of 2013 by the Constitutional Tribunal, there is a procedure for the updated payment. In this case, a Tribunal said that it is necessary to establish the procedure for the

payment of the land debt, and this must be established by the Executive. And a Supreme Decree needs to be issued regulating the procedure for registration, updating, and a payment form of the debt within the six months from this ruling.

Unlike the 2001 Ruling, this made it possible for the MEF to establish a payment procedure administratively. So, when the Constitutional Tribunal opted for dollarization, it said that dollarization had to be applied but also how it had to be applied.

So, there were studies that the Justices had at hand. They looked at them, and there were reasons in connection with financial equilibrium, budget balance, et cetera. So, from 26 to 29, the procedure is established, and it talks about the same terms that are included in the Supreme Decrees: Five years at a maximum, and then two years to obtain the valuation updating, and then eight years to collect on the debt. And then the Order offers alternatives. The most important thing, I think, is that it sets aside and rejects a new valuation of the lands, and that's very

important. This is Article 1 of the 2013 Ruling.

And, Number 2, we have dollarization, and the criteria for dollarization, and the most important thing is Article 3 that establishes the mechanism to be applied. And this establishes the guidelines set forth in the Supreme Decrees, and then we have a consolidative text of Decree 242 of 2017.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much, Professor.

Mr. Jijón, any other questions--Mr. Drymer has a question, Professor Hundskopf.

ARBITRATOR DRYMER: Thank you, Professor.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR DRYMER: I'll speak English so I won't butcher the language of Cervantes.

On Slide 7, your last point, the second point on Slide 7, well, it says what it says. I won't read it. But it suggests that it was only in 2013, not in 2001, that the Ministry of Economy was enabled, "habilito," to establish a payment process. Is it your Opinion that the 2001 Decision of the Constitutional Tribunal did not empower the Ministry

to establish a procedure for payment?

THE WITNESS: Yes. With respect, I'm quite critical of the 2001 Ruling because it includes in its Resolution Foundation 6 and now Foundation 7. I think that the good thing about this ruling is that it established the guidelines, the mechanisms, procedures and timelines and the stages--specifically, the stages--registration, authentication, the Technical Experts' Opinion so that the MEF by different legal processes could put this into practice. And this had not happened in the 2001 Ruling.

ARBITRATOR DRYMER: With apologies, I won't stay long on this, but, perhaps, it's a translation issue or at least an understanding issue for me.

PRESIDENT FERNÁNDEZ ARMESTO: Can I clarify the question.

ARBITRATOR DRYMER: Please do. Please do.

PRESIDENT FERNÁNDEZ ARMESTO: Let me ask you because I know what Mr. Drymer is asking, and sometimes things are lost in translation.

One of the things that we have examined is the following: We have the 2001 Ruling, and it

entailed a development. There was a law that was drafted, but it was never passed in Congress?

THE WITNESS: Yes, there were bills, sir. Yes, there were bills.

PRESIDENT FERNÁNDEZ ARMESTO: Now, when you have a ruling, a 2013 Ruling, well, this is put into practice via a Supreme Decree. This means that no Congress action is necessary. My question, or, rather Mr. Drymer's question--my Co-Arbitrator--is the following: Couldn't we have passed a Supreme Decree in 2002, 2003, 2004, to implement the criteria put forth by the 2001 Judgment by the Constitutional Tribunal?

THE WITNESS: Your question is very interesting, but the breadth of the current value theory is so large that it admits a number of methodologies. A Supreme Decree is a lower-ranking provision, so what we needed was an enforcement judgment by the Constitutional Tribunal because this had to do with constitutional development of this judgment at that level, at the constitutional level, meaning at the Constitutional Tribunal level. I don't

think we could have done this via a Supreme Decree.

ARBITRATOR DRYMER: Right. And so, when you say in Slide 7 that (la diferencia de la sentencia) unlike in the 2001 Ruling, the 2013 Order "auto habilito", enabled the Ministry to act. I think you're--enabled the Ministry to act. It facilitated the Ministry's action. It didn't empower the Ministry to act.

The Ministry was equally empowered after the 2001 Decision; is that correct?

THE WITNESS: Yes. I insist. The 2001 Ruling was good, but it had legal lacuna. It had things that were not precise.

ARBITRATOR DRYMER: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Mr. Jijón.

MR. JIJÓN: Thank you very much, Mr. President. We have no further questions at this time.

PRESIDENT FERNÁNDEZ ARMESTO: Very well.

Mr. Costa, Ms. Popova, Mr. Friedman.

MR. FRIEDMAN: Ms. Popova. You will be glad

to know that Ms. Popova will be handling this Witness since it will be in Spanish.

PRESIDENT FERNÁNDEZ ARMESTO: Muy bien. Ms. Popova, you have the floor.

MS. POPOVA: Thank you, Mr. President.

CROSS-EXAMINATION

BY MS. POPOVA:

Q. Good morning, Professor Hundskopf.

I introduced myself before. I am representing Gramercy. I am Ms. Popova, and I'm going to have the honor of asking a number of questions on the Reports that you submitted and the Statements that you have made this morning.

I wanted to start by saying that you talked about your long academic experience. You said, in particular, that you had the opportunity of authoring 23 books and also some university courses that you took, and if I understand correctly, some of these books had to do with Constitutional Law; right?

A. Well, actually, if you allow me to answer the question, my books had to do with business law and corporate law.

Q. Of course, many of the issues have constitutional implications.

A. Yes, certainly. And I do mention this. There is a compendium of core decisions of the recordation court, where a number of issues are dealt with that have a constitutional impact. Many of the books are compilations of articles that have been published periodically in a number of journals in the University of Lima and in the Legal Gazette. Many have legal connotations.

Q. And have you ever taught a course in civil law and the law of obligations?

A. Well, in San Martín de Porres University, in 2019, I taught a course on the basis of private contracts. That was the first time that I left my specialty, which is corporate law, and I have taught that for a number of years, for many years. But because of my master's and the doctorate, I had the opportunity to study those issues and to participate in a number of events. I have been invited to the University of Buenos Aires at the master's level, to the University of Callao, and I have done lectures on

civil law.

Q. I'm not going to ask you to drop away from your area of expertise, but I'm going to ask you, the Land Bonds are securities; correct?

A. They are monetary securities--they are securities, yes, they are securities.

Q. And specifically, they are nominative securities.

A. Yes, that's right.

Q. You said this morning that one had to choose the Bonds, A, B, or C. There were three classes: Class A, Class B, Class C. Perhaps, your Statement was not quite precise because these Bonds had to be accepted compulsorily; correct?

A. Undoubtedly yes. The Bonds, as a means of payment, as an instrument of payment, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. We are going to move ahead much faster. Please answer the question asked. It was posed by counsel. Because if we don't do that, we are going to be here for a long time.

THE WITNESS: Yes, of course, I will.

PRESIDENT FERNÁNDEZ ARMESTO: Don't forget that we have read your Reports and we know your--

THE WITNESS: Yes. It was a decision to opt for one of these classes: Class A, Class B, or Class C. It's a decision.

BY MS. POPOVA:

Q. You maintain that it is a decision of the party expropriated to opt for each one of these classes, A, B, or C?

A. Well, the Bonds that I have seen are 25-year bonds, Class C Bonds.

Q. You know that according to the Agrarian law, the different class of Bonds corresponded not to an option by the expropriated Party but the kind of land expropriated?

A. I am not sure about that, Counsel, with respect. The expropriated lands were rural lands or agricultural lands and they were located at different places and they were under different conditions and situations, so much so that--

PRESIDENT FERNÁNDEZ ARMESTO: Professor. Professor, excuse me for the interruption. We are

pressed for time, so what counsel is telling you--and that was my understanding as well--was that the determination of whether the Bonds were A, B, or C was not based on the option by the expropriated Party but the quality of the lands.

THE WITNESS: Personally I don't think so, sir.

BY MS. POPOVA:

Q. You have not read Article 167 of the Agrarian law.

A. I have followed a number of procedures, and I have had the opportunity to submit pleadings, and the aggrieved Party decides to opt for Class A, B, or C.

Q. Do you agree with me that the different classes of Bonds had to do with the productivity of the expropriated lands. You talked about the quality of the lands. Isn't it true that the more productive lands were compensated with Class A Bonds. Class A Bonds have the largest interest rates, and the lands that were of lower value were compensated with Class C Bonds?

A. In the cases that I have gained knowledge of,

the aggrieved Party had a plot of land that had a number of different kinds of land, excellent plots of lands, intermediate plots of lands, and low quality plots of lands. So, how can you give someone land like this if you think (in Spanish) haciendas like that?

How can you give a bond to people like that?

Q. You can do that by applying Article 177 of the Agrarian law. We can move on.

I understand that you are not familiar with that Article?

A. I am familiar with that Article.

MR. JIJÓN: We don't need that kind of comment and lack of respect of the Expert.

PRESIDENT FERNÁNDEZ ARMESTO: All right. Let's move on.

BY MS. POPOVA:

Q. Of course, I did not want to disrespect you in any way, Professor.

All right. Let's move on then.

(Comments off the record.)

Q. Let us go back to your area of expertise,

which is securities law. You agree with me that nominative securities law are transferred via an assignment of rights?

A. Yes.

Q. In your Reports, you talk about the legal framework applicable to these kinds of securities, specifically in connection with the transfer of Land Bonds; correct?

A. Yes.

Q. However, you do not issue any opinion in connection with the validity of the purchase of the Land Bonds by Gramercy?

A. That specific question was never posed to me.

Q. You never looked at the contracts whereby Gramercy acquired its Land Bonds.

A. I have had the greatest amount of information possible, and, undoubtedly, I have seen the evolution of the guarantees that one must have when one acquires Bonds, and this changes with time in Perú.

Now, the transfer has to identify the assignor and the assignee. Now, if there is reference to a registry or not, that's not important because the

most important thing here are the assignor and the assignee.

Q. One of the pieces of information that you've had is the Report by Dr. Bullard?

A. Yes.

Q. And you know that Mr. Bullard opined on the legal framework for the transfers and also for the application of that legal framework to the specific contracts that Gramercy entered into; correct?

A. Yes.

Q. But you issue no opinion in connection with this second point. You have not reviewed the contracts?

A. Yes. Yes. And I saw that in the presentation, and in my second slide, I talk about the clause related to the assignment of rights.

PRESIDENT FERNÁNDEZ ARMESTO: I think, Professor, what counsel is asking is whether you have any doubts that Gramercy is the legitimate acquirer of the securities.

THE WITNESS: I would have no doubts if there is an assignment of rights where the assignor and the

assignee are identified. Then I would have to doubts whatsoever.

BY MS. POPOVA:

Q. Thank you.

But instead of that, what you say in your Reports is that in 2006 there was uncertainty in connection with whether the Land Bonds could be validly transferred under Peruvian law; correct? That's what you say in your Reports.

A. Well, I'm not saying sure I'm saying that in those terms. One thing is a transfer that can be registered and then--well, we're not saying that a transfer in Perú constitutes rights. It is simply declaratory in nature. If I were the lawyer for Gramercy or any acquirer, any legal or juridical person, I would say, well, we need, of course, a Notary's deed, an authenticated signature, et cetera, but there was no specific registry at the time. It existed until 1992, but then there was none. The best way to do this was by doing this via a public deed for the assignment of rights. I agree with Mr. Bullard 100 percent in connection with that.

Q. One of the things you say in your Reports to support this opinion in the sense that there was uncertainty in connection with this matter is that the Land Bonds were obligations that were in express consideration of the person, intuitu personae?

A. The Bonds?

Q. Yes.

A. At the beginning?

Q. Yes.

A. When the expropriation took place in '69, yes, they were nontransferable securities.

Q. When you say at beginning they were, are you maintaining that the Land Bonds were intuitu personae obligations?

A. Until what time?

Q. Until 1979.

A. Okay. Each aggrieved Party, each one of the aggrieved Parties, received an official letter with a certain valuation and all the facilities needed to be extended to them. Personally, I'm saying that the relationship was an intuitu personae relationship, the aggrieved Party versus the State. It was an

obligation in express consideration of the person, and they received the Bonds in accordance with a certain procedure that they had to follow.

Q. Your conclusion is, then, that the obligation under the Land Bond was in the hands of the State?

A. Yes. The State was a debtor. The State had to pay.

Q. Oh, okay. The Statement was a debtor, and you maintain that the obligation by the State to pay as a debtor was an obligation that was intuitu personae?

A. Yes, until 1979, with the original aggrieved Party because these Bonds were nontransferable.

Q. When you say that this was an obligation in express consideration of the person, intuitu personae by nature, how was it possible that in the Constitution of July '79 declared that they were fully transferable?

A. Well, there was a transitory provision of the Constitution?

Q. Are you making reference to the Decree of November '79?

A. Yes. That was taken up by the Constitution of '79.

Q. This was a few months after the July Constitution?

A. Well, the July Constitution came into force in November, more or less about that time. What I'm saying is that the situation and the development of the country evolved notably. The military dictatorship was coming to an end, and I'm not going to give you details, but the situation of the country was very difficult.

Q. What I meant is that starting in 1979--

A. Yeah, '79.

Q. --the Bonds had no limitation whatsoever or any kind of agreement-related issue to transfer their property?

A. When they say that they are freely transferable, no limitations exist.

Q. Now, you mentioned this before. An assignment in 2006 of Land Bonds would be invalid because it couldn't have been registered with the Agrarian Bank.

Have you maintained that?

A. I have never said that ever. It is not invalid. It creates uncertainties. That's a very different thing. It creates an expectative right whether payment will be given or not, but I never said that its invalid.

Q. Okay. As you mentioned, the formalities in connection with registration are basically declaratory in nature, and they don't constitute rights. You did not identify any regulation in Peruvian law that requires the registration of the assignment of Land Bonds?

A. Specifically, no. There is none?

Q. There is no provision in the Peruvian law that says if there is no registration, the assignment would be invalid; right?

A. That's right. That doesn't exist. It is a risk that is run by the acquirer. It has to do with an investment and that he or she makes with other certainty of collecting anything. This is an expectative right. I said that.

Now, if we are talking about speculation of

securities, what you're doing is that you are purchasing something without knowing what you are going to recover, five times more or five times less. It is a risk-related investment.

Q. In that regard, that is not different from another securities.

A. Of course not.

Q. Now, Professor, you cite a number of authors in connection with the nominalistic and current value principle in Peruvian law. I have read all of them. They were very interesting. Thank you. One of the authors that you cited is Professor Mario Castillo; correct?

A. Yes, of course. And also Mr. Díaz Picaso. He's the most important for me.

Q. Well, perhaps, we disagree in this connection, but he also read the Report of former Justice Revoredo; correct?

A. Yes.

Q. She also cited Professor Osterling and Castillo in connection with the meaning of the current value principle; correct?

A. Yes.

Q. And also the Supreme Court of Perú. It has also cited Osterling and Castillo in connection with the meaning of the current value principle; correct?

A. Felipe Osterling, who was a very dear friend and a professor of two courses as well, he was the Chairman of the Commission in charge of reforming the Civil Code. Who better than him than to make comments in connection with the draft civil law process?

So, Mr. Castillo came to the University of Lima as a professor of the law on obligations. He was also the professor of law on obligations for 14 years when I was there.

Q. Okay. Perfect. But in your Report, you opine that Professor Castillo, who taught class at your university, is mistaken in connection with the whole theoretical construct applicable to Agrarian Bonds?

A. In my opinion, and with all respect to Professor Castillo--we have participated together in a number of academic events--I think he considers that the current value principle is synonymous with the

Consumer Price Index. And that's a mistake.

Q. You also think, if I'm not mistaken--because you mentioned this--that the Land Bonds are a monetary debt?

A. They are a monetary debt because of the ruling of 2001, and the current value theory applies to them.

Q. In your opinion, because of their very nature, Land Bonds, are they subject to a nominalistic principle or not?

A. They were originally, but starting in 2001, no longer. In 2001, the current value theory applies to them.

Q. And, according to you, it is not related to their nature but because the Constitutional Tribunal ruled so?

A. Yes. That's right. Undoubtedly.

Q. But you consider that was a mistake.

A. What I do consider that's a mistake is to say that the current value theory is synonymous with the Consumer Price Index.

Q. I'm asking you something else. The CT made a

mistake, you think, in 2001, when it ruled that the Land Bonds are obligations of value?

A. No, not at all. I think that was correct. I think the country needed that kind of ruling.

PRESIDENT FERNÁNDEZ ARMESTO: So, it was a necessity given historical need for those people that have been expropriated?

THE WITNESS: Yes.

BY MS. POPOVA:

Q. And in spite of the fact that in your own opinion they should be debts of value.

A. But, once again, there have been four subsequent currencies. There was a devaluation, hyperinflation, and we had a combination of very serious events, so there was a need to assess the budgetary economic fiscal issues.

Q. And is that the reason why you think that your Judgment of 2001, the Constitutional Tribunal, based their Decision on equity and not on right or law?

A. Well, I think that there was a convergence of different factors, in the sense of justice based on

the famous compensation. The Bondholders had to be compensated in a way that they could actually recover value, and I don't think it was a mistake, and I think that--I think I have even said this in writing, that the Resolution of 2001, even though they didn't do it technically fine, because it is not indicated under the Resolution, but it is indicated under the "whereas" clauses.

PRESIDENT FERNÁNDEZ ARMESTO: So, if I bought a bond in 2002, would you agree with me the expectative right as a buyer, it would be clear to me that the Peruvian Government had the obligation to pay 400 soles oro of the principal for each of the coupons, two, that that figure needs to be subject to the current value theory based on a criterion that is not clear but it has to be readjusted based on the current value theory. Those two concepts were clear.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Professor.

BY MS. POPOVA:

Q. So when you--rather, let me ask you this way.

Do you consider that this judgment of the CT in 2001 is not based on a specific legal standard but on equity considerations?

A. The Civil Code of 1984, at Articles 1234, refers to the nominalistic principle, and 1235 and 1236 refer to the current value principle, and that's where it is based.

Q. And it also went back to Article 7069 Constitution?

A. Yes, clearly. That is compensation due to expropriation, Article 70.

Q. Perfect.

Professor Hundskopf, to go back to a question by the President, in your two Expert Reports, you did not identify one single Decision by the Peruvian Court between the Judgment of the CT of 2001 and the Resolution of July 2013 that applies the nominalistic principle to Land Bonds; is that correct?

A. I could refer you to 500, 300 proceedings, but the positions were so contradictory that it was necessary, so much so that the Engineers Association in 2011 asked to implement the Resolution of 2011 in

the correct way, because there was uncertainty that was so significant that led to opposing positions within the Supreme Court.

Q. But that was before 2001.

A. Well, you asked me 2013, also before 2013.

Q. Let me repeat my question. So, you did not cite in your Report any Decision between March 2001 and July 2013, whereby the Peruvian Courts apply the nominalistic principle to the Land Bonds?

A. It was impossible because it didn't have the strength, Decision by the Supreme Court cannot oppose a Decision by the Constitutional Tribunal.

Q. And you did not identify a single Decision in this period that applied the dollarization to the Land Bonds?

A. Well, I mentioned Resolution 088 of 2000, Supreme Decree.

PRESIDENT FERNÁNDEZ ARMESTO: No. You are being asked whether there is any Judgment, any Resolution ruling by the Courts.

Let me ask the question, if there is any ruling after 2001 that provide for dollarization of

Land Bonds by applying dollarization.

THE WITNESS: I am convinced after my search that there were some, but I do not know them off the top of my head. But there were rulings that also applied a different methodology other than dollarization.

PRESIDENT FERNÁNDEZ ARMESTO: Off the top of my head, I think that Professor Castillo said that the Judgment you were quoting had a different legal linkage, but they were not Land Bond situations?

THE WITNESS: But they did have the application of the current value theory.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

THE WITNESS: And that was important, the application of the current value theory. That is to say that it was applied, but the situations were different.

PRESIDENT FERNÁNDEZ ARMESTO: I think that he said that if my car is destroyed and the spare parts need to be imported, I may request dollar-denominated compensation, so he mentioned these type of situations, but the current value theory as a

dollarization was not applied to Land Bonds.

Do you agree that for Land Bonds the Courts apply the CPI as a general rule?

THE WITNESS: Well, we could say that they had three options, and they apply one. Correct.

BY MS. POPOVA:

Q. When you said that they were three options, you also mentioned Article 275 of the Civil Code, but we also agree that this Article only applies upon agreement by the Parties.

A. Article 275 says "theory of valuation." That is the subtitle.

Q. Yes.

A. The text of the Article provides for that, but beyond the Agreement, we have the Resolutions by the CT.

Q. Yes. But when you are saying that there are three options, I think that we agree that the options at Article 275 only apply based on the Agreement of Parties.

A. As attorney of one of the Parties, I would probably discuss which one is best--

PRESIDENT FERNÁNDEZ ARMESTO: No. What counsel is asking you is that--is telling you that 275 requires agreement.

THE WITNESS: Yes, but above that you have the Resolution by the CT.

PRESIDENT FERNÁNDEZ ARMESTO: But 275 is enforced only upon agreement of the Parties.

THE WITNESS: That is what Mr. Castillo said.

PRESIDENT FERNÁNDEZ ARMESTO: Well, it seems that it is common sense.

THE WITNESS: Yes, this is stated in the body of the Rule.

BY MS. POPOVA:

Q. You said that you do not know off the top of your head if there were other rulings. The State as debtor of the Land Bonds is always a party to these processes to update and pay the Bonds; correct?

A. Yes.

Q. So, if there were rulings where the Courts applied dollarization to Land Bonds, the State would need to have a copy; right?

PRESIDENT FERNÁNDEZ ARMESTO: I imagine that

rulings are public in Perú; correct?

THE WITNESS: Yes, all of them.

PRESIDENT FERNÁNDEZ ARMESTO: I think that everyone has access to all of the rulings.

BY MS. POPOVA:

Q. But in this period, between March 2001 and July 2013, there were two other judgments by the CT; correct? And in connection with the Land Bonds?

A. Yes. Clearly, yes, but the Engineer's Association--

PRESIDENT FERNÁNDEZ ARMESTO: Yes, there were two. Now, let's go there.

BY MS. POPOVA:

Q. I am trying not to interrupt you, but I am going to ask you to answer my question.

PRESIDENT FERNÁNDEZ ARMESTO: I apologize, Professor, if I am interrupting you, but this is to make faster progress. Please go ahead.

BY MS. POPOVA:

Q. So, one these rulings was issued in August 2004, according to you?

A. Yes.

Q. And this ruling declared that the dollarization was appropriate and also compatible with the March 2001 Decision.

A. I said voluntary. Voluntary.

Q. Yes, that is an important qualification; correct?

A. Yes.

Q. And that is a qualification that you had not mentioned in your Report.

A. Well, this invitation led me to read the interventions in depth, and that's the reason why I can answer.

Q. And so, you agree with me that the CT declared that the dollarization would be constitutional only upon agreement of the Bondholders?

A. No. In 2001--

PRESIDENT FERNÁNDEZ ARMESTO: It is 2004. In 2004, whenever it is an option for the Bondholder, it is constitutional.

MR. JIJÓN: I apologize, but that is not a completely accurate interpretation, and we will make a comment later on.

PRESIDENT FERNÁNDEZ ARMESTO: If I have said it incorrectly, I do not want to misrepresent this. Please, Mr. Jijón, I apologize. Please, state it correctly.

MR. JIJÓN: If I am not wrong, and I do not have it in front of me, the ruling of 2004--and this is not an argument. This is based on an invitation by the President--has several sections, and one of the statements by the CT was that in that case the text of the--of Decree 88 did not impose something, but it was voluntary.

But it also recognized, and this is something that I cited--and maybe I went too fast in my Opening Argument. It also recognized that the dollarization principle was not foreign to the treatment of time, therefore it was consistent with the ruling of the CT in 2001, and that was a specific question that the CT was asked to answer, separate from the voluntary aspect.

PRESIDENT FERNÁNDEZ ARMESTO: All right. Ready. Let's move on.

MS. POPOVA: Thank you. Let me continue with

my questions. I just wanted to--

BY MS. POPOVA:

Q. So, you wanted to highlight one of the Parties, but it does not exclude the other one. So, in this ruling in 2004, the CT also addressed the application of interest in arrears to the Bonds?

A. Well, the application of the interest rate, I think it was about 5 percent of the--based on the U.S. dollar.

Q. Well, one of the unconstitutionality elements was that the Decree was not in accordance with the calculations contemplated under the Civil Code, and to that end, the CT decided that it was not against the Constitution because it was an option; correct?

A. It is clearly based on their position of 2001.

Q. During this period, March 2001 and July 2013, there were several other Decisions by the Supreme Court of Perú applying the current value principle to the Bonds. Do you agree?

A. Yes.

Q. In your Second Report, you state that there

are some rulings by the Supreme Court of Perú that apply the dollarization principle, and this in which--and this one applies dollarization to the Land Bonds.

Do you recall?

A. Well, you're talking 2013 onwards?

Q. Yes. 2013 onwards.

A. Yes. 2013 imposed the current value theory as mandatory, and there is another Decision of November 2013 that confirmed this.

Q. Yes. And the reason why this Judgment applied dollarization for the first time to the Land Bonds is because of the Decision of the CT in 2013 that decided that it was mandatory for application for all of the public branches.

And this was the basis for the rulings, four or five rulings that you cited; correct?

A. Yes.

Q. We do not have time to see all of them. I will be showing you one. And please look at 23, Tab 23 in your binder. And this is RA-394.

A. What Article?

Q. Let's look at 10.3.

A. This is a judgment on appeal, and it analyzes the application of Article 7, and the application of 1242, 1243 of the Civil Code. This is a judgment on appeal that was issued by a court that had some Decisions that had already been--this had to do with some Decision that were contradictory, so this Judgment is of 2018. 2018? The one you're mentioning is the Decision of 2018.

Q. Yes. This is the one after 2013 that you cited in your Report.

Do you recognize this?

A. Yes.

Q. Please look at 10.3. Here, and because of the text, of the regular text of Article 1242, it is stated that the interest will be compensatory when it is a consideration for the use of money or because of any other asset?

PRESIDENT FERNÁNDEZ ARMESTO: Why don't we wait to hear the question by counsel? Why don't you read it to yourself. If you read it aloud, we need to type it, it needs to be interpreted, and it is a very

significant effort.

BY MS. POPOVA:

Q. So, you read it, you are familiar with this.

Do you agree with me that this is an example of what the Courts did in the application of the Judgment of 2013?

A. Yes. Because of that Judgment of 2013, there was a need to establish a difference between interest in arrears and in compensatory interest. The Civil Code had to be applied.

PRESIDENT FERNÁNDEZ ARMESTO: So, the Judgment said that the Bonds had to be reassessed by applying dollarization and then add interest.

THE WITNESS: Yeah.

BY MS. POPOVA:

Q. Well, we have two concepts here, we have the updating that is based on the method established by the CT in July. So, it is converted into dollars and then the interest rates are applied. This was the first part of what the Courts did, that is to update the amount of the debt; correct?

A. Well, there was the first updating and then

the compensatory interest, the second one, and after the updating with the method determined by the CT in July 2013, in addition to this, compensatory interest is added as established under the Civil Code; is that correct?

PRESIDENT FERNÁNDEZ ARMESTO: Let's have a brief pause.

MS. POPOVA: Just a minute.

PRESIDENT FERNÁNDEZ ARMESTO: We're going to have--

MS. POPOVA: I am okay. We are about to finish. Please give me a minute to talk to my colleagues.

PRESIDENT FERNÁNDEZ ARMESTO: And I have some questions. Do you want me to start asking the questions? Are you okay?

MS. POPOVA: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Let me ask you about this Judgment, or are you going to ask the Expert? I am interested in this Judgment. The truth of the matter is that I did not read it even though I should have read it, but there are so many. And could

you please start with 10.2. Just read it to yourself and then 10.3. And once you finish reading both, please let me know.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: It is important for you to look at the final Order. My question is the following: This Judgment is a little bit different from the Decision by the CT. Let's look at 10.2. You would recall that the CT Order in their Decision to revalue the principal of all of the coupons as of the date of the last unpaid coupon, and you would recall that it is going to be done at the Parity Exchange Rate.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And here it says that it should be estimated based on the opportunity when those coupons were no longer paid and also in keeping with the Constitutional Tribunal criterion, the debt shall be converted into American dollars by applying the current exchange rate.

It doesn't say "parity" as of the date of expiry for each coupon because that is a time when

they were no longer paid for these Land Bonds, and in that case there should be an addition of the interest rate of the American--the U.S. Treasury Bonds.

So, it seems that it is reassessing by applying the U.S. Treasury Bond rate, interest rate, but then it appeals the Judgment of the First Instance Court because it says that there it has not--that Judgment has not granted the interest rate of 4 or 5 percent, so it means--the Judgment is appealed and then it says, if you look at the bottom of the Decision, it says towards the end, it says the Order that has the implementation of the Judgment, there will be liquidation of this compensatory interest based on the Judgment by implementing the dollarization as of the first date of nonpayment for the coupons of each Bond to which the addition of the U.S. Treasury Bonds as stated at 5.2 shall be implemented in addition to the payment of compensatory interest.

I just wanted to ask you if this is the interpretation as to how, under Peruvian law, the Judgment by the CT needs to be enforced, the Decision

by the CT needs to be enforced?

THE WITNESS: I think that this is a very interesting Judgment because it reflects the essence of the provisions of the Resolution in 2013 by the CT, by applying dollarization, and clearly interest as of the date the last coupon was paid, and I think it is highly coherent. But I think that the final Decision does not contradict--and I may be wrong--the Resolution of 2013.

PRESIDENT FERNÁNDEZ ARMESTO: So, you are saying it is not contradictory. You are saying that it is correct. Okay. Phenomenal.

Counsel, shall we continue? And we have the break very briefly.

MS. POPOVA: I think that I only have two questions left.

PRESIDENT FERNÁNDEZ ARMESTO: So, let's try to finish. So, you can do it?

MS. POPOVA: Yes. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: So, that we conclude with the professor's cross-examination.

BY MS. POPOVA:

Q. I just wanted to ask you whether this is what all of the judgments that you cited to--that is to say, judgments that are subsequent to the Decision by the CT of 2013?

A. Yes. At one point there was a forum in Lima as to how the Resolution of 2013 had impacted the Resolutions of the Court, and there were--there was a long list of resolutions, and I think that it was a consequence, and it was based on the Decision by the CT in 2013.

Q. And out of all of these judgments, the Court updated, by applying inflation, the U.S. Treasury Bonds, and in addition to that, they also order the payment of compensatory interest based on the Bond interest rate 4, 5, or 6 percent?

A. So, I think it is--you're talking about double compensatory interest. I think there should be only one.

Q. No, it's not double.

MR. JIJÓN: Well, Mr. President, I think that he has already answered the question.

PRESIDENT FERNÁNDEZ ARMESTO: No. This is

important. This is an important question. Counsel, please go ahead and put the question to the professor.

BY MS. POPOVA:

Q. No, I was not suggesting that double compensatory interest was being paid. What I was saying was that the Judgment--there is this Judgment and there are other examples of this in this and in others, what the Court does is orders the payment of compensatory interest based on the interest rate that's in the coupon of the Bond; correct?

A. Yes. The interest rate is preestablished on the Bond. Exactly.

Q. Thank you very much, Professor Hundskopf. I don't think I have any more questions for you. But let me just confirm. Yes, that is right.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón, any question for the professor?

MR. JIJÓN: Could I take just one minute to go through my notes.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Or would you prefer that we take the break at this point? Because we have been going for some time now.

MR. JIJÓN: That's fine.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Professor Hundskopf, we are going to take a 10-minute break. It is 10:30 right now, so we'll take a break until 10:40, and then there will be a couple of questions from Mr. Jijón, and then we'll conclude.

THE WITNESS: Fine, sir.

PRESIDENT FERNÁNDEZ ARMESTO: What I'm going to ask is that during this break, please don't speak with any of the counsel.

THE WITNESS: I'll stay right here.

PRESIDENT FERNÁNDEZ ARMESTO: No, I fully trust you. I'm just going to ask you not to engage in conversation with any of the counsel for the Republic of Perú. There is coffee. There is fruit. There is everything. Please.

THE WITNESS: Excellent.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing, and we give the floor to legal counsel for the Republic of Perú.

MR. JIJÓN: Thank you very much,

Mr. President.

REDIRECT EXAMINATION

BY MR. JIJÓN:

Q. Professor Hundskopf, at the end of the cross-examination, you were asked several questions related to a Judgment of Cassation handed down by the Supreme Court Standing Chamber of Constitutional and Social Law.

Do you recall that?

A. Yes, the 2018 one.

Q. Correct. I don't have questions about the content, but, rather, the source of this Decision. Could you please explain for us what the relationship of--what the hierarchical relationship is as between the Chamber of Constitutional and Social Law and the Constitutional Tribunal, and what does that suggest for what we must do in case of inconsistencies?

A. No doubt whatsoever, above the Constitutional Chamber of the Supreme Court is the Constitutional Tribunal, which is the highest level supreme organ for interpretation of the Constitution, and it is the one that prevails. It establishes the criteria

definitively.

There are two types of procedures in Perú: Procedures challenging constitutionality, which is a single jurisdiction straight before the Constitutional Tribunal; there's another procedure which can go three levels, an amparo proceeding, (in Spanish) proceeding, and so on. So, above the judicial power is the--at the top is the Constitutional Tribunal. That's the best example.

Q. Now, thank you. In addition, at the beginning of your cross-examination, you were asked several questions about contracts for the assignment of goods or property and expectative rights, and at some point in time you were asked about investment in such goods or property.

Just to confirm, you, in your Reports, are you presenting any conclusion as regards the conclusions of international law or the Free Trade Treaty or Trade Promotion Agreement?

A. No.

MR. JIJÓN: Thank you very much.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent.

Professor Stern?

ARBITRATOR DRYMER: No questions from me, but, once again, it is thanks to the skill and diligence of the counsel and the excellent questions, always excellent questions, from the President.

PRESIDENT FERNÁNDEZ ARMESTO: The interruptions. Very well. Actually, I did ask my questions in the course of your presentation, so, Professor, I thank you very much.

THE WITNESS: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: And I thank you very much that after your retirement, that you continue fighting for the labor continuity of those of us who are getting to retirement age.

THE WITNESS: Thank you, sir.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Then we will now call Mr. García-Godos.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: For the record, the Report that we have received from Mr. Hundskopf is H-10.

EDUARDO GARCÍA-GODOS, RESPONDENT'S WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: How are you, Mr. García-Godos? Good morning.

You are here as an Expert and, therefore, the first thing we need to do is take your declaration as an Expert, if you would be so kind as to stand and state the Declaration.

THE WITNESS: Good morning.

I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Very well. Thank you very much. Therefore, I give you the floor, to Mr. Jijón.

MR. JIJÓN: Thank you very much, Mr. President.

DIRECT EXAMINATION

BY MR. JIJÓN:

Q. Good morning, Mr. García-Godos.

I understand that you have prepared a presentation for the Tribunal?

A. That is correct.

Q. Please, go ahead.

A. Thank you very much.

PRESIDENT FERNÁNDEZ ARMESTO: We must give this a number, your presentation. It is H-11. You have the floor.

DIRECT PRESENTATION

THE WITNESS: Thank you very much, first of all. It's an honor for me to be here before the Tribunal to set forth my arguments.

I was entrusted with undertaking an analysis of the validity of the Supreme Decrees issued by the Executive and the Ministry of Economy and Finance, and as under the Resolution of the Constitutional Tribunal to briefly introduce myself.

My name is Eduardo García-Godos. I'm a lawyer with a degree from the Pontificia Universidad Católica of Perú. I have a master's in international economic law from the University of Warwick, and I have done graduate studies at the University of Korea, at the ITCUNECE in Geneva, and at the University of Buenos Aires, and then I took a course in basic economics at the von Mises Institute in Alabama.

In terms of my professional experience, I'm a partner with the García-Godos & Lindley Russo Abogados Law Firm, and I'm a founder of the Trade Facilitation Institute, which is an entity that engages in coming up with public policies that facilitate trade. I have been a public official with the Ministry of Foreign Trade. I was negotiator of the Trade Promotion Agreement, the labor chapter between United States and Chile. I was a member of the Committee for Eliminating Bureaucratic Barriers at INDECOPI, and at this time I'm also a university instructor. I'm a visiting professor at the University of Puerto Rico. Nonetheless, for 10 years I was a part-time professor at two universities in Perú.

Very well. First of all, I wanted to mention the scope of the ruling by the Constitutional Tribunal of July 2013. I know that you have read this repeatedly throughout this Hearing, but I would simply like to highlight some aspects that should be useful for guiding my arguments.

The Tribunal notes that one must establish a criterion for valuation and up-to-date payment of the

debt, as well as the procedure that should be followed by the Executive for making said payment effective. No doubt this is an Order, and then it rounds out that argument by indicating that it orders that the Executive, within six months--it sets a time frame--must issue a Supreme Decree regulating the procedure for the registration, valuation, forms of payment, of the debt of the Bonds in keeping with the grounds set out by that Resolution.

And why is it important to begin with this? Well, in light of our legal system, the Executive Branch may only act on the basis of the competences and authorities that it receives from the Legislative Branch or a supreme organ. The Executive Branch cannot discretionally attribute to itself a competence, limit of liberty, or generate an obligation, as we all know.

Having said this, parenthetically, yesterday I found that it was very enlightening for us to all see what is happening in Perú, and I go back to this italicized expression. Perú has a sophisticated regulatory system. This was said by Mr. Bullard. I

share this opinion with him, and this translates into two aspects. I have seen many regulations in Latin America--indeed, part of my work is to review regulatory policies for trade facilitation in several countries of Latin America--and Perú has some particularities.

One of these is that there is this administrative jurisdictional entity which is INDECOPI. It is not a very conventional type of institution. It's an organ of the public administration that oversees the acts of the public administration, and recently it has been empowered to such a point that it can strike down or leave without effect provisions with general effects, which, for those of us who live in Perú, is very positive because we have a good system of control, eliminating bureaucratic barriers and limiting the powers of the State.

The second is the analysis of regulatory quality, which was also touched upon yesterday, and which also constitutes progress within the oversight policy of the State, insofar as what the system seeks

is for better-quality regulations to be issued. Nonetheless, all of the branches of the Government and all of the organs of the Executive Branch make efforts to produce quality Regulations. What was done was to create an additional organ that would also accompany this oversight process. This was inspired by Perú's effort to be accepted into the OECD. It required that Perú increase or upgrade its levels of quality in terms of Regulatory Framework.

Throughout my professional life, INDECOPI has issued some 300 Resolutions assessing reasonableness and legality. Multiplied by what I read in five years--I have read more than 1,000 Resolutions--I have, as a consultant, reviewed 200 administrative procedures--more than 200--to see whether they do or do not comply with regulatory impact analysis. Indeed, I was the one who undertook the analysis of regulatory quality of health procedures. It is as though I were to review everything done by the FDA, to cite one example. And I also have reviewed more than 300 administrative procedures related to foreign trade.

Now, what are the grounds of validity of the Supreme Decrees? No doubt it is the constitution and the Organic Law of the Executive Branch. Now, I believe that the--I don't know if the scope of the organic law of the Executive has been discussed. This has to do with how provisions entrusted to the Executive are generated. It regulates statutes or sectors, and the basic principles are competence, transparency, and hierarchy. These all go together with these provision, and they cannot either violate or thwart the law.

Now, I've tried to organize schematically Supreme Decrees in the following manner: These are provisions of general application; they regulate laws, legal provisions, in functional sector activities and multisectoral, and they may or may not require a vote of Council of Ministers, and they are affirmed by the President of the Republic.

PRESIDENT FERNÁNDEZ ARMESTO: In this case, there was no need to have agreement of Council of Ministers?

THE WITNESS: No, I believe it was signed

only by the Ministry of Economy and Finance, which is totally valid.

Now, in terms of legality, one must review whether the entity is competent--that is to say, does it have the powers as a matter of law to perform a given function?--and other requirements or formalities must also be abided by. Not all requirements or formalities, if they are not abided by or not present, will annul the norm. And reasonableness, which was discussed by Mr. Bullard yesterday, comes from evolution of the case law. And the positive part, I believe, is in the INDECOPI provision on bureaucratic barriers and 1256, and that there must be a component of reasonableness, but in this case it doesn't separate them out.

Now, in terms of the requirements for validity and legality, I think there is agreement that the Ministry of Economy and Finance did have the competence to issue the Supreme Decrees and that, at the same time, it had to abide by other formalities. I don't believe there is any doubt but that the instruction of the Constitutional Tribunal was that

the MEF should issue these Decrees. But not only that, I want to anticipate my findings somewhat. What the Constitutional Tribunal has done, I believe, is something that I have not seen many times in Peruvian legislation, insofar as it practically adopted a rulemaking role--that is to say, the Ministry of Economy and Finance or the Executive told it, said--well, conceptually speaking, it describes who, how much, how.

Normally, the how--that is to say, the operational mechanics of payment and compliance with obligations--is normally delegated to the authority itself. In this case, I would think they went beyond that, and in a positive way, because they mentioned which department within the Ministry of Economy and Finance had to take up the function of processing payment of the debt. So, competence, no doubt about it.

Now, let's look at other requirements or formalities. There may be some discussion as to what are requirements or what are formalities. Basically, grosso modo, the signing of the Minister or Ministers

and publication, those are the essential formalities. In my view, these are not essential--well, the manual for economic and legal analysis of the MEF or prepublication or the statement of grounds, none of these are requirements or formalities. Why do I mention these three? Because, in particular, it was up to me to analyze the comments by Mr. Bullard, and Mr. Bullard highlighted these three elements as essential aspects, the absence of which was a serious matter.

The economic and legal manual for producing regulations of the MEF does not apply to matters of indebtedness. I believe that the history of this manual--well, I'm very familiar with it. It was an effort to also improve the production of regulations in the State generally, under a standard of analysis of regulatory impact, which is a well-known worldwide methodology where the MEF was precisely one of those who was pushing the use of this methodology in Perú. Nonetheless, this entails a certain complexity, because there's a number of formalities and procedures that not the entire State is able to use or in a

position to use. Nonetheless, the MEF did a pilot experience--the Ministry of Labor as well; 2006--but they limited the scope of this manual, and that is why they excluded provisions from the system of indebtedness, which is precisely where the dispute before the Constitutional Tribunal arose.

Now, notwithstanding that it is not under an obligation to follow this manual, indeed, its guidelines, I believe, it generally follows. There were meetings of the Working Group, presentation of a proposal, deliberation among the areas involved, and so on. One very important aspect is that this manual was not approved exactly by a resolution or a provision of adequate hierarchy. It's a Ministerial Resolution. It's a provision of a lower rank, and, therefore, it is almost a recommendation. Now, fortunately, Mr. President, today this is changing, and there are many privileges that are going to require the Peruvian State, the Executive, to carry this out.

Now, as regards the prepublication of Regulations, I consider that this does not entail the

invalidity of this one, and that application of the mandate of the CT makes prepublication unnecessary.

Let me go back to the ruling by the Constitutional Tribunal.

Publication is based on the principles of transparency and foreseeability. Normally the Opinion of the people--well, that's important in the case of prepublication, when there are certain doubts about the scope of certain provisions, whether changes or new points are going to be introduced, there's a generic group of persons who might be impacted, and, therefore, an opinion would be needed to prepare the Parties, particularly when there may be major impact on the normal course of transactions.

This comes from a judicial process as between the Parties, where there was a specific pronouncement. There was a plaintiff or several plaintiffs and a Respondent, which in this case was the State, so what was going to be prepublished and what for? And in terms of the statement of grounds, I understand that this may be something that could be discussed with respect to how extensive the Statement of Grounds

should be, and I would hope that the entire Executive were very scrupulous and were to undertake an economic analysis or detailed supporting arguments about what is set forth in the Resolutions, but I believe that, in general, one is not seeking a level of sophistication that is so scientific, but, rather, that there should be an appearance of reasonableness and responsibility at the time of issuing certain Regulations. And I think that in this case, there may be statements of purpose that are very concise, but no one can deny that there have been reports as among the various areas of the Ministry of Economy that reveal that there's been a review of the regulatory formula that was finally going to come out. And, finally, these provisions rest on the judgment of the Constitutional Tribunal.

Now, next I'm going to refer to reasonableness, and I think this is one of the most interesting aspects, because we cannot separate out the analysis of reasonableness from the context of the mandate by the Constitutional Tribunal, for, once again, in my view, the Constitutional Tribunal gets

into an analysis of reasonableness on weighing what is the most appropriate way to solve a specific problem.

When we ask ourselves about the standards of reasonableness, we have to ask ourselves--we first have to ask ourselves: What is the purpose of the Resolution? This will shape my view of what is or is not reasonableness. The purpose of the reasonableness exercise was no doubt to come up with a methodology for updating a debt and subsequent payment, and the result, what was it? Well, it was to say that we need to create an Administrative Procedure so that this payment can actually be made. So, the reasonableness analysis was to find that that administrative procedure was the most adequate way to balance out the interests and resolve a legal dispute.

Reasonableness has three expressions: Aim, proportionality, and efficiency. Well, the aim, what it seeks, is if there a problem, let us see whether the solution that I'm giving is what is going to solve this problem. Normally, when one analyzes reasonableness in the abstract, what one always says is: Shall we regulate or shall we not regulate? Is

it worthwhile seeking permits, or shall we simply let the transactions flow?

Now, when one says no, one must regulate, it's been found that the regulation generally--or regulation generally is the means of solving that problem.

Now, here, the Supreme Decrees are the result of a legal dispute that was resolved through an Administrative Procedure. The weighing was, the Tribunal said, the way to resolve this is through an Administrative Procedure with certain characteristics. It should establish a mechanism for paying the Agrarian Reform Bonds.

The second aspect, proportionality, the cost-benefit analysis. Well, here the Constitutional Tribunal makes an in-depth and very detailed cost-benefit analysis. Once again, I'd like to refer to the purpose of the Regulation. The purpose of the Regulation is to seek a payment mechanism that updates a debt and that has certain stages. The Constitutional Tribunal considered that there were three options, which they even call formulas, in the

considering paragraphs of its Resolution. Formulas. And then it says, "I'm going analyze each of the methodologies." And it takes the trouble to look at a pure updating first; second, Consumer Price Index; and three, a conversion to dollars and applying certain interest to it. Three options for solving this problem, and, finally, it chose one. And when it chose that one, it says, we have to consider the principles of agreement or concordance and foreseeability of the consequences; therefore, this is the most balanced formula. That is a cost-benefit analysis.

And you can take note of this level of detail. Not only did it select the formula that should be applied; it also spelled out the procedure to be followed, three procedures. Well, for me, it is actually just one. It's a chain of different processes. But they divide it into three. And, finally, The Ministry of Economy adopts the weighing of the effects of these provisions.

Third, efficiency, evaluation of the regulatory scenarios. Once again here, in theory,

there are dozens of INDECOPI resolutions which were mentioned by Mr. Bullard yesterday, some of which were signed by my person, which ratified the logic underlying the evaluation of the different options. Mr. President, it is not that the entire State always has to weigh different options. That's an ideal standard, and what it seeks is to keep public officials of the State generally from adopting Decisions as a matter of caprice, that there must be some reflection, some analysis.

Yes, of course, oftentimes it is not--these are not set forth expressly in writing, but, no doubt, in coming up with a mathematical formula, an environmental standard, a minimum wage, all of that presupposes some type of analysis as regards what types of options exist.

Now, the Ministry of Economy and Finance, well, it is not as though they have got so many alternatives, either. They are carrying out a mandate. It is not a conventional Supreme Decree in which one is limiting the powers of private persons and in which the State says, before telling taxis they

must be painted yellow or that the driver's license must be renewed each year, first you have to show me that that intervention that you are doing actually satisfies the standards.

I'm going to speak briefly about the analysis of regulatory quality, if I may. This is one of the issues which, in the view of the other Party, was not carried out properly. I think that, first of all, that this is an excellent tool that was created in Perú to improve the regulatory quality of decisions, but it doesn't apply in this case. What analysis of regulatory quality seeks is to verify that administrative procedures meet certain basic standards, but based on the terms of legality and necessity, proportionality, and efficacy. For example, what I have here is an example of the form that we, as consultants, had to prepare in order to see whether the Regulations did or did not meet this standard.

So, as you can imagine, they weren't very in-depth questions. What was sought was to meet basic conditions so that this legislation could survive.

Why? Because the starting point was the premise that Perú had a disorderly and dispersed regulatory system, and that never in its life as a Republic had it had any examination with these characteristics. It could not be all that rigorous, either, because that simply would have dismantled the legal system.

So, when they ask about legality, they say there is--is there an enabling provision? Yes. Is there administrative silence? What sort? Is it subject to renewal, not subject to renewal? Did this have--if these were all checked off, then it would pass for legality.

Now, in terms of necessity, they ask: Has the problem sought to be resolved by the Regulation been identified? Well, yes. What was the problem? To pay. How was it to do so? Through an Administrative Procedure, because that is what was ordered. I'm going to implement an Administrative Procedure so that the payments can be made.

Then scope, and then it says the specific objective of the administrative procedure and explain how it contributes to resolving the problem

identified, and this is very interesting because here, the only thing one had to state was the administrative procedure is for making payment. In other words, the intervention, which is the process, the procedure, had as its objective resolving a problem.

That is why question 3.4 comes next. What are the most significant risks if the procedure is eliminated? Because what the President of the Council of Ministers wanted to hear was to say you decided to regulate. Why? What would happen if you don't regulate. How? What would happen in the market? So, it doesn't refer to an analysis of specific conditions of the provision.

There are two more standards, and I'm sorry for not having included them, but they have to do with the proportionality and efficacy, but I can assure you that they have nothing to do with this issue, because they refer to the administrative costs of the requirements. In other words, do they ask you for an identity document or a laboratory exam or whether those things are connected to your procedure? This just by way of example.

In addition, the Parties that were not in agreement with the administrative procedure that had been created have several remedies available. Generic challenges; you can appeal, file for reconsideration; also recall the Constitutional Tribunal said, "This is the only procedure. This is the only procedure for collection." Administrative action, in case there's a discrepancy with respect to the result of that administrative resolution. I can apply it before some other body. And then there are the general oversight mechanisms, known as popular action, an amparo action, or denouncing bureaucratic barriers.

Finally, in my view, the Supreme Decrees do meet the requirements of reasonableness, of legality; they are valid, they are in force, and they have not been struck down by any judicial authority. And just to wind up before I forget, in addition to the July 2013 Ruling by the Constitutional Tribunal, the 8 August 2013 Clarifying Decision is also relevant, just to see what kind of Supreme Decree we have before us. This is not a general Law on Health that says that the Executive shall establish the requirements.

The Constitutional Tribunal says no provision had had effect on said legal situation, referring to the valuation, which is now regulated by the rule set by this Tribunal.

So, the Tribunal is saying, "I am going to regulate. I am going to tell you how you have to do it."

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, sir.

Mr. Jijón, any further questions?

MR. JIJÓN: No, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Costa, I understand you may wish to put some questions to the attorney. Are you going to do it in English?

MR. RECENA COSTA: With your permission, I'll do it in English.

CROSS-EXAMINATION

BY MR. RECENA COSTA:

Q. Good morning, Mr. García-Godos. My name is Guilherme Recena Costa. I'll be asking you some questions this morning.

If we could turn to Slide 8 of Mr. García-Godos' presentation, please. The Slides, I don't think, are numbered, but by my count, that is not Slide 8. It's the slide with the title "Otros requisitos formales." Thank you so much.

And here you state that prepublication is not a requirement or formality; right?

A. Yes, sir.

Q. And in another slide that you showed us, you recognized that the LOPE--which is the "Ley Orgánica del Poder Ejecutivo"--for the record, that is L-O-P-E, the acronym in Spanish--that is one of the foundations of validity of the Supreme Decrees; right?

A. That is correct.

Q. And you're, of course, an expert on this, so you are very familiar with the text of the LOPE?

A. Yes.

Q. You would know, then, that in Article 13 of the LOPE, it is said that: "Draft regulations are published on the respective website for no less than five calendars days to receive input from citizens when so required by law"; right?

A. Yes, sir.

Q. So, my question is, Dr. García-Godos: Doesn't the LOPE require the prepublication of Supreme Decree for comment?

A. Not in every case, sir. Not in every case.

Here I cite, if you will, Article 13, which says: "Draft regulations are to be published at the website to receive input when so required by law"; correct?

Q. Of course.

A. So, my interpretation was that only when the law so indicates was prepublication required. But allow me, if I may, to go back to the reasoning--

(Overlapping interpretation and speakers.)

PRESIDENT FERNÁNDEZ ARMESTO:

Mr. García-Godos, I'm going to ask you, given the difficulty of interpretation, please limit your answers to what the counsel asks you. Please stick to what you are asked. It will make everything easier. Otherwise, with interpretation, English/Spanish, it becomes very difficult.

THE WITNESS: Of course.

PRESIDENT FERNÁNDEZ ARMESTO: And we must pause, because the interpreters are changing between English and Spanish, and that takes a bit of time. Very well.

What you said was that prepublication is not required because there must be a law besides the LOPE?

THE WITNESS: That is correct.

BY MR. RECENA COSTA:

Q. You are familiar with Supreme Decree 001-2009JUS; right?

A. Yes.

Q. You don't cite it in your Report, though, do you?

A. I'm going to look through my notes.

PRESIDENT FERNÁNDEZ ARMESTO: Let's not waste time. Let's see. For those of us who are not specialists in administrative law of Perú, I understand that that is a Supreme Decree from the Ministry of Justice that regulates regulatory procedure.

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: Great.

BY MR. RECENA COSTA:

Q. If you turn to Tab 17 of your binder, you will find the Supreme Decree that I'm talking about there, Mr. García-Godos.

PRESIDENT FERNÁNDEZ ARMESTO: Dr. Costa, I need your help.

MR. RECENA COSTA: RA-396 for the record, Mr. President. With apologies, this is CE-I apologize. That was a wrong reference. It is CE-489.

PRESIDENT FERNÁNDEZ ARMESTO: CE-489. Very good.

BY MR. RECENA COSTA:

Q. Have you ever seen this Decree before, Mr. García-Godos?

A. Yes, sir.

Q. So, you're familiar with the text of this Decree and the fact that it requires prepublication of regulations; right?

A. I'm not familiar with it. I'm generally aware of it.

Q. Well, I can take you to Article 14 of this Supreme Decree.

PRESIDENT FERNÁNDEZ ARMESTO: Article 14.

BY MR. RECENA COSTA:

Q. If you could show that on the screen, that would be helpful.

Am I right, Dr. García-Godos, that what this Article is telling us is that "proyectos de reglamentos" must be published with 30 days in advance to receive comments?

A. Yes, sir.

May I add something?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course.

THE WITNESS: That may be a matter of debate. I rely on a law, Article 13 of the organic law in the Executive Branch, which states this text. Only when the law says so may--must it be published. This is a Supreme Decree that I have before me. There may be other interpretations, which I respect, but let's go back to the substantive aspect of these Supreme Decrees.

BY MR. RECENA COSTA:

Q. I don't think that's an answer to my question, Mr. García-Godos. Your opposing counsel

will have a chance to address these issues with you.

MR. JIJÓN: Mr. President, if the Expert could please be allowed to answer.

PRESIDENT FERNÁNDEZ ARMESTO: Let's see. I will put the question to him.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: So, your interpretation is that the LOPE requires a--says one must prepublish so long as it is required by law. This is a Supreme Decree?

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Since it is not a statute, it is not binding in that respect.

THE WITNESS: Yes. May I add something?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course.

THE WITNESS: It is relevant to this. This Supreme Decree originated in the Trade Promotion Agreement with the United States. It says so in its considering Paragraphs and why. Because what was being sought was--well, given that the Trade Promotion Agreement addressed commercial matters, what was sought to be prevented was the imposition of any

restrictions on trade without the due guarantees of transparency and publication that the agreements in any international trade agreement would require.

So, this was issued in the context of implementing the Trade Promotion Agreement. Its objective was not just any Supreme Decree that the State might have to implement, even though the text is autonomous in respect of the considering Paragraphs, but the spirit was geared more to that.

Thank you.

BY MR. RECENA COSTA:

Q. So, just to clarify, regulations typically implement "normas con rango de ley" (in Spanish) or norms with the ranking of a legal statute; right?

A. Yes.

Q. And the legal statute, which is being implemented by this Supreme Decree, is the Treaty under which this Tribunal is constituted?

A. Could you please repeat your question?

Q. Sure.

Are you aware that the Perú-United States TPA, which is the Trade Promotion Agreement signed on

April 12, 2006, is the Treaty under which we are gathered here today and this Tribunal has been constituted?

A. Yes, I knew that.

Q. So, this obligation to prepublish in Peruvian law has its foundations on this Treaty as incorporated into Peruvian law; right?

A. Yes, sir.

Q. And international treaties under Peruvian law have the stature of a statute, "son normas con rango de ley"; right?

A. Yes.

Q. And just to clarify, I believe you said before that Article 13 of the LOPE said that prepublication was required when "una ley" was so required; is that correct?

A. That is correct.

Q. Would it surprise you if I told you that it actually says "la ley" and "Ley" is a capitalized term there?

A. Your conjecture is interesting. I do not share it, but it is a manner of understanding, yes.

Q. But you'll agree that this Treaty, as internalized, has “rango de ley”?

A. Of course. Yes.

Q. And so, by not prepublishing the full Supreme Decrees that are at issue in this arbitration, the MEF contravened principles of that treaty, the Treaty under which this arbitration is ongoing, and the Supreme Decree that implemented it; right?

MR. JIJÓN: Mr. President, I think we are going beyond the scope of the testimony of this Expert, and I think we are coming very close to an interpretation of the Treaty that must be conducted by the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: No. It is interesting what we are stating here. In the similar purpose, this Decree was issued in compliance with the terms of Treaty itself. What counsel is asking is whether that treaty could also be considered as a law for the effects of Article 13 of the LOPE. This is an issue of municipal law. We're talking about Peruvian legislation.

MR. JIJÓN: I don't want to make mistakes in

my words, but I'm going to say it in English. The MEF contravened principles of that Treaty." It's asking whether the MEF contravened the principles of the Treaty, and that's beyond the scope.

But let's move ahead. Let's move on, please.

ARBITRATOR STERN: Can I just ask something? I see that this is--only to be applicable to “leyes reglamento” only to be applicable to - It's the second paragraph “leyes reglamentos, procedimientos, y resoluciones administrativas de aplicacion general referidas al cual quier asunto” to comprendiendo el acuerdo (in Spanish),

So, to whom does that refer?

MR. RECENA COSTA: So, Professor Stern, if we can bring up Article 4 of this Supreme Decree, I think that will answer your question. And we submit that Article 4, which does not deal with "prepublication" but publication, says that norms of a general character must be published, and it continues to say, accordingly, Supreme Decrees must be published, and that's Article 4(3).

MR. JIJÓN: Apologies. With respect, I think

the question was for the Expert and not for the other Party.

THE WITNESS: If you allow me, the interpretation made by counsel is not precise.

Prepublication, in the world of commercial issues and treaties, is always a best-efforts obligation for a very simple reasons, because not all countries, not all economies may in an anticipatory matter have this information. This is what it is saying in this "whereas," prepublication. This is about prepublication. Publication, no doubts about that, but this is about prepublication. The Parties have committed to prepublish to the extent possible. This is a classical best-efforts clause.

PRESIDENT FERNÁNDEZ ARMESTO: Where are you citing, sir?

THE WITNESS: I'm looking at the "whereas" clause of the Decree 01/2009 that counsel showed me.

ARBITRATOR DRYMER: Help us. Where? Which "considerando," please?

THE WITNESS: I am looking at the Supreme Decree 01/2009, JUS--one, two, three--the third

"whereas" clause, "considerando." It says Chapter 19 referred to above, transparency of the trade agreement between Perú and the United States. The Parties have committed to prepublish to the extent possible, any measure that they seek to pass and also the language of the norms to be published, and identical provisions have been placed in other agreements. Not all--not everything has to be prepublished.

ARBITRATOR STERN: I don't think you answered my question because what (in Spanish) any matter--it says here any matter comprised in--it's the second paragraph.

THE WITNESS: If you allow me, this is beyond the scope of my Opinion. I do not know the answer.

ARBITRATOR STERN: So, I see the Witness didn't really understand it. Okay. Thank you very much.

THE WITNESS: If you allow me to, this has to do with what I indicated a moment ago.

PRESIDENT FERNÁNDEZ ARMESTO: It has to do with an international trade agreement, which refers to substantial aspects that have to do with

trade--right?--for example, the incoming of goods and services.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: But Article 1, "purpose" is very broad to regulate the obligatory publication of a legal provisions of a general nature that make up the national body of laws of Perú. This is not only things that have to do with international matters; right?

THE WITNESS: I agree with you, sir. That is why I'm saying that this is not a simple issue.

BY MR. RECENA COSTA:

Q. Just one final question for you on domestic law, Mr. Godos, on this point is, you just expressed your opinion that this a best-efforts type obligation. Would you point us to any language in Article 14 of this Decree that so qualifies that obligation?

A. It does not say that, no.

Q. Are you aware of any efforts taken with respect to these Supreme Decrees to prepublish them?

A. Thank you for your question. I do not. It was unnecessary, in my opinion.

Q. That takes me to my next point, Dr. Godos. In your presentation, you said and you repeat here what you said in your Report that prepublication was despite this legal mandate, unnecessary; right? I'm just trying to ascertain whether that's an accurate statement with respect to your position?

A. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: He has said that. He has said and he just repeated a moment ago that, in his opinion, it was not necessary.

(Overlapping interpretation and speakers.)

BY MR. RECENA COSTA:

Q. And the basis for this view that you give in your Report at Paragraph 68 is that potential comments and suggestions could not have contributed to this process because they could not order the 2013 CT Order; correct?

A. Yes.

Q. But you agree with me, don't you, Mr. Godos, that the 2013 CT Order did state that a dollarization method was required, but it did not spell out the details of that method; correct?

A. No. It didn't say either what kind of documents individuals had to submit. It didn't say what some timelines were in connection with those regulations.

Q. Exactly. And, indeed, November CT Resolution, which was issued as a clarification to this order, the Tribunal expressly states that coming up with the formula is a mandate for the MEF, Ministry of Economy and Finance; right?

A. That's right.

Q. And so, the Constitutional Tribunal at no point in time specified how the Parity Exchange Rate was to be calculated; right?

A. No.

Q. It didn't tell us, for instance, the base period which should be used to derive that rate, did it?

A. No.

Q. And while it mentioned what the Treasury Bonds, as a component of the formula, it didn't tell us whether we should use the 1- or the 5- or the 10- or the 20- or the 30-year Treasury Bonds, did it?

A. It did not.

Q. So, comments could have been received on these very issues that were open for resolution; correct?

A. Well, as many other issues that could have been the subject matter of the opinion of individuals, it would be just a social wish of mankind for us to predict any regulation that may be issued by the State, but we do have to set a standard. We do have to know what provisions, either ones, that may relate to publication. We're going to delve into controversial issues such as the formula. I already expressed--

PRESIDENT FERNÁNDEZ ARMESTO: No, we're doing prepublication. We're now talking about prepublication, sir. Would it have been good or not good or would it have enriched the bait if the MEF had prepublished the Draft Supreme Decrees and received comments by the citizens?--out of the 20,000 expropriated Parties in connection with the different alternatives that were put forth to implement the Order by the Constitutional Court. This is what the

lawyer asked you?

THE WITNESS: I don't think so, Mr. President. I think this a Supreme Decree, and I insist this originated from a specific mandate to resolve a legal conflict. The State has imposed an obligation to comply, and the State did so the best it could.

Now, opinions may enrich deliberations, yes. That happens in any scenario, but this is not the case, in my opinion. This is not a typical Supreme Decree. This is an atypical Supreme Decree that comes from a specific mandate from the highest court of the land. The possibilities to act in a discretionary manner are very limited.

BY MR. RECENA COSTA:

Q. Didn't that make it particularly important to get it right in this case, given the impact and the complexity of the formula, Mr. Godos?

A. Sorry. The complexity, in my opinion, was already resolved by the CT. It uses the word "formula" in many of its revisions, but the debate already took place in the CT. The Parties had the

possibility of defending themselves. It thought about this thoroughly, and it acted with a high level of precision. The Constitutional Tribunal adopted a rule-making function when the ordered the Executive to issue these Decrees.

Q. Are you aware, Mr. Godos, that the first MEF formula on Professor Edwards' calculation yields a value for Gramercy's' Land Bonds of under $1 million, whilst the last formula yields a value of some $30 million? Are you aware of that Report or those representations?

I know that you've been here with us during the entirety of the Hearing.

A. Look, I have heard, but I have not delved deep into those findings. If you allow me, I can give you a few examples.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, but the question has to do with--well, I think it was the Vice Minister who said that the first formula carried an error. I think I remember that she said that, and what counsel was asking is, okay, well, had there been a prepublication, well, perhaps those errors could

have been avoided. I think that is essentially the question posed to you.

THE WITNESS: It is possible, Mr. President, of course, but in other scenarios, perhaps, that would not have happened either. One cannot think that the State is going to be erratic or negligent.

BY MR. RECENA COSTA:

Q. Thank you, Mr. Godos.

Let's move on to the topic of the Statement of Reasons, if you don't mind.

ARBITRATOR DRYMER: Before you do, Counsel, I just want to be certain that I understood one aspect of the Expert's testimony.

In Spanish, so forgive me, you said that as a result of the 2013 Order of the Constitutional Tribunal: "The possibilities of discretionality are very limited."

I'm going to go back to English now. But you acknowledge that there was still scope for the Executive to exercise discretion and to implement the CT Order by different means?

THE WITNESS: Yes.

ARBITRATOR DRYMER: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Now, let's move on.

MR. RECENA COSTA: Sure.

BY MR. RECENA COSTA:

Q. In your Report, Mr. Godos, you state that: "The purpose of Statement of Reasons is to ensure transparency so as to avoid arbitrariness by the Executive," at Paragraph 70; correct?

A. Yes, sir.

Q. But you told us during your presentation that a Statement of Reasons is not a legal requirement under Peruvian law; correct?

A. No.

Q. Sorry, no--your answer was slightly confusing. Are you agreeing with me?

A. It is not a requirement for the validity in general terms.

Q. Thank you.

Now, the same LOPE that we were looking at before, which is the Framework Law for the entire Executive Branch, doesn't that state that draft

regulations must be accompanied by a Statement of Reasons as well as any reports, studies, and consultations?

A. Yes.

Can I expand?

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course.

THE WITNESS: I remember. What I wanted to say at 70 in my Report--let's see. What is a Statement of Reasons? A statement of Reasons only expresses the reasons for the provisions. We can give it any name, but its aim is to support the fact that it is a reasonable, legal, and valid provision. The fact that I haven't seen the label or the heading of the Statement of Reasons, well, that doesn't matter because, if the document is justified enough, then that requirement has been met. And that is what I wanted to say.

BY MR. RECENA COSTA:

Q. So, you agree that robust justification is a legal requirement under Peruvian law.

A. With respect, "robust," you said. Well, it's a very subjective term. We would all want for all

regulations to be supported by McKinsey studies, but that's not the case. That doesn't always happen.

Q. Other legal norms under Peruvian law establish with more detail what the Statement of Reasons must contain; right?

A. The threshold is immense, immense. A statement of Reasons may be one page long or 5,000 pages long. They depend on the subject matter that they are regulating.

Q. Now, you don't cite in Supreme Decree in your Report, but you're familiar with Supreme Decree 008/2006, JUS. This is another Ministry of Justice Decree, I assume; right?

And for your reference, it is Tab 5 in your binder, and for the rest of us, it is CE-452.

A. What tab again, please?

Q. 5. Tab 5.

A. What, Article, sir?

Q. If we can show Article 10 of this Supreme Decree to Dr. Godos.

And so, this, again, repeats the idea, doesn't it, Dr. Godos, that you have to have a

Statement of Reasons, and it has to be accompanied by certain documents, including studies, technical reports, consultations with specialists, and also it must make reference to--I'll read in Spanish "public hearings organized with the aim of ensuring the effective participation of the interested parties."

A. Yes, sir.

Q. And in Article 1 of this same Decree, it is said that the Statement of Reasons must also contain a cost-benefit analysis, doesn't it?

A. Yes.

Q. And if you then indulge me and look at Article 3.1 of this same Decree, we have a legal attempt to define what the cost-benefit analysis must contain; right?

A. Yes, sir.

Q. And it says that it's a method of analysis of a quantitative nature; correct?

A. Yes.

Q. And that it must allow us to quantify the costs and benefits or, in the absence of that, to appreciate analytically the costs and benefits that

are not quantifiable; correct?

A. That's what it says, yes.

Q. And you would agree with me, wouldn't you, that under Peruvian law, a cost-benefit analysis is a tool of the utmost importance?

A. Yes. It is.

Q. And, in fact, in your Report, you, yourself, state that it must be rigorous; correct?

A. Of course.

Q. And part of your work as a consultant and practicing attorney in Perú is devoted exactly to advising clients or State entities on how to do proper cost-benefit analysis; right?

A. I have conducted some. I have not conducted detailed economic studies.

Q. So, you don't work together with economists to validate cost-benefit analysis?

A. I do, but we have not conducted many cost-benefit analysis with my economists.

Q. So, it's not something you're particularly devoted to?

A. I know the general principles, and I have

resolved a number of cases making reference to these principles.

Q. Now, you saw Professor Bullard's presentation yesterday, and you know that his opinion is that the cost-benefit analysis contained in all four of the Supreme Decrees is deficient; right?

A. That is what he said, yes.

Q. And, in particular, his opinion is that it is deficient because it doesn't allow us to understand why the Executive Branch made the Decisions that it did within the margin of discretion left to it by the 2013 CT Order; right?

A. I assume that that's what he said, but literally, literally what he said, I don't remember.

Q. Oak. Now, in your Report, your legal conclusions are based on the documents that you cited and which you appended as Appendix 2; correct?

A. Let me look at it, please.

PRESIDENT FERNÁNDEZ ARMESTO: Can someone help the Expert.

MR. RECENA COSTA: May we put it on the screen, perhaps, Appendix 2 to Dr. Godos' Report,

please?

PRESIDENT FERNÁNDEZ ARMESTO: Would you like to see it in paper?

THE WITNESS: No, this is perfect.

ARBITRATOR DRYMER: Do you recall this document?

THE WITNESS: Yes.

ARBITRATOR DRYMER: This is your own Report?

THE WITNESS: Yes, it is.

BY MR. RECENA COSTA:

Q. And the Annexes 6-9 here show the record for the four Supreme Decrees; correct--the record on which you relied to issue your opinion?

A. Yes, sir.

Q. And, to your knowledge, that's the same record upon which Professor Bullard issued his opinion; right?

A. What number is that at? Yes.

Q. And I'll represent to you that these are also the records provided by Vice Minister Sotelo as the records for these four Supreme Decrees; correct?

MR. JIJÓN: Mr. President, objection.

PRESIDENT FERNÁNDEZ ARMESTO: If it is not true, I'm sure that you will realize it is normal to say he's guaranteeing that it is the same record as presented by the Vice Minister.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Please move forward. If it is not true, well, he will say so; otherwise, we take the basis that this is true and correct.

BY MR. RECENA COSTA:

Q. Would you please put on the screen R-359.

(Comments off microphone.)

Q. So, this is the exhibit which reflects the record for the Supreme Decrees; right? It's a one-page exhibit, but it, in fact, is an index that cross-references to other documents in the record; correct?

And I'm certain that you reviewed these documents here very diligently, didn't you, Dr. Godos?

A. Yes, sir.

Q. So, is it your Opinion that in any of these documents we can find an explanation for as to why the

particular Parity Exchange Rate that was adopted in the fourth Supreme Decree, the one that we're looking at, was adopted over other potential parity exchange rates?

A. There could be an explanation, and if there is none, they should have the support as to why they did it. They are economists.

Q. But you don't recall seeing that explanation?

A. I would need to--well, I read thousands of documents. I am very honest with you. If you allow me to at least to look at this to recall, I would appreciate it.

Q. I'm sure you read a thousand documents. I'm only asking you about these five, but if you need a couple minutes to review them and if we have the Tribunal's permission to do so.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Do we have them in paper? They are the two Reports. I think one was a legal report. The other one was an economic report. And then you have the Decree itself, the Statement of reasons, and an Aide Memoire. Those are all of the documents, but at least the longest

ones are the two Reports.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: We can show them to you.

Counsel, can we give the Expert these two documents? 682, 683, 684, and 685--

MS. POPOVA: One point for the Transcript, I believe there was an answer that was not recorded at 12:02. It was, I believe, in between the question, "It is an index that cross-references other documents in the record; correct?"

There was an answer that does not appear in the Transcript. And then the question begins: "And I'm certain that you reviewed them."

PRESIDENT FERNÁNDEZ ARMESTO: The question begins?

MS. POPOVA: In between--there are two--there is an answer missing, in between the question that is recorded at 12:02:25 to 12:02:47 of the Transcript.

PRESIDENT FERNÁNDEZ ARMESTO: In Spanish or in English?

MS. POPOVA: In both of them.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MS. POPOVA: Or at least I'm looking at the English one. The answer was not reflected.

PRESIDENT FERNÁNDEZ ARMESTO: Let's try to solve this because this is not complex, to solve in English and in Spanish. I would not lose time now to try to solve that.

MR. RECENA COSTA: Sure.

PRESIDENT FERNÁNDEZ ARMESTO: Why don't we try to solve it in the break.

MR. RECENA COSTA: And in the further interest of time, I'll withdraw my question to Mr. Godos.

BY MR. RECENA COSTA:

Q. And let's move on, Mr. Godos.

You talked in your presentation about the analysis de la "Calidad Regulatoria" (in Spanish); right?

A. Yes, sir.

Q. And you are aware of the existence in Peruvian law of Legislative Decree 1310; right?

Q. And I believe you said--

(Interruption.)

A. Yes, sir.

Q. I believe you said it was a wonderful tool of Peruvian law--"instrumento maravilloso"--during your presentation; right?

PRESIDENT FERNÁNDEZ ARMESTO: Just in the Spanish sense, not in the Portuguese.

PRESIDENT FERNÁNDEZ ARMESTO: No. Marvelous.

(Overlapping interpretation and speakers.)

BY MR. RECENA COSTA:

Q. Sorry, and I don't think we have an answer to my last question, but--well, we have the present answer, I believe.

And so, one of the highlights of that Decree concerns the requirement of so-called "análisis Calidad Regulatoria" (in Spanish) to be undertaken by every executive agency; right?

A. Yes, sir.

Q. And I'll refer to this as the "ACR," so I'll use the acronym so that I don't have to say that every time in my bad Spanish. But the ACR needs to explain how the administrative procedures that were created

comply with the principles of legality and reasonableness; correct?

A. Yes. If you allow me just a technical detail, ACR does not specifically refer to legality and reasonableness. It just establishes legality, reasonableness, efficacy, and the last two are related to reasonableness.

Q. In your Report, when you define "reasonableness," you break it down into these three tasks that just enunciated; right?

A. Yes. Yes.

(Overlapping interpretation and speakers.)

Q. And the entity must issue this ACR containing that analysis and then submit it for validation by an organ called the "comisión multisectorial "; right?

A. Yes, sir.

Q. And as you explained in your Report, entities had always been bound to conduct these types of analyses, but this legislative Decree then created a form of external control; right?

A. Yes.

Q. And validation of the ACR by this Commission

is a condition for the procedures to become and remain valid as applicable; right?

A. That is the purpose.

Q. And the reference to "become" and "remain" valid here is because the regime is different for preexisting Supreme Decrees and the Decrees that are issued after the issuance date of this legislative Decree; right?

A. Yes, sir.

Q. For the procedures already in existence at the time this came into force, this instrument 1310, there was a specific timetable for submission of Reports; correct?

A. Yes, correct.

Q. And if that was not timely done, the procedures would be automatically repealed or, in the Spanish language used in the Decree, "quedan automaticamente derogadas" (in Spanish); correct?

A. Yes.

Q. And this regime would have applied to the two 2014 Decrees at issue in this arbitration because they predate this instrument 1310, which was published only

in 30th of December 2016; right?

A. Definitely not.

Q. We'll come back to your views on that, and I promise you.

But for now, and so let me just understand the general regime then.

For Reports analyzed in Supreme Decrees which came about after LD 1310, the consequence, which is stated in the norm is that those procedures no entran en vigencia (in Spanish) do not come into effect; right?

A. Yes.

Q. Now, you say that you considered that the Supreme Decrees at issue in this arbitration would have passed this ACR test by the Multisectoral Commission successfully; correct?

A. Yes.

Q. But there is no exception in 1310 that exempts Supreme Decrees that the agency itself or anyone else, for that matter, other than the Multisectoral Commission considers would pass the test successfully; right?

A. No.

Q. And, of course, so you would agree with me, wouldn't you, that doing so would defeat the whole purpose of having a mandatory external control; right?

A. Yes, sir.

Q. And you have not cited any ACR reports pertaining to any of the Supreme Decrees that we are discussing in this arbitration in your Expert Report, have you?

A. No. I understand that these procedures were not subject to that test.

Q. Because your view, and as I promised you, we would come to your view on this--is that the control mechanism set out in 1310 does not apply to the Supreme Decrees that we are discussing because in your opinion, the Supreme Decrees are not norms of general character; right?

A. Yes. That is part of my argument.

Q. But you would agree with me that the legal definition of a Supreme Decree under Peruvian law is that they are--and I'll read from the Spanish. This is from the LOPE, which you know very well--is

that: "They are general character norm, that in the Regulation have the stature of a law that regulate norms as a law."

PRESIDENT FERNÁNDEZ ARMESTO: Can you repeat the whole phrase?

BY MR. RECENA COSTA:

Q. Yes. Article 11.3, of the LOPE, the "Ley Orgánica del Poder Ejecutivo," states and gives a legal definition of the "Decreto Supremo," which is the regular character norm that--so they are norms of regular character that regulate norms of a--of the stature of statute.

BY MR. RECENA COSTA:

Q. That's the legal definition; right, Mr. Godos?

A. Yes.

Q. And that's how you describe Supreme Decrees when you define them in your Report as well at Paragraph 30; right?

A. Yes.

Q. Now, the Constitution allows a specific action called the "popular action"--in the bad English

translation--or "acción popular," which can be filed against regulations, administrative norms, and resolutions and decrees of a general character; right?

A. Yes.

Q. And in both your Report and the presentation that you just gave to us at Slide 13, for the record, you have opined that the popular action could be filed against the Supreme Decrees that established the Bondholder Process; correct?

A. Yes.

Q. In your Report, you cite a legal scholar called Rubio Correa. Do you recall Mr. Rubio Correa?

A. Clearly.

Q. And in Exhibit 16 to your Report, which is Tab 30 here or, for the record, RA-400, Mr. Rubio Correa defines a Supreme Decree as referring always to general questions, "generality is its essence."

Do you recall that definition from Mr. Rubio Correa?

A. Yes.

Q. And, in fact, you cite another piece by Rubio Correa, which is RA-401, for the record. And it's

Tab 29 of your binder, and if I could ask us to project, then, Page 8 of that Article, please.

PRESIDENT FERNÁNDEZ ARMESTO: Which is R--

ARBITRATOR DRYMER: RA-401.

MR. RECENA COSTA: RA-401.

PRESIDENT FERNÁNDEZ ARMESTO: 401. Very good. And the beginning page. I cannot see it. 8.

BY MR. RECENA COSTA:

Q. We're going to blow this out on the screen, Mr. Godos. And it begins "in this work, we are only addressing general character norms."

A. Yes.

Q. And you agree with me--well, you see that this on the screen, Mr. Godos, that Mr. Rubio Correa defines "normas generales" as those from which the text--in which the text does not appear--the specific persons to which their enforcement is addressed; correct? That is Mr. Rubio Correa's Opinion. I'm just asking--to acknowledge that you've seen it.

A. Yes.

Q. And in contrast, Mr. Rubio Correa gives examples of so-called "particular norms," which would

be, I think, the antonym of general norms here, and he gives us two examples, in particular. He gives us the example of the recognition that a person X has been a civil servant for a number of years, for purposes of retirement benefits.

And it gives--do you see that, Mr. Godos?

A. Yes.

Q. And another example of a pardon which is granted to a specific defendant; right?

A. Yes.

(Interruption.)

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you leave the mike on. It's going to be easier, and I think that the answer to the last question was yes; correct?

THE WITNESS: Yes, sir.

BY MR. RECENA COSTA:

Q. Then my question to you, Mr. Godos, is the Supreme Decrees that created the Bondholder process are very different from the recognition that somebody has spent X many years in civil service, or the "indulto," the pardon of a specific defendant; right?

A. Would you please repeat?

Q. Let me put it this way. The Bondholder process creates a procedure that is to be followed by anyone who claims to be a bondholder; is that correct?

A. Yes.

Q. And if we look at any of these Supreme Decrees, we don't see any specific names of any people in those Supreme Decrees, do we?

A. That's correct.

Q. And by contrast to the Supreme Decrees, an administrative resolution is typically considered like the examples that Mr. Rubio Correa enlightened us with, a particular norm; correct?

A. That's true.

Q. In the sense that they apply to a concrete and particular case; right?

A. Yes.

Q. Named individuals or specific entities; right?

A. Yes, sir.

Q. And when an individual Bondholder goes through this whole Bondholder Process, which has all

the norms that it has, at the end, if everything goes according to plan, the MEF will issue a resolution deciding that person, that Bondholder's specific case; correct?

A. Yes.

Q. And it will be applying the general norms of the Decree to value and to then make payment to that Bondholder? Again, you know, if things go well.

A. Yes.

Q. Now, to support your Opinion that the Supreme Decrees were not within the scope of 1310, you didn't cite any specific Legal Authorities, did you? And by that, sorry, I don't mean to trick you. But you didn't cite any Decisions, for instance, that state this type of Supreme Decree does not fall within the scope of 1310 or any legal scholarship, did you?

A. I think I cited Dromi.

Q. You cited Dromi.

A. Yes.

Q. If you bear with me, we're going to pull up the Dromi Exhibit, Mr. Godos.

PRESIDENT FERNÁNDEZ ARMESTO: Can we get the

reference?

BY MR. RECENA COSTA:

Q. It is RA-412, Mr. President, and for Mr. Godos--with apologies, Mr. Godos, we didn't include that in your binder, but we have it here. And if we can just scroll down, I think there is only one page here of text.

Can we show this to Mr. Godos, please.

And if we look at Point 4, I believe that's the reference that you are referring to; correct? I'm just asking--

A. Let me look at my Report.

(Overlapping speakers and interpretation.)

Q. You said you cited--

PRESIDENT FERNÁNDEZ ARMESTO: Let him see. Of course. Take a look at your Report.

BY MR. RECENA COSTA:

Q. I believe it is Footnote 59 of your Report.

A. Correct.

Q. And you would agree with me, wouldn't you, that what Mr. Dromi suggests is that "reglamentos," like the Supreme Decrees, are normative and general;

correct?

A. Yes.

Q. Now, you did also cite to Document R-1148 in the record, which I invite you to look at by turning to Tab 33 of your binder, please, Mr. Godos?

PRESIDENT FERNÁNDEZ ARMESTO: RA-118.

MR. RECENA COSTA: No, it's just an R, this is an Exhibit. R-1148.

PRESIDENT FERNÁNDEZ ARMESTO: What number again?

MR. RECENA COSTA: 33.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

THE WITNESS: Yes.

BY MR. RECENA COSTA:

Q. And you see that this is a memorandum entitled Memorandum 264-2018 by the MEF, and I believe the number 42 indicates that it is from the legal office; right?

A. Yes.

Q. And if you look at the first paragraph of this, it is addressing--it is addressing a request made by one of the technical departments of the MEF as

to a consultation--correct?--a legal consultation.

And it mentions a memorandum by which that request is made, Memorandum 136; correct?

Mr. Godos, can we move on. Have you seen these points? Okay.

(Interruption.)

A. Yes. I have--I just read it.

Q. These other documents that are cited here, they were not provided to you, were they? The memorandums that originated the request for the Legal Opinion.

A. Yes, I do have them.

Q. In your Report you cite the requests?

A. No. No. No, I don't think so.

(Overlapping interpretation and speakers.)

Q. No question.

A. Sir, counsel--

(Overlapping interpretation and speakers.)

Q. Whether the other references were about to see--have you seen that? You have seen them?

A. I have seen them.

Q. But you decided not to submit as evidence in

your Report.

A. I do not recall when I saw this. To be honest, I don't know whether I saw this when I produced the Report or after the production of the Report. I don't recall. I am sorry.

Q. But you did see them.

A. Yes, I have seen them.

Q. Now, are you aware that in the Legal Report that approved the Supreme Decree that we're looking at here, 242, the last one, before it was issued, the MEF's legal office recognized the Supreme Decree contained norms of a general character.

A. I don't recall that exactly, but let's assume it is true.

Q. I'll represent it to you, and if opposing counsel wish to correct me, they will have an opportunity to do so.

But in the legal memorandum which addresses--this legal memorandum, which addresses whether 1310 applied to the Decree, the legal office of the MEF stated that, no, because it was not a legal norm of general scope; correct?

And that's on Page 2? The final paragraph, the only one that has analysis.

I need you to respond verbally for the record.

(Interruption.)

A. Yes. Yes. I do see that.

PRESIDENT FERNÁNDEZ ARMESTO: Please leave the mike on. Do not turn it off.

BY MR. RECENA COSTA:

Q. And this memorandum that we're looking at now is dated 27 June 2018; right?

A. Yes.

Q. And that's almost one year after Supreme Decree 242 had been issued; correct?

A. Yes.

Q. So, by that point in time, if LD 1310 applied, the consequence would be that this Decree never came into effect; right?

A. It would have had to have been tested, yes, clearly.

Q. Okay. So, if the MEF's legal office here opined to the contrary, it would be recognizing that

the Decree was automatically inapplicable and, moreover, it would be potentially subjecting individuals within that office to administrative responsibility; right?

A. I'm sorry, if you could please be so kind as to repeat the question?

Q. When the MEF issued this Report, if it had recognized anything other than the inapplicability of 1310, in their view, it would have brought about two potential consequences. One, is a declaration of automatic inapplicability of this Decree, and, two, it could subject, potentially, the people in charge to administrative responsibility; right?

A. Yes.

Q. And this Opinion issued in these circumstances is essentially the Opinion which you have endorsed in your Legal Report; correct?

A. Yes. I agree with that position with some variance that I would like to have the opportunity to explain.

PRESIDENT FERNÁNDEZ ARMESTO: Please go ahead.

THE WITNESS: Mr. President, let us not lose sight of where these Supreme Decrees come from. I reiterate and insist on this angle. These are administrative proceedings that are atypical because they come from a resolution of a legal dispute that decided that there was a debt by the State in favor of a given group or group that could be determined.

This is one of the reasons that led me to call into question the concept of "generic," because here we're not talking about an abstract category of companies, persons, children, no. This was the result of a legal dispute with plaintiffs, respondents, a specific scope.

Second, the analysis of regulatory quality--

PRESIDENT FERNÁNDEZ ARMESTO: No, no, but the Decree is not applicable only to the engineers--to the College of Engineers. It applies to any Bondholder.

THE WITNESS: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And not all of the Bondholders participated as Party in the constitutional proceeding? Only one, which was the College of Engineers.

THE WITNESS: Thank you for the clarification, Mr. President. That is correct. But the origin of that Supreme Decree or of those provisions was creating an obligation on the part of the State in favor of this group. That's the first point.

Second, the analysis of regulatory quality was very careful in Legislative Decree 1310, modified by Legislative Decree 1448, to not clash with those administrative procedures whose content was in laws, statutes. Why? Because the Executive Branch, of course, cannot call into question the validity of administrative procedures or aspects of administrative procedures that are in a statute.

All the more so, if it's the Constitutional Tribunal. And that's why it would not go through this test either.

PRESIDENT FERNÁNDEZ ARMESTO: In other words, a regulation that develops a statute does not need to go through this procedure?

THE WITNESS: It depends on what it develops, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: The Law on Circulation of Motor Vehicles and the Regulation of the law regulating circulation of motor vehicles, that regulation approved by Supreme Decree to develop the statute does not go through this procedure?

THE WITNESS: That's right. Because the details with respect to the mechanics for the application of that internal mandate are developed by that provision. For example, it notes what type of vehicle, velocities, persons, fee, time frames, and so forth, but in no way could they call into question whether it was three correct procedures or whether the time set by Constitutional Tribunal, five years, was all right, whether the Decision to use exchange rate, interest, that is not seen by the Executive at all.

Many laws create the procedures. They say general Law on Health established the health registry implement it--or establishes the health registry, implemented it. And agricultural law implement pesticide standards, and then it goes to the executive, develop it, implement it.

But if the law set matters within the law,

that is not going to be subject to the review of the Constitutional Tribunal, but the implementation, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Here too the Supreme Decree develops some principles that are in the law, and in this case it is an order of the Constitutional Tribunal, in other words, if an order by the Constitutional Tribunal is the law and then the Regulation implements it.

So, as a general matter, in Peruvian law, and this should be applauded, all Decrees that develop statutes need to undergo this review procedure. What I don't understand exactly why these Supreme Decrees are not there, except for the argument they are not general in scope. That is what the counsel for the State is arguing.

THE WITNESS: Yes. This Resolution by the Constitutional Tribunal, Mr. President, contains many aspects that are not going to be implemented by the Executive Branch. For example, there are three procedures. The Executive Branch is not going to undertake four procedures. It set a five-year period. It is not going to have a three-year period. They set

a standard for how to update a debt. They not going to get into or meddle with the formula.

PRESIDENT FERNÁNDEZ ARMESTO: But the problem is there are many formulas to implement the Constitutional principle, and we have seen there are four formulas. Four Decrees, four formulas. So, there was a certain--and here you've answered my colleague, Mr. Drymer, noting there was a certain discretion.

THE WITNESS: Yes, but in my opinion, Mr. President, that is not the kind of depth that is sought by the analysis of regulatory equality, and I showed that with the examples I included in my presentation. The evaluation forms, which are precisely what carry out the evaluation don't get into these aspects. Doesn't touch upon them. And let me get into an--factual aspect, pragmatic in terms of what happened.

When this is embedded in 2017, and, as I say, that's the first time in the history of the Republic that a Decision was made to subject the thousands of Supreme Decrees there were in Peruvian society to

review, they knew they were going to uncover deficiencies that were going to possibly dismantle systems.

So, what they've done has been to take care to preserve the Supreme Decrees, and what has happened in practice? Well, first, they have extended--excuse me, I'm under my declaration and I'm telling you the truth.

PRESIDENT FERNÁNDEZ ARMESTO: I have no doubt about it, sir.

THE WITNESS: The times were extended, so that the public entities could present their regulations. The Multisectoral Commission gave many public entities the opportunity to cure their observations, indeed, when there were vices of illegality at--entity did not have competence to assure, well, then, it did so. Very flagrant cases with a cold application of the provision would have been derogated.

Well, in this case the Commission gave them a time frame and allowed them to somehow adapt it. Because this is a new system that is evolving. Now,

we're going to move onto a second level, as I mentioned a while ago, because it is not just going to be analysis of regulatory equality but also analysis for regulatory impact. So, it is a regime in transition that allows for certain flexibility.

PRESIDENT FERNÁNDEZ ARMESTO: Any other question, Mr. Costa. We have to finalize.

BY MR. RECENA COSTA:

Q. In this Memorandum, as we saw, none of the reasons that you just explained were expounded upon; right? It's just that it is specific rather than general; correct?

A. Yes, sir.

Q. Okay. My question to you, Mr. Godos is, is it your impartial and independent Opinion that this memorandum is correct as a matter of Peruvian law?

A. It is up for discussion. In my view it is valid. I have argued that. I think that it lacked further detail in the analysis of the general effect being tied to it, not stemming from a constitutional mandate that resolved a legal dispute.

Q. Thank you, Mr. Godos.

ARBITRATOR DRYMER: May I ask--excuse me. Just to follow up. Again, maybe it's translation or maybe it's a legal splitting of hairs, but that is what we do, the question was whether you believed that the memo is correct as a matter of law, and the answer was "I think it is valid."

Now, is there a difference between "validity under the law" and "correct" as a matter of law? My understanding of administrative law, there is a distinction. Is there a distinction to be made here?

THE WITNESS: Let me put it in the following terms. It is a position that could be upheld or defended, though it could also be questioned.

ARBITRATOR DRYMER: Thank you. And that does not affect its validity as a memo as required by law exactly.

THE WITNESS: No. In no way does it do so.

ARBITRATOR DRYMER: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Last question.

BY MR. RECENA COSTA:

Q. I just wanted to ask you that it's your independent Opinion that this memorandum is

"discutible," but perhaps it is correct, and so is it right that from 2001 to 2006, you were an officer with the Ministry of Foreign Commerce and Tourism in Perú?

A. Yes. From 2001 to 2006.

Q. Is it correct that you then left the Ministry, but you have consulted on multiple occasions for Perú, Peruvian agencies or State entities?

A. Excuse me. There's one word. When you say did you "consult," you mean was I a consultant?

Okay. Yes. The answer is, yes.

Q. And you list some consulting experience.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

BY MR. RECENA COSTA:

Q. And I believe--and I'll just ask you to correct me if I misstate something.

PRESIDENT FERNÁNDEZ ARMESTO: It's the third question, but okay.

MR. RECENA COSTA: There will be just one more after this question.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. What is the question. He said in the beginning that he had done this work.

BY MR. RECENA COSTA:

Q. Is it correct that you have done consulting jobs for the National Port Authority, National Competitiveness Counsel, Ministry of Economy and Finance, Ministry of Foreign Trade and Tourism, Peruvian National Port Authority.

PRESIDENT FERNÁNDEZ ARMESTO: What is the question?

BY MR. RECENA COSTA:

Q. The question is, Mr. Godos, is since 2001, considering your experience at INDECOPI, which is also appointed by members of Peruvian Ministries, has there been a single year in which you were neither an officer nor a consultant acting on some form of work for Perú?

A. I'm sorry. I haven't really been able to follow you.

PRESIDENT FERNÁNDEZ ARMESTO: It's irrelevant. It is clear that you've done this work. It was a question as to whether each year you had or had not had some administrative Contract. It is really not relevant.

MR. RECENA COSTA: We have no further questions, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Dr. Costa.

And now, Mr. Jijón, do you have any other questions?

MR. JIJÓN: If you could give us just a moment to consult.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

(Pause.)

MR. JIJÓN: Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: You have the floor, Mr. Jijón.

REDIRECT EXAMINATION

BY MR. JIJÓN:

Q. You were asked many questions, somewhat fragmented, with respect to certain documents, including Supreme Decree 001/2009JUS.

Do you recall that? If we could turn to the document, I think that it is Tab 17 in your binder. I don't know if we can get that on the screen.

ARBITRATOR DRYMER: Remind us, please, of the

RA. I think it was an RA number.

MR. JIJÓN: Por tiempo, voy a continuar.

ARBITRATOR DRYMER: Thank you.

MR. JIJÓN: Out of time considerations, I'm going to continue. For the Tribunal, this is the document that makes reference to Chapter 19 of the Treaty. I have it here. It is CE-489.

ARBITRATOR DRYMER: Thank you.

BY MR. JIJÓN:

Q. And if you could turn to page--it's the fifth page, it begins with Chapter 3 on the dissemination of legal provisions. There you have Article 14, dissemination of draft legal provisions, general in nature.

Then after this you spoke of legal provisions of general in nature.

Can you discuss what this suggests in the context of this provision and whether you consider that this has an impact on the application of these requirements?

MR. RECENA COSTA: Objection. That's a very leading question.

BY MR. JIJÓN:

Q. How does this impact on the requirements for the Supreme Decrees?

A. Could you repeat the question, please?

Q. Of course. If you could focus on Article 14, dissemination of draft legal provisions general in nature, if you could please comment for us, what does this suggest for the application of these requirements to Supreme Decrees?

A. Well, as I had indicated, for me there is no obligation to publish the drafts of such provisions in light of what had been established by the Constitutional Tribunal. For me, this provision does not apply to the Supreme Decrees in question. I'm talking about prepublication.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Jijón, if what you are saying is if it is not a provision that is general in nature, as the attorneys for the State said in the documents we saw, then nor would it be in respect of dissemination of legal provisions general in nature.

MR. JIJÓN: We have seen it. Thank you very

much, Mr. President. I have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Fine.

MR. RECENA COSTA: Nor do we, Mr. President.

ARBITRATOR DRYMER: No, thank you.

ARBITRATOR STERN: No, thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, sir. The world is complex and the effort being undertaken by Perú to improve the quality of legislation is very interesting. I would hope that other countries would do the same, beginning with my own. So, I must congratulate you all for the effort to improve legislative quality.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Very well, then.

MR. FRIEDMAN: May I raise two brief housekeeping matters before we break.

PRESIDENT FERNÁNDEZ ARMESTO: Off the record.

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: We will now ask the interpreters to rest while we are on the record.

MR. FRIEDMAN: There are just two

housekeeping matters that arose from issues on the first day of the Hearing, and I wanted to make a record here because I think it is--

PRESIDENT FERNÁNDEZ ARMESTO: No, es que no Español.

MR. FRIEDMAN: I just--I think it is more courteous than writing a letter about it, and we are all together.

So, the first is about the physical Land Bonds, the two physical Land Bonds that I showed during Gramercy's opening.

PRESIDENT FERNÁNDEZ ARMESTO: They did not give them back?

MR. FRIEDMAN: No, no. We have offered them to them, they have never taken them up on us--us up on the offer.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. FRIEDMAN: And we wanted to make it clear that they are available and if they would like to look at them, time is just sort of running out a bit because, after tomorrow, those will go back into custody and to respond to any concerns. Those are

both Bonds of small enough amount under any valuation that they violate no custom laws by moving them across borders. So, that's fine.

Second, you will recall that we had questions about this Document R-257 that had, where each side had had some pages that the other side's copy didn't have.

ARBITRATOR DRYMER: Yes. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Agree.

MR. FRIEDMAN: We have been endeavoring since the February 7 to just say, can we please agree on this consolidated document and give it a new number, and we just have not had a response yet.

So, I'm not asking for a very response right now. I wanted to mention it before the lunch break, so that perhaps we can have a response after the lunch break to both of those issues. I just didn't want there to be any ambiguity about it. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. R-257 was simply that you had the full text, but they had the Annexes.

MR. FRIEDMAN: Perfect.

PRESIDENT FERNÁNDEZ ARMESTO: So, let's just join them and we said that would be an H document, so that that is clear. And the physical ones, if you want to see them, provided you give them back. Don't create us now the additional dispute whether they have to be delivered back or not. Provided you deliver them back, it is up to you.

MR. HAMILTON: Mr. President, thank you very much. We are surprised by the comments here. We've seen these stunts before. So, let me address each of the two items mentioned.

The first issue was the fact that Gramercy apparently carried certain documents from Perú to the United States. We don't know the details of how they did that. They have not provided their Bonds for authentication. They have not submitted their Bonds to the valid--Mr. President, I'm sorry, but he chose to make a record of this.

PRESIDENT FERNÁNDEZ ARMESTO: I know. I know.

MR. HAMILTON: So, you leave me no choice but to comment.

PRESIDENT FERNÁNDEZ ARMESTO: If you want to see them, you see them. If not--we know that they are not authenticated.

MR. HAMILTON: I know. I know, Mr. President. But, I'm sorry, because my colleague specifically insisted that we go on the record to make his little stunt. I will Reply on behalf of the Sovereign, if I may. And I will be brief. I appreciate it.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Of course.

MR. HAMILTON: We see this over and over. As a matter of fact, for years we've lived with stunts and propaganda. It is too much. It has gone directly to the heart of attorney-client relationship. It has gone directly to the validity of this proceeding. It is too much.

So, I will very briefly, just to conclude, physical Land Bonds, the physical Land Bonds have never been submitted to the valid Bondholder process, duly established, all Peruvians with Bonds are able to submit them. Gramercy was able to submit them. We do

not have present here technical Experts for the review and authentication of Bonds, as is clear, so, to repeatedly suggest, for example.

And let me give you one more example, Mr. President. We were told on the first day of the hearing, we offered them for inspection during lunch and they made no effort. What we learned is that some random member of their team, mentioned to a random member--no offense--of our team, are you going inspect them? As a matter of fact, I believe that someone said it to Ms. Menaker as she came out of the bathroom. And then it was represented that they offered and we didn't respond.

Perú has made available the Bondholder Process. They chose not to recover $34 million. That's between them and their clients. So, they have never put into this case an Expert Report that in any way approaches the diligent process of review and authentication of Bonds, that the State must go through because the State doesn't just give away money. That's number one.

Number two, R-257, again, this is a

distraction. It's already been sent to the Tribunal last Friday. They have chosen to do this. They are doing this over and over for reasons--we have no idea, and the fundamental reality is we have been asking for weeks where and when did you get this document?

And, again, as usual, they conceal it, they will not answer, they refused to answer to the President last Friday as well, it is already in the record. And as I said on the first day, we are glad to discuss this document, and we have discussed this document, because it assists the case of Perú.

Finally--and I'll save this for further comment tomorrow--all of this is camouflage for the reality that we all now know, that side of the room knowingly and intentionally hid a secret tranche of Land Bonds, prevented us from understanding it, assessing it, prevented the Tribunal from understanding all of the implications that has for jurisdictions, Merits, and compensation, and this all camouflage.

I regret it, but there is nothing else to be done about these two issues today. I'm sure we'll

discuss other issues tomorrow. Thank you very much, and thank you for your patience, Mr. President, but when my counterpart insists to go on the record, we must respond. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. FRIEDMAN: I will obviously not rise to that, simply saying I will treat that as confirmation that we can simply assign a hearing number to R-257 and that, if you wish to see the two physical Land Bonds, you are welcome to, but please let us know after the lunch break.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Lunch. 3:00. No, 2:00.

(Whereupon, at 1:00 p.m., the Hearing was adjourned until 2:00 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much for waiting.

We are going to resume the Hearing. We are here to examine Dr. Wühler.

NORBERT WÜHLER, RESPONDENT'S WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much for being here with us, Dr. Wühler. You are here as an Expert. You know that, as an Expert, you are requested to take your oath, so could I kindly ask you to stand up and please take your oath?

THE WITNESS: I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, Dr. Wühler.

I will now give the floor to Mr. Hamilton.

Mr. Hamilton, please.

Before I do that, we did receive a handout, and it is H-11--12. Sorry. H-12.

MR. HAMILTON: Thank you very much, Mr. President.

On behalf of the Republic of Perú, it is my pleasure to introduce Dr. Norbert Wühler, Expert for the Republic of Perú.

Dr. Wühler has presented two Expert Reports in this proceeding, and he has prepared a presentation to share with the Tribunal today, which has just been distributed to you.

DIRECT EXAMINATION

BY MR. HAMILTON:

Q. Mr. Wühler, welcome, and I invite you to take the floor.

A. Thank you very much.

DIRECT PRESENTATION

THE WITNESS: Good afternoon to everybody.

I would first just make a few remarks about my professional experience and the expertise I have for the items on which I have delivered my Reports.

I am a lawyer by education and background. I received my legal education in Germany, but I spent most of my professional life outside of Germany in a number of countries. The main stages of my professional life were, first, the Iran-U.S. Claims

Tribunal, where I was the legal advisor to the President and the Deputy Secretary-General. After that, I was the Head of the Legal Service of the United Nations Compensation Commission, and then director of the Claims and Reparations Programs of the International Organization for Migration.

That is all in the past. I am currently chairman of the Kosovo Property Claims Commission. In my CV, I said I was Chairman, and that was true at the time I wrote that, which was in 2017 and '18, and the Commission thought--we thought that we had completed all the work in 2015, and then just a few months ago we have been reactivated, because there were some other things that came up and we have to complete some further cases.

I have advised a number of governments and international organizations on the establishment and on the conduct of claims and compensation processes. Appointments were, again, by different governments, by international organizations, in one case--since we are in the U.S., it may be of interest--in one case by a federal U.S. judge, Presiding Judge Coleman of the

Eastern District of New York, because that particular process was following a decision of the Court and the implementation was given to my organization, and I was in charge of that.

I was also chair and member of several arbitral tribunals in international arbitrations, and I was the Expert appointed by the Tribunal in the case of Abaclat v. Argentine Republic.

You are aware, of course, that in my Reports I concluded that the process established by Perú to deal with the agrarian bonds and with the claims by Bondholders is a claims and compensation process. So, I would like, just for the context, to say a few words about what is a claims and compensation process. And I would like to say that for the context, but I think also there have been some confusions about this.

At the basics, it is quite a simple process. It is a process that allows people that think they have a claim to put the Claim into that process. The process takes the claims, it verifies them, it makes decisions on them and if it's compensation on the amounts payable, and it pays the claims that have been

found to be eligible, meaning that they comply with the requirements.

I have assessed the Bondholder Process established by Perú against this framework, and I have compared it with other claims and compensation procedures and the standards and the practice that is applied in them, and I would like to note that this comparison with these other procedures is the appropriate comparison, because the Bondholder Process has the same kind of features and characteristics, and it must deal with the same challenges as these other processes.

So, first, now, going directly into the Bondholder Process, I'll first say something about what I call the "Regulatory Framework." This is really the beginning of these things, and it's the foundation of the process. It establishes, if you like, the basic architecture to then build the house, the actual process based on that, build the structure and develop the procedure that has to be followed in the process.

So, in this case, this was done by the

Supreme Decrees which followed the Resolution of 2013 of the Constitutional Tribunal, and these Decrees were that basis that created this basic architecture. Now, I found quite appropriate a remark that Minister Castilla made during this Hearing, where he used the words--he talked about "un proceso gradual" that the development of these Supreme Decrees constituted, and I think that is a very good description, because there was not just one; there were several of these Decrees.

It is--it happens quite often that the legal framework, the legal basis, the Regulatory Framework that is established for these processes is not just done in one instrument. There are reasons for that. They have to do mostly that one cannot foresee everything at the beginning, and so adjustments are made; sometimes before the process starts, sometimes they are made even into process and quite far into the process. So, again, something that you can see quite frequently.

So, what do the Supreme Decrees do in addition to building that framework? They allow the Bondholders to understand how the process operates and

what requirements they need to fulfill and how they can participate.

Now, the Supreme Decrees, of course, in a certain language--some of the language is quite technical, but what is very important is that, for the people that want to participate, there are very simple forms that are included in the Decrees and that are available on the website of the Minister of Finance; where available, the process is closed. They are actually quite simple, and I have seen many, many claim forms in my life. And these forms are certainly among the simplest and easiest to fill out that I have seen.

I just want to mention two additional points that come out of this Regulatory Framework, the Supreme Decrees. One concerns the prioritizations that they provide for the Bondholder Process. They create categories, different categories of Claimants, of Bondholders, that would be served in a certain sequence, and that's a practice that is very common in claims and competition processes. And second, another important aspect is what kind of due process exists in

the Bondholder Process. And, again, certainly compared to other procedures of that type, there is certainly sufficient, if not more than sufficient, due process here, both within the process and outside the procedure, including the ability to appeal, reconsideration inside appeal, and have judicial remedies outside and to exit the process and have them outside.

So, the first aspect of the house, so to speak, that then has been built is the institutional framework. So, again, in a claims process, what is the institutional framework that one looks for? Well, there is no one single identical framework for every situation, because the situations are different, so different models are used in different circumstances. What one does find is that in some other processes, what I call the embedding in a Ministry has been used as that institutional framework. This has been done here as well. The choice of the Ministry of Economy and Finance, I found appropriate, considering what kind of functions the process has to perform and what kind of tasks the procedure has to go through. So, it

made sense to put it into the Ministry of Economy and Finance.

The Ministry then developed what the last part of the house is, so to speak. They concluded interinstitutional agreements that were necessary with the National Bank, with the Ministry of Interior for the National Police Unit that was doing the authentication; they developed the internal mechanisms and developed quite extensive SOPs, as they are called sort of in the lingo of these mechanisms, standard operating procedures, which are important. They are internal, but they are important to, first, regulate the actual work and, second, to keep consistency in that work, because different people are working on different claims. So, it's very important to have these things set out so that there is consistency.

So, I now come to a part of the process that I think everybody is quite familiar with, which is the structure of the actual procedure. So, what are the stages that the claims go through, and how do these stages work in these kind of processes? Again, at a basic level, it is quite simple: The claims have to

meet a certain threshold when they are submitted. Then the Claimants' eligibility is determined, meaning, is a particular Claimant entitled to be a benefit of the right or the compensation that the process offers? And that stage typically includes the verification of one or more key documents, and then where that applies, where valuation is an issue, there's a valuation stage, and then payment is made to the Claimants that are eligible, and the payment that has been assessed, the amount that has been assessed, is paid out. So, the four stages of the Bondholder Process, they follow this standard. They are necessary in the case of this process, and they are structured in a reasonable manner.

Can we just go back a second? I won't go into any details here. The one point that I wanted to make is: There was a lot of talk already in the Hearing, and it is in the documents, about authentication. Where there was less detail was on the registration. And to an outsider, it may seem that registration is a very simple process. You take a piece of paper, put a stamp, and the person is

registered as a legitimate Bondholder. Well, that's not what this is all about.

For every Bondholder that comes into this process, the entitlement with respect to every bond has to be established, because the bond has been issued to an individual. Maybe the individual is still the same Bondholder; maybe the person has deceased, the other Bondholders now. So, it's not just with respect to a case that comes in that the eligibility has to be established, but with respect to each Bondholder--to each Bond. Sorry. That is then also quite an involved process, and it's not just putting a stamp on a piece of paper.

So, no more details on the other status.

BY MR. HAMILTON:

Q. Dr. Wühler, if we could stay on that slide if a moment, you discuss in greater length in your two Reports how this four-stage process works, and you mentioned earlier the forms.

We have time, so why don't you take a few more minutes and share some further comments?

A. Okay.

Q. I think on authentication--you've just discussed registration, but perhaps on authentication, and then apart from that, your views about this stage process, why it's not that you rush in on one day and the next day you walk out with cash or bonds or whatever it might be?

A. Okay. I'll be happy to do that. On authentication, I'm not commenting on what authentication requirements might be under Peruvian law. That's not my area. But I have compared it to the same kinds of things that happen. It's a verification of a document, the authenticity of a document. In many, many of the processes that I have been involved, I have looked at in detail what happens at this stage in the Peruvian process. It is quite an involved process. At that stage, people that are specialized for that look at--I forget the exact number, but something like maybe 15 items that are checked for each of these Bond documents, and we are speaking--because the process is closed, we know what the numbers--we are speaking about 12,902 Bonds, but they do not only look at the one-page Bond. They look

at the coupons, because the coupons are part of what constitutes the legal entitlement and the same thing. So, these items are checked for each of those coupons, so some of the Bonds have maybe one coupon left; some have none left; others still have 20 coupons. So, when you look at these numbers, that is not just an involved process, but it's a process that certainly takes time.

Actualization--I have not commented on the methodology of the evaluation on the value. That is outside my assignment. But the same comment again: Actualization has to happen for each bond. It is not that a Bondholder, so to speak, is actualized and the value that the Bondholder represents, but it has to be done for each bond. So, again, not commenting on the methodology, but it is an involved process that requires time.

Payment, again, it is probably less of an issue, but it is also not purely, it's a figure that has now been calculated during actualization and now that figure is being paid out, because the process foresees that the Bondholder has choices at that

point, options for what kind of form of payment he or she will opt, and the options are either cash or Government bonds or Government land.

So, there is, sort of inside that stage, another procedure where an option is put forward by the Bondholder. If that is found to be agreeable and, I guess, implementable, then that is what goes forward. If not--

PRESIDENT FERNÁNDEZ ARMESTO: Can you repeat that?

THE WITNESS: Sorry?

PRESIDENT FERNÁNDEZ ARMESTO: Repeat that last phrase.

THE WITNESS: Okay. So, the Bondholder puts forward his or her choice. Let's say they choose cash. If then it is determined in the process that is appropriate and there is cash and cash will be paid, that's the end of it. Money is paid.

PRESIDENT FERNÁNDEZ ARMESTO: The impersonal "it" is the Government?

THE WITNESS: It's the process. It is the people running the process.

PRESIDENT FERNÁNDEZ ARMESTO: Civil servants. The Ministry.

THE WITNESS: Yeah, whoever is in the Ministry of Economy and Finance responsible for that.

PRESIDENT FERNÁNDEZ ARMESTO: So, at the end, a payment depends on a decision of a civil servant in the process?

THE WITNESS: It depends on what the process has led to, and then at some point one person makes a decision that that now is done.

PRESIDENT FERNÁNDEZ ARMESTO: Assume I say I want cash.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Can you then explain to us exactly how it then develops? Because there seems to be two alternatives: That I get the cash or I don't get the cash.

THE WITNESS: Yes. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And I would like you to explain who takes what decision, and if I don't get the cash, what is the alternative?

THE WITNESS: Okay. The request is, "I want

cash." The area in the Ministry of Finance that is managing this process that is responsible for that phase of the process will decide, yes, cash is the form of payment here. Then, I assume, there is some procedure to have funds made available for that, and then it is out of these funds that payment is made.

PRESIDENT FERNÁNDEZ ARMESTO: There must be an appropriation in the budget?

THE WITNESS: Exactly.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And if there isn't?

THE WITNESS: Then I don't know about that.

ARBITRATOR DRYMER: And what if the Bondholder opts for cash and the authority decides, no, that is not appropriate?

So, two questions: One--this may be the simpler one; I don't know--is what happens; but, second, on what basis is that decision made as to appropriateness? Thank you.

THE WITNESS: Okay. On the first component, what happens is the Bondholder can either choose another form or, if he or she insists, there will be

another time, so to speak, when it would have to be decided: Will it be cash or will it not be cash? So--

ARBITRATOR DRYMER: So, the authority won't say, "Cash is inappropriate; I'm giving you a bond or I'm giving you land"? They will simply decide thumbs up or thumbs down?

THE WITNESS: Yeah.

ARBITRATOR DRYMER: And then the Bondholder can accept that decision or challenge it, effectively?

THE WITNESS: It's not a formal challenge.

ARBITRATOR DRYMER: Please.

THE WITNESS: There's a next phase where the Bondholder can then say, "Okay, I agree with land or bonds" or "I still would like to have cash." And there is another time period that is foreseen in the Supreme Decrees, which is one month in that case, for the Bondholder and the Ministry to agree on a payment form. If they do agree, then that is the payment form that goes forward. If they don't agree, then at that final stage, so to speak, in the payment process, then a decision is made which payment form is chosen by the

Ministry. So, there's sort of, like, two steps in that to make the option operable, if you like.

ARBITRATOR DRYMER: And, of course, the second part of my question was: On what basis is that decision, the thumbs up or thumbs down decision, made?

THE WITNESS: Right. Right. That, I can't comment on. I don't know what the basis is.

ARBITRATOR DRYMER: Presumably, there is a basis in what would be an acceptable structure, in your view.

THE WITNESS: Well, there is--I can't really comment on that. I would have some guess of what it means at that stage. I can't comment on that, because I really don't know exactly how that part of--the last step of that decision-making, how that works.

ARBITRATOR DRYMER: Yes. Just one more question. Pardon me. Patience, all. In the other claims processes that you're familiar with and that you've compared this to--

THE WITNESS: Yep.

ARBITRATOR DRYMER: Are the criteria for that sort of decision spelled out? Is that something one

would expect to see?

I'm not asking you to comment on the appropriateness of the criteria; just the fact that they should be--whether or not they are typically spelled out as part of a process, a claims process.

THE WITNESS: What is spelled out or what is available, typically, is one of two things, normally. Either you have a fund that exists, and that is sufficient to pay the claims as they run through the process--

ARBITRATOR DRYMER: Such as the UNCC, but perhaps that's not a good example.

THE WITNESS: I mean, at some point you stated there wasn't enough, but then enough came in.

ARBITRATOR DRYMER: Right.

THE WITNESS: Or the alternative is you don't have enough in the fund, and then it may take quite some time until payments are made. Or, you know, at some point--well, I have not really seen the process where no payments were made, but what I have seen a number of times is that the amounts that initially were awarded--in other words, what the processor said

the people should get--they had to be reduced, because there was not enough money either in the fund or coming into the fund, or even, in some cases, certain categories of Claimants did not receive any payments because there was priority for others that were found to be more deserving, so to speak.

ARBITRATOR DRYMER: Thank you. I'll come back, if necessary, later on, but I'd like to hear you further, and eventually to hear counsel.

THE WITNESS: Okay. So, I come now to the last main point in my presentation, and that is: What is the progress in the Bondholder Procedure?

And the first question I would really like to emphasize here is: How is progress assessed in a claims and compensation procedure? And why am I emphasizing that? Different people have different views on what the progress is, and that--again, if you'd like me to expand on that, I can certainly do that. But just to say that, if you look at the viewpoint of an individual participant--in this case, an individual Bondholder--that Bondholder would certainly have a certain view on what the progress is

for his or her Bond, and we can all think about what people think about progress for their particular case. But that look doesn't answer the question: What is the progress in the process as a whole? Because that is the key parameter. So, you have to see what the progress is overall, because the job of the process is to resolve the claims that are coming in, to lead them through the process and to lead them to a conclusion, and that is what has to be determined when one assesses the progress in the Bondholder Procedure.

Now, my first comment on that is progress in the process is not measured by the amount paid. And I'm saying this in two respects. It's not measured--and I'm emphasizing again, "progress." It's not measured for the individual, because the amount paid, everybody will have a different view on what the reasonableness of the amount is that is paid. So, I just put that out, but I leave it aside.

For purposes of the Bondholder Process, I put to you that the measure really is the number of Bonds that are going through the process and that are completed, and that is the equivalent of what a claim

for one amount in another process represents. If you have a claims process where you have an amount that is fixed and the person puts in a claim, once that claim is processed, that determines what the process--the progress is. In this case, what has to be processed are the Bonds, as we looked at in the beginning.

It's not claim. Yes, the claim has to be completed, but the real work is on the Bonds at every stage of this process. So, that is what determines how good and how effective the process is.

So, this happens at each stage process, and all these stages have to be looked at, and then there has to be sort of a comprehensive picture of that.

So, to do that, what we have available in the record at the moment, are the statistics as of August 2019, and I'm sure you're aware of this summary chart. And this is the one I will use in the next slide I would like to go through with you. Can we just come back?

So, important point: This data as of August 2019, of course, gives a snapshot at that point in time. They can show what has happened up to that

time, but they don't show how the process continues, and they certainly don't show what the eventual outcome is.

So, when I look at this snapshot for the different stages of the process, the progress is comparable with experiences in other claims and compensation processes at similar stages, because the stages have a different progress rate, if you like.

The first stage in the Bondholder Process, authentication, is by now practically completed. And we will go through the numbers, if you bear with me, in a moment.

What I also wanted to mention as a context is the snapshot is as of August 2019. In her testimony, Vice Minister Sotelo mentioned that more recent data are available, and they do show further progress. This is something that I can certainly--this is something that is absolutely normal and natural. As you progress in such a system, it is quite normal that you start slow, that you get faster, that the numbers of cases that you complete get higher, and in this case that, again, the key measure, the number of bonds

that are completed gets higher.

So, if we can now go to the summary table, so what I have done here is I have--

ARBITRATOR DRYMER: Excuse me, just apologies again. Just so that I understand your point on that, are you telling us in effect--and I'm making up numbers--just because it might have taken two years to register 500 bonds doesn't mean it will take another two years to register another 500 bonds; in other words, the pace will accelerate?

THE WITNESS: Well, that is the first point.

ARBITRATOR DRYMER: Yes.

THE WITNESS: But the second point is that--

ARBITRATOR DRYMER: Yes.

THE WITNESS: --may be the more important point is--

ARBITRATOR DRYMER: Yes.

THE WITNESS: The fact that a bond had to register were not in the registration on Day 1 of the process.

ARBITRATOR DRYMER: Of course. Understood.

THE WITNESS: Because they first had to come

from the previous stages from authentication.

ARBITRATOR DRYMER: Understood.

THE WITNESS: And so, only those that come to the next step can be processed as of the time that they come in.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I understood Vice Minister Sotelo that the procedure was now closed, and so the number of cases which entered the procedure is closed. No new cases can come in.

THE WITNESS: That is correct. It is closed as of January 2019.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But they eventually go through the procedure.

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: But, actually, what she said was, as they move through the process, when you look at that over time, you can see that more cases have gone to the next stages, away from the first stage.

So, the figures on this table, everything except the red and blue arrows and numbers are on the

table that are in the record. The red and blue is from me, and what I'm trying to show with that is progress, and progress that can be expected further in the process.

So, if you would first, please, look at the numbers that are in the boxes. In the first Column A, the 11,395 bonds, they represent 88 percent of all the Bonds that came into authentication into that process. So, in August 2019, 88 percent of those had been authenticated, and I think there had been--everybody agreed that by now practically all of them have been authenticated.

In the second stage, there is the same type of number, how many of these bonds have been registered at this stage, and the same thing in actualization.

So, what do these arrows and the percentages mean? And I've added these to demonstrate that it's a dynamic process and progress is dynamic. So, I've calculated--it's a pure calculation. I have calculated the number of bonds that move from one--have moved from one stage to the next. And in

the first stage, the 53 percent means that, out of the bonds that have been authenticated, 53 percent have moved through registration, and the same for the other parts of these processes.

And then--so, you see these numbers here. I have to say I was not surprised generally that at this point in time numbers were not 100 percent because, again, it's a process that has a time factor and has a resource factor. And I make this as a personal observation. I was surprised about the first number of 53 percent, that only basically half the people whose bonds were authenticated actually asked to be registered as legitimate Bondholders. I have no real explanation for that, but personally I would have expected that more people take that step as well because it's a real simple step.

So, what the blue numbers and the blue arrows are trying to show is the following: Again, this is a snapshot as of August last year. When you try to look into the future, so to speak, to determine what, based on the data that you have can be expected for the progress in the process, I took what I think was the

best measure for that. But, again, first, all of this is on bonds because I think bonds are the measure for this.

But, second, for this progression in the stages, I took what you can see as the actual percentage of bonds that have moved forward. Like these red percentages, I've taken those and have applied them to the cases still pending, which is in pendientes, and I have calculated number of bonds that are pending there. If you take that percentage, so many move forward. And then you can see that based on whatever views you may have, how many--will the percentages be the same? Will they be lower? Will they be higher? This is what will move further in the process.

Now, there is another component, and I'll stop there, I'm eating up a lot of time. So, these numbers are just the blue numbers based on the percentages in each stage. You actually would have to make it like composite interest. You would have to add those that are coming and the basis for that. But let's forget about that. It is getting very

complicated. I think these simple numbers are easy to understand.

PRESIDENT FERNÁNDEZ ARMESTO: Well, your estimation is that payment eventually will reach 565, plus 381 bonds. That is your estimation.

THE WITNESS: I'm not really estimating eventually how many will. I'm saying, based on the current rate of moving, these are the numbers here--

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: --pending still.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Assuming that there is no change in the percentages, eventually the number of bonds paid would be 565, which those are already paid, plus 381, which will come into the procedure from the actualization.

THE WITNESS: No. Because--

PRESIDENT FERNÁNDEZ ARMESTO: No. Then I have misunderstood you. Thank you.

THE WITNESS: Sorry, because there would be more than 381 still coming because more are coming from the first stages before that. So, the 381 are

just the ones that came at this point from actualization.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, it would be 381, plus 549, plus 83?

THE WITNESS: If that is the same rate, that's correct. But based on my experience, the rate will increase. Because once you have completed the first stage, the rate will increase. Again, I know that specific numbers of the next stages are not in the process. But I know that Vice Minister Sotelo has made the remark that more progress has been made, and I really think, based on every experience I've seen in these processes, one can expect that the numbers will be higher.

Now, at some point, one can maybe look at those numbers, but I understand that at this point in time what I have done here can only be done in front of you now as of August 2019.

BY MR. HAMILTON:

Q. Dr. Wühler, in the interest of time, one question to conclude this table and lead you to your conclusion: Why is the filter process indicated by

these reviews and the rechazados important for a state institution allocating state funds?

A. Well, I think any state institution is bound by the requirements to be diligent and careful with how the money is spent for which that entity is responsible, and that is sort of the simple answer to the question. I mean, it's not--I mentioned in the very beginning it's not just a process where you put in a piece of paper and registration means you are registered and then the payment is made. So, that's in simple terms what the answer to the question is.

Q. Would you like to share your conclusions?

A. Yes, please.

So, the summary of my conclusions, the Bondholder is a fair and effective process for the resolution of the bonds, but also for the individual Bondholders to seek the payment of the actualized value of the bonds. So, it has these two components. It is progressing according to two things, according to the framework that it has and within that framework, and according to the circumstances in which this process operates, and it does provide for an

efficient resolution of the individual bonds submitted to it.

That conclusion is based on my review of the key features of the process, the Regulatory Framework, the institutional framework, the House and the procedure, as well as the practice and the outcomes that we just went through on the occasion of this table. And these conclusions are confirmed when this Bondholder Process is compared with other claims and compensation procedures and their practice and the standards that are applied in them.

That concludes my introduction.

Thank you very much.

Q. Thank you, Dr. Wühler.

MR. HAMILTON: Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. So, we will give now the floor to--is it Ms. or Doctor? I don't want now to--

MS. LAVAUD: I would love to be called doctor, but I do not want to mislead the President. Señora will do. Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you,

Ms. Lavaud.

CROSS-EXAMINATION

BY MS. LAVAUD:

Q. Good afternoon, Dr. Wühler.

A. Good afternoon.

Q. It's a pleasure to meet you. My name is Floriane Lavaud, and I represent Gramercy in these proceedings.

In the interest of time, I will be asking you questions about the Reports that you submitted in this arbitration. I will try to keep my questions as short as possible, and I would be grateful if you could do the same with your answer. And my learned friend, Jonathan Hamilton, will, no doubt, give you an opportunity to provide more information if you wish to do so on redirect.

Dr. Wühler, you were retained by Perú to assess the procedure established for the payment of the Agrarian Reform Bonds; correct?

A. This is correct.

Q. And you refer to that procedure as the "Bondholder Process."

A. That's correct.

Q. And your expertise is in national and international claims programs; correct?

A. Claims and compensation programs.

Q. And those programs concern, for example, losses suffered by victims of forced labor during the Second World War?

A. Also, but not only. There were many other types of processes coming out of many different circumstances.

Q. That's why I said, for example. Umm-hmm.

And so, you compared in your Reports the Bondholder Process to this kind of program; is that right?

A. Yes.

Q. And, in fact, on direct--

A. Sorry. That's correct, that I first reviewed it, and then I compared it to these programs.

Q. Right. Thank you.

And, in fact, you said on direct examination that the Bondholder Process is a claims and compensation process; correct?

A. Yes. That is correct.

Q. So, you are analogizing the Bondholders to the victims of those programs; correct?

A. No. No. This is what I tried to say already on the first question. The origins of these processes are very different. You have war, you have human rights violations, you have 9/11, you have environmental damages. All kinds of different sources can lead and events can lead to the setting up of these processes.

Why I'm using this analogy is for the process and the procedure. It's not for the source from which they come.

Q. Thank you.

But would you agree with me that the original landowners in this case were the victims of a mass expropriation; correct?

A. I'm saying the landowners--no. I'm saying the landowners are the participants in the process as the process has been set up, and there are participants with bonds.

Q. And you would agree with me that millions of

hectares of agricultural land were expropriated and were distributed as part of the Agrarian Reform; is that right?

A. I don't know all the details. Don't take me on a number--

Q. Okay.

A. --but it goes back to that historic event, obviously.

Q. I was just citing your Report. Those were your words, Dr. Wühler.

A. Okay. Yeah.

Q. And you concluded that the Bondholder Process is well within the standards of accepted practices for claims processes; right?

A. Yes.

Q. And that the efficacy and efficiency of the Bondholder Process are sound and consistent with international practice; is that right?

A. Yes. Yes.

Q. Now, one of the factors that you considered is transparency; is that right?

A. No.

Q. You didn't consider transparency?
A. Yes. Sorry, I take that back--
Q. Okay.
A. --transparency, but not transparency generally, but transparency with respect to the process.
Q. Okay. In fact, you say that the Bondholder Process is transparent; is that right?
A. Yes. Yes.
MR. HAMILTON: Excuse me, can we just slow down just a little bit?
MS. LAVAUD: Oh, absolutely. I'd be happy to.
MR. HAMILTON: I'm trying to read the transcription. And, also, if you're quoting his Report, you can just tell him what you're citing to and help him follow along with you. Thank you.
BY MS. LAVAUD:
Q. If he would like to obtain the specific paragraphs I'm referring to--I would be more than delighted to provide that to you, Dr. Wühler.
PRESIDENT FERNÁNDEZ ARMESTO: I think we were

doing very well. Let's do leave a second between question and answer--
MS. LAVAUD: Absolutely. I would be happy to. Thank you, Mr. President.
PRESIDENT FERNÁNDEZ ARMESTO: --so that our Court Reporters can keep pace.
THE WITNESS: Okay.
BY MS. LAVAUD:
Q. Yeah. We have the pleasure of being able to converse in English without at least translation between the two of us.
So, I will--but I will try to slow down. We obviously have the interpreters.
ARBITRATOR DRYMER: The Transcript is still being translated. Bear that in mind as well.
MS. LAVAUD: Yes. Absolutely. Absolutely. Thank you for the reminder, Mr. President and Mr. Drymer.
BY MS. LAVAUD:
Q. And so, let's just go back.
You said that the Bondholder Process is transparent, and I think your answer to that question

was yes?
A. I said the process is transparent, yes.
Q. Right.
And you said that it provides sufficient information for Bondholders to make informed choices about participation; is that right?
A. Is that a quote?
Q. It is in your Report. Yes, I would be happy to point you to it if you'd like?
A. Yes.
Q. And this information is contained, you said, on the MEF website.
Do you remember that?
A. Yes.
Q. So, did you take a look at this--did you look at this website?
A. It's a MEF website, and it's in the forms that are made available.
Q. It's in the forms.
And the forms are on the MEF website; correct?
A. Yes. Yes.

(Interruption.)
Q. I was just saying, for the record, that the forms are on the MEF's website, and I believe you answered to that question was yes.
So, did you look at this website, Dr. Wühler?
A. Yes. Yes.
PRESIDENT FERNÁNDEZ ARMESTO: You must wait. You must wait for his answer, and you must wait for the question because otherwise it becomes impossible.
(Comments off the record.)
BY MS. LAVAUD:
Q. So, because you have been on this website, you know that when--if the Bondholder wants to know how much he or she will be able--will receive as part of the process, he's taken to--he or she is taken to the part of the website that is called methodology.
Do you remember that?
A. Yes, I do.
Q. And when you click on that "methodology," there is actually a button that--there's a link to the August 2017 Supreme Decree.
Do you remember that?

A. Yes. There is a link to the methodology, to the methodology as it is explained.
Q. Right. But there's--
A. But there is something else on the website. There is a simpler explanation of the methodology also.
Q. Okay. And you looked at that--
A. Yes.
Q. You looked at that?
A. Now, I have not looked at valuation and valuation methodology because that was not part of my assignment. I've looked whether these things are there, but I haven't looked into them.
Q. So, let's just go back. You said that on the website it actually takes you to the 2017 Supreme Decree, and I believe your answer was yes.
A. If I remember correctly, yes.
Q. And those Decrees contains the formula to update the value of the Bonds; correct?
A. The Decrees do contain the formula.
Q. Right. And, actually, when you click on that link, you will see that what appears is under--if you

want to take a look under Tab 6?
PRESIDENT FERNÁNDEZ ARMESTO: 6?
MS. LAVAUD: 6. Yes. Of your binder.
PRESIDENT FERNÁNDEZ ARMESTO: What shall we do?
MS. LAVAUD: So that is...
PRESIDENT FERNÁNDEZ ARMESTO: What shall we do? Shall we go into the website of MEF?
MS. LAVAUD: Yes. I will give you a shortcut for that. That is RA-23, please.
PRESIDENT FERNÁNDEZ ARMESTO: RA?
MS. LAVAUD: 23.
PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank you.
MS. LAVAUD: And if you actually turn, you'll see it has, a few pages in, it is Page 6.
PRESIDENT FERNÁNDEZ ARMESTO: No, no, no, no. You have to go--you leave us. Please.
MS. LAVAUD: Do you want to put it on the screen, RA-23?
ARBITRATOR DRYMER: This is the Supreme Decree 242?

MS. LAVAUD: Yes.
ARBITRATOR DRYMER: All right.
BY MS. LAVAUD:
Q. And so, if you turn to Page 28, which I believe is Page 6 of the PDF for the Tribunal. So, it is Page 6 of the PDF and Page 28 of the document itself.
(Comments off microphone.)
MS. LAVAUD: Tell me when you're ready, Mr. President.
PRESIDENT FERNÁNDEZ ARMESTO: I have the formula, yeah.
BY MS. LAVAUD:
Q. Do you have it in front of you, Dr. Wühler?
A. Yes.
Q. Do you see Page 28, it says "methodology for actualization"--
(Interruption.)
MS. LAVAUD: Yes, of course, absolutely.
BY MS. LAVAUD:
Q. Do you see on Page 28, it says--and you speak a little Spanish, Dr. Wühler, I understand?

A. Yes. I understand Spanish, yes.
Q. Okay. So, there's a methodology for actualization?
A. Umm-hmm.
Q. So, now, Dr. Wühler, let's assume for a second that you are a Bondholder, and that you had a farm that was expropriated in Perú, say, in 1970, and in return, you were given, say, 10 bonds, Class A, for a face amount of 10,000 soles de oro, and that as of today, you have half of your coupons that remain unpaid.
Okay? Are you with me?
A. Umm-hmm. Umm-hmm.
Q. Now, because I mentioned that there were some of the coupons that were clipped, you only have half of them left--if you want to just look over to Page 29, which is what the formula is for clipped coupon bonds, can you just take a minute and just tell me, if you can, tell me how much you think that you're going to get under the Bondholder Process by looking at the formula?
A. I don't need to take a minute--I'll slow it

down. I don't need to take a minute because I can't tell you because I haven't looked at that, but I also think that what you're asking me is whether--no. I stop there. So, I can't tell you.

Q. Okay. You said you haven't looked at it. I understand. So, if you look at it now--

A. I haven't look at anything to do with the method and the numbers of valuation.

Q. I see. But you testified just now, but also in your Report, that "the process is transparent and provides sufficient information for Bondholders to make informed choices about participation."

So, you don't know how much the process offers to Bondholders?

A. Well, this is a situation that you have in many, many claims processes where compensation comes out at the end. You have no idea how much you will be compensated for. Actually, you have nothing to have any parameters in the beginning because the decision is made in the process, and you don't know what the outcome for your individual case is.

So, it's not unusual that there is a process

where you have to make a choice if you are going--you know, it would be great if you knew what is coming out at the end, but you don't necessarily know, and then you have to make the choice "am I taking what will come out or not?"

Q. Would you agree with me that in this particular case, the Bondholder is sitting--being in your situation would be very interested to know how much he or she is going to get as a decision to make to decide to submit his or her bonds into the process? Would you agree with me or not?

A. I think every participant in the claims process would definitely like to know how much they can expect from the process and how much they will receive on their individual claim. But many times that is not the case, and many times people have gone into these processes with requests for a specific amount of money because they think that is what is owed to them. And the process has come out very differently. But there have been many other times where the process has told people "don't tell us how much you want because the process has criteria to

decide that, and this is what will come out. We don't want you to be disappointed, so don't put that in even."

Q. So, just to be clear, a Bondholder before participating in the process would not be able to know how much he or she is going to get as part of the process. Is that your testimony?

A. I don't know. I don't know.

Q. You don't know.

A. Because I assume that there are people who will know and who will understand, but I don't know.

Q. Instead, the Bondholder, that same Bondholder, would have to go through the authentication stage. You talked about that during your direct. And then the registration stage and then the third stage you actually know how much he or she will get through the process; is that right?

A. In the particular case?

Q. Umm-hmm.

A. Yes.

Q. And that process--

A. Again, they could know before because I

assume that people, they will understand the methodology. And those people would know.

Q. And who are "those people"?

A. I don't know. I have not looked into valuation, into the methodology. I have not spoken to people who are participating, but I would assume that there are people who understand it.

Q. So, you're saying that people would understand it, but you don't know for a fact?

A. Yes.

Q. Now, we talked about the stages, authentication, registration, actualization.

ARBITRATOR DRYMER: Pardon me. Pardon me, Counsel, are you moving on from this?

MS. LAVAUD: No, I'm still--

ARBITRATOR DRYMER: All right. I'll let you--

MS. LAVAUD: Please, Mr. Drymer, because it's a related point, but I don't want to move too quickly.

ARBITRATOR DRYMER: All right. I understand full well the idea that many claims processes don't tell you what the outcome will be. That's the nature

of a process, any more than this process is telling anybody what the outcome is going to be at this stage.

It seems here though that the Regulation, the Supreme Decree in question, purports to tell people what the outcome will be. And maybe that's an incorrect characterization but to the extent it's correct, is that unusual? I have only some familiarity with some of the processes that you know closely, but this seems to me unusual in that respect compared to the others, which are more legal in nature than technical, financial.

THE WITNESS: There are compensation processes that say something about the criteria, which are used to--in the valuations. They have to make valuations, and they say something about the criteria.

ARBITRATOR DRYMER: But they are not usually formulas such as this?

THE WITNESS: I could not say that I have been in a process where there has been a formula like this upfront. There have been formulas in the process, certainly, and there have been very complex formulas. Like in corporate claims, in the UNCC, they

were very complex calculations, methodologies, but I haven't seen this type of formula upfront.

ARBITRATOR DRYMER: Thank you.

MS. LAVAUD: Thank you for your question, Mr. Drymer.

BY MS. LAVAUD:

Q. So, going back to the stages that we discussed earlier, you're aware that it takes sometimes--well, it actually takes years for Bondholders generally to find out how much they are going to get paid; is that right?

A. Well, it takes the time it takes for them to get their claim through the process, through the stages of the process.

Q. Are you aware that, based on the data provided by the MEF as of August 31, 2019, it takes an average 4.1 years for Bondholders just to know how much the MEF is offering?

A. I don't think this is a correct statement because what it does, it takes one Bondholder, it calculates the time that it has taken that one Bondholder, and it takes it as the average. That is

not a correct conclusion, I think.

Q. No. That is based on the data that was provided by the MEF, and the way this is calculated is just to take a look at the number of bonds that were--or Bondholders that entered the process, and the numbers and just calculate the--how long it takes on average for those Bondholders to get through actualization. And that's just based on the data that you attached to your Report, which is R-1062.

A. Can you take me through that calculation? Because I didn't understand it.

Q. I would be happy to, but I don't think that it's a very good use of the Tribunal's time. I'm happy to represent--if there is any question about the way that this average is calculated, we're happy to answer any questions.

A. I think it's the wrong--

MR. HAMILTON: If I could, for a procedural matter, are you citing to an expert report or calculation or this is a free-style number that you're presenting?

MS. LAVAUD: I wouldn't call it free style.

MR. HAMILTON: Because the Witness--the Witness is saying he's never been given this information before.

MS. LAVAUD: Well, I am relying, just for the record, on R-1062, which is a document that Dr. Wühler was citing to in his Report.

And the calculation is very simple. You just look at how long it takes from the date that the Forms A have been submitted, through the notification of the Form C, and you calculate the average--just the average and the amount of time that it takes.

If the Republic of Perú has any doubts about this calculations, feel free. I just don't think that it's a good use of the time that we go through this calculations, but, Mr. President, I'm in your hands.

PRESIDENT FERNÁNDEZ ARMESTO: No. Just represent to the Expert that you say it is for four years for the Stages A, B, and C.

MS. LAVAUD: Correct.

PRESIDENT FERNÁNDEZ ARMESTO: It's a representation. It's a statement from counsel. What is your reaction?

THE WITNESS: Well, my answer was it is both a wrong calculation and it has the wrong parameters.

It's a wrong calculation because it takes the beginning of the process and it purports to say this is when the claims that are paid at the end of the process came in.

Now, I haven't looked at the particular claims that you're referring to that are in this chart that have actually been paid out, at what time they have come into the process because the process has been open until January 2019. So, to say I take the first day when the process opened and it has taken these people to get their payment 4.5 years later doesn't tell you anything about the average time it takes to process.

BY MS. LAVAUD:

Q. So, I will just clarify one thing for the record. I think you understood, Mr. President, Mr. Drymer, that this actually just covered only the first three phases. So, it doesn't cover the date, which actually would render the average even longer if we were to take into account the date on which those

Bondholders were paid. My calculation is just based on the date from the filing of the Form A to the date of the notification of the actualization.

In other words, how long does it take on average for Bondholders to know how much they are going to get paid out of the process. That's the only point.

(Overlapping speakers.)

A. Again, I say it is the wrong calculation. It's the wrong calculation.

PRESIDENT FERNÁNDEZ ARMESTO: Sorry.

MR. HAMILTON: We would simply like the record to show that the Expert has never seen these free-style numbers before. That's the problem with free-style numbers thrown in a witness' face.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MS. LAVAUD: Should I move on?

THE WITNESS: It's a wrong calculation.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. It is quite a--I mean, you will agree, whatever four year--we are now 2020 and the process started 2014. It has not been a huge amount of activity in the

process?

THE WITNESS: I don't agree. There has been a lot of activity. Well, let's say the majority--the vast majority of all the Bonds in the process--and I really think it is important not just to think about number of cases. The Bonds in the process, the vast majority, have been authenticated. That was a very involved process. If you have looked at what the results Report of the National Police is to the Ministry of Economy and Finance for a particular case with all the Bonds attached there and the kind of examinations they make, the kind of details they attach to that, that is a very involved process.

One also has to keep in mind every claims process that you enter into, you don't start on Day Number 1 to process claims. So, in this case, my understanding is that it has taken quite some time to get the institutional arrangements concluded, to get this unit or the part of that unit that then is devoted to this process--it's not the only work they are doing--to get set up and equipped and so on, and that time, of course, you can say this is what the

process takes in the end overall, but these are all considerations that you have to keep in mind when you talk about the progress.

PRESIDENT FERNÁNDEZ ARMESTO: I asked--I don't know if you have been with us before, and you heard Professor Hundskopf.

THE WITNESS: Professor Hundskopf, I haven't heard. I'm sorry. I have heard others but not him.

PRESIDENT FERNÁNDEZ ARMESTO: He's an expert. He was the Dean of the Faculty of Law in Lima, and he's a highly respected jurist, and he said he had had personal experience because of his age and his university with a number of cases and he had been involved directly in the procedure. They asked him how many persons had been expropriated and he said it was approximately 20,000. That was his number. I don't represent to you whether it's true or not, it's just his number.

But it struck me that if there have been 20,000, probably a lot have died, disappeared, but still it was a number in the thousands, that only 443 landowners have actually gone into the process.

I don't know if that--if you have--let me ask you: What is for you, for a procedure to be successful, what would be the threshold of percentage of entitled persons who actually make use of the process? When would you start to speak of the success?

THE WITNESS: I really think it is impossible to give a general answer to that. I'm not avoiding to try to give an answer. It really is impossible because there are so many different factors that impact that.

I have been personally in processes where the trend was that--and in processes where the origins of what cause the processes also went back 50, 60 years. In those situations, quite often, you had two sort of conflicting trends. One was you had people originally affected that were old by that time, quite old, that, on the one hand, were very attached to what they had lost, so to speak. And that was the case, for instance, in situations where they were displaced from property or other things were taken, and they were quite attached to that.

I have been personally in a situation where such an old Claimant took me to a place where a house had been. It wasn't there anymore, so it was just a question of money. And she took me with a key in her hand that she had kept for 50 years of that house.

There was another aspect, then, in those kind of situations where the next or the second-next generation, the younger people, who were not so close to the facts that had given rise to these kind of processes, they were much more detached from them.

Now, there were two conflicting trends even in that population, if you like, of potential participants. In some cases, they were very aggressive, much more aggressive than their parents or grandparents, in pursuing these things and also being aggressive about the little outcome and things like that. In some other cases, it was the opposite, because they said, I have a life of my own now, you know. This is long gone. I have gone on with my life, I'm going to go on with my life. I'm not going into this, not, you know, because I don't think it's worth trying to do something, but I'm just at a

different stage of life, and I'm not doing this.

I'm saying this not to say that this is every time the situation. I'm saying it's very difficult to make a general statement about why people participate or do not participate and how many should participate because also the base from which you estimate that you mentioned this statement by Professor Hundskopf, which I haven't heard, but I cannot comment on those numbers. I'm just giving considerations.

ARBITRATOR DRYMER: I'm sorry but I'm glad you raised a question, and I'm glad, Dr. Wühler, you're talking about this because one of things that strikes me, and I wonder whether it's related to this phenomena, is the percentage of bonds that move to the next stage in your picture here.

First of all, did I understand you correctly earlier to say that--you said you were surprised at the 53 percent number of bonds. And you said that, you know, that the holders of only 53 percent of the bonds asked that they be registered. So, in other words, it is up to the Bondholder to take the step to go to the next stage?

THE WITNESS: Yes.

ARBITRATOR DRYMER: And have you got a comment as to why it's only roughly half that chooses to go to the next stage at each of these stages? Again, not half the owners, but the owners of half the Bonds that finish in one stage and choose to go to the next?

THE WITNESS: I think you have to even be a bit more concrete and detailed because it is not half the people that own bonds.

ARBITRATOR DRYMER: Please. That's what I'm saying. The owners of half--

THE WITNESS: No, it is half the number of bonds--

ARBITRATOR DRYMER: Half the number of bonds.

THE WITNESS: --can be moved to the next stage.

ARBITRATOR DRYMER: All right.

THE WITNESS: And just to put that in perspective again, in the first year--actually in the first half year, there was one particular claim that was filed by one person that comprised 1,875 bonds.

That claim along would have a very big impact on all these things in the process. It's about 15 percent of the whole caseload--sorry--yeah, 15 percent of the whole caseload, so to speak.

There were other cases that were filed in the first year where one particular Claimant had hundreds of bonds. Actually, over all, about 75 percent of all the Bonds were submitted into the process in the first year. Half of them in the first half year, number of bonds.

I'm digressing. But that goes, again, to the progress because you have a very, very big bottleneck in the beginning, which you always have in these programs because Claims come in quickly. You're not yet equipped to start, people are very angry about no progress. I've personally had that many times, and you have to work down that pool that is sitting there in the beginning. And here, it was a very great pool in the very beginning.

ARBITRATOR DRYMER: Right. And, you know what, if counsel realizes I'm misunderstanding, I'm going to let you clear things up afterwards, but

still, a couple years in, for example, once we get to the actualization stage, just for example, still only 41 percent of the Bonds--of the number of Bonds have progressed--have been asked to be progressed to the payment stage. Why so low? Why only 40 percent?

THE WITNESS: The number is correct.

ARBITRATOR DRYMER: Yes.

THE WITNESS: It's the number I calculated. I really don't know. I can't speak for the people there. I can speak for experiences for these other stages that I'm familiar with.

ARBITRATOR DRYMER: Yes.

THE WITNESS: But I can't speak about that one.

PRESIDENT FERNÁNDEZ ARMESTO: But there could be--I mean, the logical explanation is that they are unhappy with the outcome of the first payments or that they think that the payment is--that they are unsatisfied with the payment or with the expectation of the payment. If they were very satisfied with the expectation, they would go forward amass.

ARBITRATOR DRYMER: Or it's a generational

thing, as you explained?

THE WITNESS: It could be any of those.

PRESIDENT FERNÁNDEZ ARMESTO: It could be a generational thing.

MR. HAMILTON: It could be a propaganda campaign.

MS. LAVAUD: Objection. That is inappropriate.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Thank you.

BY MS. LAVAUD:

Q. Now, another factor that you looked at is participation, right, Dr. Wühler, the participation rate?

A. Can you point me to where I made statements about the participation rate?

Q. Yes. It is your--I think you talked about that in both of your Reports, but I will point you to your Second Report, which is under Tab 2. For the record, that is RER-9.

And I will point you to Page 6, for example. And here you say: "The rates of participation in the

Bondholder Process are reasonable."

Do you see that?

A. At 6?

Q. Page 6, yes. The top of Page 6. The penultimate sentence of this first paragraph.

A. Yes. Yes, I see that.

Q. And so, your conclusion, just to be clear, is based on the number of cases and the number of bonds that were submitted in the Bondholder Process; correct?

A. Well, I'm saying that they are proceeding at a reasonable pace.

Q. I'm talking about the rates of participation. So, when you talk about participation, are you talking about the number of cases and the number of bonds that were submitted to the Bondholder Process? Is that what you're referring to?

A. Well, again, it's the participation in the process, but what you read out about reasonableness, that's the rate of processing. It's the pace that each will proceed.

Q. Okay. And just to be clear, Dr. Wühler, you

did not--for purposes of assessing this rate, you didn't look at the number of the Bondholders or the number of bonds that were not submitted in the process; correct?

A. That did not enter into the process in the first place.

Q. That's right. That's my question.

A. I did not look at those. They were not in the process.

Q. Right. So, you don't know whether the--you don't know whether the bonds, the number of bonds, for example, that were submitted in the Bondholder Process represent 1 percent, 5 percent, 10 percent, of the entire universe of bonds, you wouldn't know that; correct?

A. I wouldn't know, but that is not what I'm speaking about here. I'm talking about if you look at the first line on Page 6, participation at each stage I'm not talking about participation over all in the process.

Q. So, just to be clear, for purposes of your analysis, when you speak about "participation," you

never took into account how many bonds the number--how many bonds are currently outstanding, did you?

A. Excuse me. How many bonds were?

Q. Are currently outstanding? That is not something that you considered for purposes of your analysis?

A. Currently outstanding?

Q. Correct.

A. I don't have numbers on that, so I couldn't take that into account.

PRESIDENT FERNÁNDEZ ARMESTO: That was my question to you with the number of Professor Hundskopf.

THE WITNESS: Yeah.

BY MS. LAVAUD:

Q. Now, you also looked at what you called the success rate of the process.

Do you remember that?

A. Where was that?

Q. Paragraph 44. Still in the same Report, Page 19 for the Tribunal of the PDF.

Paragraph 44, and it says: "The Bondholder

Process as a whole--in the Bondholder Process as a whole, the success rate has been quite high."

Do you see that?

A. Yes.

Q. And so, in this paragraph to assess the success rate, you compared the number of bonds that were submitted for authentication and the number of bonds that were actually authenticated; is that right?

And you do the same for registration?

A. Yeah.

Q. Please take a minute, if you want to just take a look at this paragraph, Dr. Wühler.

A. Well, I talk in this particular paragraph about the number of claims and the bonds in those claims, but if you go to the actual number of bonds, as I have in my table, that's the numbers that I'm speaking about. And as I said before, those movements in the stages are reasonable and are comparable.

Q. Right. And now, if you stay in your Second Report and just go back two pages before, Page 17, you will see on--in Paragraph 39, that you basically--all this data is basically the data that we looked at

during your direct examination; is that right, Dr. Wühler?

A. It's the August 2019, yes.

Q. Right. So, that's the data that is on Page 9 of the Slides. Okay.

And so that data, as we said, was provided by the MEF; correct?

A. Correct.

Q. And I believe you said that the data provided by the MEF demonstrated the effectiveness of the procedure as a whole; is that right?

A. As a whole, yes.

Q. Now, let's take a look at this data. So, as of August 31, 2019, there were 377 cases in which the bond had been authenticated; is that right?

You can look at the Slides or--

A. That is correct. Yeah.

Q. --paragraph. Yeah.

A. That is correct.

Q. Either way, I have no preference.

A. Yeah.

Q. And out of those, 13 had been paid; is that

correct?

A. No. That's not correct.

Q. It's not correct?

A. No. Because I don't know which ones that were in that first stage have gone on to payment. I don't know. I can't say that.

If I may explain it again, we were over that again before. You cannot say because so many Bonds were in that process and authenticated, the Bonds that were paid went through that process. We know that some of them haven't moved to the next stages, and again, I don't know when they were filed. So, that is not information that these statistics give you.

Q. Okay. If we look--just by looking at the chart that you provided for the Tribunal, would you agree with me that it says that there were 13 cases that were paid?

Would you agree with me on that? That is Column D.

A. Yes.

Q. Pago.

A. Yes.

Q. And it says "concluidos." And that's 13 "pagados."

Do you see that?

A. Yes. Yes.

Q. Okay. And you also agree that there were 377 cases, whose bond had been authenticated by then; right? So, even if you don't agree with me that those were the same bonds, if we do simple math--and that's 13 out of 377, that's 3.4 percent; correct?

That is simple math. And I represent you that mathematically it is correct, but, obviously, if Mr.--my learned friend has any correction to make to the math, obviously I welcome any comments.

ARBITRATOR DRYMER: Or the less learned arbitrator. Is it correct to say that of 377 Bonds authenticated--

(Overlapping speakers.)

ARBITRATOR DRYMER: Of 377 authenticated casos, cases, casos, excuse me, 13 casos have been paid. Whatever the percentage is.

MR. HAMILTON: A case is not number of Bondholders.

ARBITRATOR DRYMER: Understood.

MR. HAMILTON: It's a file.

ARBITRATOR DRYMER: Understood.

MR. HAMILTON: And the file of 16 cases doesn't mean 16 Bondholders.

ARBITRATOR DRYMER: Understood.

MR. HAMILTON: There is--sometimes multiple people have interest. So, I'm simply stating as a factual matter, there's a confusion with the data that is being thrown around on the fly.

PRESIDENT FERNÁNDEZ ARMESTO: No. No. No. But, Mr. Drymer's data is correct, because he's comparing apples to apples. Out of 377 cases--and we have discussed that with the Vice Minister that there could be various persons who own one bond because there could be--

MS. LAVAUD: We have.

PRESIDENT FERNÁNDEZ ARMESTO: --heirs and/or co-owners and situations like that. But out of these 377 cases, it's a fact that, as of that date, 13 had been finalized.

THE WITNESS: Mathematically, that's correct.

But other--but other things have happened on the way.

ARBITRATOR DRYMER: Yes.

THE WITNESS: Because if you take--and, again, I invite you to look at Bonds, because Bonds is what the work is here.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: So, if we look at the--

PRESIDENT FERNÁNDEZ ARMESTO: It's the same.

THE WITNESS: Yeah. If you look at 11,395 that had been authenticated.

ARBITRATOR DRYMER: Yes. Yes.

THE WITNESS: The first thing that you have to take out from what I would call the baseline against which to look is those that have been rejected at that stage because they could never move forward, and that is not a problem of the process. That is because they don't fulfill their requirements. They have been dealt with in the process, but they can't move to payment. So, you can't take them as a baseline. That is the 196 in this particular table of the column A.

ARBITRATOR DRYMER: Yes.

THE WITNESS: Right? So, those are rejections. And then--right?

ARBITRATOR DRYMER: Yes.

THE WITNESS: Then a number--and that was my whole point about these arrows and what is moving forward. A number of the cases don't move forward. So, if you say isn't that a very low figure and it's very slow, which is--

ARBITRATOR DRYMER: Well, just to be clear, I'm not saying it's low figure or slow. I was simply trying to get away from making--adding--coming up with percentages and just simply speaking--

THE WITNESS: Right. Yeah.

ARBITRATOR DRYMER: --of hard numbers. Of 11,395 bonds that have gone through the process through which there are many stages and people choose not to go forward.

THE WITNESS: Umm-hmm.

ARBITRATOR DRYMER: There are rejections at each stage. It turns out, for whatever reason, that 413 bonds have been paid. That's all. I'm not adding a value statement to that.

THE WITNESS: That is correct. But what I am saying is, it is not sufficient to look at that number precisely for what you said.

ARBITRATOR DRYMER: For the reasons.

THE WITNESS: Others have been rejected and others have moved forward, so for me the baseline is not that baseline. That's what I'm saying.

ARBITRATOR DRYMER: Yes. One my maxims is beware the "helpful arbitrator." I was trying to be helpful. It seems as though I haven't been, so.

MS. LAVAUD: You were very helpful, thank you, Mr. Drymer. And if I may add, I think that my colleague Jonathan Hamilton raised a very good point at that--let's take a look at number of bonds and see how they compare.

BY MS. LAVAUD:

Q. So you see that, based on the chart again, if you look at the number of bonds that have been paid, that's 152, and the number of bonds that had been authenticated by then, by the MEF itself, was 11,395.

Do you see that, Dr. Wühler?

A. Yes, I do see that.

Q. And if we do--I hate to do math, but it's very simple. That will be 1.33 percent?

MR. HAMILTON: We object. They could have put in an Expert Report on all of this.

MS. LAVAUD: You don't need an Expert Report, I think, to do this simple math, Mr. Hamilton. Thank you.

MR. HAMILTON: We disagree.

PRESIDENT FERNÁNDEZ ARMESTO: Well, I was doing maths myself.

So, what is your point?

BY MS. LAVAUD:

Q. And so, the point is that five years and a half, which is when we are looking at the data in August 2019, only 1.33 percent of the Bonds that had been authenticated at that point in time had been paid; is that right, Dr. Wühler?

MR. HAMILTON: Objection. Mr. President. They should have put in an Expert and we would have been pleased to cross an Expert on this. They have no Expert on these issues. That's why this is inappropriate.

MS. LAVAUD: Professor Olivares-Caminal provided also this information.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, I don't think it takes us much longer. We understand that mathematically--let's look at it. Bonds, 413 Bonds out of 11,395, but of these 11,395, only half proceeded voluntarily to the next, only half proceeded voluntarily to the next, and only half proceeded voluntarily to the next.

And so, if out of those, I could do the maths, and it's probably whatever. It's 1,000 something. Out of those, 13 have been paid. Still, it's a low. It's a low. It's a low payment percentage.

THE WITNESS: It's what it is, but if you take that kind of calculation and--again, I think it's the wrong kind of calculation because it takes the wrong base, if--just if, as a hypothetical--if out of the 11,395 bonds, 11,000 would not have reached the stage of payment for two reasons: Either because they would have been rejected--

ARBITRATOR DRYMER: Right.

THE WITNESS: --or they would have decided not to move forward.

ARBITRATOR DRYMER: Yeah.

THE WITNESS: You would have a result, at the end, at the very end of the process, that only 152 would have been paid in this process. You would say that is a pitiful result, but you would have to see why they have not reached that stage and haven't been paid. That's what I'm trying to say.

ARBITRATOR DRYMER: That is well understood by myself, at least, and I'm sure by counsel even better.

PRESIDENT FERNÁNDEZ ARMESTO: Ms. Lavaud.

BY MS. LAVAUD:

Q. Just one final question on that particular point.

You say that, Dr. Wühler, this pace is reasonable, but you haven't really provided any objective basis for calculating that pace, have you?

A. Is that in the same area of the Report?

Q. No, that's just a question to you, Dr. Wühler.

A. I understand. Reasonable, I mean, where is that, that it was reasonable?

Q. No, I said you haven't provided any basis for believing that this pace was reasonable. I think that's what you were explaining to the Tribunal, that this was a reasonable pace?

A. Well, you just said I said in my Report. I mean, I gave a number of considerations for the pace. That's the whole reason why I put up this chart now to put more meat to that.

PRESIDENT FERNÁNDEZ ARMESTO: I think we can move forward. Is there any other--

MS. LAVAUD: Happy to, yes.

PRESIDENT FERNÁNDEZ ARMESTO: --question to Dr. Wühler?

MS. LAVAUD: There is, indeed, but I will try to be very short and efficient.

BY MS. LAVAUD:

Q. Let's take a look at the results of the Bondholder Process, Dr. Wühler. And we looked at the results of the Bondholder Process; correct?

A. What do you mean by "results?"

Q. I'm just looking at your Expert Report, Second Report. Second Report, you talk about "progress, pace, and results."

So, you looked at the results; correct?

A. Yes.

Q. Because the--

MR. HAMILTON: Which paragraph are we citing here?

MS. LAVAUD: I'm just looking at--actually, it's a heading--

MR. HAMILTON: What page?

MS. LAVAUD: --of Doctor--Page 16 of his Second Report. And I believe he talks about the results in the First Reports as well, Mr. Hamilton.

MR. HAMILTON: Okay. Second Report. Page 16.

MS. LAVAUD: You see this heading that is called "progress, pace, and result," Mr. Hamilton?

MR. HAMILTON: Yeah. I do. Now, I see.

BY MS. LAVAUD:

Q. Now, you looked at the results because the process is designed to provide compensation to

legitimate Bondholders; right?

A. I look at the results because at this stage I can only look at progress pace, and what that tells you about the results as of this stage.

Q. Do you agree with me, Dr. Wühler, that the process is designed to provide compensation to legitimate Bondholders?

A. Yes.

Q. And would you agree with me that calculation of current value is a key stage in compensation processes?

A. No, not generally. I mean, there are compensation processes that have no calculation of value. They are for fixed amounts. There are others that have simple calculations, so there are--as far as value is concerned, they are different types.

Q. Can I take you to your Second Report, please, Page 8, Paragraph 11. You see there are a few bullet points here and one is called "actualization."

Do you see that, Dr. Wühler?

A. On Page 8.

Q. Correct.

A. Yes. Yes.
Q. And that's your Second Report, just to be clear.
A. Umm-hmm.
Q. Do you see it says--I was basically just quoting your Report here where you say: "Calculation of current value is a key stage in compensation processes." Do you see that?
Those are your words; correct?
A. Well, you have to continue the sentence
Q. Okay.
A. Can I read it?
Q. Absolutely. You can.
A. It says: "Calculation of current value"--so, not just the fact that value is in compensation, but "calculation of the current value is a key stage in compensation processes that are dealing with claims arising out of situations reaching back a considerable length of time." Because there's a time aspect you have to factor in.
Q. Right. And that's the case here, too; correct?

A. Sorry?
Q. We also have to go back in time here, is that not right?
A. This is a statement about--it's a feature of compensation programs. It doesn't talk about methodology. It talks about the fact that--
PRESIDENT FERNÁNDEZ ARMESTO: Let's go on. Because counsel was building up a question, and we have not reached the climax of the question.
BY MS. LAVAUD:
Q. Now, the next sentence actually says that--well, it refers back to the calculation of current value, and I think it says "this principle is generally recognized."
Do you agree with that, Dr. Wühler?
A. That's what I'm saying here.
Q. Umm-hmm. Now, here you didn't actually look at whether the Bondholder Process provides current value in this case did you?
A. I did not.
Q. You express no view on the formulas contained in Supreme Decrees. I think you said that before.

A. Not on anything concerning valuation.
Q. So, Dr. Wühler, let me ask you, if somebody went through this process for a few years and only received, say, a dollar for his or her bonds, would you still say that this process complies with established practices?
MR. HAMILTON: Objection. He's made it clear that he's not focused on those calculations.
PRESIDENT FERNÁNDEZ ARMESTO: Oh, no. But that is a reasonable question, because what she's asking you, you don't know what the valuation is. But counsel is asking is if the end result is that I am a Bondholder, I've gone through two, three years of process through these various stages, and at the end I get one dollar, is that still--what was your adjective? "Reasonable."
MS. LAVAUD: Whether it complies with established practices, which is what Dr. Wühler has tried to do in his Report, I believe.
THE WITNESS: That is not something I can comment about, whether $1 as an outcome in the Bondholder Process complies with accepted standards.

MS. LAVAUD: So, your testimony--
THE WITNESS: You said in the beginning is--excuse me, I didn't mean to interrupt you.
BY MS. LAVAUD:
Q. No, please go ahead.
A. You said whether that particular Bondholder will be happy with $1. That I can compare to other processes, but not whether the $1 is appropriate in this situation because I haven't--not been dealing with figures of value in this situation.
Q. So, your testimony to this Tribunal is that this process complies with the established so long as it doesn't--so, long as it provides a compensation that is not zero?
A. No. No. I've been in processes where, out of 130,000 claims, 129,000 were rejected in the process. After they had been let into the process. So, you can see all kinds of outcomes in these processes.
Q. So, let's take a look at what the Bondholder Process offered, actually offered to two Bondholders who submitted Witness Statements in this arbitration,

and I will refer to their initial just to protect their identity.

Are you aware that Perú has decided not to call those Bondholders to tell their story before this Tribunal?

A. Am I aware of what? Excuse me?

Q. That Perú has decided not to call those Bondholders to tell their story before this Tribunal.

A. I'm not aware of that.

Q. But you've seen their record of participation; right?

A. The documents in their files?

Q. Umm-hmm.

A. Yes.

Q. And you concluded, based on this review, that these records, what you say demonstrate that the Bondholder Process is functioning; is that right?

A. Can you point me to that?

Q. Umm-hmm. Paragraph 43 of your Second Report, Page 9.

A. Yes, I see it.

Q. Now, you also note in your Report that the

MEF has assessed a current value of the bonds of those Bondholders; right? That's Paragraph 42, third bullet point. It's basically the last sentence on Page 18, just to make it easier for everyone. You see--

A. Yes. Yes.

Q. Okay. But you did not include that value in your Report, did you?

A. No.

Q. So, you know that Mrs. L.--she's the first Bondholder--submitted bonds that her father and her grandfather received when their families' farm was expropriated in 1973; correct?

A. I think I recall that it was grandparents, yeah.

Q. And that was quite a large farm; right? It was 148 hectares.

A. I didn't look at those details.

Q. And when she submitted her bonds, nearly half of, I think, her coupons remained unpaid.

Do you remember that?

A. I don't remember that.

Q. And more than three years later, the MEF

assessed the value of her bonds to the equivalent of $67.

Do you remember that?

A. I didn't look at values. I looked at the processes.

Q. So, you don't know that she--that the MEF assessed a value of her bonds to $67.

A. I don't recall that figure because I didn't look at those figures.

ARBITRATOR DRYMER: I'm sorry to exercise the President's prerogative, but he said that now several times.

MS. LAVAUD: Right. Just for the record, Mr. Drymer, if I may, he does talk about those two Bondholders in his Expert Report, his second one, and he does mention that he's reviewed the file. So, I just wanted to--

ARBITRATOR DRYMER: I'm just saying, that question you asked three times. He said the same thing three times.

BY MS. LAVAUD:

Q. So, there's another Bondholder as well who

also submitted his Witness Statement in these proceedings, and he submitted Bonds following the expropriation of a 56-hectare farm that took place in 1975.

Do you remember that?

A. Again, I did not look at numbers.

Q. Okay.

A. So, I don't recall those numbers.

Q. So, you wouldn't know that, 3.5 years into process, the MEF assessed a value of his bonds to $240? That doesn't sound familiar?

A. I looked at the process, and I look at the stages that these claims went through, but I didn't look at those numbers. I don't recall those numbers.

Q. So, these two Bondholders together received a little more than $300 just for the expropriation of their farm. Now, Dr. Wühler, you dedicated, I think, what is it--30 years of your career to claims processes; correct?

A. Umm-hmm.

Q. And during your career, you gave a voice to millions of victims; is that right?

A. That's correct.
Q. Including in your role in the United Nations Compensation Commission, which had over, I think, 2.6 million claims; is that right?
A. That is correct.
Q. Now, when you consider the Bondholder Process as a whole, including in light of what those two Bondholders were offered, does that look like justice to you, Dr. Wühler?
A. I'm sorry, I have to repeat myself: I'm not making--I'm not giving an Opinion on the monetary outcome, on the amounts, on the methodologies there. I have been in compensation processes where, not only were a lot of people rejected completely, but where payments were made that, if you look at it as an outsider and not look at how the process is structured and what the basis is, you would probably come to the same conclusion. And I have to give you an example to show you why I'm making this statement.
MS. LAVAUD: I think that might be on the Respondent's time, an example.
PRESIDENT FERNÁNDEZ ARMESTO: Let the Expert

continue.
THE WITNESS: Because I have to explain why I'm saying this because you pointed to my 35 years and what I have done in those 35 years. In the German Forced Labor Compensation Program, to which I referred many times, because it has a number of features that are compared and I thought appropriate to compare, someone who was for five years in a concentration camp in Germany or somewhere during the Nazi regime would receive something like EUR 4,000 for five years in a concentration camp.
Not only were those people--unhappy is the wrong word. They thought that was an insult. Some of them brought cases through German courts to have Courts find that that was a process that was totally insufficient and inappropriate, but that was the framework of that process.
So, I cannot comment on something that is purely based on a number. Because it's always context.
BY MS. LAVAUD:
Q. Now, can I just ask you one final question,

Dr. Wühler?
PRESIDENT FERNÁNDEZ ARMESTO: Of course. But I think you must get closer to the microphone.
MS. LAVAUD: And I will do so, with great pleasure.
BY MS. LAVAUD:
Q. Dr. Wühler, you are being paid to testify today; right?
A. Yes.
Q. And may I ask what's your hourly rate?
PRESIDENT FERNÁNDEZ ARMESTO: If you remember. If you don't remember, don't worry.
THE WITNESS: No.
BY MS. LAVAUD:
Q. Is it a daily?
A. It's an hourly rate.
Q. Okay. Can I ask you what the rate is, please?
A. Well, you say--am I being paid for testifying here? I have a cap on my Contract, and the cap has expired, I think, the first day that the Hearing started. So, I'm not being paid for today.

Q. So, let me ask you how much--what's your hourly rate, normally?
A. I think it was 400. You would have to--I don't--I think it was 400.
MS. LAVAUD: So, 400--
MR. HAMILTON: You know he's not paid in Land Bonds.
MS. LAVAUD: Okay. Well, that's good to know.
BY MS. LAVAUD:
Q. So, in one hour of testimony, you will be paid, or you're paid more money than those two Bondholders were offered by the MEF; is that right?
MR. HAMILTON: Objection. Mr. President.
PRESIDENT FERNÁNDEZ ARMESTO: That is for conclusions, Dr. Wühler.
Any redirect?
MR. HAMILTON: Yes, sir. Could we have just a moment, please, to organize.
Mr. President, if we took the break now, I could be a lot shorter. Because I can take a few minutes and narrow down.

(Overlapping speakers.)

ARBITRATOR DRYMER: Call an offer that you cannot refuse?

PRESIDENT FERNÁNDEZ ARMESTO: This is what it is called an offer which I cannot refuse. We will be back at 4:15, 4:20? What do you prefer? I'll now give you the option, 4:15 or 4:20.

MS. LAVAUD: I'm happy with either, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: No, you choose.

MS. LAVAUD: I'll take 4:15.

PRESIDENT FERNÁNDEZ ARMESTO: 4:15.

Dr. Wühler, can I kindly ask you not to speak to counsel, to the Republic during the break? As you know, there is coffee and refreshments.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing. We continue the examination of Dr. Wühler, and I give the floor to the Republic of Perú.

MR. HAMILTON: Thank you, very much, Mr. President.

REDIRECT EXAMINATION

BY MR. HAMILTON:

Q. Thank you, Dr. Wühler, for your comments.

Now, Dr. Wühler, you were asked about the website of the Ministry of Economy and Finance, the Ministerio, of the Republic of Perú.

Do you remember that?

A. Yes, I do.

Q. Okay. But you did not have a chance to look at the website when you were asked to comment on it, so with permission, Mr. President, we will take a look at the website.

So, let the record indicate that we are demonstrating on the screen the website of the Ministry of Economy and Finance--

ARBITRATOR DRYMER: As of today, or these are screenshots?

MR. HAMILTON: This is as of today.

ARBITRATOR DRYMER: Very good. You are live.

MR. HAMILTON: This is the portal on their intention for the payment of the Land Bonds.

PRESIDENT FERNÁNDEZ ARMESTO: This is not for the record. We are now here live in the web?

MR. HAMILTON: Both are correct, sir. In the record at R-382 are impressions of this website. And we are also live and in color.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank you.

MR. HAMILTON: Okay. So, this website, Dr. Wühler, of course, I will not go through all of the different sections. It has different information about the Bonds, the legal framework, the procedures, the actualization of value and, of course, the classic "preguntas frecuentes," and you were asked, in particular, about "actualización del valor."

So, let's click down on that, and it was mentioned to you the methodology. Let's click. This is what you were asked about. Okay. And so, you saw here the methodology. And that links, as you can see, to the relevant Decree, so that there is transparent access to the Decree, and then if you go back up, "actualización del valor."

So, for instance, on "calculo," down below. Okay. And then there's an explanation, of course, of how the calculation is made.

So, Dr. Wühler, you've heard in this case that Gramercy did its own calculation of the amount of--available to it through the Bondholder Process, and you also mentioned in your answers regarding the steps in the process that there is a phase for advising Bondholders of the amount available to them.

How do those steps work in terms of advising Bondholders of the amount available to them?

THE WITNESS: Sorry. I don't understand the question. I'm sorry.

BY MR. HAMILTON:

Q. Sure. Sure. You mentioned in response to my counterpart that there was a stage in the process where Bondholders learned the amount available to them. How does that work?

A. Well, they learn it at the actualization stage.

Q. Please feel free to explain further why--the actualization stage, how does that step work as part of a Bondholder Process?

A. Because that is--if you have a process that requires calculation based on data coming from a

claim, which is the situation here, you have a Bond with certain characteristics, you have coupons. These factors go into a methodology and a calculation and that happens at the stage of actualization. And then, at the end of that, a value has been calculated.

Q. Okay. And, Dr. Wühler, you also mentioned--you also mention that Bondholders can exit the process if they don't like it. In other words, once they learn about the amount, they still have the option to leave if they don't like the amount?

A. That is correct.

Q. Okay. Now, so, in your view, just to conclude on this point, is there a way for a Bondholder to learn the amount available and decide about their ultimate participation in that context, and what does that tell us about the effectiveness of this process for Bondholders?

A. Well, they learn about the specific amount for them at the actualization stage, when it is completed, and they can make a Decision, and we see that they do make Decisions at that point, whether they continue or not, because some people have elected

not to continue and some have elected to continue.

Q. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Does the web state that the procedure is closed? Because I didn't see that. I mean, quickly, to be very frank, I had not been to the web, but quickly, it looked as if you could register.

MR. HAMILTON: I believe the answer is that, at least on a brochure, I haven't checked every page of this, as well as in relevant materials, the date is indicated.

PRESIDENT FERNÁNDEZ ARMESTO: Because this is not any longer available. The position of the Republic is that this procedure has been closed in January 2019, and it is not--if I am a Bondholder, the window has closed.

MR. HAMILTON: Correct. And that was publicly known, including to Gramercy.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Yeah. It didn't look on the web page, but maybe it's hidden somewhere.

MR. HAMILTON: No, I think it's not hidden.

I think it's there, but it's a little difficult for me to navigate to it at the moment because I don't recall offhand. Okay.

Now, next question--by the way, we see here photographs of the authentication process on the website.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

BY MR. HAMILTON:

Q. Okay. Next, Mr. Wühler, let's go to the table that you were asked many questions about. And we can put this table back up on the page.

While we're waiting for that graphic to come up, I just wanted to--housekeeping item. You were asked some compound questions.

Just to be clear, you're not opining on the meaning of "current value;" right?

A. No, I'm not.

Q. Thank you.

Can we get that table up?

Okay. Now, Dr. Wühler, you were asked various questions about the pace of the Bondholder procedure, and we heard calculations which we've never

seen in writing, but we heard calculations dating back to--I'm not sure exactly what date.

You mention in your answer that there's a process of designing the architecture, building the house, the machine, a startup phase.

How does that fit into the overall assessment of the pace of this process?

A. Well, that's a common stage in processes like that, and it does take time. How much, every single step of building that house has taken, I don't know. But, I mean, it certainly has taken time, and--and again, that happens in every process that has to be built and created, because these processes don't exist. They have to be created.

Q. Okay. Thank you very much, Mr. Wühler.

You were asked questions relating to the amount available to Bondholders, and you were given hypothetical examples, and you were given some references to examples that are in a binder that we heard about but didn't look at.

If there is a Bondholder, for example, I represent to you that one of the Bonds that Gramercy

presented to this Tribunal in Opening Arguments, in fact, that Bond would be worth--that Bond would be worth twice as much through this Bondholder Process than what Gramercy paid for it.

Does that tell you anything about the efficacy of this Bondholder Process compared to Gramercy's treatment of Bondholders?

A. Well, it would certainly say something about the efficacy because it would have one claim going all the way through the process and through valuation and actualization. Again, I didn't make comments on the actual amounts or the values, but it would tell you that that claim would have gone through that process, and that is a process that is available.

Q. Thank you, Dr. Wühler.

You were asked various questions about the reason for participation rates or Decisions by Bondholders to continue to subsequent phases or not. As you've heard during the course of this Hearing, it turns out that Gramercy acquired over the past couple of years, two or three years, acquired additional Land Bonds.

If a Party acquires bonds and keeps them out of a process, would that be one reason for reduced participation rates?

A. I mean it wouldn't be a reason, it would be an objective fact. Because, I mean, if they don't go into the process, they can't be used for the baseline.

Q. Dr. Wühler, just before the break, you gave comments about your profound experience handling compensation procedures, and mentioned that sometimes people are happy and sometimes they aren't.

Looking at the totality of this compensation procedure for Bondholders of the Agrarian debt, what are your conclusions regarding whether this is an effective procedure to resolve the issue of the Agrarian debt?

A. My conclusion was, and I said that, in my concluding points at the introduction, that it is an effective process. Whether each individual Bondholder will see it that way, that's a different question, but that was not my assignment.

Q. And in conclusion, Dr. Wühler, looking at the totality of the progress to date and your

understanding of the ongoing progress, what is your conclusion regarding the overall efficacy of this process?

A. Overall, as I said, it's effective. And it's effective in the circumstances that it has. We went through all these stages, we went reasons, why these stages are where they are. It is effective, and it's effective compared to other processes comparing to the different stages that they have.

Q. Thank you, Dr. Wühler.

MR. HAMILTON: No further questions, Mr. President.

MS. LAVAUD: No further questions from the Claimants. Thank you, Mr. President.

ARBITRATOR STERN: No questions.

ARBITRATOR DRYMER: No questions. Thank you, Doctor.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you very much, Dr. Wühler, for--you have made the effort of coming from Germany to help us. Thank you very much. And with that we finalize your examination.

THE WITNESS: Thank you, Mr. President.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: And now, shall we break for five minutes and before we call our next, Dr. Guidotti. So, five minutes' break.

(Brief recess.)

PABLO GUIDOTTI, RESPONDENT'S WITNESS, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Are you going to give your statement in Spanish or English?

THE WITNESS: In English.

PRESIDENT FERNÁNDEZ ARMESTO: And would you prefer to make the declaration in English?

THE WITNESS: It's the same to me.

PRESIDENT FERNÁNDEZ ARMESTO: You're Argentine?

THE WITNESS: Yes, I'm Argentine.

PRESIDENT FERNÁNDEZ ARMESTO: Professor Guidotti, thank you very much for being here with us.

THE WITNESS: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: As a first step, we must take your oath as an expert.

THE WITNESS: Yes.

I solemnly declare, upon my honor and

conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you very much, Professor Guidotti. Thank you for being here with us, and I give the floor now to Respondent.

MR. HAMILTON: Thank you very much, Mr. President, Members of the Tribunal.

We'll take a moment to pass out our presentation.

PRESIDENT FERNÁNDEZ ARMESTO: And we have to give it a number. That will be H-13.

DIRECT EXAMINATION

BY MR. HAMILTON:

Q. Very well. Mr. President, on behalf of the Republic of Perú, I would like to introduce Professor Pablo Guidotti, Expert, and he has prepared a presentation for you, and I will invite him to speak directly to the Tribunal.

PRESIDENT FERNÁNDEZ ARMESTO: Professor Guidotti.

DIRECT PRESENTATION

THE WITNESS: Thank you. Good afternoon, Members of the Tribunal, Mr. President. I have eight Slides, including the qualification, so I will try to be efficient in the use of time.

So, let me first put up this slide summarizing my qualifications.

I am an economist. I hold a Ph.D. in economics from the University of Chicago.

(Comments off the record.)

THE WITNESS: I'm currently a professor and member of the Board of Directors of Universidad Torcuato Di Tella in Argentina, which is one of the leading research universities in Latin America, and I was founding dean at that university in the past.

So, instead of going through these bullets, I will simply add some complementary information.

When I was on the Board of Directors of Argentina Central Bank, and I was second Vice President, I led the adoption by Argentina of modern international standards of banking relation and banking supervision, and I was very much involved in the successful management of a banking crisis that

occurred in '95 in Argentina after the devaluation of the México peso in November 1994.

As Treasury-Secretary and Deputy Minister of the Economy, I had responsibility over the three major areas of public finance: Expenditure, tax policy, and debt management. Also in that capacity, I participated actively in the international discussions about the international financial architecture in the context of the Group of 22, which was the predecessor of the Group of 20. And in those discussions, I was co-chairman, jointly, with Mario Draghi, the former ECB president. I was co-chairman of one of the Working Groups that dealt with strengthening financial systems, but I also participated in the other Working Group on sovereignty crisis and crisis resolutions.

Let me--in terms of my academic work, I published several scientific papers dealing on issues such as Government debt, fiscal policy, monetary policy, and issues on international finance.

So, let me go now to the next slide and start dealing with the main points, the main conclusions that I reach in my two Expert Reports.

The first one is that Perú displays today, and has displayed for over two decades, a very sound economic and fiscal management. As we have discussed, Perú suffered serious economic and political instabilities that led eventually, between 1988 and 1990, to a hyperinflation, and at that time the GDP of Perú collapsed by a cumulative--even more than 25 percent. So, it was a megacrisis, and Perú was also part of the many developing countries that restructured its debt within the context of the Brady Plan.

Since the mid-1990s, Perú has implemented a very sound economic management and has become a success story in Latin America and emerging markets in general. Between, for instance, 2002 and present, the GDP of Perú has increased by a cumulative 140 percent. During all these years, inflation has been on average 2.8 percent a year, so half of what has been the level in other emerging markets, and if we can summarize the fiscal responsibility of Perú, that can be summarized in the fact that today, it has one of the lowest debt-to-GDP--public debt-to-GDP ratios, at 26 percent.

This track record, which spans different administrations over these almost 25 years, has been clearly recognized by international organizations such as the IMF, the OECD, and by international credit rating agencies. The major credit rating agencies, Standard & Poor's, Fitch, and Moody's, rated investment grade Perú in 2008, and since then have upgraded further Perú to the levels of BBB-plus, for Standard & Poor's and Fitch, and A3 by Moody's.

As part of this story of fiscal responsibility, Perú has developed a very sophisticated and transparent debt management--public debt management strategy, anchored on a very solid institution--institutional infrastructure. Perú has accessed international capital markets with a placement of Global Bonds. It has issued 24 Global Bonds in dollars, raising about $14.5 billion, and it has issued three Global Bonds denominated in euros, raising about $2.75 billion.

In addition to the development of this international program, Perú has developed a domestic market anchored on structural reforms, such as, for

instance, the privatization of the Social Security system, which, as in the case of Chile, also allowed the development of pension funds and institutional investors. In fact, in recent years, Perú has tried to develop more the domestic bond market with the issue of "bonos soberanos" that are modern sovereign bonds denominated in a Peruvian currency, and substitute--reduce the dependence on external financing. And this is why, when we look at the market for bonos soberanos, in 2013 it was about 6.5 percent of GDP and has now reached a number of 12.5 percent currently. So, there has been this substitution.

The debt strategy of Perú is very transparent. It has a medium-term projection, and the documents that describe the objectives and what they are doing are published on the website.

Let me finally simply, based on my experience as Treasury-Secretary, when we talk about fiscal responsibility, it's not a theoretical term. Fiscal responsibility is not easily attained, and it's not easily maintained consistently during 25 years. For

that, you need to develop institutions to have a very good budgetary process in place, have careful debt management, and have respect for the legal framework of your country. And I think that Perú's handling of the Agrarian Reform Bonds actually shows precisely it is totally consistent with this notion of fiscal responsibility.

Let me now move to a second area that I refer to in my Reports, in which I show that Agrarian Reform Bonds are very different from modern sovereign bonds. And in this comparison, I want to focus on issues of substance, not on, you know, characteristics that may not be really important. And this is why I focus on three main areas that go directly to the nature of bonds and to the risks that investors take when they hold these bonds, as well as the market infrastructure of how they are traded and settled.

So, these three areas are basically the purpose for the issuance of bonds, the trading in secondary market, and the risk protection, which have to do with whether, for instance, bonds are protected against inflation or not, whether they are rated by a

credit rating agency, and also, of course, the governing law and courts that apply to these contracts.

So, the following table is actually one that compares Peruvian Agrarian Reform Bonds to Global Bonds, the type of bonds that were the subject of the Abaclat v. The Republic of Argentina Case. I will talk a little bit in detail on this table, and then more generally in the comparisons with bonos soberanos and other sovereign bonds that are analyzed in detail in the Report, but I don't want to bore you with a lot of information.

So, when we compare the Agrarian Reform Bonds to the Global Bonds in terms of why they were issued, well, we know that the Agrarian Reform Bonds were given as compensation for land expropriation. They were never sold to investors; namely, the acquirer or the person that holds these Bonds typically, originally, didn't do it voluntarily. They didn't buy. Okay? And I think that the involuntary nature of the Agrarian Reform Bonds is precisely at the basis of why the Constitutional Tribunal then decides to

update the value of these bonds, something that did not, with many other contracts in the economy that also were nominal and were subject to the risk of inflation, which, if you voluntarily buy a contract which has that characteristics, you are assuming the risk of inflation.

So, when we look at the Global Bonds, the nature is totally different. Global Bonds are issued to investors that are institutional investors, that can be retail investors, and they are typically issued through the use of underwriters, large financial institutions that intervene in the primary market and then also in developing the secondary market. They are marketed through roadshows, for instance, so it is a totally different origin of these two securities.

If we go to the market infrastructure to what allows a secondary market to exist, we note that the Agrarian Reform Bonds which are issued in physical form, bearer form, they were never registered with depositories--

PRESIDENT FERNÁNDEZ ARMESTO: Nominative. Not bearer. They were never bearer Bonds.

THE WITNESS: Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Nominal Bonds.

THE WITNESS: They were never listed on the Stock Exchanges. They were not registered with central depository institutions. So, they didn't have the characteristics that allowed the development of a secondary market, and in fact, there is no secondary market for Agrarian Reform Bonds, and they are illiquid assets.

In fact, I saw in the declaration or in the testimony of Professor Olivares-Caminal that there was shown a document that was called vademecum bursatil (in Spanish), and if one analyzes the table that refers to this negotiated volume in this extrabursatil mesa de negociación (in Spanish), that were 200,000 in effective value of nominal terms, in that same document there is an indication of the exchange rate. At that time, that was one soles de oro--actually, one dollar was equivalent to 2,2065.5 soles de oro, so if we divide 200,000 by that exchange rate, one sees that the total amount negotiated of a "bonos de deuda Agraria" in 1983 was $88. Okay? So, simply

nonexistent.

If we go to the Global Bonds, they are issued in electronic form. They are listed on foreign exchange markets. They are registered with international depository institutions, such as DTC, Clearstream, Euroclear. Their trade is electronical. Their settlement is electronic, and sometimes investors hold these bonds through security entitlements. So, this infrastructure is what allows for the existence of a liquid bond market where there is continuous trading, many investors are participating in it, and transparency in the sense that investors have continuously the prices, know the prices of these securities.

BY MR. HAMILTON:

Q. Professor Guidotti, in your Reports, you discuss the purpose of contemporary bond issuances underlying these different characteristics--

A. Yes.

Q. --based on your firsthand experience as the former Treasury-Secretary of Argentina who helped pioneer such issuances?

A. Yes.

Q. What role do those kind of issuances play with respect to the contribution to the economic development of a country, and how does that compare to these old agrarian debt bonds?

A. Yes. Certainly the objective--the primary objective of the issuance of all of these modern Sovereign or Government Bonds is really to finance budgetary needs. In some cases, they can be used in operations that simply manage the profile of debt, the Government debt, with the objective of reducing risks, reducing the vulnerability to capital market volatility, and so on.

So, let me go, then, to the third aspect, which corresponds to the comparison of these risk characteristics. Well, first of all, we know that Agrarian Reform Bonds were nominative, were issued in nominal terms with fixed coupons; no protection for inflation whatsoever. So, they were not indexed. They were issued in soles de oro, the old Peruvian currency, and they are governed by Peruvian law and subject to the exclusive jurisdiction of Peruvian

courts.

Instead, the Global Bonds are issued in foreign currency. So, they have a protection against devaluation and, implicitly, inflation. They are normally issued according to foreign law, and the issuer submits to the jurisdiction of foreign courts.

So, the summary of these characteristics is that, really, Agrarian Reform Bonds are completely different from Global Bonds. I do the same explanation, very similar characteristics, with respect to the bonos soberanos that are issued in the domestic market. Okay? And I also compare the Agrarian Reform Bonds to the U.S. Treasuries. Okay?

You could ask: Why on earth would you compare Agrarian Reform Bonds to U.S. Treasuries? Okay? I simply do it because there was a claim in Professor Olivares-Caminal's Report that Agrarian Reform Bonds were similar to U.S. Treasuries because they were issued in domestic currency and that they had long maturities. But, of course, that is really, in my view, a very superficial analysis, because we all know that the U.S. dollar is very different than

other currencies. It is what is called a reserve currency, a currency in which most international reserves are held on. It is the currency in which most international trade is denominated, commodities are priced in, and often is referred to as a "dominant currency."

Moreover, the U.S. Treasury market is the largest and most liquid market in the world, with a volume of over $16 trillion. Many foreigners, foreign institutional investors, hold U.S. Treasures, including central banks, as precisely international reserves. U.S. Treasuries, moreover, are the risk-free asset by excellence, and it's the asset that is used as a benchmark to price all other bonds issued in dollars. And they have a particular behavior also, because, for instance, if there is capital market volatility or uncertainty, prices of bonds would tend to fall, but the price of Treasuries would go up with a phenomenon that is always called "flight to quality."

Let me now move to the following point--

Q. Professor, just to note, we may need to pick

up the rhythm just a little bit for timing purposes.

A. Yes. Let me move to this point, which is: Essentially, what I argue is that Agrarian Reform Bonds do not fall into the commonly held category of public debt. To do that is not a matter of going to a dictionary and finding what the word means. Okay? Here, we need to understand what is the meaning and usefulness of an economic aggregate like public debt, and how governments and international organizations define it.

Okay. And this implies that, for instance, it is composed by assets that are comparable, that are homogeneous, so that it allows, for instance, to evaluate whether the fiscal policy of a country is sound, whether a country is subject to external shocks, to capital market volatility. This does not mean that there does not exist other liabilities in the Government.

For instance, liabilities such as pensions from the Social Security are not part of public debt. Okay. Because if we would include like mixing apples and oranges, then we would have an aggregate that

suddenly we want to evaluate what is the vulnerability to capital market uncertainty. And while we know that there can be a run on bonds on the market, on the bond market, there will never be a run on pensions; right? And there never will be a run on Agrarian Reform Bonds that have no secondary market whatsoever.

Secondly, if we look at what is in the IMF Government and Finance Statistics Manual, "public debt" does not include contingent liabilities, which are liabilities whose value or whose existence depends on some event that occurs in the future.

Well, Agrarian Reform Bonds are contingent on liabilities. Their value is determined once we go through the Bondholder Process, that we have heard in the previous examination, and well, of course, initially, people go and try to collect and ask for a collection of these bonds. This is totally consistent with the testimonies of Vice Minister Sotelo and Minister Castilla, okay, because essentially what they pointed out--and there is an item in other internal debt that is valued at 1 cent. Certainly, that 1 cent is not the updated value of that these bonds, and the

bonds now are--essentially, what one sees is a description of the process that--of collection of this.

Let me now move to the following page, where simply I state my opinion on the contribution, alleged contribution of Gramercy to the Peruvian economy. First, the size of the purchase, which was $33 million, represents only 0.03 percent of Perú's GDP at the time, which was about 100 billion. So, the number is really so small to think that it has a significant impact on the economy.

Moreover, we really don't know what was done with the proceeds of the sales of the individuals that sold the bonds, so we don't really have basis to argue that they have a contribution.

Also, it is clear that Gramercy did not provide liquidity to Peruvian markets. Again, isolated transactions of 33 million do not create a secondary market. The secondary market is a different thing, and if Perú markets are liquid, it is because Perú has been fiscally responsible and has a low public debt to GDP ratio and has a modern debt

strategy, not because of these transactions.

Let me go now to the next statement, which has to do with the alleged analogy between bond restructuring and the term "debt restructuring" with a Bondholder Process.

I said that I was part of the international discussion on the international financial architecture where these issues were discussed, so I know exactly what this means. So, when we talk about the debt restructuring, we are typically talking about three items, three big characteristics.

First of all, in a debt restructuring, the debtor has inability to pay. Often it's in default or it is close to default. Okay. If we say is this what happens in Perú with the Agrarian Reform Bonds, no. The Agrarian Reform Bonds, as far as I know, have never been defaulted upon. They just simply lost value because of hyperinflation, but there has not been a breach of the original contractual terms of these bonds.

Moreover, Perú is actually paying, has willingness to pay and has ability to pay, and it's

demonstrating through the Bondholder Process that it's paying and has fiscal responsibility.

So, analogies to Perú, to Argentina or Greek defaults, I think, is totally far out. Anybody modestly familiar with Perú knows that in Perú there is no sovereign debt crisis. There is no need to have a restructuring.

The second aspect is that in a debt restructuring, you talk about a reduction of value relative to the contractual terms, and this is why debtors and creditors negotiate. In the case of the Agrarian Reform Bonds--sorry, I go fast--in the case of the Agrarian Reform Bonds, really the procedure that was decided by the Constitutional Tribunal adds value to the original contractual terms of these bonds. So, there is no reduction in value. If anything, there is an increase in value. And this is why there is no analogy to the debt restructuring.

Third is the point of fair and equal treatment. In debt restructurings, typically some investors, foreign investors, fear to be treated, to be discriminated against, and, therefore, this is an

important principle.

In the case of the Agrarian Reform Bonds, the Bondholder process and the decision of the Constitutional Tribunal applies to everybody. So, there is very equitable treatment. And I would say that as a former policymaker, I would find a worrisome precedent if, in these proceedings, Gramercy were allowed to obtain a more favorable treatment than that available to Peruvian citizen. It would be sort of a reverse discrimination, a discrimination against domestic citizens, and I would find that inconsistent with the policy objectives that countries seek when they sign bilateral investment treaties.

Bilateral investment treaties are meant to provide assurances to foreign investors that they will be treated fairly as a way to promote foreign direct investment and as a way to promote development and a growth in developing country. It would be really surprising that a bilateral investment treaty would now be used to obtain a windfall gain, a commercial gain in a way in which it is not available to domestic citizens. Okay. So, this is simply my conclusion.

Thanks.

MR. HAMILTON: Mr. President, just one question to conclude.

BY MR. HAMILTON:

Q. Dr. Guidotti, following on the lines of what you just mentioned, in your First Report, you have a section at the end, it's called "The Impugnation of Perú's Reputation for Fiscal Responsibility," and you say at the end: "Gramercy has engaged in efforts to impugn Perú's well-deserved reputation for fiscal responsibility as a way to damage Perú, force a windfall and/or suppress a Bondholder procedure and give cover to its own risky speculative conduct."

What do you mean by that, Dr. Guidotti?

A. Well, I have analyzed especially two documents that essentially tried to argue that Perú is not meeting the IMF standards, which is wrong, and also that it doesn't deserve entering as a member to the OECD. I have also seen, which is also incorrect, and I have statements by "Angel Gurria" that exactly say to the States to the opposite. And I have also seen a paper which is used as the basis of why some

Experts, including Edwards, talk about default, a paper by Arturo Porzecanski which simply has no basis. They have "default" in the title, but the word "default" is simply a word in the introduction with no justification, no reference whatsoever. And then this is used as well as Arturo Porzecanski said, but you go to Arturo Porzecanski, and there is nothing. Okay.

So I think in this sense, I think I have seen these documents that actually put Perú in a bad light when actually Perú should be praised, and it is praised around the region as a country that turned its economy around, and now is really a star in terms of economic performance, even more so after the whole political situation that arose in Chile, where Chile was, by definition, the standard.

PRESIDENT FERNÁNDEZ ARMESTO: Was the product of your University?

THE WITNESS: In Chicago?

PRESIDENT FERNÁNDEZ ARMESTO: In Chicago. Was Chicago a school of economy--

(Overlapping speakers.)

THE WITNESS: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: --had importance?

THE WITNESS: Yes. Yes, has important members but--

PRESIDENT FERNÁNDEZ ARMESTO: Members in the Chilean Government or not?

THE WITNESS: It was--

PRESIDENT FERNÁNDEZ ARMESTO: Or you knew this--

THE WITNESS: I would say that it was overestimated, but certainly--

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: --there are good economies in Chile, and (in Spanish) from Chicago also.

MR. HAMILTON: No further questions, Mr. President.

MR. FRIEDMAN: Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q. Good afternoon, Professor Guidotti.

A. Good afternoon.

Q. My name is Mark Friedman. I'll be asking you a few questions.

A. Yes.

Q. You understand, of course, your duty is as an independent expert; correct?

A. Yes.

Q. And you're being compensated for your time, I assume.

A. Yes.

Q. What's your rate at which you are being compensated?

A. The Contract has a cap, so I'm in the same position as Dr. Wühler, but now we are working free in this testimony.

Q. Umm-hmm. Yes. Until you were working free, what was your hourly rate?

A. It was 850.

Q. $850 an hour?

A. Yeah. Umm-hmm.

Q. Okay. And I know that have you worked with White & Case and this team before; right?

A. Yes. I was Expert in the

Abaclat v. Argentina Case.

Q. Yes. And have you worked with them in any other cases?

A. No.

Q. Okay. And you coauthored an article with Mr. Hamilton, I believe; right?

A. Yes. Actually, that was a great collaboration between an economist and a lawyer, so it was very satisfying. And, actually, that came out from the experience of not only Abaclat, but the experience of Argentina. At that time--

Q. Okay. And so you haven't--

A. --as a rogue nation in the capital market, against retail Italian investors, almost the opposite as here.

Q. Yes. And you haven't worked with White & Case since that time; is that right?

A. I haven't.

Q. Okay. Now, you were asked, as I understand it, based on your First Report, to provide an expert report on considerations of sovereign debt and the Agrarian Reform Bonds that are at issue in this

arbitration. That was your mandate? It's in the first paragraph of your First Report, if you want to take a look at it.

A. I'm looking at the Argentine version.

Q. Sure. Your First Report, Paragraph 1.

A. These are the Argentine--the Spanish translations.

Q. Oh. Would you like the--we have the English ones. Would you like them?

A. Yeah, it says "considerations about sovereign debt"--thank you--and the Agrarian Reform Bonds," right.

Q. Yes. Right.

And your background, of course, is an economist; right?

A. Yes.

Q. Now, the last conclusion that we just saw on your Slides was that: "As a former policymaker, my Expert Conclusion is that it would set a worrisome precedent if in these proceedings Gramercy were allowed to obtain more favorable treatment than that available to Peruvian citizens."

You are not holding yourself out as an Expert on bilateral investment treaties, are you?

A. No. No, no. For that reason, I clarified that this is a statement as a foreign policymaker, and I talk about policy objectives, and I'm not a lawyer so I will not enter into a legal discussion about--

Q. I see.

So, as a policymaker, you would simply resist countries entering into bilateral investment treaties, I guess.

A. No, I have not said that.

Q. Well, you are aware that bilateral investment treaties have as a normal feature of them that they provide rights to foreign investors that may not be available to domestic citizens. You're aware of that; right?

A. I'm not aware that they provide the possibility of having a better treatment than domestic citizens.

Q. You're not aware--

A. I think that they provide assurances, but, again, this a legal issue, and I'm not going to be

talking about that.

Q. And so, you weren't aware that many treaties provide in addition to national treatment provisions, they also provide other rights? I guess you weren't aware--

(Interruption.)

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. You must leave a second between the question and the answer because otherwise it is impossible.

THE WITNESS: Sure.

Yeah. I'm not familiar with all the treaties, and so I'm not really providing a legal opinion.

BY MR. FRIEDMAN:

Q. Yeah. So, all of those, the--those features are beyond your expertise; correct?

A. Yes.

Q. Okay. And so, the opinion you gave wasn't based on an actual understanding of the nature, structure, or rights associated with most bilateral investment treaties; correct?

A. It was based on the understanding a

policymaker has on the role of bilateral investment treaties in the fostering of Foreign Direct Investment and economic growth.

Q. Yeah. But I'm not going to let you off so easily because isn't it the case that the whole reason that bilateral investment treaties work to attract investment to less developed countries or countries with less developed rule of law is because they provide rights that are better than those provided by the domestic economy? Otherwise, they would be unnecessary.

A. Again, I think that this is a legal question. I can tell you simply my reasonable answer without entering into reasonable discussions--with legal discussions. I think that treaties provide assurances that investors are not going to be discriminated against. Okay. But they do not provide privilege to foreign investments vis-à-vis domestic investments.

Now, the specifics of how this assurances translate in the letter of the law, I'm not an expert, and I cannot give an opinion and this is why I think there is an important task for the Tribunal; right?

Q. I take it you are not responsibility for Argentina's entry into bilateral investment treaties?

A. No. No, they were previous to my arrival to Argentina.

Q. So, your policy-making experience did not include considerations actually undertaken by states and entering into bilateral investment treaties--

A. Not in negotiations, no.

Q. Okay. Now, I next to want turn to another topic in your Report, and you talked about it again today, which is drawing distinctions between the Agrarian Land Bonds, on the one hand, and what you call "global contemporary bonds"; right?

A. Yes.

Q. And you say they are not comparable, and you gave us a chart in your presentation today because Land Bonds are physical instruments. For example, while Global Bonds trade on electronic clearing houses, they are different currencies, different laws, different ways of having been marketed, and all that; right?

A. Yes. These have very significant--

Q. Yeah.

A. --differences that go exactly to the nature of these different instruments.

Q. Yes. And so, the instruments are different; right?

A. Yes.

Q. You don't, in your Report, express any particular conclusion that you draw from the fact other than observing that these differences exist; right?

A. No. Especially this is what I was asked, and my conclusion is that Agrarian Reform Bonds are unique in nature because of their historical origin, and they are very different--

Q. Sure.

A. --to other modern government bonds and to some other bonds that have been introduced.

Q. Right. But you're not saying, and you don't opine, that the Agrarian Land Reform Bonds are not bonds; right?

A. They are called bonds.

Q. They clearly are bonds; right?

A. They are called bonds.

Q. Yes.

A. And so, on that topic, really what I say is that they are not included in the definition of "public debt." Okay. And I would say more that even if they are called bonds, what the Agrarian Reform Bonds, they really are an implementation of a specific expenditure that is the land compensation but, of course, through time.

Q. Yes. But you agree with me they are bonds?

A. They are called bonds. So, if you want to.

Q. They're not just called bonds; they are bonds; right?

A. I don't know how you are using the word "bond."

Q. Do you know what a bond is?

A. Yes.

Q. What is a bond?

A. And this is why I'm saying the bonds are instruments that are sold to investors, that raise funds.

(Overlapping speakers.)

Q. So you are saying--

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman--

Q. We will come to public debt--

MR. HAMILTON: Give him a respectful chance to hear and answer.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: You are really as fast as Ms. Lavaud, and we must go slower because it is impossible to transcribe your exchanges.

MR. FRIEDMAN: Yes.

THE WITNESS: Yes.

BY MR. FRIEDMAN:

Q. Professor, let's separate out if we can for a minute the discussion of public debt. I'm going to come to that. Okay?

I, first, just want to talk about what a bond--right?--because can you have bonds that aren't any part of public debt; right? You can have private bonds?

A. Yes.

Q. And those would still be bonds; right?

A. Yes.

Q. Okay. And you're going to tell me, I think, what's a bond? What is a definition of a bond?

A. It's a contract that essentially provides a schedule of payments, sometimes with coupons, sometimes with not, and that has certain characteristics, and it is issued in exchange for resources.

Q. Okay. And what are the essential characteristics that make something a bond as opposed to a note or something else?

A. I have already described the characteristics of modern bonds.

Q. No. I wasn't asking about modern Global Bonds, I understand what those are. I'm asking you, a much simpler, what's a bond? What are the essential characteristics of a bond?

A. I already said. It's a contract that specifies a number of payments over time and these payments typically are associated with the principal and some interest that is manifested as coupons.

Q. Okay. And you'd agree with me that Land Bonds meet that definition; right?

A. That they are payments over time, yes.

Q. Okay. And, of course, if--you're familiar with private bond placements; right?

A. Yes. I'm not particularly familiar with private bond placement, but, yes, I know what they are.

Q. But you know about them; right?

A. Yeah.

Q. So, for example, if a Peruvian business wanted to borrow money by a bond issuance to its shareholders, family members, something like that, and it created a domestic law governed instrument that would be subject to Peruvian Courts, and--but it acknowledged the debt with a stream of payments, it was in paper and written down, and six of the Bondholders were associated with the organization became Bondholders, would you agree with me that, although that lacks many of the features of a modern Global Bond, it is still a bond; right?

A. Well, there are many forms in which obligations to pay over time take. You have also loans, for instance.

PRESIDENT FERNÁNDEZ ARMESTO: No, but the question is not that. The question is whether--

(Overlapping speakers.)

THE WITNESS: So, it is whether--

PRESIDENT FERNÁNDEZ ARMESTO: The question is whether--Professor, the question is whether that private bond, which has been described by Mr. Friedman, in your economic analysis would qualify as a bond, not in a legal analysis.

THE WITNESS: Yes. It would qualify.

BY MR. FRIEDMAN:

Q. Okay. And with our Agrarian Reform Bonds that we're talking about in this case you already acknowledged, of course, they say bond on their face. They acknowledge a debt of the State; correct?

PRESIDENT FERNÁNDEZ ARMESTO: I think he has said yes to both.

BY MR. FRIEDMAN

Q. I don't know that he said they acknowledge a debt.

A. They acknowledge an obligation of the State of making a payment over time of compensation for land

expropriation.

Q. Right. And you were aware, of course, that the Government guaranteed that debt obligation with no reservation whatsoever?

A. All government debt is typically warranted by a State.

Q. And that includes, of course, the bonds in this case; right?

A. I would assume so.

Q. Okay. Now, I did promise that we would come and talk about public debt--

A. Yes.

Q. --which is something that you testify about.

And I would like to take you to Paragraph 22 of your Second Report, if you wouldn't mind. That's at Page 13 of your Second Report.

A. Which paragraph?

Q. It is Paragraph 22. It appears on Page 13.

A. Okay.

Q. Now, we see it here. It is in Section II.3, and it's this one paragraph, 22. Now, am I right that you express no opinion in your First Report about

this? This was new in your Second Report--that is any comment on public debt?

A. I don't recall if I treat this particular--probably this is--counts as a response of something that I--that was in the--in one of your Expert Reports.

Q. Yeah. If it would help, we may just take a moment and look at the Table of Contents of the two Reports and I think you'll see that this is kind a new chapter.

Do you accept that?

A. Well, possibly.

Q. Okay. And were you asked--

A. Actually, I talk about this when I talk about Mr. -Jaramillo's paper where also I say what I said in the--in my introduction, where I specify that Agrarian Reform Bonds are contingent liabilities and they are not part of the public debt, and I cite the IMF government statistic manual, all of that is in the First Report.

Q. Well, maybe you can take us back to that on redirect because I don't remember it being discussed

in that way.

But in any event, let's look at the first sentence of 22. It says: "In an investment context, the Agrarian Reform Bonds are not within the commonly understood definition of 'public debt' because they were not issued in connection with government financing."

Do you see that?

A. Yes.

Q. Now, here, you--this is--the entirety of your opinion in this Report is based on this one paragraph; right? That's the full explanation for your point; correct?

A. There are two parts that I described in my presentation. One is the fact that they were not issued in connection with Government financing. They were given as compensation, and then there is the issue that they implement--this is in this paragraph--contingent government expenditure that is essentially the compensation, and that because of that--and this is what I discuss in the First Report--Agrarian Reform Bonds are not part of the

commonly understood definition. Not only commonly understood, but what the IMF and international standards of how you present a Government statistics actually tell.

Q. So, am I right this is the entirety of your reasoning in the Second Report?

A. Yep.

Q. Okay. And there are no citations here. You mention the IMF Report. So, we should go to that in a bit, but there are no other citations that you cite; correct?

A. Well, this is a conclusion of--well, I have discussed all of the very different characteristics of the Agrarian Reform Bonds in relation to other modern bonds.

So, here I talk about public debt, and, therefore, this is a reference and--

Q. But, Professor--

A. --it's a little bit--

PRESIDENT FERNÁNDEZ ARMESTO: The question is different.

BY MR. FRIEDMAN:

Q. Yeah. Professor, surely you know--surely you know that public debt includes more than just global sovereign bonds; right?

A. What I am saying and what I say in the First Report is that public debt does not include contingent liabilities and that Agrarian Reform Bonds are contingent liabilities. And I said before, of course, the notion of "public debt" does not include all of the liabilities of a State. And this is why I said, for instance, pensions are not included. If you have lawsuits that are pending, those are not included. And they are--in the recommendation of the IMF, they should be treated as memo items.

Q. So, am I right that public debt includes more than just global sovereign bonds?

A. They include--yes.

Q. Yes. Right. So, the other portions of your Report, just talking about modern global sovereign bonds, don't address whether or not the definition of public debt.

Would you agree with that?

A. Could you repeat?

Q. Yeah. What I'm saying is, the full explanation for your analysis about public debt is here in this one paragraph with no citations; right?

A. I have said that there is another part where I touch on this same subject that is in the First Report.

Q. Okay. Well, we will talk--

A. Here there is no citation in this particular paragraph.

Q. Now, are you aware that Perú itself classifies Land Bonds as public debt?

A. I said exactly that based on the testimony by Vice Minister Sotelo and Minister Castillo.

Q. Yes. So, they said--

A. That there is a line on the Agrarian debt under other internal debt and in the documents, in the informe de deuda (in Spanish), it appears jointly with contingent liabilities and the only thing that it says is essentially the legal statutes or the process for paying these bonds.

And as the Vice Minister and the former Minister testified, they are registered for 1 cent.

So, they clearly refer to the original contractual values.

In Perú's publication, the same paragraph that appears in the "informé de deuda" is also included in another document that is called "informé" de contingencias explicitas (in Spanish). It's all on the web.

Q. Sorry. That was a very long answer.

A. Yes.

Q. So, I think you are saying that you don't believe that they--that Perú treats the debt as public debt?

A. I said that Agrarian Reform Bonds are not included--

PRESIDENT FERNÁNDEZ ARMESTO: No.

(Comments off microphone.)

BY MR. FRIEDMAN:

Q. Professor, would you agree with me that--would you agree with me that really the public debt is the debt of a State and its distinguished from private debt? That's the reason we call it public debt?

A. Yes, the distinction between public and private has to do with the issuer, one is the Government and the other is private entity.

Q. Right. And you heard the testimony of Ms. Sotelo where she described the Bonds as part of the internal domestic public debt of the country. That was her testimony--

A. Yes, this is what I say.

Q. --on day 3?

A. She also says that it is registered for 1 cent and it is registered, as she said in the testimony, as other internal debt.

So, what I'm saying here in this paragraph and what is in the First Report is that in the definition of public debt that is used by governments and is used, for instance, by the International Monetary Fund, public debt does not include government contingent liabilities, does not include pensions. This does not imply that they are--pensions are not an obligation of the State, you know. This is a different matter. This, we are talking about a definition of "public debt."

Q. Right. So, that IMF guide was set up to be a guideline so that states could have common accounting standards amongst each other; right?

A. Yep.

Q. Okay. And the definition in there of "public debt" is--the gross definition is all debts of a Government; right?

A. It is specified that Government debt should not include contingent liabilities. So, it is not all of the debt--all of the obligations that the State has, and this is why I, in particular, mention the obligations related to Social Security because they are very large. And let me tell you, you can have economists that maybe would like to compute those liabilities as part of the debt statistics, but, in fact, the standards that countries agree and under the International Monetary Fund do not include them into the definition of "public debt."

Q. So, when--

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman, at some stage we should move on.

MR. FRIEDMAN: Move on. I understand.

BY MR. FRIEDMAN:

Q. Let's see. One--so, there are these two distinctions that you say--you say in an investment context it is not public debt, and I was wondering--that's your testimony. I was wondering whether would you agree with me that the investment chapter of the United States-Perú Trade Promotion Agreement and its annexes would be a good place to look for how that term "public debt" is used in an investment context?

A. I don't know because I'm not a lawyer.

Q. So, you have not looked at Annex 10F of the Treaty?

A. No.

Q. So, you're not familiar that it says in the annex--

A. I have not seen it because it was not my assignment. There are other Experts that have and have testified.

Q. I understand. But in thinking about the--

PRESIDENT FERNÁNDEZ ARMESTO: He has not, Mr. Friedman.

BY MR. FRIEDMAN:

Q. Yes. So, you're not aware that that says that public debt is debts issued by a party; right?

MR. HAMILTON: He's responded to your question.

THE WITNESS: I have not seen the Treaty.

ARBITRATOR DRYMER: May I ask a question on that point? I did not understand what you meant by the words in Paragraph 22 "in an investment context." What did you mean by that? And I'm not talking about the Treaty because you are not talking about the Treaty, I gather.

THE WITNESS: No. I'm not talking about the Treaty.

ARBITRATOR DRYMER: So, what do you mean by that?

THE WITNESS: That essentially public debt, all of the public debt instruments, are issued to raise funds for Government purposes in this sense.

ARBITRATOR DRYMER: Yes.

THE WITNESS: While the Agrarian Reform Bonds are really involuntary. People have these bonds

because they were given by the State. They didn't choose.

PRESIDENT FERNÁNDEZ ARMESTO: I don't think that that was an answer to the question because the question was why do you start your Paragraph 22 in "in an investment context."

THE WITNESS: Because I'm referring to bonds as essentially issued to investors. So, this is essentially the meaning. And I see a substantive difference with Agrarian Reform Bonds, which is an issue that I discuss throughout, actually, the two Reports.

BY MR. FRIEDMAN:

Q. Yes. You do say here that the Land Reform Bonds were not issued in connection with Government financing.

A. Yes.

Q. You've studied a number of the authorities, including the original Supreme Decree, that authorize 15 billion soles de oro placement of bonds; right? That's at Footnote 8, by the way, of your First Report.

A. Umm-hmm. Yep.
Q. Could you turn to that please? It is in Tab 3, RA-233. We can put it up on the screen.
A. Which is the tab?
Q. Tab 3. This is the 1969 Decree that authorized the placement of the Land Bonds, and if you look in that right column, the first full paragraph in the right column.
A. Yes. Okay.
Q. And, of course, you are fluent in Spanish.
A. Yeah.
Q. But--forgive me if I get it wrong, but it's--you want to just read out that first sentence?
A. "Autoriza." It authorizes?
Yes. Okay. Yes.
Q. So, that it's necessary to finance the Agrarian Land Reform; right? That's the reason these bonds were placed?
A. The Article--which one is the--because the Article first--
Q. "Que siendo necesario."
ARBITRATOR DRYMER: First full paragraph on

the right side.
THE WITNESS: I think that I would interpret that this--what is necessary to be financed is the compensation, is the execution of the Agrarian Reform, namely, you know--
BY MR. FRIEDMAN:
Q. Placing the Bonds.
A. No, this is not placing the Bonds. This is actually a document that says, we are going to compensate a Landowner over 20 years, 25 years, and this is the document that tells you how you are going to receive the payments. So, in this sense, the--this is the way in which I read "necesario financiar la ejecucion," namely, that the execution of the Agrarian reform will be implemented or will be financed, the compensation will be paid through this "bonos de deuda Agraria."
Q. Exactly.
A. In fact, at that point I think for more than 10 years they were not even transferable. So, it was a document that said you are going to get these payments.

Q. Exactly. The Bonds--the Land Bonds financed the Agrarian Reform; right?
A. No. They didn't finance. They simply instrumented the compensation at that time of the Agrarian--of the--not the Agrarian Reform, but the expropriation of land.
Q. It seems sort of obvious, but if the Government didn't pay for those expropriations with the Bonds, they would have had to pay by some other means; right?
A. Probably.
Q. So, instead of using cash on hand, they used Bonds; right?
A. Yeah. Yes, but--
Q. So, you're saying that if they floated--the point is clear. Okay.
(Interruption.)
PRESIDENT FERNÁNDEZ ARMESTO: I think the point is sufficiently discussed, and--
BY MR. FRIEDMAN:
Q. Thank you. I want to turn to one other.
MR. HAMILTON: For the record the answer was

"yes, but."
BY MR. FRIEDMAN:
Q. Okay. That's fine. I want to turn to one other topic. In your--sorry, give me just one second. Yes. In your First Report, could I take you to Paragraph 62. This is where you talk about Gramercy's expectations.
A. Yes.
Q. Okay. At the beginning of 62, you say that "as a sophisticated investor in distressed assets Gramercy knew perfectly well the legal and economic status of the Agrarian Reform Bonds at the time of purchase."
Do you see that?
A. Yes.
Q. Then, am I right that at the time of your Reports, you had not studied the records as to Gramercy's knowledge about the legal and economic status of the Land Bonds at the time of purchase?
A. I have not studied those documents, but anyone would assume that, if Gramercy purchased Bonds, they knew the legal status and they knew the risks

they were incurring as a sophisticated investor.

Q. Okay. And you, of course, are not an Expert on Gramercy; right?

A. No.

Q. And you then claim that "seeking to adopt methodologies for determining the current value of the Agrarian Reform Bonds that are different from those mandated by Peruvian law, would be illegitimate and inconsistent with the reasonable expectation a sophisticated speculative investor such as Gramercy would have at the time of its investment."

Do you see that?

A. Yes. Yes. And I agree exactly with that statement.

Q. Yes.

A. I think that in any democratic country, once the Supreme Court, or the Supreme Tribunal, decides something, that's the law. And this is essentially what I am saying.

Q. Right. Once the Constitutional Tribunal decides something, that's the law; right?

A. Yeah.

Q. Yes. And am I right that it would be legitimate and consistent with reasonable expectations for a sophisticated investor to expect to receive returns on its investment that are mandated by Peruvian law; right?

A. Yes, but the Peruvian law, in what I know is the Resolution of 2013, the Constitutional Tribunal and the August Decree by the MEF.

Q. Right. Yeah. Yeah. And that would be true even if those returns were high; right? The investor would still be entitled to receive them if that's what the law provided; correct?

A. Yes.

Q. There's nothing wrong or illegitimate about buying low and selling high; right?

A. No.

Q. Okay. Now, the basis of your Opinion about Gramercy's expectations is actually kind of interesting because it is here, I think in Paragraph 60. And I just want to take a look at it. You say--

A. Which paragraph?

PRESIDENT FERNÁNDEZ ARMESTO: Of the first.

BY MR. FRIEDMAN:

Q. 60, of the same Report. The First Report. We're in the same Report. It's just the page before, Page 24.

A. Okay.

Q. And I just want to focus on the language here, because it's quite important.

It says: "Gramercy's expectations must reflect the fact that, unlike modern sovereign bonds, Agrarian Reform Bonds were originally denominated in Peruvian currency with fixed coupons and tenors determined by class and subject to Peruvian law. According to their original Contract terms, reasonable expectations of repayment for such nominal Contracts were that they would be repaid in local currency with no indexation whatsoever."

Do you see that? That was the assumption that you had about Gramercy's perspective at the time; right?

A. This simply states that, at the time in which Gramercy purchased these bonds, the Contract had--the

Bonds, the Agrarian Bonds had a contractual term, which was nominal, and which was--will have--with no indexation and with fixed coupons. So, that is what Gramercy bought. I don't know why they--Gramercy bought these bonds.

Q. Right.

A. Nor how they valued at that time and what expectations Gramercy had.

Q. Right.

A. I don't know.

PRESIDENT FERNÁNDEZ ARMESTO: I do not think that the Expert can help us with this.

BY MR. FRIEDMAN:

Q. If I could just--

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But it is not--it is a statement, but it is really for us to establish what the expectations were, if at all, and whether they were legitimate and whether they have any impact.

MR. FRIEDMAN: Yes. If I could, because I think it goes a little bit further. If I may, just for a second.

BY MR. FRIEDMAN:

Q. And I note that you make this reference to the original contractual terms many times throughout this--the course of your Report.

A. Yes.

Q. And we've excerpted a few of those on a slide.

Now, what I want to ask about, though, is that I take it that at the time you wrote your Reports, you were not aware of the Decision of the Constitutional Tribunal issued on March 15, 2001; correct?

A. I didn't analyze the history, the legal history. I simply based my Reports on the existing legal framework, which is the 2013 Ruling by the Constitutional Tribunal, and the--August 2017--

Q. Forgive me, I'm just sort of wondering. I think you did base it on the legal history because you have 48 pages of Expert testimony, and by my count you cite approximately 20 different Peruvian laws, Decree laws, and Supreme Decrees, but you did not--but you did not even once mention the 2001 Constitutional

Tribunal Decision?

A. Because it was a--superseded by the July 2013 Resolution. In fact, I look at the 2001, and it says essentially in the Resolution it declares two Articles of a law unconstitutional. And I believe that essentially it declares one of these Articles was stating that Bonds had to be paid in nominal value.

But so, I'm not--I do not--in fact, I was surprised given all the importance that has been given to this 2001 Resolution and that they imply that the use of CPI and interest, I went and looked at it, there is no mention of CPI in that resolution. So, it is quite plain by me that it results that two Articles of a law are unconstitutional.

But really what matters for my analysis is the July 2013, not the--I have not gone through all the legal evolution, and I'm not really the person qualified to speak about the 2001 Resolution. You have Experts on these matters.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, I think it's clear.

MR. FRIEDMAN: I think that is.

PRESIDENT FERNÁNDEZ ARMESTO: It's as far as it can.

MR. FRIEDMAN: Thank you. No further question.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you.

Is there any redirect?

MR. HAMILTON: Yes, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. HAMILTON: Thank you very much.

REDIRECT EXAMINATION

BY MR. HAMILTON:

Q. Thank you, Professor Guidotti for your patience.

PRESIDENT FERNÁNDEZ ARMESTO: Shall I give you a time check first?

MR. HAMILTON: Sure.

PRESIDENT FERNÁNDEZ ARMESTO: Why don't we get a time check, so you know where you stand?

MR. HAMILTON: Thank you.

SECRETARY PLANELLS-VALERO: Respondent has 56 minutes left, and Claimants have 1 hour and

52 minutes left.

PRESIDENT FERNÁNDEZ ARMESTO: So, if you want tomorrow, let's be economical with your time now.

(Comments off microphone.)

MR. HAMILTON: I will be glad to, and I invite you, sir, to be economical as well, if I might.

THE WITNESS: Yes, I will try to.

BY MR. HAMILTON:

Q. Okay. First question: You were repeatedly asked about comparisons between Land Bonds and contemporary bonds. Do you mind if I--we're not going to go into the details of them, but the Land Bond, for instance, CE-120, Global Bond, for instance, CE-08. And--

PRESIDENT FERNÁNDEZ ARMESTO: The position of the Republic and of the Expert are quite clear on this issue.

MR. HAMILTON: Thank you, sir. I will be economical as I promised.

PRESIDENT FERNÁNDEZ ARMESTO: Please.

BY MR. HAMILTON:

Q. So, you were asked questions about the

objectives of the Agrarian Reform Law. You were directed there, and you said "Yes, but." So, how do we understand the different characteristics of these two bonds: The Land Bond and the other kind of contemporary Global Bond?

A. I explained many characteristics, but certainly these were issued as compensation for expropriations. They have a name, a specific name, that is the beneficiary. And they were not issued to raise funds for the Government, and all of these offering memorandum have a section that actually specifies the purpose and the use of funds.

Q. Thank you, Dr. Guidotti.

You were asked various questions about the characterization of public debt, and you repeatedly said that you discussed related issues in your First Report?

A. Yes.

Q. And you repeatedly made reference to your First Report where you discussed various other sources and Experts?

A. Yes.

Q. May I direct your attention to that section, which is in Guidotti 1, for example, on Page 17?

A. Yes.

Q. And of these sources that you mention, you cite here, for example, to Moody's?

A. Yes.

Q. And Moody's Report related to the "bonos de deuda Agraria" is in the record as R-531.

Do you have comments on what Moody's has to say about the difference between these kinds of bonds that you discuss in your Report?

A. Moody's essentially analyzes the reform--the Agrarian Reform Bonds in the context of the rating of the other Bonds of the Republic. They actually state clearly that the Agrarian Reform Bonds, given the original contractual terms, have not been defaulted, that inflation risk is not a risk that is associated with a definition of "default," and therefore, that the credit rating of Perú is totally separated from the situation of the Agrarian Reform Bonds.

Q. Thank you, Professor Guidotti. And you were asked at the outset about the Abaclat Case. Can you

summarize very briefly for us, how are the characteristics of the bonds in the Abaclat Case distinct from the Land Bonds?

A. Well, the Bonds--the Global Bonds issued by Argentina that were subject of the Abaclat proceedings were essentially Global Bonds, and they were bonds issued in various currencies--in Italian litas, in U.S. dollars, I think, and in Euros--and they had exactly the characteristics that I showed in this table. And so, in this sense, they are totally different from the Agrarian Reform Bonds and, in particular, they all were Bonds subject to foreign law.

Q. Thank you. And you were also asked about your conclusion that the relief or the payments that Gramercy seeks would be inappropriate as a policymaker, you said.

As an economist, why do you think giving the amounts that Gramercy seeks would be inappropriate?

A. I cannot really enter into the valuation issues. What I see is that you have an investment of 33 million, and then you have a pretended valuation of

1.8 billion, which sounds quite outrageous.

Q. Thank you, Professor Guidotti.

MR. HAMILTON: No further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Very good. So, thank you very much.

THE WITNESS: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: You have come from Buenos Aires to be here with us.

THE WITNESS: Sí.

PRESIDENT FERNÁNDEZ ARMESTO: So, thank you for making the effort. And with that, the examination has finished and, to the absolute surprise of everyone in this room, we have finished 7 minutes before our time. And, with that, we close the Transcript for today.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: We then will reconvene at 9:00 a.m. tomorrow.

(Whereupon, at 5:53 p.m., the Hearing 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

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the matter of Arbitration between:	:	
GRAMERCY FUNDS MANAGEMENT LLC AND GRAMERCY PERU HOLDINGS LLC,	:	
Claimants,	:	
and	:	ICSID Case No. UNCT/18/2
REPUBLIC OF PERÚ,	:	
Respondent.	:	
		Volume 7

HEARING ON JURISDICTION, MERITS AND QUANTUM

Thursday, February 14, 2020

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

The hearing in the above-entitled matter came on at 9:00 a.m. 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:

On behalf of ICSID:

MS. MARISA PLANELLS-VALERO
Secretary of the Tribunal

MS. KRYSTLE M. BAPTISTA
Assistant to the President of the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
info@wwreporting.com

MR. PAUL PELISSIER
MR. DIONISIO RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

MR. CHARLES ROBERTS

APPEARANCES:

On behalf of the Claimant:

MR. MARK W. FRIEDMAN
MS. INA C. POPOVA
MR. CARL RIEHL
MS. FLORIANE LAVAUD
MS. BERGLIND HALLDORSDOTTIR BIRKLAND
MR. GUILHERME RECENA COSTA
MS. SARAH LEE
MR. DUNCAN PICKARD
MR. JULIO RIVERA RIOS
MS. MARY GRACE McEVOY
MR. THOMAS G. McINTYRE
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
United States of America

MR. LUIS BEDOYA
MR. FRANCISCO CARDENAS PANTOJA
Rodrigo, Elias & Medrano
Av. San Felipe 758
Jesús María
Lima 15072
Perú

Representing Gramercy Funds Management LLC:

MR. JAMES TAYLOR

MR. JOSHUA M. O'MELIA

MR. NICK PAOLAZZI

MR. THOMAS NORGAARD

APPEARANCES: (Continued)

On behalf of the Respondent:

AMBASSADOR HUGO DE ZELA
Republic of Perú

MR. RICARDO AMPUERO
Republic of Perú

MS. MONICA GUERRERO
Republic of Perú

MS. GIOVANNA ZANELLI
Republic of Perú

MR. ALBERTO HART
Republic of Perú

MR. JONATHAN C. HAMILTON
MS. ANDREA MENAKER
MR. RAFAEL LLANO
MR. FRANCISCO JIJÓN
MR. JONATHAN ULRICH
MR. FRANK PANOPOULOS
MR. JOHN DALEBROUX
MR. ALEJANDRO MARTINEZ DE HOZ

White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005-3807
United States of America

For the United States of America:
MS. LISA GROSH
MS. NICOLE THORNTON
MS. MARGARET SEDGEWICK
MR. JOHN DALEY
Attorney-Advisers
Office of International Claims and
Investment Disputes
Office of the Legal Adviser
U.S. Department of State
Suite 203, South Building
2430 E Street, N.W.
Washington, D.C. 20037-2800
United States of America

MS. AMY COLLINS
U.S. Department of Treasury

C O N T E N T S

PAGE

WITNESSES:

BRENT KACZMAREK and ISABEL KUNSMAN

Direct examination by Mr. Hamilton.....2344
Direct presentation.....2345
Cross-examination by Mr. Riehl.....2433
Redirect examination by Mr. Hamilton.....2535
Recross-exam. by Mr. Riehl.....2538

SEBASTIAN EDWARDS

Questions from the Tribunal.....2548

CONFIDENTIAL PORTIONS:

1.....2425-2426
2.....2428-2430

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ ARMESTO: We now start this last day in our Hearing, and we do so in order to examine the Experts, Mr. Kaczmarek and Ms. Kunsman.

BRENT KACZMAREK AND ISABEL KUNSMAN,
RESPONDENT'S WITNESSES, CALLED

PRESIDENT FERNÁNDEZ ARMESTO: Good morning to both of you. Good morning, Ms. Kunsman.

THE WITNESS: (Ms. Kunsman) Good morning.

THE WITNESS: (Mr. Kaczmarek) Good morning.

PRESIDENT FERNÁNDEZ ARMESTO: Before we do anything else, we have to take your oath.

Could I kindly ask you to stand up? And Ms. Kunsman, you may wish to start.

THE WITNESS: (Ms. Kunsman) I solemnly declare, upon my honor and conscience, that I shall speak the truth, the whole truth, and nothing but the truth.

THE WITNESS: (Mr. Kaczmarek) I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere

belief.

PRESIDENT FERNÁNDEZ ARMESTO: I think, Ms. Kunsman, you read the declaration for witnesses.

THE WITNESS: (Ms. Kunsman) I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. I do not think that Experts have to adhere to the truth. It is to your sincerely held belief.

Mr. Kaczmarek, and Ms. Kunsman, how you will be dividing your presentation and then the answers to the questions?

THE WITNESS: (Mr. Kaczmarek) In terms of the presentation, we basically have divided it into two primary sections; Ms. Kunsman will go through the first. I will go through the second, and then very briefly wrap up. In terms of questions, I think the Parties had discussed the question will be put to us, one of us will answer. If it assists, I'll kind of act as the gatekeeper, but we have agreed we will not gang up, both of us answering the same questions and

jumping in. Just one Expert per question.

PRESIDENT FERNÁNDEZ ARMESTO: Especially don't try not to antagonize each other and give different opinions.

THE WITNESS: (Mr. Kaczmarek) Rule number one.

PRESIDENT FERNÁNDEZ ARMESTO: That makes it much more difficult for the Tribunal to follow your advice. Very good.

Mr. Hamilton, would you lead the direct examination?

MR. HAMILTON: Thank you.

DIRECT EXAMINATION

BY MR. HAMILTON:

Q. Mr. President, Members of the Tribunal, good morning.

Thank you, again, for your attention and patience as we reach the seventh day of this Hearing in the Gramercy v. Perú matter.

On behalf of the Republic of Perú, it is my pleasure to introduce Mr. Kaczmarek and Ms. Kunsman. They have deep experience acting as Quantum Experts

in the context of investment treaty disputes which, of course, we consider to be a particularly important element of the assessment here.

We are going to ask them to please go directly to their presentation for the benefit of the Tribunal. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Just so that we know, I will ask the Secretary--I think Professor Edwards took approximately an hour?

SECRETARY PLANELLS-VALERO: A little bit.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, we have the same time for you.

DIRECT PRESENTATION

THE WITNESS: (Mr. Kaczmarek) Perfect. I know everyone has flights, and I don't want to be in the way of that, so we will try to still stick with the 45 minutes, but as usual, please feel free to interrupt. It is often better to address an issue that arises during the presentation than to lose it as we progress.

So, again, I'll have my colleague start with the first section, the background section, and some

of this you've heard, and so we will try to point out things that maybe are a little bit different that you haven't heard of, and then I'll primarily be addressing the calculations presented by Professor Edwards.

THE WITNESS: (Ms. Kunsman) Okay. So, as has been discussed, the Agrarian Bonds originated from the 1969 Agrarian Reform Law, and they were issued as compensation for land which had been valued based on the previously declared value of the land by the Owner for tax purposes.

The Bonds had different classes, terms, and Coupons. The Bond Coupons were based on a nominal rate, so both an inflation component and a real interest rate was included, but they weren't based on market pricing. And this is evident because, as the term of the Bond increases, the Bond Coupon decreases.

Next slide, please.

So, there were yearly issuances from 1969 to 1982, and at any time the Bonds could be exchanged for the remaining full value, full face value for

industrial promotion shares, as long as the Bondholder also purchased an equal amount in cash.

As has been discussed, in the event of default, the Agrarian Bonds were not subject to acceleration clauses that would force the early repayment of the outstanding Coupons, and they didn't state an alternative legal rate or how that rate would be applied to unpaid interest and/or principal in default. And then the Bondholders could not take back ownership of the expropriated land, so the Bonds were not mortgages.

In our First Report, we described the way that the Coupon amounts were calculated. There was a principal component that was the face value of the Bond amortized over the term of the Bond, and then an interest component that decreased over time, because it was applied based on the outstanding principal.

We described it differently in our Second Report than we did in our First Report, but we are in complete agreement with Mr. Edwards that this is how the Bonds work, the Coupons.

PRESIDENT FERNÁNDEZ ARMESTO: So, you do

agree that they actually accrue at 5, 4 percent Coupon on the outstanding principal?

THE WITNESS: (Ms. Kunsman) Correct. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

THE WITNESS: (Ms. Kunsman) So, upfront, the Coupon payments were fixed from issuance. The Bondholder knew exactly what they would get for each Coupon, and while the Coupon rate had an inflation component because it was a nominal rate, the Bond was not perfectly hedged for inflation. If inflation ended up being higher than that component, again, the Bondholder would not be hedged.

Also, the Bondholder was not protected against the devaluation of the currency against another currency, or the value of the Bond was not--of the outstanding Coupons were not adjusted for future growth prices--property prices.

One unique item of the Coupons is that there was a cap as to how much cash the Bondholder could receive for each Coupon, which was 150 times the monthly living wage in Lima.

Just to be clear, the subject of this

Arbitration relates to the unclipped coupons. It is agreed by the Party that the Coupons that have been clipped are settled debts.

This is a picture of one of the Gramercy Bonds, the unclipped coupons, and on the next page, we just want to point out that in our First Quantum Report, we reviewed the Gramercy Purchase Contracts, the Bond scans, and the Gramercy structure, something that is not addressed by Edwards in his Reports.

So, now I'm going to go into what happened after the Bonds were issued. So, as has been discussed, there was significant inflation and a period of hyperinflation after the Bonds were issued. They were--there were two redenominations of the currency, and at some point the Agrarian Bank was liquidated.

I know this came up during the Hearing earlier as to whether holders of Coupons were still presenting them up to 1992. So, what we did is we looked at the Coupons that could have been presented in each year, and we saw--which is represented by the blue bars in this chart--that Bondholders were taking

their Coupons to be redeemed, even though at some point we know they became nearly worthless. So, this was up to 1992.

PRESIDENT FERNÁNDEZ ARMESTO: Can we just have a look?

THE WITNESS: (Ms. Kunsman) Right.

PRESIDENT FERNÁNDEZ ARMESTO: The blue is the clipped Coupons?

THE WITNESS: (Ms. Kunsman) Correct.

PRESIDENT FERNÁNDEZ ARMESTO: Now, how do you know how many clipped Coupons there are? I thought one of the biggest unknown-unknowns, if I may use that Rumsfeldian term, is how many Coupons, how many Bonds there are?

THE WITNESS: (Ms. Kunsman) This is just for the Gramercy Bonds, not the entire universe.

PRESIDENT FERNÁNDEZ ARMESTO: Oh. Okay. This is only for Gramercy. Okay.

I can see that your number of clipped Coupons--this is just, you took all the Bonds, and then for each year just added up how many unclipped coupons there are.

THE WITNESS: That could have been clipped that year.

PRESIDENT FERNÁNDEZ ARMESTO: That year.

THE WITNESS: (Ms. Kunsman) So, for example, if in 1976 there were 8,000 Coupons that could have been presented that year for payment, we figured how many were--what were clipped and how many remain unclipped. So, in the earlier years, you see that most of the Coupons were clipped.

ARBITRATOR DRYMER: Each year.

THE WITNESS: (Ms. Kunsman) Each year, yeah.

PRESIDENT FERNÁNDEZ ARMESTO: But here--I mean, the total number here in 1991 and '92, it's an optical illusion. The number of Coupons is always the same, because these were 20-year Bonds.

THE WITNESS: (Ms. Kunsman) Right. But I'm just showing the ones that could have been presented that specific year.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But is the number in--is the total column in 1991 less than in 1990? The total column? I mean, at least to me, it looks like there's a decline.

THE WITNESS: (Ms. Kunsman) Yes, there is.
THE WITNESS: (Mr. Kaczmarek) Yes.
PRESIDENT FERNÁNDEZ ARMESTO: And why?
THE WITNESS: (Mr. Kaczmarek) So, if I could add: So, the total you see in the graph is the total Coupons that could have been presented each year, not the total Coupons over the life of the entire set of Bonds. So, it starts to flatten out, because the number of Bonds at issue is the same in those years. So, a little more than 9,000, around 9,500 Coupons, could have been presented, for example, in 1992; right? We were talking about 9,500 Bonds, roughly. And so, what this says is roughly for--a little less than 4,000 were clipped, and about 5,500 were unclipped.
ARBITRATOR DRYMER: That's because some of the Bonds were 20-year terms.
PRESIDENT FERNÁNDEZ ARMESTO: Exactly.
ARBITRATOR DRYMER: Some were 25. Some were longer. So, as of 1970, 20 years later, the amount was decreased.
PRESIDENT FERNÁNDEZ ARMESTO: It starts to

decrease.
THE WITNESS: (Ms. Kunsman) Yes. And they were not all issued at the same time. They were issued over time.
ARBITRATOR DRYMER: Right. Of course.
PRESIDENT FERNÁNDEZ ARMESTO: And after 1992, there is no clipping.
THE WITNESS: (Ms. Kunsman) We saw a couple, but those must have been lost, but there weren't many.
THE WITNESS: (Mr. Kaczmarek) Yes. As we know, the bank closed, so no possibility to redeem a coupon.
THE WITNESS: (Ms. Kunsman) So, as we explained in our Reports, Perú didn't default on the Agrarian Bonds; the Coupons became nearly worthless on their own terms because of the hyperinflation. So, in 1992, when the Agrarian Bank closed, Perú could have called in, accelerated all of the unclipped coupons, and paid them for less than $1.
PRESIDENT FERNÁNDEZ ARMESTO: You have to go back to the--sorry for that--to the previous chart.

THE WITNESS: (Ms. Kunsman) Yeah.
PRESIDENT FERNÁNDEZ ARMESTO: And then you have here on the--the line is a yearly inflation, and it's a logarithmic in this case.
THE WITNESS: (Ms. Kunsman) Yeah.
PRESIDENT FERNÁNDEZ ARMESTO: And when I look here, it says year-over-year-change in CPI. It is not the CPI, what you are showing. It is only the increase in the CPI you are showing.
THE WITNESS: (Ms. Kunsman) Year-over-year, yes.
PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank you. It's not really the yearly inflation; it is the evolution, the changes in the yearly inflation?
THE WITNESS: (Ms. Kunsman) Yes.
THE WITNESS: (Mr. Kaczmarek) Correct, on a logarithmic scale, in order to not have it jump off the page. I think the takeaway is really that, as you see the change in inflation increase, the number of clipped Coupons is decreasing. It would seem natural.
PRESIDENT FERNÁNDEZ ARMESTO: Okay. Thank

you.
THE WITNESS: (Ms. Kunsman) Okay. So, as I've said, Perú could have called in all of the unclipped coupons for less than $1. We looked at it from a different way.
The next slide, please.
The Fair Market Value of the unclipped--Gramercy's unclipped coupons as of the closure of the Agrarian Bank was 38 cents. The only difference between the two calculations is that, in this one, the Coupons with the payment dates after May 1992 are discounted back to May 1992. So, as has been discussed, there is no dispute between the Experts that the unclipped coupons were virtually worthless as of 1992.
Now we'll go into the timeline with the select Decisions and a summary of what happened between the hyperinflation period and Professor Edwards' calculations.
So, between 1990 to 2000, the unclipped coupons remain virtually worthless. In 2000, the Peruvian Government provided for an adjustment to the

unclipped coupons that was going to be paid out with the issuance of 30-year interest-free Bonds, and for those Bonds, the principal would not be paid until maturity. So, the adjustment wouldn't be received until 2030. And the Bondholders were only allowed to take advantage of this option for 30 days.

PRESIDENT FERNÁNDEZ ARMESTO: I'm lost. Where are you now?

THE WITNESS: (Ms. Kunsman) I am in 2000. There is--below the timeline, it says: "Decree 088/2000". So, that is the Decree that came up earlier that used the dollarization method, but I wanted to clarify that payment of that adjustment was in issuance of interest-free Bonds not to be paid until 2030.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: (Ms. Kunsman) Okay. Then you have the 2001 CT Decision that says that the unclipped coupons can't be paid at their nominal value. They have to be paid based on the Current Value Principle, but this doesn't define the parameters of the Current Value Principle, so this

creates a period of uncertainty, and as Mr. Kaczmarek will later discuss, the Current Value Principle, it's not a universally recognized term.

So, then, between 2001 and 2013, there were several domestic court rulings, many proposed legislations, that all used different interpretation of the parameters to calculate the Current Value Principle. Some used simple interest; some went back only to the last clipped-Coupon date; some used the legal interest rate, the Coupon-stated rates. And there was one bill that did pass in 2006, which was partially based on the 2004 Agrarian Commission Report, and that was vetoed, so the uncertainty remained.

It was during this period of uncertainty that then Gramercy purchased the Bonds, between 2006 and 2008, for USD 33.2 million. It wasn't until 2013 that the Constitutional Tribunal provided the parameters to calculate the Current Value Principle, and then the Executive, through the MEF, implemented that principle.

There was in one of the initial Decrees a

typo that someone noticed, and that was corrected, and by 2017, there was a consolidated formula. So, at this point, both Experts agreed that the value of the Gramercy Bonds results in a 33.6 million adjustment, had the Gramercy Bonds gone through the Bondholder process, had been properly authenticated and their ownership verified.

ARBITRATOR DRYMER: On that--and I'm looking at your chart, and I'm drawing vertical lines--it's hard to tell where you believe the value uncertainty ends. Does it end with--in July 2013, on the CT Decision? Or does it end later on, when the Supreme Decrees started coming out?

THE WITNESS: (Ms. Kunsman) In the 2013 CT Decision.

ARBITRATOR DRYMER: I see. As of that moment, uncertainty ended from an economic perspective?

THE WITNESS: (Ms. Kunsman) Right.

ARBITRATOR DRYMER: Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: You will, of course, at some stage go into a detailed explanation

of the 33.57, how you calculate that?

THE WITNESS: (Ms. Kunsman) Yes.

THE WITNESS: (Mr. Kaczmarek) Absolutely.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, I will not ask about that.

THE WITNESS: (Ms. Kunsman) So, next page, please.

So, Claimants don't advance the typical expropriation case. So, in your typical expropriation case, you have something of value that is taken away because of the measures, and then Claimant will ask for compensation, the Fair Market Value of the investment just prior to the Measures.

In this case, though, Claimants' investment had virtually zero value prior to the Measures. It is only because of the Measures that some value is added to that investment. What Claimant claims, though, is that you didn't add enough value. 33.6 million is not enough; we want 1.8 billion. That's the value that you should have added.

Now Mr. Kaczmarek will go into our response to Professor Edwards.

THE WITNESS: (Mr. Kaczmarek) Okay. I'm on Slide 19.

So, I think you've heard from Claimants, at least through their written reports, that they prefer to look at this as a debt restructuring, and Perú has taken a different view. They say it's a claims process, although I think you've heard from some of Claimants' Witnesses who say it is not exactly like a restructuring this past week, but we entertained this notion of a restructuring in any event in our Second Report. And we said, fine, let's look at it through that lens. I think it is somewhat helpful to understand the formulas, which I'll walk through with you.

So, like Professor Edwards did, I have a hypothetical Bond here, the Coupon booklet at the top, a coupon with blue and yellow portions--yellow being interest, blue being principal, and the white being a clipped Coupon. This Bond issued in 1980 for 25 years, you see clipped up until 1989; you see two Coupons after that that could have been presented, but weren't, and then the remaining Coupons until

2005. And again, by 1992, we generally all agree, worth roughly a cent.

So, let me walk through on Slide 21 Professor Edwards' calculation, and I'll describe it in--slightly differently than his, but we have an exact understanding of the calculation. So, what he does is, he takes the principal portion of all unclipped coupons, and he accelerates that, basically adds them all up and brings it back to the issuance date. That's the Step 1. He then inflation-adjusts those Coupons to the last clipped Coupon date using the Lima CPI, and in Step 3, he applies a nominal interest rate, which is Lima CPI, plus a real rate of 7.22 percent.

I think he talked about in his presentation how he goes from issuance date to 2018 with inflation, and last clipped Coupon to 2018 with a real rate. Mathematically that's the same way--it yields the same result as the way I'm explaining it, that it is just explanation to last clipped Coupon and then a nominal interest rate until 2018. I think in comparing this, which I will do later to Perú's

formula, this is a helpful way to explain it.

PRESIDENT FERNÁNDEZ ARMESTO: I'm not 100 percent--I will explain to you whether we are speaking of the same thing or not. The way I understood Professor Edwards was, he took the principal and he accelerated--he added up all the outstanding principals, had an amount in soles oro, then he revalued them from the date of issuance until 2018 using CPI, and that gave him a principal amount, and then he calculated interest from at the rate 7.22 from the last clipped Coupon. So, in his--the interest started at a different rate than the valuation.

Are we on the same wavelength, or did I misunderstand something?

THE WITNESS: (Mr. Kaczmarek) You understood exactly correctly. So, what I'm trying to describe here is another way you can look at his calculation, is just inflation-adjusting principal from issuance date to last clipped Coupon.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: (Mr. Kaczmarek) And there, two

rates apply going forward.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Yeah. Because you multiply. It's the same--that's multiplying, you can change the order of the factors.

THE WITNESS: (Mr. Kaczmarek) Mathematically it is exactly the same. Okay. And so, you'll see when I show you the Perú calculation, this is just a better way of making a comparison.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: (Mr. Kaczmarek) Okay. So, for the dollarization, basically the exact--

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Kaczmarek, at some stage--I think we have Professor Edwards somewhere. Yeah, there he is.

Professor Edwards, good morning.

THE WITNESS: (Mr. Edwards) Good morning.

PRESIDENT FERNÁNDEZ ARMESTO: He had a graph which showed--and he made the following argument. I just make the argument, you address it whenever it suits you, but it is an argument I would like you to address. And he basically said that by the time of

the last clipped Coupon, there had already been such an inflation that the 400 soles nominal value had, in fact, only become 2 percent, 3 percent of that. And he said it is--I understood him to say, it is deeply unfair if you exclude that period of inflation because, by the unclipped dates, these Bonds were already basically worthless. Do address it at some stage, please, whenever it--not now, but whenever it suits you.

THE WITNESS: (Mr. Kaczmarek) Yes. I absolutely will, and as my colleague indicated, we tried to put numbers to the "virtually worthless," 48 cents is the number Perú could have simply paid if all the Coupons had been brought in that Gramercy holds today, in 1992. That's our calculation.

So, back to the dollarization, the only intermediate step here, a new step too, is after acceleration, a conversion to dollars using parity rates observed from '99 to 2018, then using U.S. CPI to inflate to the last clipped Coupon, and then a nominal rate of U.S. CPI, plus 7.22 percent forward. Okay?

PRESIDENT FERNÁNDEZ ARMESTO: Umm-hmm.

THE WITNESS: (Mr. Kaczmarek) So, you have seen in our Second Report, we talk about some flaws we believe that are in his approach, and I'll touch on them throughout the next few slides, but the first one being the acceleration to issuance date.

As we know, there is no claim for Coupons that were being paid--right?--but he's starting not when the apparent nonpayment started, the bank closure, but going all the way back to the beginning. If you think of this like in a damages context that we usually think, when there's a bad event that happens or a measure, you create a but-for scenario to eliminate that, and that starts on the date of the Measure. You can't start it any earlier than when the Measure occurred. And in my mind, this is exactly what he's doing, is he's creating a scenario in which really the default occurred from the very beginning of the issuance of the Bonds and it--readjusting those Bonds. And I have an example to show how that works. So, this is partly already touching on your question, Mr. President.

The second area we pointed out was, he's using parity rates from '99 until 2018 as a basis to set parity back at issuance, and if we're simulating a bond restructuring back in time, obviously none of this data was known and could have been accomplished at the time. So, this is using some ex post information to simulate an ex ante exchange.

So, here again is sort of the other problem of the acceleration to issuance date. By starting over, you're effectively saying all of the clipped Coupons themselves would have been different. He would be computing a new face value for every clipped Coupon and every unclipped coupon for the principal. Even though we recognize that if it was clipped, it was paid at the amount paid on the actual Coupon; right? So, he's creating, again, sort a but-for scenario for during a period of time in which there was no problem.

As you put it, he wants to solve the hyperinflation as though Perú has a responsibility to do that, and that is a conceptual difference between the calculations in this case. What is Perú

responsible for solving here? Do they have to go back and redo the Bonds from the very beginning with new terms, new interest rates, inflation-adjusted principal, or are they solving nonpayment of Coupons when nonpayment began. That is a key conceptual issue that I'll continue to touch on in the Slides.

And you'll see from our Second Report, this is just a good example. Here's a bond, 8615, that has some clipped Coupons with the principal amount of 400 soles oro. By going back to issuance date, he's really saying in 1973 the real face value should have been 456, not 400. In 1984, it should have been 79,619, not 400, and then you get to the first clipped Coupon. Now, Perú didn't pay the 400; right? And this is 1985, so this is somebody who didn't come and present. So, of course, they couldn't pay.

But what his calculation does is say Perú effectively is responsible, not just for not paying the 400, but for not paying 161,204 soles oro for that Coupon. That is the nonpayment event for this Bond the way he's treating it. As I said, he's reprinting the face value from the very beginning and

saying that is the Coupon they didn't pay, even though that Coupon never existed.

PRESIDENT FERNÁNDEZ ARMESTO: So, let me say it in my words. Professor Edwards says in November '85, which is the date of the first unclipped coupon, 400 soles oro, the CPI of Perú was such that what had been 400 soles in 1973 equaled 161,000 soles in 1985.

THE WITNESS: (Mr. Kaczmarek) Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And he then takes this 161,204 and brings it forward to 2018 using CPI.

(Comments off microphone.)

THE WITNESS: (Mr. Kaczmarek) With 7.22.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. Of course. I am not looking at the interest now. Of course. Plus 7.22--plus compounded interest of 7.22. I fully understand, and the impact of interest on the calculation.

While you say these Coupons--the historic Coupons are settled debt. They have been paid, and we should not look back to them, and we should then

take the 400 soles de oro, bring those forward to 2018 at whatever CPI, dollar, whatever adjustment is appropriate?

THE WITNESS: (Mr. Kaczmarek) That is what the MEF formulas do, yes. They convert the 400 to dollars and apply a one-year U.S. Treasury, a bill rate from that period forward. Precisely.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

No, that was not quite my question. My question to you is whether, as an economist--I know exactly what--I think I know what the MEF formulas do, and what I need is your opinion, or of both of you as economists, as Experts, whether this is the proper financial analysis. So, the proper financial analysis is to say that you should start with 400 and not with 161,204. That is your professional Opinion?

THE WITNESS: (Mr. Kaczmarek) From our perspective, yes, that is absolutely the correct way because there was no issue about paying all of these Coupons at their face value as they were printed up until 1985; right?

So, again, why are we creating a but-for

scenario, in effect, layered on top of an Actual Scenario when there is no complaint that Perú has done anything wrong? This, again, comes back to this idea that I think Professor Edwards is solving a different problem. He's saying we have to go back--once Perú stops paying, we have to go back and we have to redo all the Bonds from the very beginning, except if you came in and asked for payment, well, that's settled, but we redo the Bonds from the beginning.

We're saying that doesn't make sense because everything was fine until the nonpayment occurred; and, at that point, there's an obligation, even though they could have paid them off for 48 cents. There's an obligation to still go ahead and pay them off today, and what is that number.

PRESIDENT FERNÁNDEZ ARMESTO: At the end it's--and I think this is for counsel--this is a somewhat legal question; namely, whether the previous Coupons which had been paid had been legally extinguished or not. There is--I see the economic component, but there is also a legal component too.

MR. RIEHL: Yes, we agree with that, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you, Mr. Riehl.

ARBITRATOR DRYMER: Forgive me. I want to say off the record, but I won't, only because I'm sure this question will seem foolish, and maybe it is.

PRESIDENT FERNÁNDEZ ARMESTO: Nothing from you can be foolish.

ARBITRATOR DRYMER: Yeah, well, that's very kind, but I haven't embarked in an economic discussion yet, so let's see.

Would your view change if you were to assume that as of Day 1--it's an assumption, a hypothesis--the Bonds were subject to the Current Value Principle, whatever that might be?

THE WITNESS: (Mr. Kaczmarek) That is the perfect qualification to your question, yes.

ARBITRATOR DRYMER: Well, but it would change to some Decree; right?

THE WITNESS: (Mr. Kaczmarek) So, let me

just postulate a scenario--

ARBITRATOR DRYMER: Thank you.

THE WITNESS: (Mr. Kaczmarek) --where if Current Value Principle means that these Bonds had to be inflation-adjusted from the very beginning and that they were deficient from Day 1--I understand your hypothetical--and then one could say, "Well, sure then, they need to be redone."

Of course, my only comment in that regard would be fixed Coupon Bonds are pretty standard types of Bonds. If we all went out to buy a U.S. Treasury, 30-year U.S. Treasury today, you would get about 2 percent. If inflation goes to 8 percent in 10 years in the United States, well, we all lose money on that Bond. That is a principle risk factor in a fixed Coupon Bond. But, yes, if they are somehow with a Current Value Principle being in effect void ab initio, as I think you say, yes, one could maybe say they would need to be fixed from the beginning.

ARBITRATOR DRYMER: Thank you. And I realize that verges on a legal issue, and I

deliberately stopped where I did in my question because I don't want to take you there. That will be an issue for counsel to address in due course.

THE WITNESS: (Ms. Kunsman) Right.

PRESIDENT FERNÁNDEZ ARMESTO: And before--if we have time at the end. Off the record.

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: We are back on the record.

THE WITNESS: (Ms. Kunsman) So, going back to your questions, there are securities that look like that, the TIPS, that they are inflation-adjusted, but you have the clauses when they are issued, and you know exactly what's going to happen. What's unusual about applying what you're saying, your scenario, is that then you might think that your debts are settled, but they are not, you are reopening them. And that's hard from an economic perspective to accept.

ARBITRATOR DRYMER: I appreciate that. I appreciate that. As I say, with the characterization of the Bonds will be--

THE WITNESS: (Ms. Kunsman) Yeah.

ARBITRATOR DRYMER: --and the payment principals will be a legal issue, but thank you for clarifying that, both of you. Thanks.

THE WITNESS: (Mr. Kaczmarek) Okay. So we are now on Slide 26. This is part of what we would call a waterfall chart or a bridge between the calculations done by the MEF and Professor Edwards. So, I'm going to focus on the first set of numbers, and the first line--this is the MEF formulas or the Bondholder Process. This is what applying the formula to Gramercy's Bonds gives you at last clipped Coupon date. It gives you a sum nearly $3.4 million. Okay. What we then did is we say--

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no. No, I'm sorry. I cannot follow. Can you start again, please?

THE WITNESS: (Mr. Kaczmarek) Yes.

So, first column of numbers, principal at last clipped Coupon--

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

THE WITNESS: (Mr. Kaczmarek) --first line,

this first line is applying the MEF formulas to Gramercy's Bonds. And step 1 is the acceleration, remember?

PRESIDENT FERNÁNDEZ ARMESTO: We are now in the MEF formula?

THE WITNESS: (Mr. Kaczmarek) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. That was my problem.

THE WITNESS: (Mr. Kaczmarek) I'll get into it in more detail, but I just wanted to show you right now the effect of the two issues I've described that Edwards is doing on the MEF formula.

So, the MEF starts. When they accelerate, they accelerate to last clipped Coupon.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: (Mr. Kaczmarek) And they come up with a number that is $3.385 million for the Gramercy Bonds. And then they apply interest at the one-year U.S. Treasury rate going forward. That's the second column. You see 33.6 million.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, but we have a huge problem here with the Parity Exchange

Rate.

THE WITNESS: (Mr. Kaczmarek) Ah, that's the second line.

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: (Mr. Kaczmarek) That is the second line. So, if I change the MEF formula and I use a Parity Exchange Rate like Professor Edwards suggests, you get, at least clipped Coupon, almost $7.5 million. These are all in dollars because the MEF has done a dollarization approach, and I'm comparing Professor Edwards' dollarization approach. It's the easiest way to compare the two.

PRESIDENT FERNÁNDEZ ARMESTO: Umm-hmm.

THE WITNESS: (Mr. Kaczmarek) Okay. So, that gets from you 3.4 to 7.5, and then if I do the retroactive adjustment of CPI to issuance date to the MEF formula, then I get an amount of almost 36 million at last clipped Coupon. Okay. So, that's the effect of those first two differences in the formulas before interest is applied.

PRESIDENT FERNÁNDEZ ARMESTO: Wait one

second. Sorry. I must make a note; otherwise, I will never remember.

THE WITNESS: (Mr. Kaczmarek) I think--and I'll return to this table again in the presentation, but I do think this is critical in understanding the impact.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: (Mr. Kaczmarek)--of the different assumptions being applied in the formulas.

MR. HAMILTON: Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, of course, Mr. Hamilton.

MR. HAMILTON: I simply wanted to confirm the understanding that the third column here, "Principal at Last Clipped Coupon Date, Edwards' Adjustment for Retroactive CPI," this is the manifestation of--

MR. RIEHL: Mr. President, I don't think it is appropriate for lawyers to be explaining this material.

PRESIDENT FERNÁNDEZ ARMESTO: I think Mr. Kaczmarek is quite good at explaining his

position.

MR. HAMILTON: I simply want to ask if it's the manifestation of what he described earlier.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. RIEHL: Mr. President, he'll have an opportunity for redirect.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Please.

So, I will put here the following: Between the MEF formula and Professor Edwards' formula, there are two factors. One is the Parity Exchange Rate on which I will hear more from you, and the other is whether we start on the issuance--start the valuation on the issuance date or on the late date of the last Coupon. And what you have done here--which is very helpful and thank you--is you have put value to that.

THE WITNESS: (Mr. Kaczmarek) Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And if the 33.5 is the calculation we saw by just using the MEF formula?

THE WITNESS: (Mr. Kaczmarek) Absolutely. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And if we

change the parity rate to the one preferred by Professor Edwards, that adds $40 million?

THE WITNESS: (Mr. Kaczmarek) Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And if we then take the calculation from the beginning, that adds 90 million dollars?

THE WITNESS: (Mr. Kaczmarek) Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And that is all before interest?

THE WITNESS: (Mr. Kaczmarek) Well, it is with interest at the MEF rate.

ARBITRATOR DRYMER: Right.

THE WITNESS: (Mr. Kaczmarek) I will come to the last part of my waterfall, there will be one more row I'm going to add with the difference in the interest rate.

PRESIDENT FERNÁNDEZ ARMESTO: Because I thought, I was very surprised here because the 33.5 number must have interest.

ARBITRATOR DRYMER: Yeah. Yeah.

THE WITNESS: (Mr. Kaczmarek) It does. That column says calculation at 31 May 2018, so, of

course, yes, that brings it forward with interest. The column that says "at last clipped Coupon," we can't assign a date because the last clipped Coupon date is different for every bond.

ARBITRATOR DRYMER: Right. And the last stage of your waterfall will presumably take Professor Edwards up to 1.8 billion.

THE WITNESS: (Mr. Kaczmarek) Indeed, it will.

ARBITRATOR DRYMER: Right.

PRESIDENT FERNÁNDEZ ARMESTO: So, these are not really Professor Edwards' numbers, these are Professor Edwards' numbers, plus interest at the one-year Treasury Bond bills from the date of the last Coupon?

THE WITNESS: (Mr. Kaczmarek) Correct. To say it in slightly different words, the last line here is Professor Edwards' complete approach in dollarization, except a difference in the interest rate from last clipped Coupon forward.

PRESIDENT FERNÁNDEZ ARMESTO: Oh, but that is not my question. Because my question is whether

you are comparing apples and apples. Because the first line is the MEF calculation, 2017.

THE WITNESS: (Mr. Kaczmarek) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And correct me if I'm wrong, but I thought that the 33.5 million number includes interest at the one-year Treasury Bond rate.

THE WITNESS: (Mr. Kaczmarek) Yes. Every interest calculation in this second column of numbers is interest at the one-year U.S. Treasury Bill rate.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, you have added--you have done something which Professor Edwards has not done. You have added to his calculation the interest rate at the MEF formula?

THE WITNESS: (Mr. Kaczmarek) Yes. So, what I'm doing is, I'm starting with the MEF formula as my base, that's the Line 1, and then I'm making the adjustments Professor Edwards says should be made step by step to get to his number. So, I first change the parity rate, Line 2, then I change the CPI adjustment from issuance date--that's the third line--and then in a couple of slides, I'll show you

the last change, which is the interest rate, and we will bridge the entire gap between the two.

PRESIDENT FERNÁNDEZ ARMESTO: I still have one question. Does the number 74 million, does it have interest or not?

THE WITNESS: (Mr. Kaczmarek) Yes. It has interest at one year U.S. Treasury Bill rate.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Okay. I have understood it. Yes. Very good.

THE WITNESS: (Mr. Kaczmarek) So, now I'm going to bridge that last gap. You've seen what Professor Edwards is doing, as he described the other day. He has this CPI, plus 7.22 percent. His 7.22 percent rate, he says, is the average lending rate on assets in the economy. It is basically--it's not calculated maybe like you have seen it before. It's GDP, elements of GDP divided by all assets in the economy, I think we heard--roads, bridges, buildings--basically, the assets that generate income for the whole country. He comes up with that figure. It is like 10.97 percent.

That is like, Professor, your Weighted

Average Cost of Capital for economy.

ARBITRATOR DRYMER: Yes.

THE WITNESS: (Mr. Kaczmarek) He then breaks it down into Cost of Equity and Cost of Debt. The Cost of Debt, he says, is 7.22 percent. This is a lending rate that someone would get if you lent to people who construct all of the assets in the economy.

What we have said is, besides some issues we have with data, it's a very theoretical rate. There is no instrument anyone could possibly invest in to replicate this. You can't be a partial lender to every asset in the economy.

So, when we talk about opportunity costs, this is purely a conceptual issue he's applying here, unlike a Treasury Bill rate, which is an instrument--yes, maybe you need to fly to the U.S., but you can still invest in it. This is uninvestable, and that is one of the problems that we have with it.

So, now I will, on Slide 28, finish the

waterfall and bridge the gap. So, the first three lines of this table are precisely the same as two slides ago. And now I've added the fourth line, and here now in the second column of numbers, I've circled the 1.7 billion number. I've now replaced in the MEF formulas the one-year U.S. Treasury Bill rate with Professor Edwards' preferred rate.

And this is what gets you to 1.7. It's not quite the 1.8 because there is a little difference between his CPI and dollarization, but this explains in three steps, three different parameter differences in the formulas, how you get from one to the other and the impact.

PRESIDENT FERNÁNDEZ ARMESTO: There is, of course, an intermediate step, which we could do, which is we could say, instead of--and maybe you do it later on. If you do it later on, let's not come back. But I could take one-year Treasury Bills, I could take five-year Treasury Bonds. I could take 20-year Treasury Bonds, and depending on what I take, I assume there is some intermediate calculations.

THE WITNESS: (Mr. Kaczmarek) Yes.

Certainly, we would say there's discretion. There's no rules saying which rate to use in this process. There is, you know, not one rate. I think Professor Edwards has somewhat intimated that his rate is the only legitimate rate, even though we know there are other calculations presented by--in other matters in Perú using different rates.

But this one is quite subjective. I think I'll leave it to counsel for Perú to articulate. I think they might say, well, if you were to change a rate, you are really saying that by using a one-year T-Bill rate, it's a breach of the Treaty. It is so ridiculous. It is so arbitrary that you have to use something else.

I think they would put the case as this is reasonable and doesn't fall into the area of being so arbitrary as to rise to a breach of the Treaty by using the Treasury Bill rate. I would point to them.

PRESIDENT FERNÁNDEZ ARMESTO: Are you coming back to the 2013 Resolution of the Constitutional Court where it says it should add--interest should be added at the rate of Bonds, U.S. Treasury Bonds, I

think it says? And we had a discussion whether it would be--the appropriate would be one-year Treasury Bills or longer-period Treasury Bills. Will you come back to that, or shall I ask you about that now?

THE WITNESS: (Mr. Kaczmarek) I'm fine to address it now. Our read is just financial and economic professionals. It's a bit ambiguous, and so even if you were to say, let's match duration; right? You run into a problem, again, then these Treasury Bonds are fixed.

Let's say it's a rate of--the Bill's average, we say 5.2 percent, but let's say it's 7 percent. Okay?

What do you do after the first year? Do you assume they sell the whole Bond and buy a whole new 30-year Bond, or do we assume they purchase and hold for the whole period such that only the Coupon interest in this case for a Treasury Bill, just the interest piece, is reinvested? Do you do that route, buy and hold? Or do you purchase one 30-year in the first year, sell it in the second year, buy the new 30-year and with the new rate, which means you may

lose some money on that first year, you may gain some money, depending upon how rates move.

There are different ways that one could do the calculation; right? And as you move closer to today, do you start to change the maturity, so, do you start to move to 10-year Bonds? Do you start to move to five-year Bonds? You run into decisions here. It's open.

All I'll say at this point, with the one-year Treasury, one benefit of it is, it's reinvested every year. And so it's always taking the market rate.

PRESIDENT FERNÁNDEZ ARMESTO: But what is the average rate? I seem to remember Professor Edwards said something like 0.7.

THE WITNESS: (Mr. Kaczmarek) Right. So two points about that: We have done our calculation and showed you it's about 5.2 percent, and I will actually get to that in a slide.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. If you get to--no, no. Follow your--at some stage, we have to discuss, if you apply one year, what it actually

means.

THE WITNESS: (Mr. Kaczmarek) Yes. Let me come back to that when I get to the graph because I think it will be helpful at that stage.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: (Mr. Kaczmarek) So I'll put a marker down for that.

Slide 29, my comments here would just be Professor Edwards has acknowledged that he believes CPI method and dollarization are both consistent with Current Value Principle. That's his view. I know he said I have a preference for CPI because it is simpler, but I think it's been a position that dollarization is a backup, but, in general, he's positioning them as both equally valid, one being more simple than the other. We could debate whether the dollarization is really that more complicated.

But one of the premises that he advances that we've had a difficult time with is he has advanced this notion, as my colleague alluded to at the beginning, that there's just one way to do this Current Value Principle and application of interest,

and any other way is really wrong. And the MEF formulas are wrong.

So Slide 30, you'll see we've commented on this, and as my colleague said--

MR. HAMILTON: Excuse me. I just have a follow-up question.

I'm sorry, please don't interrupt. Procedurally, this is my direct examination, and you don't get to control it. I'm being very limited in my interventions, and I'm able to ask a question.

PRESIDENT FERNÁNDEZ ARMESTO: What is your question, Mr. Hamilton?

BY MR. HAMILTON:

Q. You were asked by the President about U.S. Treasury Bonds and if there were other options. How does the interest rate on the one-year U.S. T-Bills compare with the stated rate on the Land Bonds?

A. (Mr. Kaczmarek) Yes, as I'll show from a graph in our Report, 5.2 is the average we calculated for T-Bill rates, which is just above the average of 4, 5, and 6. So, it's in the range of the same types of rates that had been originally offered.

PRESIDENT FERNÁNDEZ ARMESTO: We'll get there. Yeah.

THE WITNESS: (Mr. Kaczmarek) And I want to touch on the .77, which you raised. Absolutely.

So, here, Slide 30, we are just articulating--and it doesn't appear to be disagreed. There is no recognized Current Value Principle. It was put in the 2001 Constitutional Tribunal Decision.

Frankly, in my experience, it's not the first time legislation has come out with a term that's undefined. We're all familiar with Fair Market Value. That happened in 1916 when U.S. Congress passed the Revenue Act. They used the term and never defined it. It went 50 years being undefined.

And so he's only pointed in his Second Report to some what I'll call very vague parameters from Mr. Castillo as to how it should be implemented. But even if we take Mr. Castillo's guidance, it's so, in our view, broad that it still leaves open lots of questions as to its implementation in a proper way, particularly in the context of these Bonds where

we're trying to bring something that wasn't paid, that was virtually worthless forward to today.

So, there is definitely a disagreement between the two of us on that point.

So, let me now turn to the MEF calculation in the same way I described Professor Edwards' calculation. I'm on Slide 33.

MR. HAMILTON: Could we get a time check because I'm not quite sure--we are good? Thanks.

PRESIDENT FERNÁNDEZ ARMESTO: We have made so many questions that it is--I don't know what the Secretary says.

SECRETARY PLANELLS-VALERO: The Tribunal has used 30 minutes in questions, and the Respondent has 24 minutes left.

MR. HAMILTON: Thank you.

THE WITNESS: (Mr. Kaczmarek) We are very safe to finish within that time period.

PRESIDENT FERNÁNDEZ ARMESTO: We may wish to ask on some of these calculations now, or at a later stage, Professor Edwards also, to say whether he agrees that these calculations are appropriate

because we want to have the right numbers in front of us.

THE WITNESS: (Mr. Kaczmarek) Absolutely.

So, here's the MEF formula. As I indicated, there's an acceleration to the last clipped Coupon of the unpaid principal, conversion at a parity rate. They used 1969 as the base, something that would have been known if we are simulating a bond restructuring. Then, as we've been discussing, one-year U.S. Treasury Bill rate moving forward.

So, Slide 34, we have discussed in our Second Report some favorable aspects of this calculation for Bondholders, and one of those very favorable aspects is depicted here. You could say, look, each Coupon has a maturity, and we should be calculating the amount on each Coupon from the maturity date plus interest to today. That's what we should be doing because that is when the nonpayment actually occurred. There was no obligation to make any payment before maturity date of a coupon.

Now, if we did that and applied that strict economic parameter, the amount would be derisory.

Let's take--I've said 48 cents; right? Let's call it 50 cents at bank closure. We'll use Professor Edwards' "Rule of 72." We're at almost 30 years since bank closure.

So, after the first ten, it doubles; the next ten, quadruple; the next ten, eight times at 7.2 percent interest. If I apply that 7.2 percent interest for 30 years, I get 8 times the 50 percent, $4. You heard that number.

It's hard to take a very worthless amount and convert it to something worth very much today, even over 30 years. Okay? But that is not what the Supreme--or the Constitutional Tribunal required Perú to do. It said accelerate to last clipped Coupon date.

So, it is basically holding Perú responsible for all Coupons that weren't presented, including ones Bondholders never made an attempt to present. From the very beginning, there are Bonds that never had a clipped Coupon, and apparently that is Perú's fault, and that is what their calculation does, which we believe is quite favorable. It gives a new Coupon

for that Bondholder who decided "I don't want to go in and make the effort to get paid for this Coupon."

And so, I'm now on Slide 35. What we have said is--again, looking at it, this is through the lens of a restructuring. We had Bonds, we say, with a Fair Market Value of 38 cents at bank closure. But the formula that the MEF has been required to implement turns those Bonds into Bonds worth 3.4 million at last clipped Coupon by going back in time, restoring value to those, even though they were happy to continue to pay up until they were worth 38 cents. Right?

So, very favorable conversion, and I'll come back to that in the context of a restructuring. But other favorable aspects, we've said, the conversion to dollars, protects against exchange rate risk, interest is compounded. So that's not in dispute. And, again, here's my average one-year U.S. Treasury Bill rate, we say, is 5.2 percent.

PRESIDENT FERNÁNDEZ ARMESTO: The average is the average. You have taken each year and divided by the number of years?

THE WITNESS: (Mr. Kaczmarek) Yes. So you see this graph.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: (Mr. Kaczmarek) This is the comparison. So you have the stated or effective rates of the Bonds at issue, 4, 5, and 6. Those are the flat lines. And then you add the one-year Treasury rate over time.

So, very high at certain points, over 14 percent, and then, yes, we all know rates have been low as of late because of the effects of the financial crisis.

The only problem I have--

PRESIDENT FERNÁNDEZ ARMESTO: And your average is the average of each year? You are taking each year and making an average?

THE WITNESS: (Mr. Kaczmarek) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Why are you doing some tricks to these statistics?

THE WITNESS: (Mr. Kaczmarek) No tricks to the statistics. This is the effective average annual rate over time that you would get.

PRESIDENT FERNÁNDEZ ARMESTO: And you will now speak about the Parity Exchange Rate, or that will come later?

THE WITNESS: (Mr. Kaczmarek) I'm going to touch on your question of the .77 that Professor Edwards brought up.

He did his calculation from 1982--or 1988--I think it was '88, almost certain it was '88. We can check his presentation. To present day. I'm not sure why he did that and started in '88, as opposed to going back to 1970, because we know there are Bonds that have unclipped coupons going all the way back to issuance date. That's why we started with 1970.

So, by starting later in 1988, he's missing this big spike you see in the graph. If you go earlier in time, which his 7.22 calculation does, the .77 is really higher. We haven't done the calculation. It is--I think a fair number would be around 2 percent. If you just think of inflation as 3, and our nominal rate is 5, it's 2, 2.2.

So, I think, in all fairness, the .77 is a

bit low because of his constrained time period that he measured it over.

PRESIDENT FERNÁNDEZ ARMESTO: But the point here is, of course, that this huge spike, which was 14 percent, only catches a couple of Bonds.

THE WITNESS: (Mr. Kaczmarek) Well, I think it captures a number of Bonds. I don't know the statistics of how many Bonds had unclipped coupons back before then. But, again, why people weren't bringing their Bonds in or their Coupons in to be paid during this period of time, that's for their account, but, nevertheless, if they didn't bring them in, the formulas hold Perú responsible for that action.

PRESIDENT FERNÁNDEZ ARMESTO: Parity Exchange Rate.

THE WITNESS: (Mr. Kaczmarek) Let's see if I--

PRESIDENT FERNÁNDEZ ARMESTO: Or will this come--or do you have a special slide on that?

THE WITNESS: (Mr. Kaczmarek) I actually don't think we have much more.

PRESIDENT FERNÁNDEZ ARMESTO: On parity. So then we must discuss Parity Exchange Rate.

Professor Edwards made an argument I would like your position on. He says the formula--the MEF formula calculates the Parity Exchange Rate taking as the base 1969, just one month. And he says that is not proper because you should not take one month, you should take a longer period because--a longer period where the economy is in a normal situation, no deficit, no revolution, what the official exchange rate really matches--represents the true equilibrium. And then you move either forward or backwards adjusting by the CPI of the United States and Perú.

Do you agree if I have to write an exam on economy--are you also from the University of Chicago or not?

THE WITNESS: (Mr. Kaczmarek) No. Proudly the University of Virginia.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Proudly the University of Virginia. If I would describe Parity Exchange Rate as this, is this a correct way of expressing what it means?

ARBITRATOR DRYMER: What grade would you give this student?

THE WITNESS: (Mr. Kaczmarek) So, I don't think there's a dispute about what "parity" means. The problem is the application of it in this context.

So, what Professor Edwards has done is he says, well, look, I believe since the economy between 1999 and 2018 was more stable and the currency was more free-floating and not fixed, this more represents parity and so I'll use that.

That may be correct. That may be incorrect. I think he said he could get a roomful of economists to generally agree. I think most of us would say that's the opposite of what we think of a roomful of economists. They would all disagree as to this.

But our only real problem with this is, again, he's using data all the way up to today and to then retroactively go back.

If you were looking at doing this at the time, none of that data would be available, and so you would say, well, let's put that constraint on the analysis.

How would you determine parity back in last clipped Coupon or 1992 or 1969? And that date is not available. How do you solve that problem? You'd have to use other data. Historically, you wouldn't have this information available to you.

PRESIDENT FERNÁNDEZ ARMESTO: Let me ask you my second concern. He makes a point. He says, when you convert the soles de oro into dollars, you use a Parity Exchange Rate.

Now, if you run this formula for the Parity Exchange Rate to today and he had--he had--do you remember--were you here when he was there? Do you remember? He had two graphs. One was the parity exchange and then the other was the real exchange, and on the real exchange, his own parity calculation, which were pretty close.

And his argument is when the MEF formula calculates the dollars--the historic dollars, you use a Parity Exchange Rate based on 1969. When you convert them, today's dollars into Nuevos Soles, then you do not use the same formula of Parity Exchange Rate. You use the market price, and there was a huge

gap. I mean, let me show you.

ARBITRATOR DRYMER: I think he called it--maybe I'm wrong--a second expropriation or something like that.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

ARBITRATOR DRYMER: Those are his words, not mine. I want to be clear.

PRESIDENT FERNÁNDEZ ARMESTO: He said that that was--expropriatory had a very significant impact.

ARBITRATOR DRYMER: Do you recall that?

THE WITNESS: (Ms. Kunsman) Yeah, I believe that the graph that he showed, that exchange rate was not referring to the final 2017 Decree, Supreme Decree, but to the earlier ones, the one that had a typo.

And then another issue on the exchange rate is that let's say Perú, instead of paying compensation for the lands through the issuance of Bonds it had paid cash, and that cash had been converted into U.S. dollars, they would have used the official exchange rate.

Professor Edwards would say, no, it should have been converted at this Parity Exchange Rate, which results in almost twice the amount of dollars. So, it makes sense to start with 1969 because that's when the Land Reform Bill was passed.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, but my worry is--my question to you is--or the worry which was raised by Professor Edwards' argument--here it is.

Can you go to Page 29 of his Report, of his handout which is H--

THE WITNESS: (Mr. Kaczmarek) If you'll just excuse me. I have a copy, if I can get up--

PRESIDENT FERNÁNDEZ ARMESTO: Maybe can someone give it to--

ARBITRATOR DRYMER: H-8.

PRESIDENT FERNÁNDEZ ARMESTO: H-8. Can we get, for the Experts, one? Or can we blow it up? H-8, Page 29. Thank you.

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: If you can blow it up, that's fine.

THE WITNESS: (Ms. Kunsman) What page was it?

ARBITRATOR DRYMER: 29, Slide 29.

THE WITNESS: (Ms. Kunsman) Right.

PRESIDENT FERNÁNDEZ ARMESTO: So you remember that.

THE WITNESS: (Ms. Kunsman) Yeah. It is the 2014 MEF Parity Exchange Rate, not the one that is used to calculate the 33.6 million.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Okay.

THE WITNESS: (Mr. Kaczmarek) So this was fixed in 2017, the error. He's describing an error that happened temporarily and then got fixed by the MEF.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Is it your opinion now that if I use the present formula, the 2017 Parity Exchange Rate, which is now based on the bank--the Central Bank of Perú on the--because the way I understand it is that in 2017, the Parity Exchange Rate is now based on data which were requested from the Central Bank of Perú, which are in the web page of the Central Bank of Perú.

There is a formula, and with that formula and those data, you calculate the Parity Exchange Rate, and it is based on a January 1969--it's assuming that in January 1969 there was equilibrium. And it basically does--to make it very simple, what it basically does, I think, or the way I understood it is that assuming that 1969 is an equilibrium, it calculates the Parity Exchange Rates towards the future, adjusting by the CPI in the United States in Perú.

THE WITNESS: (Ms. Kunsman) That's correct.

PRESIDENT FERNÁNDEZ ARMESTO: That's correct.

THE WITNESS: (Ms. Kunsman) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: So, my question to you is the following: I would like to see the graph, and maybe I can--we can ask then Professor Edwards to make this graph also with a 2017 formula because that is apparently the one which is being used.

THE WITNESS: (Ms. Kunsman) Right.

PRESIDENT FERNÁNDEZ ARMESTO: But his

argument was the following: That the Bonds were being calculated at--the original dollar amount of the Bonds was being calculated using a Parity Exchange Rate which was much higher than his Parity Exchange Rate and the official rate, and that when they are reconverted into Nuevos Soles as of 2018, a completely different exchange rate is used, namely not the Parity Exchange Rate but the Market Exchange Rate, and that there is a gap between the market exchange rate, which is used to reconvert into Nuevos Soles, and the Parity Exchange Rate for 2018, which would result from the formula.

And that this is an elegant way of putting the money--the hand into the pocket of the investor. That was making a summary of what I understood his--I think Mr. Drymer said that it was expropriatory, or he used some strong words. I would really like your opinion of that.

THE WITNESS: (Ms. Kunsman) Right. Two things: First, in Professor Edwards' dollarization method, he uses the Parity Exchange Rate to convert the principal of the unclipped coupons, but once he

takes it to the date of his calculation, he uses the official exchange rate to convert it into soles to show the calculation. So, he is also using--

PRESIDENT FERNÁNDEZ ARMESTO: But he says that in his calculation--because he uses the equilibrium as of now. He says that in 2018, his parity and the--his parity and his market rates are the same.

THE WITNESS: (Mr. Kaczmarek) That should be logical because he starts with the assumption that they are at parity today, so he goes back to readjust the exchange rate historically to figure out what parity would be historically so that you can do the calculation to get to parity today. So, it's designed to achieve that very outcome.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. And his point is that the formula of the MEF does not achieve that outcome. Do we agree on that?

THE WITNESS: (Ms. Kunsman) Right. What the MEF formula does is we're going to use the base of 1969 because that's when the--well, they don't say that's when the Agrarian Law was passed, but that is

when the Agrarian Law was passed.

If you use a different rate, you would be rewriting the terms of the Bonds and saying these Bonds can be exchanged for U.S. dollars at a different rate in 1969, when the law was passed, and that doesn't make sense.

PRESIDENT FERNÁNDEZ ARMESTO: Well, we had the argument. Let me put this to you.

You remember the argument, which I fully understand. You say that a valuation, we should not go to the date of expropriation or issuance; that a valuation, we should do it as of the last Coupon. But now, for the basic exchange rate, we are now going back to the date of issuance of the Bonds, expropriation. You see what I mean? For one thing, we go back; for the other, we do not go back.

THE WITNESS: (Mr. Kaczmarek) Right. And just to break that and untangle it, I think they are going back to 1969 because it was more economically stable at that point in time, and I think there's agreement in concept that you should use a period of time to estimate parity using more economic stability

than instability.

So '92, when there was--the nonpayment event, would not be, I think we would all agree, inappropriate to try to establish parity.

PRESIDENT FERNÁNDEZ ARMESTO: But do you agree with the argument? That was your question, no?

Do you agree with the basic argument that whatever Parity Exchange Rate we use, it must result, as of 2018, in the same exchange rate which is being applied to bring back the Bonds into Nuevos Soles?

THE WITNESS: (Mr. Kaczmarek) No, and the reason why is because, as my colleague indicated, there were real-world constraints on exchange rates back at that time.

So, to put it in Professor Edwards' terms, the word "constraint," what are you constrained by? If you say you are completely unconstrained in terms of exchange rates, this is what he's doing. If you're unconstrained and looking forward to data that wasn't available, sure, you can do this calculation.

The question is, what constraints or parameters are reasonable to put around the

calculation? Is it okay to use an official exchange rate that wasn't at parity to do this conversion? Why not? Why not? What says--in any of the laws or Decrees, what says you can't?

I don't see any specificity--again, this is the problem we've encountered with the Current Value Principle. It doesn't tell you all of these different ways in which things could be done.

So, it's open to interpretation. Lots of people could do it very differently. You can get very different numbers from this process, and I think, as I put it, what it comes down to, as I understand Gramercy's case--they will certainly tell me if I'm wrong--they're saying the formula is so bad that it's--when it came out, the 2013 Constitutional Tribunal in the formulas, this is so bad that--

PRESIDENT FERNÁNDEZ ARMESTO: It is one specific point. It is a very highly technical point, namely whether the calculation of the Parity Exchange Rate should--that the formula for the Parity Exchange Rate should be used, should be able to justify the two exchange rates which are being used in the

formula, the exchange rate when you move into dollars on the date of the last clipped Coupon, and when you move out of dollars. You see? Because there is a very simple solution to this, namely to--yeah.

THE WITNESS: (Mr. Kaczmarek) I'm all ears.

PRESIDENT FERNÁNDEZ ARMESTO: To write the amount in dollars. If I don't go back to Nuevos Soles, this problem should not--or am I saying something which is not right? Would this problem be solved if the compensation is established in dollars?

THE WITNESS: (Mr. Kaczmarek) So, we think there are advantages to doing it in dollars. The wrinkle, I think we will agree, is the exchange rates, which we're wrestling with. So, let me make two points to just--besides what I just said before, which is we could get a roomful of economists and I believe everybody would do it differently, frankly. So, I'm on Slide 35.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: (Mr. Kaczmarek) Let's just put it in numbers. About 4.1 million is the impact, as of last clipped Coupon of using Professor Edwards'

approach on parity versus the MEF formulas. Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Right.

THE WITNESS: (Mr. Kaczmarek) So, that's what we're talking about as of last clipped Coupon. 4.1.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But the impact is huge.

THE WITNESS: (Mr. Kaczmarek) When you apply an interest to that amount, it can--

PRESIDENT FERNÁNDEZ ARMESTO: It's huge.

THE WITNESS: (Mr. Kaczmarek) Right. So, if we use the Treasury bill rate, it goes to 75 million; right?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: (Mr. Kaczmarek) So, yes, it's a small impact back in time, but small impacts magnify, of course, over time. So, one, I hope that helps to at least orient yourself as to magnitude, these tables. The other thing is--I think we've been touching upon is, what you're doing--and my colleague I think has tried to articulate.

When you are using a parity rate back and

converting this, which was not available to anyone, you're effectively granting compensation to people, to Bondholders, for an undervalued soles oro. You're saying that this is part of the problem. We have an exchange rate regime that doesn't float. It is fixed.

It was not uncommon at the time, and since we have this fixed exchange rate, we have to compensate you because we've been keeping the soles oro undervalued. We need to give you, as part of this process, compensation for that as part of the formula.

Now, I don't know. I don't know if that's correct or not. This is our issue with Current Value Principle. What is, legally, are they entitled to? As I said, I could strictly give you a calculation, absolutely 100 percent economically defensible, that would say these Coupons in this case deserve $4. That's it. We are at those extremes. We are at those extremes in this case because it is so open to interpretation as to the implementing factors.

PRESIDENT FERNÁNDEZ ARMESTO: Let's go on.

THE WITNESS: (Mr. Kaczmarek) We're on Slide 38. I just wanted to comment here. What I've done is--I hope this is evident now. You see a formula in the middle of the slide. The T-Bill rate, it has two components: Inflation and a real rate. We've gone over that. There is no doubt in the case between the Experts here. The T-bill rate includes inflation.

We've heard, I think, from the Gramercy folks: "We just wanted inflation and interest, this is what we wanted." They are getting inflation. There is no dispute by the Experts, that is being compensated. You are getting interest. There is a dispute about how big that real rate ought to be.

PRESIDENT FERNÁNDEZ ARMESTO: This is one of the questions I wanted to put to you. I don't think you were here yesterday when Professor Hundskopf deposed, and but Professor Hundskopf was led to a supreme--supreme, not constitutional--Supreme Court judgment in 2018, so after the 2013 Constitutional Court Resolution. So, it's a lower court.

And they are applying on existing procedures

the doctrine of the Constitutional Court, and what they basically did is they took first this Supreme Court, so it's the Supreme High Court, a High Civil Court in Perú. And what they did is they used the U.S. one-year T-bill rate, but then they added as "interés compensatorios," as compensatory interest, the 4 percent of the Bond.

So, they used both, so they said--they interpreted the Constitutional Court--and I stand to be corrected if what I'm summarizing, because I'm summarizing a deposition, but they--this Peruvian Court applied the U.S. Treasury Bill rate plus 4 percent as an economist, not as a lawyer, as an economist.

Do you think that that is proper, that it is correct?

THE WITNESS: (Mr. Kaczmarek) Problem with that, as there are in some other calculations purporting to adhere to Current Value Principle. They are double-counting inflation. As my colleague went through, the 4, 5, and 6 percent rates applied to these Bonds were nominal rates.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

THE WITNESS: (Mr. Kaczmarek) So, if you are taking a T-bill rate, which has inflation, and then adding another nominal--that's a nominal rate--and then adding another nominal rate, you are double-counting the inflation portion. You are including it twice. So, I think that would be hard for me to imagine that Professor Edwards and ourselves wouldn't agree on that. Adding two nominal rates together is double-counting inflation.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you.

THE WITNESS: (Mr. Kaczmarek) Okay. Slide 39, I'll see if I can move us along.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: (Mr. Kaczmarek) Again, context of a restructuring, I won't go through these formulas. We talk about "haircuts" and sovereign debt restructurings; right? It is typical that the sovereign enters a crisis, can't afford to pay its debt, it seeks a reduction.

If the old debt is 100, the new debt is 80,

your haircut is 20 percent. Right? Fairly straightforward. So, we said, well, let's apply that here. And I'm on Slide 40.

ARBITRATOR DRYMER: Hair extension.

THE WITNESS: (Mr. Kaczmarek) You get the hair extension, a big one.

Again, 38 cents, Fair Market Value at bank closure, when no possibility of getting paid occurred. What did they do? As we said, the formulas that have come out require Perú to go back in time and reestablish higher values for these Bonds. And they say, although, yes, Fair Market Value is 38 cents, we're going to give you $3.4 million for these Bonds worth 38 cents. A 900 million percent hair extension. Probably you've never seen anything of this nature, nor have I. Never heard of it at all.

Slide 41. We've done the same calculation for Professor Edwards. This comes from our waterfall chart. His parity, his retroactive CPI gets you that 36 million number at last clipped Coupon date. He would ask for a hair extension of almost

10 billion percent. This, again, illustrates, I think, what my colleague has said. This is really a case about how much more is Perú obligated to pay for something that was worthless in '92.

So, I'm wrapping up my section, we are almost to the end. I know we've had lots of questions. I hope it has been helpful, but, again, just the waterfall chart. And I think it is pretty clear.

My point I wanted to make here is, you know, the numbers earlier in time are important because if you start with 38 cents or 48 cents, the interest rate isn't really going to do much to make that number anything of value today because, as we all agree, inflation doesn't add value, it preserves value, and if you add another real component on something small, it doesn't do anything.

So, the numbers, you have to make these Bonds worth something for--to have substance in a payment that would be made today, and the formulas that came out, as I said, I believe have done that, have treated the Bondholders quite favorably by

saying we will pretend Perú is responsible for any clipped Coupon that wasn't presented.

From the earliest point in time, if you had a bond and you said, I'm not going to collect a single Coupon from this Bond, from 1970, 20-year Bond, you could have presented all 20 Coupons; right? It would have been done by 1990. Could have presented them all, then paid. The Bondholder said, no, I'm not going to do it. It is this formula is treating Perú as being responsible for not paying every one of those Coupons from Day 1.

PRESIDENT FERNÁNDEZ ARMESTO: It's clear.

THE WITNESS: (Mr. Kaczmarek) Thank you.

THE WITNESS: (Ms. Kunsman) Okay. So, up to the Reply, the initial claim presented by Gramercy was just that there is one way to calculate the value of the Bonds, just one way. But then in their Reply, they present two more options which, in our view, just demonstrate that the Current Value Principle was undefined and its inputs subjective up to the 2013 Constitutional Tribunal Decision.

And the alternative claims are

nonalternative claims, in our view. They are no more reasonable than the original claims.

So, the first alternative--nonalternative claim is, based on a calculation Professor Edwards performs, and this calculation relates to the Gramercy/Pomalca case that they filed for 44 Class A Bonds, and these Bonds had no Coupons clipped. So, they were the full booklet. And I believe they are now part of this arbitration. This case was never decided.

But in that case there were two Expert Reports issued, and both Experts applied the CPI adjustment from the issuance date, but that was the only choice they had because the Bonds had no clipped Coupons. Then one Expert applied simple interest based on the stated coupon rate, and the other Expert-applied compound interest, and yearly compounded also based on stated Coupon rate.

PRESIDENT FERNÁNDEZ ARMESTO: And also compounded?

THE WITNESS: (Ms. Kunsman) One simple and one annually compounded.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And always the Coupon rate.

THE WITNESS: (Ms. Kunsman) But always the stated coupon rate, yes. Edwards, in his calculation, though, of the 842 .

PRESIDENT FERNÁNDEZ ARMESTO: And they used CPI?

THE WITNESS: (Ms. Kunsman) They used Lima CPI, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Very good.

THE WITNESS: (Ms. Kunsman) So, Edwards interprets this calculation very favorably because he assumes that Gramercy would have been able to present Bonds with clipped Coupons, and those Coupons would have been adjusted from the issuance date, but that's not what the Experts in the Pomalca Case did. They were never presented with that alternative--with that option.

ARBITRATOR DRYMER: With clipped Coupons, with clipped Coupons, you mean? It wasn't before.

THE WITNESS: (Ms. Kunsman) Right. With

Bonds with clipped Coupons. Right. It wasn't before then. It was only Bonds with all the Coupons intact.

So, Gramercy presents this calculation as the monetary damages equal to the value that Gramercy would have likely obtained at a minimum. But, as I explained previously, there were several domestic Decisions that applied--that parameters to the interpretation of Current Value Principle that were completely different.

You had the Laredo Case, and in that case they had did have Coupons--they did have Bonds with clipped Coupons, and they did use the last clipped Coupon date and not the issuance date. And then they also used Lima CPI, and they used interest based on simple interest from at the Bonds stated Coupon rate.

PRESIDENT FERNÁNDEZ ARMESTO: Have you made the calculation because, of course, this case is based on a completely different valuation methodology, which is based on CPI?

THE WITNESS: (Ms. Kunsman) Right. And the reason why we didn't make that--oh, sorry.

PRESIDENT FERNÁNDEZ ARMESTO: My question to

you is, have you made the calculation, use simple interest rate on the Bonds or compounded annually? It has a significant impact whether you compound annually or not. So, one or the other, but using, say, CPI from the date of the last Coupon, and have you made a calculation of how much that value would represent?

THE WITNESS: (Ms. Kunsman) No. We don't present that calculation in our Reports, and the reason why we don't is because we would then need to apply a real interest rate to the CPI-adjusted principal, and we wouldn't know what rate to use.

So, we would just be offering an additional alternative, an interpretation of the Current Value Principle, and in our view, that is not for us to do, it is for the Constitutional Tribunal and then through the MEF Decrees. It would just complicate things even further.

PRESIDENT FERNÁNDEZ ARMESTO: But would you agree with me that if instead of the system of the Constitutional Court in 2013 of going back at Parity Exchange Rate to dollars and then adding the T-bills,

which is their--basically their system, if I had--if the system had been CPI plus the stated interest on the Bonds, either compounded yearly or simple interest, that the numbers would have been significantly higher?

THE WITNESS: (Ms. Kunsman) Well, but you would be applying a nominal rate to a nominal--to an inflation-adjusted principal, so you would be double-counting for inflation.

PRESIDENT FERNÁNDEZ ARMESTO: You would be double-counting for inflation.

You would just--you would, as the Pomalca Experts did, you just take the Bond, say I recalculate the principal and I just leave the interest because that's the interest on the Bond without making any further economical analysis?

THE WITNESS: (Ms. Kunsman) Oh. Okay. No. We have not performed that calculation.

PRESIDENT FERNÁNDEZ ARMESTO: But it is significantly more than $30 million? I mean, the amount would result in much higher amount?

THE WITNESS: (Ms. Kunsman) I don't know. I

would need to run the numbers.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

ARBITRATOR DRYMER: You can't ask an economist to agree with much.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Because I think--because Professor Edwards' 842 number is he brings--what he does is he takes--he starts the revaluation always at the date of issuance?

THE WITNESS: (Ms. Kunsman) Right. And we have calculated just the CPI portion without applying any interest, and it comes out, I think, to about 40 million.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Okay. But still, we may wish to have that calculation.

THE WITNESS: (Ms. Kunsman) Okay.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Sorry to have interrupted you.

THE WITNESS: (Ms. Kunsman) So, then--

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

THE WITNESS: (Ms. Kunsman) The auditors could have been fine with the 34 million or 400 or 300. All they can check, really, is the math, but what they can do, though, is insert warnings in financial statements saying: "When you analyze these financial statements, be aware," and that's what they did in this case.

In their letter attached--confidential again, sorry.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

[redacted]

[redacted]

[redacted]

(End of Attorneys' Eyes Only session.)

OPEN SESSION

THE WITNESS: (Mr. Kaczmarek) And I'll just wrap up, exceptionally briefly here. You've heard, I think, Current Value Principle, our view is not defined, open to a wide range of interpretations. You've seen many wide range of interpretations from various Parties.

The principal difference, I think, here, is Gramercy and Professor Edwards look at it as "we've got to redo the Bonds from the very beginning, except if you've collected a coupon, that's out, but we're starting over, we are going to redo the Bonds from the issuance date with inflation adjustments and a different interest rate altogether that's much higher than the stated rates that were ever in the Bonds."

The MEF formulas are far more closely aligned with simply paying the unclipped coupons but provide, as I've said this, favorable approach in treating the last clipped Coupon as sort of the nonpayment event.

Now, we can talk about interest rates, and we can talk about exchange rates and all this stuff,

but what can't get lost in all--I think, all of the details is still this very favorable aspect of the MEF formula, of moving away from the real nonpayment date in 1992 and treating Bondholders with clipped Coupons that they just decided not to go get paid and treating it as though Perú refused payment at those earlier dates.

That is a very favorable aspect of the calculation for the Bondholders that really should not be lost when we start getting into other--other, I won't call it minutiae, but fine-tuning in terms of interest rates and exchange rates.

Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you, Ms. Kunsman and Mr. Kaczmarek.

It is 11:00. We will come back at 11:15.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good. We resume the Hearing.

We will ask the Secretary for a time check, please.

SECRETARY PLANELLS-VALERO: Mr. Kaczmarek

used 46 minutes, and Ms. Kunsman, on their presentation, and Respondent now has five minutes left.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Mr. Riehl, will you be leading the cross-examination?

MR. RIEHL: Yes, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Please.

CROSS-EXAMINATION

BY MR. RIEHL:

Q. Good morning, Mr. Kaczmarek and Ms. Kunsman. How are you?

A. (Mr. Kaczmarek) Good morning.

A. (Ms. Kunsman) Good morning.

Q. If Perú paid the amount stated on each of the Coupons, that would be paying the nominal value of the outstanding Coupons; right?

A. (Mr. Kaczmarek) Yes, that's--we refer to the face value, nominal value, same amount.

Q. And that's the value that the Constitutional Tribunal said in 2001 would be unconstitutional; right?

A. (Mr. Kaczmarek) To pay that amount as of a present day, that would be unconstitutional.

Q. Right. So, a necessary implication of the 2001 Decision is that at least some form of updating of that value had to occur; right?

A. (Mr. Kaczmarek) Agreed.

Q. Now, I'd like to present to you a hypothetical. It's going to take me a little while to describe it, so please bear with me.

For the hypothetical, I'm going to ask you to consider two bonds. One of them is one you are all very familiar with; you and Professor Edwards both cite it in your Reports. There's an image of it at Tab 4 in the binder. This is CE-120, and this is Bond 008615. We'll have an image of that on the screen in a moment.

PRESIDENT FERNÁNDEZ ARMESTO: It's not this one.

MR. RIEHL: I don't know which one that is, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: I think that's from the first day from Claimants.

MR. RIEHL: I believe it is not. But I don't know which Bond that is. I'm sorry.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, we go to CE-120.

BY MR. RIEHL:

Q. Now, Mr. Kaczmarek, as you accurately describe in your First Report, this Bond was issued on November 28, 1972; it had a face amount of 10,000 soles oro, a term of 25 years, and an interest rate of 5 percent?

PRESIDENT FERNÁNDEZ ARMESTO: It is the same.

MR. RIEHL: Wonderful.

ARBITRATOR DRYMER: 8615.

MR. RIEHL: 8615, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Excellent.

BY MR. RIEHL:

Q. And 12 of the Bonds' 25 Coupons are clipped, leaving 13 unclipped Coupons.

Do you have that so far?

A. (Ms. Kunsman) Yes. I'm going to go ahead and answer this one.

Q. Great. The second bond I would like you to consider is a hypothetical bond. Let's call it Bond X, and Bond X is exactly identical to Bond 8615, except that none of its Coupons have been clipped. So, it has the same issuance date, face amount, term, and interest rate as Bond 8615.

Do you have the hypothetical?

A. (Ms. Kunsman) I do.

Q. Now, since Bond 8615 and Bond X have identical terms, their Coupons are also identical; right?

A. (Ms. Kunsman) Right.

Q. I'd like to look at one particular Coupon from these Bonds, and that's the November 1985 Coupon, and the screen is showing that Coupon from Bond 8615.

What I'd like to explore first is how the MEF's Bondholder Process updates the value of the principal from these two particular identical Coupons.

So, the Bondholder process updates unpaid principal for inflation starting from the date of the

last clipped Coupon; right?

A. (Ms. Kunsman) Right.

Q. So, the Bondholder Process would update all of Bond 8615's Coupons for inflation from November 28, 1984; right?

A. (Ms. Kunsman) The unpaid principal, yes.

Q. But, for Bond X, the Bondholder process would update all of Bond X's Coupons for inflation from the issuance date of November 28, 1972; right?

A. (Ms. Kunsman) Right.

Q. Okay. Now, looking at this November 1985 Coupon, the principal that came due in November 1985 was 400 soles oro; right?

A. (Ms. Kunsman) Yes.

Q. And the MEF's Bondholder Process would update that particular 400 soles oro, starting from November 28, 1984, yes?

A. (Ms. Kunsman) If this is the last clipped Coupon, yes. You said it was? Okay. Yeah.

Q. Yes. But for Bond X, that 400 soles oro principal would get updated starting from 1972 in the Bondholder process; right?

A. (Ms. Kunsman) Right.

Q. Now, there was quite a bit of inflation in Perú between 1972 and 1984; right?

A. (Ms. Kunsman) Yes.

Q. In fact, there was so much inflation that the MEF's Bondholder Process would value the Coupon from Bond X more than 230 times higher than the identical Coupon from Bond 8615; right?

A. (Ms. Kunsman) I haven't run the numbers, but yes, I trust that, yeah.

Q. That sounds about right to you?

A. (Ms. Kunsman) Yeah.

Q. And that would also be true, that ratio, for each of the other unclipped Coupons in these two Bonds; right?

A. (Ms. Kunsman) Right.

Q. And, more generally, anytime there are two Bonds that are identical except for the number of clipped Coupons, the MEF's Bondholder Process updates one Bond's Coupons for inflation from an earlier date than the other Bond; right?

A. (Ms. Kunsman) Right.

Q. And that means the MEF values one Bond's Coupons more highly than identical Coupons from the other Bonds; right?

A. (Ms. Kunsman) Well, they have different left clipped Coupon dates, but yes.

Q. Yes.

A. (Ms. Kunsman) Yes.

Q. So, going back to Bond X and Bond 8615, we were just looking at the November 1985 Coupon. I want to go one year earlier and look at the November 1984 Coupon.

Now, I can't put it on the screen, obviously, because it was a clipped Coupon from Bond 8615, but this would be an unclipped Coupon in Bond X; are you with me?

A. (Ms. Kunsman) Yeah.

Q. So, the Bondholder of Bond 8615 was presumably paid 400 soles oro of principal in November 1984 or later; right?

A. (Ms. Kunsman) Correct.

Q. And in 1984, 400 soles oro was practically worthless; right?

A. (Ms. Kunsman) Correct.
Q. I'll represent to you, using the Official Exchange Rate, the value would have been 12 U.S. cents. Does that sound about right to you?
A. (Ms. Kunsman) 1984, yeah.
Q. But if you look at Bond X, under the MEF's Bondholder Process, that principal from the November 1984 Coupon would still be updated for inflation starting in 1972; right?
A. (Ms. Kunsman) Sorry, would you mind--I was opening the presentation to--repeating that question?
Q. Yeah. Sure. Sure. So, turning back to Bond X, still looking at the November 1984 Coupon?
A. (Ms. Kunsman) Yes.
Q. Under the MEF's Bondholder Process, the November 1984 Coupon from Bond X would be updated for inflation starting in 1972; right?
A. (Ms. Kunsman) Right.
Q. And I'll represent to you that for the period from 1972 to November of 1984, if you do that process, you get a value of about 30 1984 U.S. dollars. Does that sound about right to you?

A. (Ms. Kunsman) Sure. It just shows that the MEF Bondholder process was favorable to Bondholders with unclipped Coupons.
Q. Well, I know you've testified to that, but it also shows, doesn't it, that Bondholder 8615 was undercompensated for the effects of inflation during that period? Right?
A. (Mr. Kaczmarek) I wouldn't say "undercompensated" whatsoever. I would say they are both overcompensated, because going back to last clipped Coupon already itself is a favorable aspect of the calculation.
Q. Now, using the same hypothetical, I'd like to look at what happens if CPI is used to update for inflation from the issuance date. And so, I'd like to start again with the November 1985 Coupon from these Bonds. And starting with Bond 8615, if the November 1985 Coupon were updated for inflation from the issuance date using CPI, the 400 soles oro principal from each Coupon would be updated from November 1972; right?
A. (Ms. Kunsman) Right.

Q. And that would be the same for the Coupon from Bond X; right?
A. (Ms. Kunsman) Right.
Q. So, in each case, that 400 soles oro of principal would be multiplied by the ratio of Perú's CPI divided by--I'm sorry, at the payment date divided by Perú's CPI in November of 1972; right?
A. (Ms. Kunsman) Right.
Q. And, after that inflation updating, the 400 soles oro principal from each of the two Coupons would be worth the same amount; right?
A. (Ms. Kunsman) Right.
Q. And that holds true for each of the other unclipped Coupons in these two Bonds--I'm sorry, in Bond 8615; right?
A. (Ms. Kunsman) Right.
Q. And more generally, when Bonds are updated for inflation from the issuance date, additional unclipped--let me start over. Sorry.
More generally, when Bonds are updated for inflation from the issuance date, identical unclipped Coupons from identical Bonds will always have the

same inflation-adjusted value; right?
A. (Ms. Kunsman) Right, because it goes to the issuance date. Yeah.
Q. Yeah. And that's true regardless of how many Coupons have been clipped in each of the Bonds; right?
A. (Ms. Kunsman) Right. They are accelerated.
PRESIDENT FERNÁNDEZ ARMESTO: So, as of today, whoever clipped a Coupon did the very bad business.
THE WITNESS: (Ms. Kunsman) Yeah. Very bad.
BY MR. RIEHL:
Q. So, the situation here, right, is that if you update for inflation from issuance, each--the principal from each Coupon is treated the same regardless of clipping or unclipping, but under the MEF Bondholder Process, a Bondholder who has clipped Coupons gets less value?
A. (Ms. Kunsman) Yes. The value will change whether you have some clipped Coupons or some unclipped Coupons, yes.
Q. Okay. Now, your view, as I understand

it--and you'll correct me if I'm wrong--but your view is that it would have been consistent with the 2001 Constitutional Tribunal Decision for the MEF to update the outstanding principal starting from 1992, when Perú closed the Agrarian Bank; is that right?

A. What we're saying is that the 2001 Constitutional Tribunal Decision was unclear, that all it said was you have to update the Bonds based on the Current Value Principle; didn't define that principle, but that there were several Bonds--Coupons that could have been presented prior to 1992, and they were not presented. And so, Perú was not in default on those Coupons, because they could have been presented and they could have called them all in for 40 cents.

Q. Well, your view is that a method that updates from a day before 1992 is a conservative method; right?

A. (Ms. Kunsman) Our view is that we don't know what the Tribunal meant with the Current Value Principle, so--no, our view is we don't know.

Q. Right. So, is it or is it not consistent

with the 2001 opinion to update starting from 1992, in your opinion?

A. (Mr. Kaczmarek) I'll address this, since I did in the presentation. I think it would be entirely consistent to use 1992, because, as we said, that is the date nonpayment started. That is technically the problem, and so, going back at any other date earlier is a favorable position for Bondholders.

They could have very easily started from bank closure, no earlier than that, and no later than maturity date for each Coupon, when each Coupon matured and should have been paid. That would be completely economically sound.

Q. And going back to our hypothetical Bonds, under that system, each of those Bonds, the totality of those Bonds, would be worth far below 1 cent; right?

A. (Mr. Kaczmarek) Correct, because that's--the issue here--like I said, I think the Parties are trying to solve different problems. The MEF is solving a problem of unpaid paper; right?

As of '92, we all--I thought we all had agreed--and we can check this--that, if we paid a piece of paper, it is done. We are not dealing with it anymore; it's a discharged obligation. So, if Perú had just kept paying beyond 1992 and paid them off, apparently we wouldn't be here.

So, that starts the problem. The problem doesn't start at the issuance date of the Bonds, or at the last clipped Coupon, necessarily.

Q. And so, to be perfectly clear, that payment of far less than a cent on each of these Bonds, in your opinion, is something that would have been entirely consistent with the 2001 CT Decision; is that right?

A. (Mr. Kaczmarek) I think the 2001 CT Decision is obviously a legal document for the lawyers to interpret. When we look at it, it is ambiguous. It leaves open a lot of interpretation, and what I've tried to say is the interpretation that has come out--we said this is favorable if the objective is to pay off the paper, and obviously Gramercy is taking a very different view, that it's not to pay off unpaid

Coupons, but it's to go back and redo the Bonds from the very beginning and change the terms, and it's to remedy underpayment for expropriated lands, essentially.

Q. Well, Mr. Kaczmarek, that's all very interesting, but I would like an answer to my question, which is: That payment of far less than 1 cent on each of these Bonds was, in your opinion, something that would have been entirely consistent with the 2001 CT Decision; is that correct?

A. (Mr. Kaczmarek) No, because the CT decision has certain parameters in it which--I believe last clipped Coupon was a parameter. So, you have to apply the parameters of that Decision.

Q. I'm sorry. It is possible you misunderstood my question. I was referring to the 2001 CT decision. Is it your understanding that that Decision has parameters?

A. (Mr. Kaczmarek) Oh, 2001. That Decision has no parameters, so almost anything goes at that point. I could not make a calculation with the information contained in that Decision.

Q. Right. So, if almost anything goes, in your opinion, I take it you agree that payment of far less than 1 cent for the entirety of Bond 8615 and Bond X was consistent with the 2001 CT Decision; is that right?

A. (Mr. Kaczmarek) If you interpret the 2001 CT Decision to just grant inflation off of 1 cent, you have the equivalent of 1 cent today. That would be consistent then, yes.

Q. I think you added a qualifier to that. The answer to my question is yes; right?

A. (Mr. Kaczmarek) Yes. 1 cent back then, the equivalent of 1 cent today, would satisfy the objective of that Decision, in my view.

Q. And according to your calculations, the Fair Market Value of Gramercy's Land Bonds in May 1992 was 20 cents; right?

A. (Ms. Kunsman) Yes.

Q. And that's the base value you use when you say that the MEF's Bondholder Process would give Gramercy a hair extension; right?

A. (Ms. Kunsman) Yes. That is the denominator.

Q. So, when you say "hair extension," all you mean by that is that Gramercy gets something more than 20 cents for all of its Land Bonds; right?

A. (Ms. Kunsman) For the unclipped Coupons, yeah.

Q. I'd like you to turn, please, to Tab 2, which is RER-11, the second Quantum Expert Report, and in particular to Page 11. And there's a table on that page, Table 3.

A. (Ms. Kunsman) Which tab?

Q. Tab 2.

A. (Ms. Kunsman) Oh. Sorry.

(Comments off microphone.)

MR. RIEHL: The Second Quantum Report, yes.

BY MR. RIEHL:

Q. So, Table 3 is a table in which you show purported effective annual interest rates and principal discounts for each class of Bonds; right?

A. (Ms. Kunsman) Right.

Q. The effective annual interest rates you presented in this table are wrong, aren't they?

A. (Ms. Kunsman) They are. They should be 6,

5, and 4. That's what I clarified in the Hearing, in the presentation, yeah.

PRESIDENT FERNÁNDEZ ARMESTO: And I was also at some stage--this is the adding, and then--adding the interest and dividing by the years, that's not the way it works?

THE WITNESS: (Ms. Kunsman) It is not. We described it correctly in our First Report, then looking--at looking at a Bond image that was blurry, we thought we had made a mistake and clarified it, but it was correct in our First Report. So, it is 6, 5, and 4.

BY MR. RIEHL:

Q. And the principal discounts shown here are also wrong; right?

A. (Ms. Kunsman) No, those should be correct. Oh, they were? Okay.

Yeah, those are wrong as well.

MR. RIEHL: Mr. President, I don't know if the rules laid down allow consultation like that between the Experts.

PRESIDENT FERNÁNDEZ ARMESTO: It is

important that they are here to consult, which--the important thing is that we get one answer. But, I mean, you also consult with Mr. Friedman from time to time, so--

MR. RIEHL: Fair enough. Thank you. He's very wise.

BY MR. RIEHL:

Q. And just to make sure we have a clean record, Paragraphs 44, 45, and 46, which rely on those figures, are also wrong; is that right?

A. (Ms. Kunsman) Yeah. Those would need to be amended, but it is all related to the same issue.

Q. Great. Now, I want to turn to a slide from your Opening Presentation. I apologize, it's going to take me a minute to find it.

If you happen to know where it is, it's the one where you show the interest rates of the U.S. Treasuries.

(Comments off microphone.)

Q. I have it. It is Slide 37.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, the graph.

BY MR. RIEHL:

Q. Now, in your Opening Presentation, Mr. Kaczmarek raised a point about the range of dates of Professor Edwards' calculation of the real interest rate on Treasuries, and--so, my first question, though: You raised a question about the range of dates, but his computation on that range of dates was accurate; right?

A. (Mr. Kaczmarek) We haven't checked it. I think that's the first time we saw the number, but it doesn't surprise me as being out of order, any order of magnitude, to be incorrect.

Q. And it doesn't surprise you because the one-year Treasury Rate is generally only slightly higher than the expected Inflation Rate at any point in time; right?

A. (Mr. Kaczmarek) That depends upon monetary policy of the Federal Reserve.

Q. But it's not surprising that that would be within a range of 1 percent?

A. (Mr. Kaczmarek) Sometimes it can be. Sometimes it can be much higher than 1 percent.

I'm--I haven't broken out the inflation, for example, in 1979 or '80, where you see the one-year T-bill rate was over 14 percent. So, I don't know the components.

But, again, the Federal Reserve doesn't set inflation. Inflation is a result of economic conditions. The Federal Reserve changes rates, which is affecting real interest rates, and it will push rates up and tighten when it deems appropriate, so the spread can be more than 1 percent.

Q. Now, Mr. Kaczmarek, I don't know if you, like me, lived through the late '70s in the U.S. in the way that you remember, but I assume you know that economists, when they think about U.S. inflation during the late '70s, the first thing that pops into their mind is the term "stagflation"; right?

A. (Mr. Kaczmarek) Possibly. This is not a period of time I studied for this particular assignment in this case.

Q. Well, you've heard the term "stagflation" before, haven't you?

A. (Mr. Kaczmarek) Certainly.

Q. And the term comes from U.S. inflation rates in the late '70s; right?

A. (Mr. Kaczmarek) Again, I haven't studied up on this particular issue, because it's not a topic we addressed in the Report.

Q. So, in your general expertise, that's not the type of thing you would know?

A. (Mr. Kaczmarek) I am generally regarded as knowing a lot of things people probably don't want to know, but that is not something I keep in my back pocket and converse with people over coffee regularly.

Q. Well, do you understand that what "stagflation" refers to is a period in which inflation is very high, but economic growth is low?

A. (Mr. Kaczmarek) I would say that's a fair characterization.

Q. In fact, in the late '70s, and even into the early '80s, inflation in the United States was very high by historical standards, wasn't it?

A. (Mr. Kaczmarek) Depends upon how far back you go in history, but again, this is nothing I've

commented on. It has no bearing on any of my opinions in this case.

Q. Well, you did mention the spike that's shown on Slide 37. What I'll put to you is that that spike is the result of stagflation; isn't that correct?

A. (Mr. Kaczmarek) Again, I have not looked at the underlying details between the real rate and the Inflation Rate specifically in that year.

Q. But I assume it wouldn't surprise you to learn--and I'm not making a representation, because I have not looked at it--but I assume it would not surprise you to learn that the Inflation Rate at that time was very close to the one-year Treasury Rate as well?

A. (Mr. Kaczmarek) I have no idea. I haven't looked at the data.

Q. Okay. As part of your work on this matter, you looked at some court proceedings in which Peruvian Courts valued Land Bonds; right?

A. (Ms. Kunsman) Correct.

Q. And in particular in your Reports, you describe four cases that occurred after the

Constitutional Tribunal's 2001 Decision in which Peruvian Courts relied on Expert Reports that calculated Land Bond values; is that right?

A. (Ms. Kunsman) That's correct. I'm just going to get my Report.

Q. Sure. It's in the binders at Tabs 1 and 2.

A. (Ms. Kunsman) Okay.

Q. If you're--are you looking for Appendix 13 to your Report?

A. (Ms. Kunsman) I am.

Q. Yeah, that is Tab 16. And, for the record, this is Appendix 13 to the Second Quantum Report.

Now, in each of these four cases, the Court used CPI to update the unpaid principal for inflation; right?

A. (Ms. Kunsman) In three of them, it used Lima CPI. In another one, it was a combination of Lima and Trujillo CPI, and the--you said in these four cases, the Court--well, the Pomalca Case was never decided, I understand, so in three cases the Court issued its Decision relying on a CPI. Depends on which case.

Q. Right. In the Pomalca Case, both the Expert Reports you referred to earlier used CPI to update the unpaid principal for inflation; right?

A. (Ms. Kunsman) Yeah. Lima CPI, yes.

Q. You just mentioned the Trujillo--sorry, Trujillo CPI. I apologize for my terrible Spanish pronunciation.

Trujillo is a city in Perú; right?

A. (Ms. Kunsman) Yes. My recollection is that Trujillo was where the land was located, but it didn't have CPI for the entire period, so the Expert in that Report had to use a combination.

Q. And what "Trujillo CPI" means is the Consumer Price Index measured in the City of Trujillo; right?

A. (Ms. Kunsman) Correct. I don't know if it's the city or the Province, yes.

Q. So, that is another CPI index?

A. (Ms. Kunsman) It is.

Q. Now, one of those cases, the Luna Case, was a case that involved bonds in which 14 coupons had been clipped from each bond; right?

A. (Ms. Kunsman) Right.

Q. In that case, the Court actually made an award in which it updated using CPI from the placement date; right?

A. (Ms. Kunsman) Right.

Q. And you mentioned a case in which--I believe, in which CPI updating was done from the date of the last clipped Coupon. That was the Laredo Case; right?

A. (Ms. Kunsman) Right.

Q. And in that case, there were 25 Bonds at issue; right?

A. (Ms. Kunsman) Yes.

Q. And each of those Bonds had 20 Coupons; right?

A. (Ms. Kunsman) I believe so. I might need to look at--

Q. Yes. If it helps you--it may help you to look at Tab 18, which is CE-119. And there is--in the tab there is--separated by blue pages, there's the original, and there is a translation, but I believe it's a partial translation.

A. (Ms. Kunsman) No. That's fine. I can look at the original. That's the one that I looked at.

Q. And that document, CE-119, is the Expert Report that was submitted in the Laredo Case that was used to value the Bonds; right?

A. (Ms. Kunsman) Yeah. In going back to your earlier question, yes. 25 Bonds, 20 coupons, yeah.

Q. And each of those Bonds had 20 coupons; right?

A. (Ms. Kunsman) Originally issued, some of them were clipped.

Q. Good point. Thank you.

A. (Ms. Kunsman) Right.

Q. In particular, a total, among those Bonds, a total of five coupons total were clipped; right?

A. (Ms. Kunsman) There were five Bonds that had one coupon clipped each, so five unclipped coupons for those Bonds.

Q. Right. So, to make sure we're all on the same page--

A. (Ms. Kunsman) Yes.

Q. --there were 20 Bonds that were totally

unclipped, and then there were five Bonds, each of which had one coupon clipped out of 20?

A. (Ms. Kunsman) Correct.

Q. Okay. In that case, the choice of updating from placement or updating from the date of the last clipped coupon had very little effect on value; right?

A. (Ms. Kunsman) It was one year difference. Yep.

Q. Yeah. And I have done the calculation. I'll represent to you that what I get is--

A. (Ms. Kunsman) Okay.

Q. --that the value would have been about 2 percent higher if they had gone from issuance.

Does that sound about right to you?

A. (Ms. Kunsman) It was the year--yeah, that sounds about right.

Q. Okay. And, again, putting aside the date from which the inflation updating was done, in all of the cases you look at, CPI was used to do inflation updating; right?

A. (Ms. Kunsman) CPI, yeah.

Q. Okay. Now, the President has asked us to use Spanish terms for Peruvian legal principles. I assume you're comfortable with that, yes?

A. (Ms. Kunsman) I'm comfortable with Spanish. I'm not sure I'm comfortable with Peruvian legal principles.

Q. I won't ask you about anything you didn't talk about in your Report.

A. (Ms. Kunsman) Okay.

Q. And, again, I apologize for my horrible pronunciation. But it's fair to say, isn't it, that the Courts in the cases you reviewed understood el principio valorista as applied in the 2001 Constitutional Tribunal Decision to include updating for inflation using CPI?

A. (Ms. Kunsman) When reviewing those cases, I focused on the calculations, not on the actual Decisions, so I would need to review every single one to be able to respond to that question. So, I'm not sure.

Q. Well, you don't think a court would have valued in the manner it did if that isn't what it

thought was legally required, do you?

A. (Ms. Kunsman) I don't know. That's a legal question. I don't know.

Q. Okay.

ARBITRATOR DRYMER: Is the point simply whether or not these Courts used CPI?

MR. RIEHL: No. I think--I'll move on, I think. Yeah.

ARBITRATOR DRYMER: All right.

PRESIDENT FERNÁNDEZ ARMESTO: But we agree that the Experts designated by the Court, because I think there is a difference--

ARBITRATOR DRYMER: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: --here between what the Experts designated by the Court said and what the Court said.

MR. RIEHL: Right. Yeah, I'll be happy to clear that up.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ ARMESTO: What Ms. Kunsman is saying--I don't know what the Court said.

MR. RIEHL: Right.

PRESIDENT FERNÁNDEZ ARMESTO: I know what the Expert said.

And is it true that the Experts used CPI?

THE WITNESS: (Ms. Kunsman) Yes, they used CPI.

BY MR. RIEHL:

Q. Okay. And in three of those four cases, the Court then entered the calculation that the Experts had made using CPI; right?

A. (Ms. Kunsman) Correct.

Q. And the one case where that didn't happen, was the Pomalca Case; right?

A. (Ms. Kunsman) Correct.

Q. Now, you mentioned earlier that there were two different Expert Reports in the Pomalca Case; right?

A. (Ms. Kunsman) Yeah. Actually, there were three--we reviewed three--but, yes, two are the ones that have come up.

Q. Okay. And I'd like to focus on the two that you did mention. Is that okay with you?

A. (Ms. Kunsman) Yes.
Q. Great.
And there was chronological sequence here. One of those reports was earlier in time in that case than the other; right?
A. (Ms. Kunsman) Right.
Q. And the First Expert Report that was submitted in that case is the one that used simple interest; right?
A. (Ms. Kunsman) Right.
Q. And then the parties in that case filed objections with the Court to that Expert Report; right?
A. (Ms. Kunsman) Gramercy did, yes.
Q. Yeah. And then the Court rejected that Report and appointed a new Expert; right?
A. (Ms. Kunsman) Again, that was part of the legal decision, so what I did was look at the two Reports. I didn't look at the Decision behind rejecting one or the other, and I don't know how the process works either in Perú, how a court does that.
Q. Sure. And I don't expect you to have legal

knowledge. You're not a Peruvian lawyer; right?
A. (Ms. Kunsman) No.
Q. Or an expert in Peruvian law?
A. (Ms. Kunsman) No.
Q. All right. So, you don't know, one way or the other, why the next Expert Report came about procedurally?
A. (Ms. Kunsman) Right. No, I don't know. One used simple, one used compounded. The one that used simple was before the one that used compounded.
Q. Right. And so, the Report that used compound interest was the last of the Expert Reports, that you were aware of, in that case; right?
A. (Ms. Kunsman) Yeah.
Q. And the First Report in that case, even though it was simple interest, it calculated interest using the original coupon interest rates; right?
A. (Ms. Kunsman) Yeah. The stated coupon rates.
Q. Yeah. And, in fact, in each of four cases you looked at the--I'm sorry, scratch that.
In each of the four cases you looked at,

after the Courts updated for inflation, they awarded interest on that updated amount; right?
A. (Ms. Kunsman) Right. Not always using the stated coupon rates. I think it was the Saavedra Case that used the legal rate.
Q. Yeah. Well, and that's a very interesting case. Let's take a closer look at it. The legal interest rate that the Expert applied, and then the Court issued an award on that basis, the legal interest rate varied over time during the updating period; right?
A. (Ms. Kunsman) Yes.
Q. And it was as high as 300 percent for part of that time; right?
A. (Ms. Kunsman) I don't recall exactly.
Q. Well, let's take a look. If you would look, please, at Tab 60 of your binder, that is CE-1342, and I will direct you to Annex 2.
A. (Ms. Kunsman) It's Tab 60, so it's in the--
Q. Tab 6-0, yes.
A. (Ms. Kunsman) Okay.
Q. And, again, in the tab, there is a partial

English translation. I believe the table, the Annex 2 that I'm referring to, is only in the Spanish in the tab.
A. (Ms. Kunsman) Okay.
(Comments off microphone.)
MR. RIEHL: Well, if you look at Annex 2, I think it's on the bottom, it says Page 9. That's where Annex 2 starts.
(Comments off microphone.)
BY MR. RIEHL:
Q. So, let me ask first, just so we know what we're looking at, this is the Expert Report in the Saavedra Case that you referred to; right?
A. (Ms. Kunsman) Yeah, it's the one that--what's the C number?--C-148.
Q. I'm sorry, C-142.
(Overlapping speakers.)
Q. Yeah. I was saying CE-142, I believe, is the Expert Report, and then CE-148 is the Opinion in that case; is that right?
A. (Ms. Kunsman) Correct.
Q. Yeah. And the Opinion awards the amount

that is described in the Expert Report; right?

A. (Ms. Kunsman) Correct.

Q. Yeah. And so, Annex 2 starts on Page 9 and goes through Page 14. This shows the Expert's interest calculation in that case; right?

A. (Ms. Kunsman) Yeah. It's a calculation of the simple interest, yeah.

Q. Yeah. And so, if you--sort of just looking at the top, going from left to right, first the Expert looks at particular periods in time and goes through those periods sequentially; is that right?

A. (Ms. Kunsman) Right.

Q. And then has the "días vigentes" the number of days in each period; is that right?

A. (Ms. Kunsman) Yeah, "días vigentes."

Q. And then there's the legal interest rate; right?

A. (Ms. Kunsman) "Tasa interés legal," yeah.

Q. Yeah. And so, that's the interest rate that actually gets applied for that number of days of that period; right?

A. (Ms. Kunsman) Correct. On a simple basis.

Q. Yeah. And that gets you to--all the way over on the right--"interés legal" is the amount of interest for each of those periods; right?

A. (Ms. Kunsman) Yes.

Q. And then when you flip over to Page 13, on the bottom right, there is a "total interés legalis"--I'm sorry for pronunciation again--of 9.4 million Nuevo Soles; right?

A. (Ms. Kunsman) Yes.

Q. Now, and if you go back to Page 9, if you look at the row for the period from September 1 of '88 through November 30 of '88, the legal interest rate that the Expert applied for that period was 300 percent; right?

A. (Ms. Kunsman) Can you repeat?

PRESIDENT FERNÁNDEZ ARMESTO: To make it simple, this is, to me, the standard calculation of in our legal systems of legal interest, which is a changing rate which you apply flat.

MR. RIEHL: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Based by whatever the law tells you you have to apply, and the

law changes. When there is inflation, it went up.

MR. RIEHL: Right. I won't linger much longer here, Mr. President. I do want to look very briefly at what these rates actually were because I think it is pertinent.

PRESIDENT FERNÁNDEZ ARMESTO: No. But because it is interesting to me, I was not aware, it seems that what the judge was just applying--or what the Expert was applying is just the legal interest rate for the quoted amounts, for unpaid amounts.

BY MR. RIEHL:

Q. Is that your understanding?

A. (Ms. Kunsman) On a simple basis.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, yeah, yeah. This is the way I think on the Peruvian law this is applied?

THE WITNESS: (Ms. Kunsman) Yes.

MR. RIEHL: Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: Just coming from other legal systems where the legal interest rate is always applied as a simple interest rate.

THE WITNESS: (Mr. Kaczmarek) I'll just add

that I have dealt with legal interest rates in many jurisdictions, it has always been my experience is that they are always applied simple.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: (Mr. Kaczmarek) They are always higher than rates that are compounded, but they are always simple.

BY MR. RIEHL:

Q. And now that you've looked at this, you would agree that, for part of this period, the rate that was applied was 300 percent; right?

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Clearly, yes.

BY MR. RIEHL:

Q. Okay. And that rate was applied to principal that had already been updated for inflation; right?

A. (Ms. Kunsman) Right.

Q. And if you look over the rates, they were roughly speaking in the double digits during the '80s--

A. (Ms. Kunsman) Yes.

Q. --and then they dropped for a little while in the early '90s and then they were back up into the double digits in the late '90s.

Is that generally accurate?

A. (Ms. Kunsman) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: The thought of the Expert is there was--I recalculate the principal, and then the proper interest rate to apply is the legal interest rate, not the bond interest rate, nor the American interest rate. He takes what the normal default interest rate under Peruvian law.

MR. RIEHL: Right.

PRESIDENT FERNÁNDEZ ARMESTO: I think that's the calculation, no?

THE WITNESS: (Ms. Kunsman) Correct.

BY MR. RIEHL:

Q. Okay. Yeah. And then what I want to explore with you is how the effect of that compared to the other ways of doing it. In sort of cutting to the chase, the interest that the Expert calculated and that the Court awarded in the Saavedra Case was more than 20 times the updated principle that the

Court awarded; right?

A. (Ms. Kunsman) I haven't made the calculation, but that looks right.

Q. Yes. And if you go back to--this might help--within Tab 60, CE-142, the page that has the number "7" on the bottom, Section 4, "Conclusiones."

A. (Ms. Kunsman) Yes.

Q. All right. That says in 4.2 that the amount of 422,000 Nuevos Soles is the Award for the principal component; is that right?

A. (Ms. Kunsman) Correct.

Q. And then the Award for the interest in the next paragraph is 9.4 million Nuevos Soles?

A. (Ms. Kunsman) Correct.

Q. And then the Court actually awarded those amounts; right?

A. (Ms. Kunsman) Yes.

Q. Now, in Professor Edwards' computation of the value of Gramercy's Land Bonds, using the 7.22 percent interest rate, interest is only about 91 percent of the updated principal; right? If it helps, in Tab 1 is your First Report.

A. (Ms. Kunsman) Okay.

Q. And if you turn to Page 41.

PRESIDENT FERNÁNDEZ ARMESTO: Can we break for one minute?

(Pause.)

PRESIDENT FERNÁNDEZ ARMESTO: Sorry.

MR. RIEHL: May I proceed, Mr. President.

BY MR. RIEHL:

Q. So, having looked at that, does that refresh your recollection that in Professor Edwards' computation of the value of the Gramercy's Land Bonds, using the 7.22 percent interest rate, interest is only about 91 percent of the updated principal?

A. (Ms. Kunsman) The real interest because he is supposedly--he says he's using a real interest rate.

Q. Well, the--in Saavedra--

A. (Ms. Kunsman) Yes.

Q. --the interest rates they applied were also on a real basis; right?

A. (Ms. Kunsman) Yes, you're right.

Q. Yeah. And it's just a fact--right?--that

interest was about 91 percent of Professor Edwards' calculation?

A. (Ms. Kunsman) Yes.

Q. And it was about 98 percent of the Award in Saavedra?

A. (Ms. Kunsman) Yes.

Q. And I do want to look at interest in one of the other cases, and that's the Luna Case?

PRESIDENT FERNÁNDEZ ARMESTO: Your point is here it is 91 and here it is 75 percent?

ARBITRATOR DRYMER: 98.

MR. RIEHL: 98 percent, Mr. President.

ARBITRATOR DRYMER: Of the total value of the Award, I believe, is the point.

MR. RIEHL: It's--

PRESIDENT FERNÁNDEZ ARMESTO: I lost this point because, if I look at this calculation, it is approximately 80 percent.

MR. RIEHL: I'm sorry, Mr. President, which calculation are you looking at?

PRESIDENT FERNÁNDEZ ARMESTO: I'm still in CE-142, Page 13. That is where you started.

MR. RIEHL: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And there we see that the capital is 421 million and the total interest is 9 billion, no?

(Comments off microphone.)

MR. RIEHL: I'm sorry. Can you say that again, Mr. President. I didn't have it right in front of me.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. This is for the Experts, really, but I understand that what this means is that the capital--that the valued capital is 421 million and on that you must add 9 billion interest.

MR. RIEHL: I believe the units are off. I believe the numbers on the page are 421,000 and 9.4 million.

THE WITNESS: (Ms. Kunsman) On Page 7.

ARBITRATOR DRYMER: Are you--

PRESIDENT FERNÁNDEZ ARMESTO: Okay. These are in thousands, not in millions. So, it is 421,000 versus 9,393,000?

MR. RIEHL: Those are the numbers on the

page I was asking about, yes.

THE WITNESS: (Ms. Kunsman) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. So, it's a huge amount of interest and the very small amount of capital?

MR. RIEHL: Right.

THE WITNESS: (Ms. Kunsman) Yes.

BY MR. RIEHL:

Q. And, in fact, Ms. Kunsman, of the total award, if you add them together, the interest component is about 98 percent; right?

A. (Ms. Kunsman) I haven't made the calculation.

ARBITRATOR DRYMER: You're suggesting to us that the 9.4 million of interest is about 98 percent of the 9.8 million total value awarded?

MR. RIEHL: That is correct. And I'll make that as a representation. I have done the calculation.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. And now say--you compared it to Professor Edwards' calculation, and you say, well, the percentages are

similar?

MR. RIEHL: Actually, I'm saying that the percentage in Edwards' is 91 percent, which is lower.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Now I understand the argument.

Do you have any comment to that?

THE WITNESS: (Ms. Kunsman) No.

BY MR. RIEHL:

Q. All right. Let's take a look, and I think this will be quicker, at the Luna Case.

So, with respect to interest, in Luna--actually scratch that.

In the Luna Case, what the Expert calculated and then what the Court awarded was first updating for inflation using CPI and then adding compound interest at the original coupon rate and then additionally adding a second piece of interest on top at a 3.915 percent compound rate; right?

A. (Ms. Kunsman) Right. Yeah.

Q. So, to be clear, the interest award on an inflation updated amount--so on a real basis--was the coupon rate plus close to 4 percent; right?

A. (Ms. Kunsman) Right, which economically doesn't make sense because you're applying a nominal rate to an inflation-adjusted base.

Q. But that's what a court in Perú actually awarded to a Bondholder; right?

A. (Ms. Kunsman) Yes. Yes.

Q. And it's fair to say that in all four of these cases that you looked at--sorry, I'll amend that.

It's fair to say in the three cases in which there was an entered Decision, the Courts understood Perú's obligation under the Land Bonds to include paying interest on the outstanding principal; right?

A. (Ms. Kunsman) The calculations all applied interest, yes.

Q. Yeah. And they all applied interest at a rate that was at least equal to the original coupon interest rate in real terms, and in two of the cases it was higher; right?

A. (Ms. Kunsman) One was--the Saavedra Case was the legal, and then the other two with the stated coupon rates.

Q. Right. And so, the answer to my question is yes?

A. (Ms. Kunsman) Yes. Well, I don't know if the legal interest rate--if it's exactly comparable to the coupon stated rates because they changed over time, but that's why I made the qualifier.

Q. Right. But you would agree, wouldn't you, that the interest awarded in Saavedra was much, much higher than would have been awarded using the coupon rate on the compound basis; right?

A. (Ms. Kunsman) Saavedra was simple basis. I don't know. I would need to check.

Q. So, you don't know whether awarding interest that's 20 times as much as the principal is more or less than awarding interest at the original coupon rate?

A. (Ms. Kunsman) One is on a simple basis and the other is on a compound basis.

Q. You can look at the total amount awarded though; right?

A. (Ms. Kunsman) Well, I would need to run both calculations from the adjusted date and then see

which one comes up. They are two different cases. You are comparing two different cases.

Q. Okay. But so, you don't know one way or the other.

A. (Ms. Kunsman) That's what I said, that I would need to run the calculation.

Q. In your Reports, you expressed some opinions about the Constitutional Tribunal's 2013 Order, and I'd like to turn to those. If you look at Tab 1, it's the First Quantum Expert Report, RER-5, and I'll direct you to Paragraph 57.

A. (Ms. Kunsman) I'm there.

Q. So, in this paragraph, you're referring to the Constitutional Tribunal's 2013 Order; right?

A. (Ms. Kunsman) Decision, yes.

Q. And you believe that the Constitutional Tribunal's reasons for rejecting the CPI method were reasonable from an economic perspective; right?

A. (Ms. Kunsman) Right.

Q. One of the Constitutional Tribunal's reasons was that the basket of goods used to calculate CPI might fail to take into account certain things that

might happen during times of hyperinflation; right?

A. (Mr. Kaczmarek) Yes. They expressed some concern about that.

Q. So, the idea here is that Perú's official CPI statistics might be inaccurate during the hyperinflation period?

A. (Mr. Kaczmarek) That it wouldn't properly measure the--how prices of goods and services had increased, given how, as we've discussed during the Hearing, people tend to switch to consume different things in hyperinflationary periods.

Q. And if that actually happened, the necessary consequences that Perú's official CPI statistics are inaccurate for that period; right?

A. (Mr. Kaczmarek) They could be inaccurate or just not the best measure to accomplish the task that they are trying to accomplish.

Q. Well, if the CPI statistics are accurate, they could be used to update for inflation accurately, couldn't they?

A. (Mr. Kaczmarek) When you say "accurate," again, mathematical accuracy or--you know, I think

they are not suggesting there's a mathematical problem. They are suggesting--because of how the baskets are changing, they are expressing some doubts about whether the math truly reflects how much more money it would cost a person to consume an average basket from period to period. So, it's not really a matter of accuracy in math, but an accuracy in terms of behavioral consumption patterns.

Q. The CPI statistic at a particular point in time is a measurement; right?

A. (Mr. Kaczmarek) Yes.

Q. In particular, it's a measurement of the prices that existed at that time; right?

A. (Mr. Kaczmarek) It's an index measuring how the average basket of goods and services is changing from period to period.

Q. But at any point in time, it's a measurement at that time; right?

A. (Mr. Kaczmarek) Yes. Yeah.

Q. And so, that measurement is either accurate or inaccurate; right?

A. (Mr. Kaczmarek) Mathematically? It can be

accurate. Whether it measures appropriately the consumption that--the increased price of the consumption of goods and services that an average citizen is consuming? Maybe not.

Q. Well, if it measured that inappropriately, the result would not accurately show how prices had changed; right?

A. (Mr. Kaczmarek) I'm just having a hard time with "accurate"--

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. But it seems it can be wrong. I mean, the CPI can be wrong. It cannot reflect the real inflation. We all agree.

THE WITNESS: (Mr. Kaczmarek) I think so, yeah.

PRESIDENT FERNÁNDEZ ARMESTO: Even economists must agree that sometimes their statistics are wrong. It could be wrong, yeah.

BY MR. RIEHL:

Q. So, is it your view that Perú's official statistics for CPI during the hyperinflation period are wrong?

MR. HAMILTON: Objection.

THE WITNESS: (Mr. Kaczmarek) I don't think we've taken any such view. We just--here we observed that the Constitutional Tribunal expressed some concern. We say, okay, yeah, there's some validity to have some concern, and they ultimately chose a dollarization approach, which, you know, alleviates the concern, and we say that that's economically justified, in our view.

BY MR. RIEHL:

Q. And the concern that the Constitutional Tribunal expressed was that the official CPI statistics might be wrong; right?

A. (Mr. Kaczmarek) Not that they might be wrong, but that the measurement, again, may not accurately reflect the basket that a citizen consumes of goods and services.

PRESIDENT FERNÁNDEZ ARMESTO: The inflation.

THE WITNESS: (Mr. Kaczmarek) Right. The real inflation that they are experiencing in real life.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. The IPC--the CPI in English, is the measurement of

inflation. We all have heard about governments changing the basket in order to reduce the official inflation, so you--by changing the basket, calculating improperly the basket, you can, of course--and Governments do--affect inflation.

But my question to you--I think the relevant question here is the following: Do you agree, as an economist, or do economists agree that in times of hyperinflation, the CPI methodology does not reflect the true inflation? That is the question.

THE WITNESS: (Mr. Kaczmarek) I would say that it can. It becomes much more difficult to measure the CPI during those particular periods of time.

PRESIDENT FERNÁNDEZ ARMESTO: So, you agree with the--you agree with the argument of the Constitutional Court.

THE WITNESS: (Mr. Kaczmarek) Yes. I think they are expressing it--counsel is expressing it as they believe there's inaccuracy. I'm not sure I would agree with it. That was their concern, that there's some mathematical inaccuracy, but that it

really probably may not capture the essence of how much prices were going up that a consumer of--goods and services consumers consumed.

That's the way we kind of interpret it. We said, sure, that during hyperinflation, it is really hard to measure these things. One way around that is dollarization approach.

BY MR. RIEHL:

Q. There's a terminological issue that I'm hoping I can clear up quickly. You testified a little bit ago that CPI, at a particular point in time, is a measurement of prices at that time; right?

A. (Mr. Kaczmarek) Yes.

Q. And to calculate inflation, you have to compare that measurement of prices at a particular time with a prior measurement of prices at a previous time; right?

A. (Mr. Kaczmarek) Correct.

Q. So the CPI statistic at any point in time by itself is not a measure of inflation; right?

PRESIDENT FERNÁNDEZ ARMESTO: No.

THE WITNESS: (Mr. Kaczmarek) No. The

inflation is a percentage. It's a rate. It's a rate of change from one period to the next.

PRESIDENT FERNÁNDEZ ARMESTO: Of course. I have spoken simplified, of course, that inflation is the difference between two indices.

BY MR. RIEHL:

Q. Thank you. Now, the concern about the accuracy of CPI that the Constitutional Tribunal expressed in its 2013 Order was that people might trade or barter or buy cheaper substitutes, therefore making the official CPI statistics too high; right?

A. (Mr. Kaczmarek) True. I think, if I can simplify it, the concern raised was that the previous basket may not reflect the basket that the average consumer would consume in hyperinflationary times.

Q. But the--I'm sorry. Were you finished?

A. (Mr. Kaczmarek) Yes.

Q. But the particular concern the Constitutional Tribunal had was that the statistics might be too high, not just that they might be inaccurate; right?

A. (Mr. Kaczmarek) That may be.

Q. Well, let's look at that a little more closely.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. I think it is too high. I mean, because if it's too low, they pay less and they would not be concerned.

MR. RIEHL: I'll move on.

PRESIDENT FERNÁNDEZ ARMESTO: Are you going to the second, because I really would like to explore with the Expert the second reason.

MR. RIEHL: I am. I would really like to explore this one, as well, if I may.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. If you are, you take the lead.

BY MR. RIEHL:

Q. So, other than during times of hyperinflation, I assume you have no reason to doubt Perú's official CPI statistics, do you?

A. (Mr. Kaczmarek) We haven't undertaken any study to verify the accuracy or inaccuracy of CPI statistics.

Q. And Perú's economists, I take it, do a thorough and careful job to measure CPI accurately?

A. (Mr. Kaczmarek) It's not something I have studied or can render an opinion on.

Q. Okay. The period of hyperinflation in Perú that we're talking about was in the late '80s; right?

A. (Mr. Kaczmarek) I think that's fair to characterize it at that time, yes.

Q. Okay. And I think we just established that CPI in 2018, it's a measurement as of 2018; right?

A. (Mr. Kaczmarek) It's an index value as of 2018.

Q. So, the particular value of the CPI statistic in 2018 is unaffected by anything that happened previously; right?

A. (Mr. Kaczmarek) I don't know all of measurement techniques being used, if they go back and relook at it--obviously, sometimes CPI statistics can be revised historically, after they have been reported, so sometimes, yeah, sure, you can go back several years and remeasure and re-report.

Again, I have not studied any of these calculations and the mechanisms of how they have been performed.

Q. So--but if the CPI measurement in 2018 were not affected by things that happened before, since it's just a price measurement, and the CPI in 1992 was also a measurement of prices at that time, when you compare those values, the inflation you get for the intervening period is not affected by the CPI measurements in the intervening period; right?

A. (Mr. Kaczmarek) If there's a change in the basket, perhaps. It's a series. I think the series itself is important. I wouldn't, per se, want to look at one and the other and not know what happened in between.

ARBITRATOR DRYMER: I think the question is, does it matter to know what happened before, not in between '92 and 2018?

THE WITNESS: (Mr. Kaczmarek) Does it matter what happened before 1992? I would think so. I'd think you want to understand the derivation of the buildup of the series and how it changed, yes.

MR. RIEHL: Okay. Mr. President, I will address the second point.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

BY MR. RIEHL:

Q. In Paragraph 57, you have a characterization of a second reason that the Constitutional Tribunal gave. You say that the Constitutional Tribunal was concerned that using the CPI method would yield such a large value that it would jeopardize the Government's ability to finance its other obligations and promote the general welfare of the country; right?

A. (Mr. Kaczmarek) This is apparently what they said, yes.

Q. Okay. Well, you gave an opinion that that was an economically reasonable thing to say, didn't you?

A. (Mr. Kaczmarek) We gave reason for rejecting the CPI method. We didn't say that this particular issue was, per se, an economically justifiable reason, although obviously, in any payment of debt, the Government considers how much it can actually afford. It doesn't like to issue debt it knows it's going to default on immediately.

PRESIDENT FERNÁNDEZ ARMESTO: Because my

question to you is, you have not made any calculation of that.

THE WITNESS: (Mr. Kaczmarek) We have not. I mean, obviously these are jurists. I don't know how much of a grasp they had of what--how some of these calculations would turn out. I think I would treat this as a statement of that we want to be concerned that something doesn't--we don't set a debt that suddenly the Government is going to immediately default on. That would be a problem. I have not done the calculation.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. My question is, in your point of view, do you have any good data, being the Expert from the Republic of Perú, what the likely outstanding principal amount of Bonds is? How many Bondholders are there in the world, and how many Bonds do they hold, do you know?

THE WITNESS: (Mr. Kaczmarek) I don't think we've done any calculations of total issuance. We've given you in this Report credit ratings.

PRESIDENT FERNÁNDEZ ARMESTO: No, not the total. How many Land Bonds are still outstanding?

Do you know?

THE WITNESS: (Ms. Kunsman) We do not.

THE WITNESS: (Mr. Kaczmarek) Yeah, I don't think we know. We only know the details related to the Gramercy Bonds.

PRESIDENT FERNÁNDEZ ARMESTO: So, you never made--and you don't know if there is any place where--you have not found any--in the papers or in the documents of the Peruvian Ministry of Finance, you have not been given any estimation, calculation, of how many Bonds are outstanding?

Because to make this statement that the CPI is dangerous--jeopardizes--I think is the verb--the fiscal stability, you, of course, must know two things: A, how many Bonds there are, and, B, how much it will cost to repay all of them.

And have you ever seen a calculation of that?

THE WITNESS: (Mr. Kaczmarek) Not to my knowledge, no.

PRESIDENT FERNÁNDEZ ARMESTO: And you also have not seen any calculation of how much it will

cost to repay all the Bonds with the MEF formula?

THE WITNESS: (Mr. Kaczmarek) No. Only applying the MEF formula to the Bonds in this case.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

THE WITNESS: (Mr. Kaczmarek) So we don't have a universe to know what the total would be.

THE WITNESS: (Ms. Kunsman) There were some calculations on the Agrarian Report bills, but we don't know how they were calculated, and we couldn't tell what they represented, if it was the total or just the unclipped. We didn't have any detail.

PRESIDENT FERNÁNDEZ ARMESTO: But you have not had access to any internal calculations made by The Ministry of Finance?

THE WITNESS: (Mr. Kaczmarek) As far as I know, no records were kept or were available, at least, of all the Bonds that were issued and still remained outstanding.

I think we're in this period of some probably got lost, some may have gotten thrown away, some were redeemed.

PRESIDENT FERNÁNDEZ ARMESTO: It's clear.

But you could make--the maximum is 15 billion, and the minimum is what Gramercy holds, and in between you can make estimations.

And I'm just curious that no one seems to have made an estimation using different assumptions and different calculations to double-check that what the Constitutional Court says or how the Constitutional Court got to this opinion that revaluing it at CPI would be dangerous and doing it at--with using the dollar is much less money.

I just--as an economist, when you like figures and amounts and alternatives, and more likely, less likely, and suddenly in this, to me, is an important point. And it's an important point for the Tribunal evidently.

I mean, if we decide that this is worth, as Claimant says, 1.8 billion, we have no idea what the impact would be for the whole outstanding Bondholders. We could be bankrupting Perú if the outstanding amount is very significant.

And I'm surprised that I find no numbers on that. I have asked a number of people. You were my

last hope that you would have some numbers, and you tell me no.

THE WITNESS: (Mr. Kaczmarek) Unfortunately, no. We haven't seen any calculations that the Constitutional Tribunal did.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Or the Ministry of Finance? You never saw any papers of Ministry of Finance with these calculations.

THE WITNESS: (Mr. Kaczmarek) No.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

BY MR. RIEHL:

Q. And have you ever seen any estimates of the total value of the outstanding Land Bonds under any of the MEF compensation formulas?

A. (Ms. Kunsman) Professor Seminario did run some numbers based on different scenarios, but it--

PRESIDENT FERNÁNDEZ ARMESTO: Professor Seminario did? I'm not aware.

Do we have--okay. Can you at some stage look up whether it is in the record? Ms. Kunsman, can you at some stage look up whether it is in the record?

THE WITNESS: (Ms. Kunsman) Yeah, I can check, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Because we know that Professor Seminario was asked to do that. We saw his contract, but I don't know--or I don't remember having seen where he actually answered.

So, if you--if in the next break or so, if you can--or afterwards, tell us if they are in the record, that would be helpful.

THE WITNESS: (Ms. Kunsman) Yeah.

BY MR. RIEHL:

Q. So, other than the Seminario Report in the course of your work on this matter, have you at any point seen any other documents estimating or calculating or showing the total outstanding principal of Land Bonds?

A. (Ms. Kunsman) In the Gramercy due diligence, there were some references to the--I think the President claiming that the Agrarian debt can be settled, and there were different amounts in there.

But specific calculations? No. That would show this is outstanding, this is what we would need

to pay specifically, no.

Q. Okay. And including general estimates and focusing on not Gramercy documents, have you seen any documents from the MEF or any agency of Perú or otherwise from Perú that estimate or calculate the total outstanding principal amount?

A. (Ms. Kunsman) No.

Q. Have you seen any documents that estimate or calculate what might be owed in total to Bondholders under any of the MEF compensation formulas?

A. (Ms. Kunsman) MEF, no.

Q. There's one hopefully tiny technical thing I can clear up.

The President asked a question this morning about if one wanted to use a long Bond rate within Bondholder process type of formula, how would that be done. And I'm really trying to get this accurate. You can tell me if I got your answer wrong.

I think you said what the MEF currently does is they use the one-year rate for a year and then they effectively roll it over into the next one-year rate and so forth.

Is that right, what you testified?

A. (Mr. Kaczmarek) They roll the whole principal and the interest over into a brand-new bond.

Q. But doing that one year at a time, I believe, is what you testified; right?

A. (Mr. Kaczmarek) Right. And I explained, well, if you do a 30-year, what's the assumption? Is it buy and hold and reinvest the interest, or is it buy and sell after a year and reinvest at the new 30-year? And then as you move closer to today, do you switch durations to 10? 5? There's lots of possibilities to do the calculations.

Q. Okay. Well, I'd like to--

PRESIDENT FERNÁNDEZ ARMESTO: But it would be more? What is clear to us, if you look back at the yield curve of the United States in the last 30 years, long-term bonds have yielded more than short-term bonds, no?

THE WITNESS: (Mr. Kaczmarek) That is generally the case for most of the time, that's true.

BY MR. RIEHL:

Q. But I think to try to cut to the chase and do this briefly, the answer to the President's question, I take it you would agree, is there are various different approaches one could take to doing that. There are ways to deal with the problem that he identified; is that right?

A. (Mr. Kaczmarek) Yes, because it wasn't--that parameter, it was helpful, but it wasn't as specific as it could have been, so it required some interpretation.

Q. Let's turn to looking at some of the MEF formulas. In your Reports, you argue that the wide range of results in the MEF's approaches is evidence that the Current Value Principle was uncertain; right?

A. (Mr. Kaczmarek) I think that's fair.

Q. Okay. But here today you said that the 2014 formula had a typo, and I believe at one point you characterized it as wrong. That formula was wrong; right?

A. (Mr. Kaczmarek) I think we pointed that out in our First Report, yes.

Q. So, the fact that it produced a different value does not suggest anything about uncertainty, does it?

A. (Mr. Kaczmarek) No. I mean, if a formula has got an error, I wouldn't carry out the formula and try to make sense of the result.

Q. And you heard Professor Edwards' presentation about the attempted clarifications in the February 2017 Supreme Decree; right?

A. (Mr. Kaczmarek) I've read his description of the clarification process.

Q. And do you agree with him that those clarifications actually did not clarify?

A. (Mr. Kaczmarek) Well, I think there was, at least from my understanding, two issues he complained about in his review, and he tried to make sense of how the formulas could make sense, when they're really either just typos or errors. And I don't understand the purpose of trying to make sense of a typo or an error.

It's a typo or an error, and it just needs to be fixed. At the end of the day, it was fixed and

there's typos or errors remaining.

Q. And when you say "at the end of the day, it was fixed," I assume you're referring to the August 2017 Supreme Decree; is that right?

A. (Mr. Kaczmarek) Exactly.

Q. You would agree, wouldn't you, that after the February 2017 Decree, reasonable attempts to interpret what was going on could have produced a very wide range of values?

A. (Mr. Kaczmarek) Well, again, if those formulas have an error, then I don't understand why one would want to implement a formula that has an error and try to make sense of the results. It just seems like a nonsensical exercise to undertake.

Q. Well, you do understand, don't you, that Bondholders would have been very interested in knowing how much their Bonds were worth, in, say, March 2017? Isn't that right?

A. (Mr. Kaczmarek) Some may have. Some never went to get a Coupon collected. May not have been. I don't know. I can't testify to every Bondholder.

Q. And if a Bondholder was interested in

knowing in March of 2017 what their Bonds were worth, and they looked at the Supreme Decrees that had been issued at that point, they would have concluded that there was a very wide range of values that might be among what were intended; right?

A. (Mr. Kaczmarek) Well, at any one point in time, I think there was just one Decree issued with a formula, which then was fixed over time.

Q. Can you answer my question, please?

A. (Mr. Kaczmarek) I'm confused by the question. If you could clarify for me.

Q. Sure. There was a Supreme Decree--two Supreme Decrees, actually, issued in 2014; right?

A. (Mr. Kaczmarek) Yes.

Q. And then a Supreme Decree issued in February 2017 that had corrections; right?

A. (Mr. Kaczmarek) Yes.

Q. I'll represent to you that there was not a formula in that Decree, but the document speaks for itself.

If a Bondholder in March of 2017 was attempting to understand what their Bonds were worth

based on the Supreme Decrees that had been issued up to that point, they would have reasonably thought there might be a very wide range of values that were intended; right?

A. (Ms. Kunsman) Not as wide as Professor Edwards indicates in his Report, but it is something we didn't address just because that formula was never applied to any Bondholder, so--and the initial formula, if you applied it, resulted in a miniscule value.

So, it was clear that it was low and that it was a typo that was corrected. But I think Professor Edwards presents more interpretations that I think are reasonable to present based on reading the first--the DS34.

Q. And in the August 2017 Supreme Decree, there was a new formula for calculating the Parity Exchange Rate; right?

A. (Ms. Kunsman) Right.

PRESIDENT FERNÁNDEZ ARMESTO: A new formula for?

MR. RIEHL: For calculating the Parity

Exchange Rate.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. So there is a change.

THE WITNESS: (Ms. Kunsman) There is. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: That is important, yeah.

BY MR. RIEHL:

Q. Yeah. And in his Reports, Professor Edwards applies some Algebra to the equations and restates them in a way that he says shows that basically what that formula does is uses the January exchange rate, assumes that's in parity and then calculates Parity Exchange Rates at other points in line with that base.

Do you agree with that?

A. (Ms. Kunsman) It uses the 1967 official exchange rate and then applies the--did I say 1967? No, 1969, January 1969 exchange rate and applies the differential and inflation between the U.S. and Perú's CPI.

Q. And in January of 1969, you agree, don't you, that Perú's currency was pegged to the dollar?

A. (Ms. Kunsman) Yes.

Q. So the official exchange rate at that point was 38.7 soles oro to the dollar?

A. (Ms. Kunsman) Yes. I believe that's what it was, yeah.

Q. And it was at that exact same rate from January of 1967 through August of 1975; right?

A. I looked at that. I trust that's right, yeah.

Q. And 38.7 soles oro per dollar was just as likely to be in parity at any point in that time range as any other point; right?

A. (Ms. Kunsman) Yeah. But, again, parity--there are many different interpretations of parity. It all depends on the base period, what do you think the correct base period is. And like it was brought up, you can't just look at an index and say this is what the Perú parity rate is. This is what the U.S. parity rate is. No, it is subjective because of the base period.

Q. Right. And assigning 38.7 as the parity rate in January of 1967 has a--

A. (Ms. Kunsman) '69.
Q. No. I'm sorry. I'm talking about '67 because it was pegged from January '67 through August 1975.
A. (Ms. Kunsman) Oh, okay.
(Overlapping speakers.)
Q. The point in time within that range at which you choose to decide you were in parity has a substantial effect on value, doesn't it?
A. (Ms. Kunsman) On what value?
Q. When you use that exchange rate to convert to dollars, on the number of dollars that you get.
A. (Ms. Kunsman) Okay. Can you repeat the question, please?
Q. Sure. The point in time between January of 1967 and August 1975 during the currency peg, when you choose to say the exchange rates in parity at this point in time, that has a significant effect on the number of dollars you get when you use that rate to convert; right?
PRESIDENT FERNÁNDEZ ARMESTO: When you use that rate?

BY MR. RIEHL:
Q. When you use that as your Parity Exchange Rate to convert to dollars.
A. (Ms. Kunsman) You're saying that when you use that rate to create your base to calculate the Parity Exchange Rate?
Q. Yes.
A. (Ms. Kunsman) Okay. If it's the same rate, the 19--if it's the same rate, it shouldn't affect then the value that you get as your Parity Exchange Rate because all you're doing then is just taking the differential in inflation, so it shouldn't have an impact. But maybe I'm not understanding your question.
Q. I'll represent to you that the real exchange rate--do you understand what I mean by "real exchange rate"?
A. (Ms. Kunsman) Official.
Q. No.
A. (Ms. Kunsman) Oh.
Q. So, do you understand that a real exchange rate means an exchange rate adjusted for inflation at

some base period?
A. (Ms. Kunsman) Yes.
Q. And if I represent to you that the real exchange rate in January 1967 was 20 percent higher than the real exchange rate in January 1969, does that sound about right to you?
A. (Ms. Kunsman) I didn't look at those numbers exactly.
Q. Okay. But if that is correct, then choosing January 1967 as your base period for the Parity Exchange Rate would lower the values you get by 20 percent, wouldn't it?
A. (Ms. Kunsman) As your Parity Exchange Rate, not as the base for the calculation, yes.
Q. Well, actually that is not what I'm asking, because the Parity Exchange Rate formula uses--in the MEF's Order uses January 1969 as a base; right?
A. (Ms. Kunsman) Right.
Q. And then it calculates the Parity Exchange Rate at other points in time with reference to that base; right?
A. (Ms. Kunsman) Correct.

Q. And what's important in that calculation is what the rate was in real terms in the base period; right?
A. (Ms. Kunsman) It uses the official exchange rate in 1969, and then multiplies it by the Perú CPI divided by the U.S. CPI at whichever date you're trying to calculate the Parity Exchange Rate.
PRESIDENT FERNÁNDEZ ARMESTO: And the official--what you have said is that the official rate was the same from '67 to '75.
MR. RIEHL: Yes.
BY MR. RIEHL:
Q. But what I'm getting at is, as inflation varied over that time, the real exchange rate varied from January 1967 through August 1975; right?
A. (Ms. Kunsman) Yes.
Q. Yeah.
PRESIDENT FERNÁNDEZ ARMESTO: Although the State never changed the official rate, that is your point.
MR. RIEHL: My point is actually--my point is actually that the real exchange rate varied quite

a bit during this time period.
PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Yeah. Yeah. The real changed while the official remained the same.
MR. RIEHL: Right. Right.
BY MR. RIEHL:
Q. And the--if the real--so, if the real exchange rate were higher in 1967 than in 1969--right?--if that real exchange rate is used as the base in your Parity Exchange Rate question, all of your parity exchange rates are higher; right?
A. (Ms. Kunsman) Now, I get your question. Yes. If you use it, yes.
Q. And that means--and that means the dollar values you get when you convert them are lower; right?
A. (Ms. Kunsman) Right.
Q. And if the real exchange rate was 20 percent higher in January of 1967 than in January of 1969, using January of 1967 as the base rate would lower the dollar values by 20 percent; right?
A. (Ms. Kunsman) If you used the real--yes, the

real exchange rate, yeah.
Q. Okay. And--yeah. And I'll represent to you that the real exchange rate in August of 1975 was 25 percent lower than in January 1969.
Does that sound about right?
PRESIDENT FERNÁNDEZ ARMESTO: '65?
MR. RIEHL: August '75 is the end of the peg period.
PRESIDENT FERNÁNDEZ ARMESTO: '75.
MR. RIEHL: Yes. Yeah.
PRESIDENT FERNÁNDEZ ARMESTO: Okay. Sorry. '75.
MR. RIEHL: Yes.
BY MR. RIEHL:
MR. RIEHL: And so, I'll represent to you that the real exchange rate in August 1975 was 25 percent lower than in January of 1969.
Does that sound about right?
A. (Ms. Kunsman) Okay. You're representing it to me. Okay.
PRESIDENT FERNÁNDEZ ARMESTO: That means--sorry. So, you are going very fast. That

means there had been 25 percent more inflation in Perú than in the United States?
MR. RIEHL: Yes. I--yeah.
PRESIDENT FERNÁNDEZ ARMESTO: Yeah.
MR. RIEHL: Yeah.
THE WITNESS: (Ms. Kunsman) Relative.
PRESIDENT FERNÁNDEZ ARMESTO: Is that--that relative?
THE WITNESS: Relative inflation, yeah.
PRESIDENT FERNÁNDEZ ARMESTO: Of course.
BY MR. RIEHL:
Q. And so, if that's true, then if the MEF had used August 1975 instead of January 1969, its dollar valuations would be 25 percent higher; right?
A. (Ms. Kunsman) Right. I mean, you are saying the MEF would have used the real exchange rate and not the Official Exchange Rate.
PRESIDENT FERNÁNDEZ ARMESTO: Yeah. The problem which counsel is bringing up seems very simple. If you have a long-term peg with very--
THE WITNESS: Yeah.
PRESIDENT FERNÁNDEZ ARMESTO: With different

inflation rates in the United States and Perú, depending on which date within the peg you choose has an impact on the outcome. I think that was your point.
MR. RIEHL: Mr. President, as usual you have seen it exactly.
THE WITNESS: (Ms. Kunsman) Yes.
PRESIDENT FERNÁNDEZ ARMESTO: And that it would--it would be better for investors. Let me say, in that way, it would be better for investors if the base had been '75 and not '69.
THE WITNESS: (Ms. Kunsman) Right.
(Comments off the microphone.)
PRESIDENT FERNÁNDEZ ARMESTO: Or is it the contrary?
MR. RIEHL: I'm sorry.
PRESIDENT FERNÁNDEZ ARMESTO: It would have been better for investors if the base used to calculate the Parity Exchange Rate had been '75?
MR. RIEHL: That's right.
PRESIDENT FERNÁNDEZ ARMESTO: 75. Yeah. Rather than '69.

MR. RIEHL: That's correct.

PRESIDENT FERNÁNDEZ ARMESTO: So, the closer you get to '67, the worse for investors. The closer you get to '75, the better for investors.

MR. RIEHL: It's not quite that linear. The real exchange rate had some fluctuations that I heard.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Okay. And we do not have any--do you have any good reason, any economic reason why '69 was chosen? What is the explanation? Is there any explanation in the MEF Decrees why they have choose '69? Have you seen any internal documents saying, we have chosen '69 because they have--because, really, at this stage it was really the moment of equilibrium?

THE WITNESS: (Mr. Kaczmarek) All we've seen I think is that it corresponds to when the Land Reform program and the Bond program was--took effect. So, at the start of the program. So, you know, they were using official rates at the time. That's what people could exchange currency for. That was a real-world constraint, and then they adjust for

inflation from that point forward. That's what they are doing.

So, is that economically justified? Sure. I mean, if you're going to apply a real-world constraint that existed, which is that Official Exchange Rate, why wouldn't that be justified.

PRESIDENT FERNÁNDEZ ARMESTO: So, the argument is that '69 is the start of the program. That is really the--your argument.

THE WITNESS: (Mr. Kaczmarek) Yes.

BY MR. RIEHL:

Q. But you didn't do any study about whether that would provide a--the type of Parity Exchange Rate that economists would agree on; right?

A. (Mr. Kaczmarek) Well, we didn't because, frankly, nobody says parity has to be used to begin with or how parity has to be used. One could introduce parity. One could have just used official exchange rates. That's--sort of all this was open to interpretation and implementation.

Q. But you have done no study of whether that was an economically reasonable choice, have you?

A. (Mr. Kaczmarek) Of using the '69?

Q. Correct.

A. (Mr. Kaczmarek) When you say an "economically reasonable," it suggests as opposed to something else. And that really depends upon what your objective is.

Q. You've used the phrase "economically reasonable" in your own Report. Do you have an understanding of what that phrase means?

A. (Mr. Kaczmarek) Yes, meaning there is nothing unsound about it.

Q. And you have done no study--

A. (Mr. Kaczmarek) Nothing irrational.

Q. You have done no study of the economic circumstances that would inform the choice of a base period for the Parity Exchange Rate, have you?

A. (Mr. Kaczmarek) Other than knowing that that was the start of the program, no. But there is nothing economically unsound about it.

PRESIDENT FERNÁNDEZ ARMESTO: Well, can I make one question. When did the Peruvian--when was there an efficient market to calculate the exchange

rate? Because a good test, I would say, for a parity, you run it into a period when there is--when the market gives you a good real exchange rate, and you see where the model leads you into reality correctly. If the model leads you into a nonreality, then I would no longer submit to you that this parity is--exchange rate had not been properly calculated.

Would that make sense?

THE WITNESS: (Mr. Kaczmarek) If I understand the question, and I think, again, this goes back to something my colleague has said, the more years you expand this and the more you observe, you are going to get different answers; right? If you look at a window that's this small, and look at the data in terms of years and exchange rates, you'll get one answer.

If you expand that, you're going to get another answer. If you expand it 100 years, 200 years, you're going to get different answers, because the base period is really what matters; right? That's why it's so hard to say one is right and one is wrong. You have to say, well, what is the

objective? What are we really trying to do? What's the problem we are trying to solve?

ARBITRATOR DRYMER: And what was the problem that the MEF was trying to solve here, in your view, that renders that Decision reasonable from an economic perspective?

THE WITNESS: (Mr. Kaczmarek) My view is the MEF is trying to solve--at least this is what the Constitutional Tribunal's formula indicates--paying off Coupons that were not paid. Not going back to the beginning of the Bond and redoing the Bonds, paying off the Coupons. Is what they have done in terms of exchange rates reasonable? Sure, yes. Absolutely.

PRESIDENT FERNÁNDEZ ARMESTO: Because parity comes from the Constitutional Court.

THE WITNESS: (Mr. Kaczmarek) Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: It is the Constitutional Court which says Parity Exchange Rate. And this is why it is important to us to understand what they meant by "Parity Exchange Rate" and how you calculated Parity Exchange Rate and what is the

proper way of doing that.

THE WITNESS: (Mr. Kaczmarek) And I can only say, again, it depends upon your constraints. If you're trying to, without sort of hindsight bias affecting what you're doing, because here we are--right?--in 2013 doing an ex post what is--what should we do like for interest rates, I don't think you want to a bias that let's pick the best Rate of Return, the highest Rate of Return, if they had been the smartest people back in 1992 and invested the money; right?

So, if you're simulating something of what would have been a reasonable exchange back at the time, using information known at the time, I think the MEF formula is perfectly valid. If you take Professor Edwards' view that, no, no, we are not limited to information knowable at the time. If we are going to open up the door to later rates, okay. But that's just applying different constraints and we've showed you what the impact of that is; right?

ARBITRATOR DRYMER: May I ask a further question or two? I don't know the answer to this

question. Have you looked at--were you provided and have you looked at the supporting documentation that came along with the Supreme Decrees? The Statement of Reasons, all of that that we've discussed with other Witnesses over the last couple of days?

THE WITNESS: (Ms. Kunsman) We were provided some internal memorandums, yes.

ARBITRATOR DRYMER: Did you see an analysis along these lines? In other words, if the formula, including the parity rate mechanism is reasonable in accordance with an objective, did you see any analysis of that in those documents?

THE WITNESS: (Ms. Kunsman) Regarding using the 1969 as a base?

ARBITRATOR DRYMER: Yes.

THE WITNESS: (Ms. Kunsman) No.

PRESIDENT FERNÁNDEZ ARMESTO: But you said there had been one parity rate before, one calculation, and then it was changed in 2017.

Do you remember that?

THE WITNESS: (Ms. Kunsman) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Now, can you

explain to me what was changed and have you seen any justification what it--why it was changed?

THE WITNESS: (Ms. Kunsman) So, what was changed was the base period, the base period was originally from 1950 to 1982, being 1982 when the last Bond was--Agrarian Bond was issued. So, that was the first period used and then it changed. And the 1969, I don't know the reasoning why.

PRESIDENT FERNÁNDEZ ARMESTO: So, the original period was not one month. It was 32 years.

THE WITNESS: (Ms. Kunsman) Correct.

PRESIDENT FERNÁNDEZ ARMESTO: And that was then changed to one month. This is the only change from one system to the other.

THE WITNESS: (Ms. Kunsman) There was another change. There was the first one was 1950 to 1982, then there was a subsequent one of 1950 to 2013, which was the--or, no. 2014. I don't remember exactly. It was the issuance of that specific Decree, and then it was changed in 1969, and the original period was based on Professor Seminario's--an economist that apparently doesn't

agree with other economists on the period, and--but had used another period.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. But to get it clear, initially the base period was 1950 to 1982.

THE WITNESS: (Ms. Kunsman) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: And then it was changed to one month in 1969?

THE WITNESS: (Ms. Kunsman) Ultimately. There was another change in between, yes.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. In between.

THE WITNESS: (Ms. Kunsman) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: You have not seen any justification.

THE WITNESS: (Ms. Kunsman) No.

PRESIDENT FERNÁNDEZ ARMESTO: And have you run the numbers? I mean, would the numbers come out very differently if you apply one period--one method of calculation or the other?

THE WITNESS: (Ms. Kunsman) They wouldn't change the numbers that much because, as we showed in

our calculation, using a different Parity Exchange Rate doesn't have that much of an impact in the calculation.

PRESIDENT FERNÁNDEZ ARMESTO: Well, it took us 40 million, no. It was 40 million--

THE WITNESS: (Ms. Kunsman) 40 million. But the difference would have been less. I know it was significantly less than 40 million, because the most aggressive rate--the most aggressive parity rate was the one Edwards presented.

PRESIDENT FERNÁNDEZ ARMESTO: But in any case, the change of methodology reduced the reparation to the Bondholders?

THE WITNESS: (Ms. Kunsman) Yes.

MR. HAMILTON: Mr. President, if I could. I won't object, I simply will note that you are asking them a question for a reason that is beyond the scope of their Report. They weren't asked to review every--look for any reasoning in MEF.

ARBITRATOR DRYMER: Understood.

MR. HAMILTON: So, I'm taking note, if it were--if the question had been raised by the other

side, I would have raised an objection because the question goes to other issues, and they may not realize what other issues you're aiming for, and I don't want to read in a Post-Hearing Brief that they've made some admission because they haven't. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: To get your objection. What is it exactly--that you--to what--so, that I do not commit the mistake you are drawing my attention to, but what is--exactly what they had not analyzed?

MR. HAMILTON: Sure. They were asked about looking at all the internal MEF documents, what analysis have they seen or not seen. Their task is the task set out in their Reports, and that is what has been explained here, and so their response is not that responsive necessarily to the question that you might be asking. That's my comment. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. It is just that they--I'm sure they have spoken with representatives of Perú and might have had access to some information. If they haven't, it was not their

job, so--

THE WITNESS: (Ms. Kunsman) No, we did not do that.

PRESIDENT FERNÁNDEZ ARMESTO: You never spoke with any civil servant of Perú?

THE WITNESS: (Ms. Kunsman) No.

PRESIDENT FERNÁNDEZ ARMESTO: Then you could not have access.

BY MR. RIEHL:

Q. Do you recall in Professor Edwards' testimony that he mentioned there are other methods that could be used to calculate Parity Exchange Rates?

A. (Mr. Kaczmarek) If you could refer us to that section, that would be helpful.

Q. Okay. I was just asking if you remember. That's fine.

Are you aware of whether or not there are other methods that could be used to calculate Parity Exchange Rates?

A. (Mr. Kaczmarek) Other--certainly starting with other base periods, yes, but I think it's agreed

that, once you have your base period and you feel you are at parity, it is inflation differentials between the two countries.

Q. And aside from methods that would use a base period like this, are you aware of whether or not there are other ways to calculate Parity Exchange Rates?

A. (Mr. Kaczmarek) No. That is--inflation differentials are principally the methodology we use to calculate parity rates.

Q. And in your work on this case, you didn't go out looking to see if there are other ways that economists do that? Is that correct?

A. (Mr. Kaczmarek) No. That--inflation differentials are the way I do it all the time in my Valuation Models.

Q. And in your work on this case did you review any articles about Parity Exchange Rates?

A. (Mr. Kaczmarek) No.

Q. And you're aware, aren't you, that there is a field of economics in which economists study Parity Exchange Rates and how to calculate them; is that

right?

A. (Mr. Kaczmarek) I'm sure, yes. I'm sure there is.

Q. And it sounds from that answer is, though, you haven't really had exposure to that work, though. Is that accurate?

A. (Mr. Kaczmarek) It's not a deep-dive topic I like to spend a lot of time on. Like I said, in valuation, which is my profession, purchasing power, parity assumptions, inflation differential is the principal assumption we use.

Q. And is it fair to say you have not spoken with economists about how they calculate Parity Exchange Rates?

A. (Mr. Kaczmarek) For purposes of this case, no, I have not.

Q. You express a view in your Report that a room of economists would likely all reach different conclusions as to which year or period best reflects the Parity Exchange Rate.

Do you remember that?

A. (Mr. Kaczmarek) Did we say this in our

Report?

Q. Yes.

A. (Mr. Kaczmarek) It's probably true then.

Q. I take it that statement was not informed by any actual discussions with actual economists about that point; is that right?

A. (Mr. Kaczmarek) No. I'd say it is our general experience, and I would think most of the Tribunal's experience of getting Quantum Experts in a room. It is difficult for us all to agree on everything.

MR. RIEHL: Mr. President, I don't have a whole lot more, but I do have a bit, and I--you know, I'm conscious that the Witnesses have been on for a while. I'm in your hands.

PRESIDENT FERNÁNDEZ ARMESTO: How long do you have to go, Mr. Riehl?

MR. RIEHL: Obviously, I need to consult with the wise Mr. Friedman, among others. I think it will be in the neighborhood of 10 or 15 minutes.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Yeah. Because I do have still--have a couple questions, and

there may be some redirect, also. But I do have a couple of questions which I would like to put to the Experts. So, what you were proposing that we have a break?

MR. RIEHL: I think potentially, yes, and I'm just mindful that Witnesses, when they are going for a while. And it would help me to organize my thoughts, maybe pare down the remainder as well.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Shall we come back then at 1:10? In 8 minutes?

MR. RIEHL: Yes. That would be great.

PRESIDENT FERNÁNDEZ ARMESTO: 8 minutes.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: We resume the Hearing.

Mr. Riehl?

MR. RIEHL: Yes, Mr. President. I fortunately can report I will be, I think, very brief.

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

MR. RIEHL: There is one quick point I need to note, though.

You had expressed an interest, potentially, in hearing further from Professor Edwards. He has travel reservations that require him to leave by 2:30 today, so I wanted to make you--

PRESIDENT FERNÁNDEZ ARMESTO: We are all on reasonably the same wavelength.

MR. RIEHL: Very good.

PRESIDENT FERNÁNDEZ ARMESTO: So, it's now a quarter past 1:00. We will go an hour.

MR. RIEHL: Yes.

BY MR. RIEHL:

Q. So, I'd like to ask you to turn, please, to Tab 3. This is the Amended Expert Report of Professor Edwards from July 2018, CER-4. And I'd like you to turn, please, to Appendix P of that Report.

And this, Mr. President, is the chart that you asked for, a comparison of the Official Exchange Rate, the parity rate that Professor Edwards calculated and the Parity Exchange Rate used in the August 2017 MEF formula.

Is it your understanding that that is what

this diagram shows?

A. (Ms. Kunsman) Yes.

Q. Would you agree this is using a logarithmic scale?

A. (Ms. Kunsman) Yeah.

Q. If you look for the period from, very roughly, about 1994 through 2018, what this shows is that the MEF's Parity Exchange Rate from the 2017 August formula is on the order of about 2.5 or 3 times as high as the Official Exchange Rate during that period.

Is that roughly correct?

A. (Ms. Kunsman) Yes.

Q. And so, if you used the Parity Exchange Rate that the MEF uses on the way in when you're converting back at the end, that would roughly increase values by about 2.5 or 3 times; is that right?

A. (Mr. Kaczmarek) As compared to what?

Q. As compared to what is currently in the MEF Bondholder Process.

A. (Mr. Kaczmarek) So, again, using the

preferred method of Professor Edwards, I think, as I showed, last clipped Coupon, the MEF formulas give 3.4 million. If we implement his approach--

Q. You might not understand the question. The question is much simpler than that.

If you use the formulas in the August 2017 MEF Supreme Decree, but the only change you made was to use the Parity Exchange Rate that the MEF uses when you convert back to soles, that would roughly--that would increase the value by about 2.5 or 3 times; is that right?

A. (Mr. Kaczmarek) I have no idea. We didn't do that calculation.

PRESIDENT FERNÁNDEZ ARMESTO: Because, although it looks very small, this is logarithmic--this is your argument, and it is, in fact, quite a lot.

MR. RIEHL: I have no further questions, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

Any redirect? It is you? Yes. Mr. Hamilton?

REDIRECT EXAMINATION

BY MR. HAMILTON:

Q. Thank you, Mr. President and Members of the Tribunal.

We have very limited time, so I will be brief and invite you to do the same.

Mr. Kaczmarek, why does it make economic sense to pick one-year rates for this retrospective calculation instead of long bond rates?

A. (Mr. Kaczmarek) As I think I touched upon, the benefit of using one-year rates, although generally smaller, because the yield curve is upward-sloping, you are reinvesting that each year at the market rate. Obviously, using a longer-term rate has higher interest rate risk exposure, so if inflation happened to go up during that period of time, it would erode the value of bond.

If we knew inflation rates had increased--this is my ex post bias concern--we would say, "Oh, no, no, no, let's not use the longer-term bond, because it would erode in value. Let's use short-term. Oh, inflation didn't go up sharply after

this time. Ah, now we are safe; we can use the long-term bond." This is the problem of the ex post bias, in my view.

Q. Thank you. And you also were given a somewhat messy hypothetical comparing different bonds, including Bond 8615.

Do you remember that?

A. (Mr. Kaczmarek) Yes.

Q. And in response to questions from my counterpart, you said both Bondholders are overcompensated.

What did you mean by that, and what does it tell us about the fairness and reasonableness of the MEF approach?

A. (Mr. Kaczmarek) Right. This was the Bond that was actually on Page 25 of our presentation this morning. And the example, and what I meant by my answer, was: The formula goes back to last clipped coupon, which already holds Perú responsible for a nonpayment event simply because somebody didn't decide go in and ask for payment.

So, it is, by definition, already very

favorable, in my view. And I think the suggestion and the questions to us were: Well, if somebody had the same Bond and didn't clip any of them, they would get a better deal. True. I don't think that means that we have to make everybody get the best deal out of this. My view would be, if we're going to fix it, let's fix it and move back to the bank closure date.

Basically, we don't give out three cherries and no cherries. If you're going to have equilibrium, no cherries for everybody. In my view, that would be the proper way to do it.

Q. And correspondingly, the second half of my question: What does this tell us about the overall MEF approach?

A. (Mr. Kaczmarek) I think the formula imposed upon the MEF to utilize is beneficial. As I said, if we started with bank closure, or maturity date of a coupon, we are not going to get--nobody is going to get any money out of this process. It is not worth going through, period.

So, the formulas that were imposed on it by going back to last clipped coupon is beneficial,

because it does restore value to the Bonds when the nonpayment event starts. So, it's a very beneficial process, in my view.

Q. Thank you, Mr. Kaczmarek.

MR. HAMILTON: No further questions, Mr. President.

MR. RIEHL: If I could--I apologize. I do have just one very brief thing.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

RECROSS-EXAMINATION

BY MR. RIEHL:

Q. And it relates to the questions about the one-year Treasury Rate. I'd like you to turn, Mr. Kaczmarek, in your First Report, which is Tab 1--this is RER-5--to Page 24, footnote--

PRESIDENT FERNÁNDEZ ARMESTO: Page?

MR. RIEHL: 24.

PRESIDENT FERNÁNDEZ ARMESTO: Yes.

MR. RIEHL: Footnote 110. And this is a very technical footnote. I promise I'm not going to ask technical questions about it. But please read it first.

MR. HAMILTON: Mr. President, excuse me. I didn't ask about this on redirect.

PRESIDENT FERNÁNDEZ ARMESTO: You did ask on--did you ask on short-term versus long-term bonds, and he says--your colleague says that this has some relevance. Yeah. I have read it. Very complex, yes.

BY MR. RIEHL:

Q. Mr. Kaczmarek, what that footnote says is what the MEF actually does is not to apply the U.S. Treasury Bill Rate one year at a time, but instead uses a daily rate which is based on averaging that one-year rate; is that right?

A. (Ms. Kunsman) Yes, correct, daily rates.

Q. Yeah. And if one wanted to apply long bond rates, they could apply a similar method which would take into account inflation as it was changing day by day; right?

A. (Mr. Kaczmarek) As I indicated, there are hundreds of ways one could do the interest rate calculation, yes. That could be one of them.

Q. That is one of the ways that could be done;

right?

A. (Mr. Kaczmarek) Certainly.

Q. And that would address the problem you identified during your redirect examination; right?

A. (Mr. Kaczmarek) I don't think I was addressing a problem. I mean, I think, again, the Tribunal has to first start with, in my view, that this is--the methodology used by the MEF is so out of bounds and so wrong that it needs to be fixed. And I just don't view it as being so wrong that it needs to be fixed.

Q. Okay.

MR. RIEHL: I have no further questions.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Thank you.

Professor Stern?

ARBITRATOR STERN: No questions.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Drymer?

ARBITRATOR DRYMER: Oh, my turn? No, thank you. Again, my questions were addressed earlier, either by myself, by you, or by counsel. So, thank you.

PRESIDENT FERNÁNDEZ ARMESTO: I have just one question--that is the good news--and it relates to something which we have really addressed very little. Only Professor Edwards spoke very briefly about it, and that is the formula of the Ministry does not actually lead to payment in cash. It leads--only for small amounts. For bigger amounts, it leads to payment with Bonds. And I remember Professor Edwards made a calculation, and he then said, if all existing Bondholders--he took some numbers, and then he said, if these Bondholders are all paid and they are all paid with a 30-year bond, then the impact on the budget is de minimis, is small.

You have not addressed at all the issue of payment with bonds and how you would calculate bond value to be equivalent to cash value, and you have not addressed at all that the MEF Decree actually results in payment with--I think it says "a menu of bonds."

Do you have any comment on this?

THE WITNESS: (Ms. Kunsman) I think what

Professor Edwards was referring to was to the Emergency Decree in 2000, that it would be paid with a 30-year bond that would--yes, that has a huge impact on the calculation, because that bond did not have interest. It was interest-free and the principal would not be paid until 2030.

However, in this case, the MEF way, I understand, that they could be paid with bonds, currently market-traded bonds that would be based on market rates, not a newly created bond just for this purpose.

But, yes, you're right, it makes a difference. But we haven't calculated it, because we don't know what bond they would pick out of all those.

PRESIDENT FERNÁNDEZ ARMESTO: Because you have--have you looked at the 2017 Decree?

THE WITNESS: (Ms. Kunsman) Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Can I take you to Article 16?

THE WITNESS: (Ms. Kunsman) Yeah. What tab is it?

PRESIDENT FERNÁNDEZ ARMESTO: It is the TUA, the text unificado (in Spanish).

THE WITNESS: (Ms. Kunsman) Yes, but where?

PRESIDENT FERNÁNDEZ ARMESTO: It was prepared by--maybe someone can blow it up. I don't have the reference.

MR. RIEHL: It is Tab 43. Document CE-275.

PRESIDENT FERNÁNDEZ ARMESTO: Article 16, Ms. Kunsman.

THE WITNESS: (Ms. Kunsman) Article 16. Yes, I'm there.

PRESIDENT FERNÁNDEZ ARMESTO: Why don't you read it first, and then--

THE WITNESS: (Ms. Kunsman) Payment with sovereign bonds--

PRESIDENT FERNÁNDEZ ARMESTO: Paragraph 16 says: "Payment in cash up to the maximum amount of 100 soles." The amount is irrelevant. I mean, 100,000 soles for this Arbitration is irrelevant. It may be important for small bondholders.

THE WITNESS: (Ms. Kunsman) Right. But here it says "freely transferable."

(Interruption.)

THE WITNESS: (Ms. Kunsman) Sorry. I'll stay in English.

PRESIDENT FERNÁNDEZ ARMESTO: I'll put you the question, because it says if they should be--they can be paid with sovereign bonds, freely transferable, similar conditions of other bonds, and then comes this very strange phrase, or a very--"el menú." "Menú" in Spanish is normally the menu you get in a restaurant, so "el menú de los bonos" of the bonds to be delivered would be defined by the Ministry, by the Ministry. And then that is basically what it says.

So, have you studied what this menu is, whether--how these bonds are valued?

THE WITNESS: (Ms. Kunsman) No, we have not. We have just taken it from here that they would be freely tradable market bonds that you could sell.

PRESIDENT FERNÁNDEZ ARMESTO: For the same--that you could sell for the same amount as the cash?

THE WITNESS: (Ms. Kunsman) As the cash, yes.

PRESIDENT FERNÁNDEZ ARMESTO: So from an economic point of view, the proper way of interpreting this is bonds which can be--which have the same Market Value as the cash component.

THE WITNESS: (Ms. Kunsman) Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: Ms. Kunsman, thank you very much.

THE WITNESS: (Ms. Kunsman) You're welcome.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Kaczmarek, thank you very much. We have now finalized your examination, and you are free to stay with us or to leave.

(Witnesses step down.)

PRESIDENT FERNÁNDEZ ARMESTO: And that now, I think, takes us to the end of our Hearing and to the wrapping up.

Have you been--you have not been able to speak to each other, have you? No, to confer.

Very good. So, what you have basically agreed, I think, is--do you have an idea? Let me ask you this question, Mr. Friedman: What would be your preferred solution? One single written Post-Hearing

Brief?

MR. FRIEDMAN: Thank you, Mr. President.

We believe, obviously, Post-Hearing Briefs are something that would be very helpful to the Tribunal, and I think the Parties need the opportunity to sort of summarize their cases at this point.

I think we believe that two rounds would be more effective. I think we would like the opportunity to--sometimes in Post-Hearing Briefs, things get characterized.

PRESIDENT FERNÁNDEZ ARMESTO: Can I interrupt you?

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: I forgot Professor Edwards. Sorry. And he's leaving. Sorry to be so rude to interrupt you, but I think we should deal with Professor Edwards first.

Professor Edwards, you have seen--why don't you sit down anywhere near a microphone.

MR. HAMILTON: Simply a procedural question: Are Experts still sitting here?

PRESIDENT FERNÁNDEZ ARMESTO: Yeah, yeah.

MR. HAMILTON: I don't know where this is headed, so I simply--

PRESIDENT FERNÁNDEZ ARMESTO: No, no, no. I'm just asking that he confirm certain calculations, but I would like Mr. Kaczmarek to be around. Is he there? And Ms. Kunsman? Is Ms. Kunsman still there?

(Comments off microphone.)

PRESIDENT FERNÁNDEZ ARMESTO: Shall we wait for her?

(Comments off the record.)

SEBASTIAN EDWARDS, CLAIMANTS' WITNESS, RECALLED

PRESIDENT FERNÁNDEZ ARMESTO: I think that there are a couple of--how would you call it? The cascade?

ARBITRATOR DRYMER: Waterfall.

PRESIDENT FERNÁNDEZ ARMESTO: The waterfall.

ARBITRATOR DRYMER: That wasn't my term. That was Mr. Kaczmarek's term.

PRESIDENT FERNÁNDEZ ARMESTO: I just wanted, now that you--at some stage, I think it would be fair, Mr. Hamilton, that we have the confirmation

from Mr.--from Professor Edwards that the cascade, which is--the waterfall, which is in Page 26--

ARBITRATOR DRYMER: "Cascade" is a good word as well.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. 26, 28, 35, and 35, I think it is basically. That these--okay. Ms. Kunsman is now with us, so we can continue.

QUESTIONS FROM THE TRIBUNAL

PRESIDENT FERNÁNDEZ ARMESTO: Whether these numbers-the numbers are correct, and you have heard what they are said to represent.

So my question--I would kindly ask you not to argue on these numbers, just whether they are mathematically correct or not or you would like to redo the math to see if they are correct.

THE WITNESS: Mr. President, this is the first time I see this cascade or waterfall, so I would have to do the math to answer that question.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Could we agree--how long would you need, Professor?

THE WITNESS: Five minutes.

PRESIDENT FERNÁNDEZ ARMESTO: Five minutes. No. We have to do this--I mean, one week?

MR. HAMILTON: Mr. President, I'm sorry. This was directly from the Quantum Expert Report. This was from the Quantum Expert Report 2 submitted last September. Nobody has been surprised by this information. We would be surprised if he gets to put in a bonus Report.

PRESIDENT FERNÁNDEZ ARMESTO: A what?

MR. HAMILTON: Bonus comments on this issue. It was already provided in September.

PRESIDENT FERNÁNDEZ ARMESTO: It is--my only point is I want to be sure that these numbers are agreed among between the Experts.

THE WITNESS: I would assume that they are. I assume that we will agree, but I would like to check them, and that's why I said five minutes. But a week. A week would be perfect.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

THE WITNESS: Five days.

PRESIDENT FERNÁNDEZ ARMESTO: Let's not, please--I hear--you have heard Mr. Hamilton. We

don't want a new Report. We want just one single letter from you saying the numbers are fine or my numbers are the following. And you put your numbers, and please let's not get into more discussion.

If we need some further discussion, we will come back to both Experts, but at this stage, please only--hopefully, you will confirm these numbers are correctly done. Okay?

THE WITNESS: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: And in a week's time.

THE WITNESS: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: Very good. And let's adhere to that so that we don't have a procedural incident with this.

THE WITNESS: Yes, sir.

PRESIDENT FERNÁNDEZ ARMESTO: If we feel that we need certain additional information, we will go to both Experts. Okay.

Professor Edwards, we wish you a safe trip home.

THE WITNESS: Thank you, sir. Likewise.

(Witness steps down.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good.

So, sorry for that interruption, but I now have Professor Edwards off my conscience, and his trip is--and we have solved that.

Sorry for that. Now, I give you back the floor.

You were saying that you would like one long and then a very short Post-Hearing Brief.

MR. FRIEDMAN: Yes. If I may make just a comment arising out of what you just asked Professor Edwards.

It's obvious that the Experts from both sides, I think, would be able to develop scenarios, so to the extent that the Tribunal in its questions comes up with questions relating to what would it look like if this had been the state of the world or something, I'm highly confident that the Experts could, in consultation with each other, answer those questions.

PRESIDENT FERNÁNDEZ ARMESTO: I'm sure they could, but that requires some deliberation by the

Tribunal, and we will see where we stand.

But I just wanted to be sure that these numbers are. Since they purport to refer to Professor Edwards, I think it is fair to give him the opportunity to confirm that they are his numbers.

MR. FRIEDMAN: Yes. I think they are on a different basis than Professor Edwards calculated because of the assumption of the one year U.S. T-bill rate, so they are kind of a mix and match, I believe, but--

PRESIDENT FERNÁNDEZ ARMESTO: I know. But we heard it, and with that change, because it's not a 7.22 rate--

MR. FRIEDMAN: Right.

PRESIDENT FERNÁNDEZ ARMESTO: --but with that change, to be sure, that Ms. Kunsman and Mr. Kaczmarek have done the right thing.

MR. FRIEDMAN: So what we would like to propose is to have two rounds of Briefs and then an oral argument where we set aside a meaningful amount of time. That request arises out of the sense that there are a number of complicated issues and that the

Tribunal has shown a great deal of curiosity, which we applaud.

PRESIDENT FERNÁNDEZ ARMESTO: You know we are curious.

MR. FRIEDMAN: Yeah.

PRESIDENT FERNÁNDEZ ARMESTO: You cannot survive a week here if you are not curious about many, many things, Peruvian law, financial aspects.

MR. FRIEDMAN: Well, we think that the Tribunal may benefit from having the opportunity to interact in more realtime rather than just reading briefs.

The briefs obviously are essential because it's a big record and things need to be distilled, but it does seem that it could be material in this case in a way it's not in every case.

PRESIDENT FERNÁNDEZ ARMESTO: So, you would say one long brief, a very short rebuttal brief, and then a day?

MR. FRIEDMAN: Yes. Forgive me for being very pushy on this. I would want--I would actually propose two days because I felt that we were pressed

in this Hearing. No, no, at the beginning, on Day 1, I felt that everybody was rushing to get in.

We do have jurisdiction, merits, and quantum all in a single hearing.

PRESIDENT FERNÁNDEZ ARMESTO: Two days.

MR. FRIEDMAN: That's not always the case.

So, our proposal would be two days, which would give us and the Tribunal, most importantly, reasonable amount of time to speak with the lawyers.

PRESIDENT FERNÁNDEZ ARMESTO: If I come, and Professor Stern, if we come--well, you are also far away--if we come to Washington, it is the same to stay for a day or for two days. So, two days is fine.

Mr. Hamilton, you look stern, not like Professor Stern, but you do not seem to be happy with this proposal.

MR. HAMILTON: Thank you very much. And I have no Hermes today, so I do have some comments, Mr. President.

As a starting point, the proposal we just heard was proposed to the Tribunal and rejected in

October--proposed and rejected in October--proposed and insisted because that is the way that Gramercy conducts itself.

That's the way it's conducted itself with these Bonds forever and that's the way it conducts itself with this Tribunal is it pushes, pushes, pushes until it gets what it wants.

So, that's the starting point for this discussion. We, of course, want to hear the Tribunal's perspective on what would assist the Tribunal in post-hearing elements.

Second, before reaching the issue of specific Briefs and Oral Arguments, we would like to confirm the scope of what will be addressed. Now, we understand that there will be freedom to make comments, plus there will be guidance from the Tribunal with questions for identification of some issues, a process which is starting to unfold and will be communicated to us.

Beyond that, we want to confirm our understanding about the scope of the record.

Now, along those lines, for some reason, we

do not understand--we repeatedly have been hearing about an Exhibit R-257. We have no idea why it's continually raised. Nothing substantive has come out of this issue. If there is something that Gramercy wishes to raise about this, it should have already told us by now.

But we don't want any more surprises or issues over that document, which the Tribunal chose to accept into the record.

The second thing--

PRESIDENT FERNÁNDEZ ARMESTO: Sorry. Let me ask the Secretary.

Do we now have as an H-number document 257 plus the annex, Madam Secretary?

SECRETARY PLANELLS-VALERO: Not to my knowledge.

PRESIDENT FERNÁNDEZ ARMESTO: If you don't have it, it doesn't exist.

MR. HAMILTON: It was submitted last Friday. I'm simply saying--

PRESIDENT FERNÁNDEZ ARMESTO: We don't have it.

MR. HAMILTON: --we have no idea what the drama is about this document. We consider it grossly unacceptable not to know when and where they got this document. We think the Tribunal should simply ask them to answer that question.

We put our documents in with Witness Statements long ago, and then right at Hearing time, they have repeatedly declined to tell us that. We don't know and we don't want to find further surprises about this issue.

The document was submitted by Gramercy last Friday. The Tribunal has already had it. So, that logistic was taken care of a week ago. So, we simply don't consider it fair that they haven't disclosed when and how they got that document because it is material to procedural considerations.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton, if you want to make--if that is really something which you think is really important, please make a submission to the Tribunal. We will discuss it, and then we will let the other Party react and we will decide.

I have--that is one issue, so you are welcome at any stage. But let's then do it, please, in writing. Send us a letter. We will then give the floor to Claimant, and we will take a solution.

MR. FRIEDMAN: May I just try to clear this up?

MR. HAMILTON: Yeah, we're confused.

MR. FRIEDMAN: What we--well, okay. What we sent on Friday was the version of R-257 that we had discovered. What we proposed, and what the Tribunal requested, was that the Parties attempt to agree on sort of a composite document that could be submitted as a hearing exhibit.

We sent what we believe is an accurate composite document to counsel for Respondent days ago, and we have continually sort of asked, "Is this okay? Do you have any comments about this particular compilation of pages so we can give it to the Tribunal?"

We are still waiting for a response about whether they--we haven't tried to do anything secretive. We've tried to give them the document as

we understand it. So, we would be grateful for that, but I'm sure it could be done if they could just respond to us. If they have any comments, I'm sure we'll work them out, and then we can give it to the secretary and it can be given the Hearing number. I don't think there is any drama about it, and I do think that, to the extent that people have had arguments so far or put issues to Witnesses, they have used the materials from in 257, so it's not like there is any new material other than what the Tribunal already has, but currently in two documents rather than one.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. We have already taken two Decisions on this. Decision one is we incorporate it as an H number, R-257, with the full pages, because some pages were missing, and with the annex. And we will do this, putting together Claimants' and Respondent's copy. That is first point. This is a Decision, and we have taken the Decision, and the Secretary is now in charge of doing that.

Second question is--yes, yes, yes. I'm

coming to this.

The second point is that, Mr. Hamilton, you now have a completely separate question; namely, you ask: How is it that Claimant has a full copy of R-257, while in the record there is a noncomplete copy of R-257? This a completely separate question, which you are, of course, perfectly entitled to put, send us a letter with this question, and we will give it to Claimant and we will take a Decision.

There is no--these are the two problems, but they are unrelated.

MR. HAMILTON: That's the question we have been asking for weeks. That is my point.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, put us a short letter from someone from your team, and we will run it and take it.

MR. HAMILTON: I'll keep going, if I might, through a couple more items, because what I want to do is--I heard the Tribunal well that--you expressed to us last month that you're not interested in waves of letters. We want to help you focus on post-hearing issues.

PRESIDENT FERNÁNDEZ ARMESTO: I'm not encouraging--

MR. HAMILTON: I'm trying to assist in that way. So, that is the issue of R-257.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton. I'm not encouraging you to send a letter. I just say, it is--you are perfectly entitled, and if you feel strongly about it, please do it. And I understand, if it is important to the Republic, it is a question which we will address.

MR. HAMILTON: Okay. All right. That is R-257.

The second item I wanted to mention is that there were at least two different areas of Perú documents that came up along the way, one related to Bondholder Process status--and Ms. Sotelo mentioned it; Dr. Wühler mentioned it. My counterpart seemed not interested in having an update.

We are at your disposition. We are not going to insist or resist. If you want--if it would assist the Tribunal, we can provide an update of that table. I understand that my counterpart--I

understand their comments, so I'm flagging this.

You also have asked at various times about, there must be some data inside the Government about the number of outstanding Bonds. Now, just to be clear, we've given thousands of pages. Our view, of course, is that Perú, even from the very First Submission that it made, provided much more transparency and openness than Claimant did.

So, there is various information across many years of time. There is not a single magic clear understanding of the total number of outstanding Bonds and correspondingly, their face value, for all the different reasons that we have heard about, but I hear you asking this issue. We will take a look at what is already in the record, because there are various things in the record, and we will address it in our Post-Hearing Brief.

But, again, I'm just being--taking note of your questions. And each side can say what they have to say. I'm not aware of any other magic document that there is. We have tried to be very forthcoming.

PRESIDENT FERNÁNDEZ ARMESTO: No, I think

there are two things which we asked all Witnesses about. One is: Do you have any idea about how many Bonds are outstanding? And then the other thing is: What is the impact of the different--what is the budgetary impact of the various alternatives? We have actually not seen any calculation of saying, if we recalculate the value at CPI, then it would be this, or if we do it with the first formula, with the--you will remember the first parity in 1950, 19--the first parity exchange formula, then it would be so-and-so-much with the second.

What I have not seen--normally, there would be some calculations made by some statisticians or economists at the Ministry looking into this. It would have been sent to the President when the Supreme Decrees were submitted. We just have not seen it. Maybe it does not exist. Maybe it was impossible to do it, and it does not exist.

MR. HAMILTON: In the case of Global Bonds, you would simply look at the registry and understand the outstanding Bonds, and here--I won't reiterate. We all know the complexities of history that we are

dealing with and we have heard about.

So, the uncertainty of the number of outstanding Bonds is precisely part of the concern of impact of something that you cannot calculate with precision, and why--Dr. Wühler explains how a fund works, that you don't necessarily know all the numbers in advance. So, I'm just noting the question, and we will try to address.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Because on the other side, if we get--I mean, we have no idea if we have jurisdiction. We have a number of issues on jurisdiction, and I have no idea, and we have not decided anything on jurisdiction, and we have not decided anything on merits, but if we ever--if we get to the merits stage--which is unknown; it's a total unknown--it would be irresponsible for this Tribunal to take a Decision which may have an impact on the wider Peruvian economy without--no one having looked into what the impact would be. You see what I mean?

MR. HAMILTON: The uncertainty is the risk. I agree that that would be a highly risky and unusual step for a Tribunal to take.

PRESIDENT FERNÁNDEZ ARMESTO: Exactly. Exactly. Exactly this is why. Yeah. If there is some information, it would be helpful.

MR. HAMILTON: If there is anything new, we'll let you know.

Third and final item in terms of scope of the record--and I will really try to be brief and straightforward--the Republic of Perú was very surprised by the information that came forth during the testimony of Mr. Koenigsberger and Gramercy's Witnesses regarding 2017 acquisitions of Land Bonds.

We haven't seen these documents. We don't know their impact. We have been left in the dark. We would say, you know, one further thing, which is: It is difficult--impossible--for us not to understand this as a very intentional decision not to share information with the Tribunal, with Perú, with the U.S. Government, for that matter.

As a matter of fact, we've gone back and looked at our document request, and one of the most notable things in our document request which post-dated these developments is that we identified a

time period related to the Land Bonds, and it said specifically on the front of our document request that we understand that the acquisition period runs from 2005-'6 to 2008, based on representations of Gramercy.

We then the stated that, if that understanding or those representations are incorrect, then, for example, we specified, instead of asking for documents through 2008, our request means documents through the last date of any acquisitions.

We had concerns. We expressed them in the document requests, and we now see that, in fact, there are other document requests. We actually think that this is relevant to a whole series of document requests that we raised.

Now, on the one hand, we can look at situations where Tribunals react in a very aggressive manner to a scenario like this. I was sitting in the room during the first Fraport case where Professor Reisman was sitting at this table and the Tribunal, Mr. Fortier, immediately ordered the production of documents that came up through testimony that had

been previously unproduced. It was an immediate act by the Tribunal.

We also note that Fraport I was ultimately annulled, not because of those documents that were provided, but because the Claimant wanted more documents down the road. And so, we recognize that there are--this new information presents procedural challenges. We also consider it risky for Respondent not to have known any of this. It makes it a difficult situation any way you look at it.

So, we have a couple of options here. One is that there is a briefing process where they say what they have to say about the situation as part of the Post-Hearing Briefs, and we will respond accordingly. The other would be more in the vein of a revisitation of document production, but, again, the mere fact that these documents exist at the end of the Hearing--we're talking about this after all of the Witness testimony and all--is already a difficult and potentially prejudicial situation.

So, all of that said, one option of how we could deal with this is by sequencing the

Post-Hearing Briefs so that they can say whatever they have to say about the--for post-hearing purposes, including on this issue, and then we can respond, having seen what they have to say about it, including--I've got a note that once the issue came out, we then saw an effort happening live and in color before our eyes to characterize these things in ways that we had not heard before.

Now, I'm trying to lay this on the table. It is tempting to become quite exorcized about the issue, but I'm trying to simply lay the procedural situation on the table so that we can discuss it in a calm manner and have guidance from the Tribunal as well.

PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman?

MR. FRIEDMAN: May I, Mr. President?

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

MR. FRIEDMAN: First of all, this case concerns a particular investment that Gramercy made and GPH and GFM made in Land Bonds that it acquired from 2006 to 2008. That's always been the entire scope of the claim and the only thing that is

relevant and at issue as part of the investment that Gramercy is claiming here. It's not claiming relief for anything else, any other investment of any kind.

Consequently, second, Gramercy has complied in good faith with all of the document requests that were put to it and has presented all the documents that it could. I'm not aware of any failure on Gramercy's part to comply with the requests as they were issued and concerning the investment in this case.

Third, if we're going to get into aspersions about what wasn't produced, I do think that you have to take in mind also that you have asked many times--and we are equally surprised, Mr. President, that, astonishingly, apparently nowhere within the Ministry have there been any projections, understandings, expectations ever about any of these Land Bonds other than Seminario's Report, and you heard Minister Castilla testify both at different times--this was my interpretation of his testimony--was both that, "yes, of course we had projections," and, also, "we didn't have

projections."

I will tell you that, to the best of our knowledge, in looking through the entire document production of Perú, we haven't seen them, other than documents that we have already brought to your attention.

So, consequently, I don't think it's quite fair to talk about hiding documents, withholding, not complying with discovery requests. We raise this particular issue about these particular kinds of documents because we knew they would be important to the Tribunal in this Arbitration, in an earlier procedural conference, and the Republic of Perú represented "that's all we have," and the Tribunal said, "Well, if that's all you have, that's all you have."

Fourth, in terms of what to do with it--I mean, I think we have a record. You have the evidence that the Witnesses gave, and that's it. We don't believe that any of these additional Tranche 2 documents are relevant to any issue that you have to decide. If Respondent believes otherwise, they can

argue it, or if they have some further relief, they can make an application. But I don't think we have much to say about it right now until we've heard a position.

And so, consequently, we couldn't accept sort of the proposal that they make. I believe that what you can do is decide on the record that you have about the investment that this case concerns.

MR. HAMILTON: Mr. President, I will be very brief.

PRESIDENT FERNÁNDEZ ARMESTO: Yes, Mr. Hamilton.

MR. HAMILTON: I will be very brief. And, again, I frankly am under pressure to be less brief and more vocal, so I'm really trying to show restraint on this issue.

First of all, this is not a scenario where we have a claim on a contract. For example, Perú recently had two different cases related to Bonds from 150 years ago: One in federal court in New York, one in federal court in Los Angeles. $12 billion in claims: One case related to one set

of bonds, one case related to another set of bonds. Contract claims, total victory for Perú, $12 billion claims thrown out.

Here, we're dealing with a treaty case, and in a treaty case, the expectations of the investor, the due diligence of the investor, contemporaneous valuations, all of these issues are relevant and material. They are relevant and material to jurisdiction, they are relevant and material to the merits.

I asked Mr. Koenigsberger: "Did you consider it a good idea to buy Land Bonds in 2017," and he said "yes." That is relevant for you to know and understand because these are not contract claims. Yeah, this is one set of claims and here is another.

Imagine if you had a case relating to an airport project, and you went through a whole hearing about an airport project, and during the Hearing you found out we had a second airport project at the same time that occurred during the claim on the first airport project in Country X, and all that that implies in terms of expectations, valuation, as well

as jurisdictional implications.

We would say, as well as the fact that here, Perú considers that Gramercy bought claims and keeps buying claims and keeps using this case as part of a master strategy of creating as much pressure as possible until it forces a resolution that sufficiently satisfies it as part of a master scheme of pressure.

So, I think to say it would certainly not be plausible to say this is totally different. That could be plausible, if you had two different contract claims in two different cases, but certainly not in a treaty case. So, I leave it at that.

And then to put the shoe on us and say we have to come and brief this, when it is clear that they have all been sitting here, going through this case with knowledge of this situation while they are engaged in a propaganda campaign that Perú won't pay Bonds, and they are buying more Bonds, it is deeply troubling. It is deeply troubling. So, something needs to be done.

There's two different options. One option

is we brief it. If that's the case, we are simply going to brief it as it is, and they don't want to share this, then they can say what they think about it; we will respond. Why should the Respondent have to go first, when we're not the ones who intentionally withheld those documents?

The other option is document production, and we would have to raise this issue. We are inviting some guidance from the Tribunal. If the Tribunal wishes to consider this issue and give some guidance, of course, reserving the possibility that we may each have further comments.

Finally, the last issue, I'm sorry, is camouflage. They have been trying to drum up the suggestion during the course of this week that there is some other documents of the Ministry because they knew this moment was coming, that we have already said throughout the Hearing, the Witnesses have been forthcoming, there are many different things in the file already on this, and we've already said that we'll recheck in good faith.

So, I'm sorry, that is just sort of an

inflated issue and a distraction. So, really I'm inviting the Tribunal that you may wish to consider, and we will all consider the implications of this situation, but it certainly affects the Post-Hearing Brief and timing scenarios.

I will pause there.

PRESIDENT FERNÁNDEZ ARMESTO: Yes. Let me see. I mean, you are not alleging that there is any falsehood in any of the submissions of Claimant.

MR. HAMILTON: I haven't said that. I'm unable to say that at this time.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. What you are saying is that in the--the Witnesses brought up a fact which was unknown, which was not in--had not--was not mentioned maybe that they had bought additional Bonds. The point is this is very difficult to solve this issue orally--orally because this is a complex issue. One would have to review the whole--everything which has been written. My tendency is always to say, if you have some issue, it is for you to raise it.

I mean, if you now say Claimant has made

falsehoods in their submissions, or this has an impact on valuation, or I need some more documents because the document production was erroneous, I mean, the question is fairly simple--I mean, do you want to make any submission on this issue or make any document--do you want to make a submission on the additional Bonds, the Tranche 2 Bonds?

MR. FRIEDMAN: A submission in the sense of submitting them as a claim?

PRESIDENT FERNÁNDEZ ARMESTO: No, as submitting--or adding them as claim or just making a statement on how--on what has happened.

Do you want to make any submission?

MR. FRIEDMAN: I think we will argue from--we are prepared to just argue from the current record, and I believe--in Post-Hearing Briefs. If Respondent's counsel believes that there are implications of that, then they can raise those implications. If they believe that something else needs to be done, then they should make an application for it. But right now, our position is that it has very little, if any, relevance to the

Claim that Claimant has brought.

PRESIDENT FERNÁNDEZ ARMESTO: But that is argument. You don't want to make any specific submission on this. You are not asking the Tribunal for the right to make an additional factual submission on these Bonds.

MR. FRIEDMAN: No.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. They are not. They think it is irrelevant. You think they are very relevant. It is for you to argue that. There is no--I don't see--if they say it is irrelevant for my case, and you say it is very relevant for my case, you must argue it. And it is, of course, your right to argue it, and argue it with the consequences you think which are relevant, which may be whatever it is.

If you think that you need some additional documents and that we need an additional document production, of course. But if Claimant--I mean, this case could lead either to the Claimant taking the lead or, if the Claimant does not want to take the lead in saying anything about it, then it is for you

to argue it.

MR. FRIEDMAN: Yes. I just think we need something more concrete. If there is otherwise we have the record that we have.

PRESIDENT FERNÁNDEZ ARMESTO: Yeah.

MR. HAMILTON: Respondent will consider it, and we all know that neither the Tribunal nor Respondent were told during the course of this case that they were secretly buying Bonds. So, we will consider and determine what further steps.

Now, then we come back to the concrete issues--

PRESIDENT FERNÁNDEZ ARMESTO: Can you look at it in, say, two weeks?

MR. HAMILTON: Sure. Sure. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: To close windows, because otherwise I would not like this to come up in six months' time.

MR. HAMILTON: Yes. Yes. Yes.

PRESIDENT FERNÁNDEZ ARMESTO: Can you look at it--would two weeks be reasonable?

MR. HAMILTON: Yes, sir. Two weeks.

ARBITRATOR DRYMER: And that is effectively to submit an Application, if you choose to do so. I'm not sure what we're asking for within two weeks.

(Overlapping speakers.)

MR. HAMILTON: It comes back to the entire Post-Hearing Schedule.

ARBITRATOR DRYMER: Yes. Yes.

MR. HAMILTON: Now, there is one thing I want to mention on Post-Hearing Schedule.

PRESIDENT FERNÁNDEZ ARMESTO: Let's close this one. Can you, in two weeks' time, if you have any reaction to the fact, to the statement made by Gramercy's Witnesses that they had bought a Tranche 2 of the Bonds, any Application with regard to that new fact, can you please present it in two weeks' time, so that we can get it--hear the other Party and then solve it in a reasonable period of time?

MR. HAMILTON: My only comment, Mr. President, is I think this needs to be considered as part of an overall plan for post-hearing.

PRESIDENT FERNÁNDEZ ARMESTO: Of course.

(Overlapping speakers.)

MR. HAMILTON: Because we, as Respondent, they are the ones who held these documents, and we are the ones who then have to--we must submit something first.

(Overlapping speakers.)

MR. HAMILTON: They have the documents. We don't. We then are being asked to file the first post-hearing document. That's my concern.

PRESIDENT FERNÁNDEZ ARMESTO: No, you are not being asked. If you want--if you want, you file it. If you think that it is relevant for your case, you file it. We will address it. If you think it is not, then don't. I just want to put--I just want to put some sort of timeline.

Okay. Yeah. Can we break for five minutes.

MR. HAMILTON: Sure. Thank you.

(Brief recess.)

PRESIDENT FERNÁNDEZ ARMESTO: Very good. Let's do the following:

After having thought through the various alternatives, we would say in a period of time, which you stated two weeks seems reasonable, if you want to

make an application to the Tribunal regarding these new facts, this Tranche 2 of the Bonds, please do it within this period of time. And then please do submit exactly what type of relief--procedural relief you are asking for.

If--I mean, so that we know exactly what you are expecting us--how you are expecting us to react. And if that is that way, we will then pass the Submission on to Claimants, and we will give Claimants two weeks also to react, and then we will take whatever Decision is appropriate.

I think that would be--that is a procedurally reasonable way of doing this, because it is for you really to establish what relief you want, and we have been discussing who should go first.

Since at the end we have to decide on a specific relief, I think it is for you to define exactly what you want.

ARBITRATOR DRYMER: Presumably--excuse me, presumably on the basis of the views you've expressed and will express more fully as to the impact and relevance of the evidence or further submissions or

whatever it may be you will be seeking--you may be seeking by way of procedural relief.

MR. HAMILTON: Mr. President, thank you for the comments of the Tribunal.

What would be the former--the further views of the Tribunal in terms of the Post-Hearing approach? Obviously, you will have to determine--we have to consider some issues. Our friends may have to consider how they respond, and we may have to see.

Do you wish to go ahead and discuss further Post-Hearing steps at this time? I've heard a proposal. I do have one observation, which is that we understand that you're each extremely busy. We understand that these cases are not simple in terms of the volume of information, et cetera.

We also are mindful--and I can't help but observe--that there are elections in Perú next year. Every time there have been elections in Perú, this has been yet another round--it's written in their first due diligence memo--where they clearly have plans for pushing Claims and Settlement in that context.

So, we want to have a reasonable period of time for Post-Hearing, meaning let's do what needs to be done and then let the Tribunal get its job done.

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Mr. Hamilton, let me--I don't think we can today establish deadlines because this problem--I think we should--having lived through this procedure, that it is likely that you will submit something in two weeks' time, and it is likely then you will have to react, and it's likely that we'll have to take a Decision, and we don't have the slightest idea.

So, the only thing that we can really at this stage agree--or try to agree is would you prefer one single round or two rounds? And I know you didn't like the idea of oral conclusions at all. That is correct? Just give me a feeling, and we will have--we will take a Decision at some stage, because I see it is not easy for you to get to an agreement. But I would like to know how you feel.

ARBITRATOR DRYMER: Might it relate directly to the outcome of this initial procedure--application and resolution of that application? I don't know.

MR. HAMILTON: It might. It might. Thank you for the comment, Mr. Drymer.

Yes, in fact, look, we're talking--what's been put on the table by Gramercy is two written submissions, plus an oral submission, so basically three submissions.

Right now, we obviously have some procedural concerns that we reasonably need to consult with the Republic, and so it makes it a little bit difficult right now.

What we don't want to do is spend six months in a Post-Hearing phase, followed by six years to reach a Decision and things like that, because the reality is this case exists not only as a pending Treaty dispute, but it exists as part of a broader apparently multidimensional game of chess that includes press aggravation and all of these different ongoing factors.

So, we want to give you what you need to make your Decision and reach a conclusion here.

PRESIDENT FERNÁNDEZ ARMESTO: Let me see. Instinctively, I say three rounds is too much.

One written round is unavoidable. And then we should have either an oral presentation or a short written second round. I mean, three rounds, I think it is overkill.

MR. HAMILTON: And two days I would say is overkill, as well. I mean, we love to hear each other speak, but...

PRESIDENT FERNÁNDEZ ARMESTO: Okay. Two days may be overkill, but the point here is that--the only advantage I see is, very frankly speaking, on having an oral submission, is it gives--the Tribunal has not had as much time as it would have liked to deliberate because we have had very long hearings.

So, it is an added opportunity to immediately after your Post-Hearing Brief--Post-Hearing oral presentation, be it one or two days, at the end, once we make the effort of coming to Washington, staying one day or two days is de minimis of having deliberation. So, that is the advantage I see.

On the other side, I am perfectly aware of the cost, and you know that I am very cost-conscious,

I think, and especially for States that the economics with the cost is fundamental. So, we have to wait. I have to speak with my co-arbitrators.

MR. FRIEDMAN: If I may, Mr. President, we appreciate all of those comments, and we are also obviously very sensitive to the costs and the time that it will take.

I think it is wise to think of it as two instead of three, that we accept that completely. I do think that--I do want to sort of--I don't think it's overkill to have a two-day oral argument.

The Tribunal has raised a number of questions about what's the information about the universe of outstanding bonds, for example. And there is evidence in the record that bears on that. The evidence has some nuance about it, and we'll write about it in our papers.

But I do think it's the kind of thing where everybody might benefit if we had an opportunity to have an exchanges and say, here is what we think of the record is, here's why we disagree with the position that the other side is taking about the

characterization of it.

And I think by that time, we will be down to a number of discrete points that will really matter to you and be able to focus on those in a way that it was hard to do when you start out and do opening arguments.

But at the same time, I would really urge not to try to compress it into too little time. I think it is a false economy to say not two days. It makes it not as valid.

PRESIDENT FERNÁNDEZ ARMESTO: If we do it--I see your point.

MR. FRIEDMAN: Yes.

PRESIDENT FERNÁNDEZ ARMESTO: If we do it, we make it one morning and then the next day. It is an advantage for Respondent, if you have the second day to respond. You have at least the afternoon and the night to think.

Very good.

So, summary. Summary. Summary is we--from Professor Edwards, we will get in a week's time this short confirmation. In two weeks' time, you tell us

whether you think that this information is relevant and the procedural relief you are requesting. We will give you then the possibility to react.

We will take a Decision, and depending on how we come out, we will then--at some stage, we will deliberate and see whether we need one--whether we do the second round of Post-Hearing Briefs in writing or orally.

And I really have to speak with my colleagues. And we will send you a letter next week with the ideas of our interest.

That would be my wrapping up of the Hearing.

MR. HAMILTON: I have one detailed point and one more item to discuss, if I might.

One is for the Briefs, we would be interested in exploring parameters--reasonable parameters. The first case under the U.S.-Perú Treaty had a final Post-Hearing Brief where the Claimant put in a Brief that--I can't remember--but it was very long, and we submitted one page. We still won the case, but there was a huge difference in approach. So, some reasonable parameters.

(Comments off the microphone).

MR. HAMILTON: We can sort that out.

MR. FRIEDMAN: That sounds like a good procedure to follow. So we'll write a lengthy brief, and they can write a page.

MR. HAMILTON: In other words, we can try to sort that--I'm sorry, I do need to stay on the record.

So, I just want to flag that as an issue to explore.

The final thing that I want to raise, Mr. President, and I will try to be brief, but the Republic very much would like to be able to move through the remainder of this Treaty proceeding with greater calm than we've gone through it until now.

I know that the issue of aggravation of the proceeding may not be the first priority of the Tribunal, however, here the Tribunal chose to go through an entire phase at the start of this case about aggravation of the proceeding. The Tribunal has repeatedly reiterated its Orders with respect to nonaggravation.

And it is the Republic's view that we now see that aggravation is not only something that is a distraction to the sanctity of the Treaty proceeding, but we believe reflects their entire Claims strategy from the very beginning.

And we are all here together. Mr. Koenigsberger is here. We are here trying to show goodwill, and this is an opportunity for us to speak frankly and try to put a little order to the situation.

I will not repeat all of the information that is in the record. We talked about it during our opening arguments. We even talked about things that were happening in 2017, billboards, letters leaked to the press on behalf of pension funds and American workers, and, of course, we've learned many things during the course of this hearing.

But I will just give you one example, an example of something that I think is a good example of aggravation of the proceeding that simply should not be tolerated. And the Tribunal even has ruled that there should not be unnecessary aggravation. We

already know that this is an issue that attracts emotion.

But, as one example--and I will be reserved in how I convey the example. I received a call last year, unexpectedly, from the office of a level individual on Capitol Hill in the U.S. Government.

I was told that Lobbyist X had come to visit that office for the third time. Now, Lobbyist X is retained by the entity set up by Gramercy through Debevoise and Gramercy. Lobbyist X is--throughout the record, connections to Lobbyist X. The lobbying regulation forms are before the Tribunal, continuing after all of the different discussions we've had and pleadings we've had related to aggravation.

And I was told, "are you Jonathan Hamilton?" "Yes." I get all sorts of random calls within the City of Washington or from different parts of the City.

"Yes, I am." "I'm calling you because Lobbyist X has come for the third time. Lobbyist X has said that you are personally blocking the Republic of Perú from paying billions of dollars to

American workers and interfering with their freedom of speech under the Constitution. And I wanted to let you know that this concerns us."

Now, we know where this is coming from because we've given you a broad, incredible colorful cartoonist record of the lobbying structure, et cetera. We even have--and I refer you to Exhibit R-242, for example--emails where someone personally connected to said lobbyist is in an email, and it's copying Mr. Koenigsberger as the Office of the Presidency of Perú--this dates back two years ago--responds and says, "please direct your attention to Jonathan Hamilton."

Now, we understand that there's a desire to generate propaganda about this issue. That's clear. But we're inside the stadium now. Perú ratified a Treaty to create a rules-based system to resolve problems like this. Perú does not choose to give what it considers would be a windfall to Gramercy in violation of Peruvian law.

Perú has been willing to speak. We have found those efforts difficult. I'm sure everybody

has found those efforts difficult. We don't have to go into it.

But we have to have a little bit of order, and we have to avoid a situation--and the record is also replete with other examples where the attorney-client relationship is affected and interfered with as well. We even believe, frankly, involving issues of trying to blackball our firm in connection with totally unrelated issues in unrelated parts of the world.

So, I would like to invite Gramercy, on behalf of the Republic of Perú, let's have a little bit of order here. Let's put down the lobbying process that has persisted despite the Tribunal Orders.

I also say, respectfully, it's not a simple matter for the Tribunal. All of these different issues are complicated, but we are here acting in good faith--not all States do that--having a Hearing, providing documents, participating in this case, and let's treat each other respectfully. Let's treat each other reasonably. Let's finish this case.

Let's let the Tribunal do its job, but, really, these examples of aggravation, again, they are too far. They are too far.

There is even a random thing in the newspaper already today, and it doesn't have Gramercy's name on it, but it says, "Peruvian State might lose major arbitration; Government of Peru has used false arguments."

I don't know if this--it doesn't have Gramercy's name on it. There are many things that are clearly connected to Gramercy, and we've proven that.

So, I'm inviting you, please, let's be grownups here. We're in a treaty proceeding. The United States Government has been present. We are sitting before an esteemed Tribunal. They are going to make Decisions, and that is where we need to be directing our attention, not other places.

I am in the hands of Tribunal. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Thank you, Mr. Hamilton. You know the Decisions, the interim Decisions, what the Tribunal has taken.

Mr. Friedman?

MR. FRIEDMAN: We also are aware of and have abided by the Orders of the Tribunal. I was frankly not aware of what Mr. Hamilton has described about the phone call that he received until today. I don't know when that occurred or what the circumstances were, so that is new information that I will have to vet, I suppose.

But I believe that we are in a situation where we are dealing with--and I think we've been very clear about this all along. We do respect and have abided by the Tribunal's Orders, and to the same extent, I suppose, that the Republic of Perú has. And we have pointed that they have made comments on their website, and they continue to engage in a wide variety of public statements that Gramercy considers to be false, inaccurate, and whatever. We don't have to revisit everything that was in the papers, but there are very much two sides to this story.

And I believe that both Parties have, since the Tribunal's Orders, abided by what the Tribunal had indicated, which is: Don't take steps that are

aggravating. But, as we've always said, this is a matter of public concern, in the United States as well as in Perú, and it's not just about Gramercy. And Gramercy also is not disabled from its rights to speak publicly on these issues simply because it is also pursuing a dispute resolution mechanism through this Arbitration.

And especially in an arbitration system that is--encourages and requires transparency, it is just--it is--it would be completely irresponsible, and there is no basis, for the Tribunal to impose the kind of gag order that I believe the Republic of Perú has continually sought to have, and the Tribunal has taken a much more balanced approach.

So, if there's a particular allegation about interference with Mr. Hamilton's relationship with his client, I take that seriously, and that is something that we do need to take on board, and I will investigate that. But otherwise, I think this is a matter of public concern, and it is perfectly appropriate for the Parties to comment on it as they will.

And, you know, we can't pretend that this doesn't have wider and political implications. It does, and this proceeding needs to have integrity, and the Tribunal needs to be free to do its job, but otherwise, I really think we need to let this issue go.

MR. HAMILTON: Mr. President, I will be brief. I know they want to let this issue go, because there is no balance whatsoever in terms of the conduct of the Parties here. As a matter of fact, the call that I mentioned, I said, "That matter is pending in a case before a Tribunal. You can read that information"--and I was very respectful, and I ended it. That is not the way they have conducted themselves.

We have shown you billboards parked in front of the United States Congress, parked in the front of the Peruvian Embassy, totally unimpressive. And, Mr. President, it is interesting to hear the phrase "gag order." And the reason it is interesting to hear the phrase "gag order" is because a series of consecutive Peruvian Ambassadors here in Washington

have been contacted by certain individuals in the United States Government stating that Jonathan Hamilton of Perú is forcing American citizens to be subject to "gag orders," which is false, and wrong, and an interference with Perú, a disrespect to this Tribunal, and an interference with our attorney-client relationship.

The issue that I raised is not a surprise issue. We raised it in correspondence last year. I tried to be respectful to all, including, quite frankly, to Gramercy, including to other individuals in this city who are involved. We respect in the utmost the bilateral relationship that Perú has with the United States Government, but this has simply gone too far.

This is all on the record. I've already raised the exact issue, but I'm trying to not to unnecessarily overshare and give everybody a chance to try to do the right thing.

Perú has been very reserved, very reserved, including in all dealings with the United States Government, where we try to be as limited as

possible. So, I will leave it at that.

We consider this literally to impact the validity of this proceeding. It has gone too far. We invite cooperation. Is it not assisting in resolving things with Perú. Frankly, it's done the opposite, because it has specifically been a tactical blunder of interacting with problem-solvers in the wrong way.

So, I invite you to please consider--I invite the Tribunal to keep in mind its orders. We need to finish this case better than it has happened to date, and we look forward to cooperating to do that. Thank you.

MR. FRIEDMAN: And I will just add that Gramercy, for--as the record has shown, for more than 10 years has offered its hand to try to resolve the issue cooperatively. And that--it remains very willing to do so if that is something--if it is sincere that Perú wants to deal with the issues cooperatively.

PRESIDENT FERNÁNDEZ ARMESTO: Okay.

MR. HAMILTON: Perú doesn't pay when it

doesn't have a duty to pay. So, let's be reasonable here. Just because you don't get what you want doesn't mean you can bully in the wrong way.

Thank you, Mr. President.

PRESIDENT FERNÁNDEZ ARMESTO: Let me just make a couple of arguments, because one thing is the interference in the relationship between a lawyer and his client. That is totally wrong, and I think there is nothing--I don't think anyone around this room will--to try to advance one's case trying to interfere in the relationship between another lawyer and his client is false, and the Tribunal has forcefully said that and expects that this will not happen. This will not happen. This is totally, totally unacceptable. First point.

Second point, I do think that, at this stage, spending money--because these lobbyists do charge money--is senseless, because we are here in the middle of a legal procedure which will lead in a reasonable period of time to an outcome. And I don't think that lobbying in the U.S. Congress or whatever has any merit, and it will not improve anyone's

chances of the outcome, regarding the outcome of this case. This is a legal case. And so, I would--I think that lobbying should not continue. I don't think that that adds any value to Claimants' case.

Third point is this is an open procedure because, under the Laws and the Rules, it is obligatory. We are now in the internet, so anyone who is interested can follow it. Journalists can follow it. It may have a political impact in Perú.

The next step is then for Parties to try to influence the press, and we all know that there may be some temptation to influence the press. I would totally discourage that the Parties engage in trying to push the press to support its case.

And the reason is, it is irrelevant. It will not help the case, because we do not read the Peruvian press or American press. If we see it, it is probably--whatever they write is totally unrelated to the truth, and so, it is wasted effort. It is wasted effort. And so, I can only repeat what we have already said: Let's all focus on this case. It is complicated enough. Let's fight it in the proper

arena, which is the arena of the law of justice, and treat this as the proper way of solving this problem.

And I had some hope--or I always have the hope that there may be some possibility of finding that the Parties, among themselves, find some sort of settlement. I hear Mr. Hamilton saying here that, for the Peruvian State, it is difficult because there are rules and laws, and they would have to change--approve laws. It is, in general, difficult for States. For example, for the Spanish State, it is practically impossible to reach a settlement because the internal hurdles are so high that it is very difficult.

That said, nothing would make the Tribunal more content than to see that this problem and the problem of all the other Bondholders is solved, but I don't think that this is now a realistic possibility. I think we have to go through this procedure, and the best way to go along this procedure is just keeping no--not speaking to the press, not making press releases, no lobbying, and certainly that--I say with absolute emphasis--is no interference in the

relationship between a law firm and its clients. That is manifestly improper.

MR. FRIEDMAN: Yes, I think that we accept that there should be no interference in this process, but I really do have to put down a reservation that this is a wider political matter that has dimensions beyond these walls, and that is the reality, and it will continue to be the reality.

PRESIDENT FERNÁNDEZ ARMESTO: But let's not put oil on the fire. Let's not put oil on the fire. It does not help the case.

I mean, the case--each Party's case is helped by good legal arguments and good legal drafting. It is really the only thing which helps.

Very good. Gentlemen--

MR. HAMILTON: So, in two weeks, we will submit or not submit something and determine from there. And we understand that any potentially relevant and material documents will be preserved in the meantime, and not affected, and we will see where we go from there. Thank you.

PRESIDENT FERNÁNDEZ ARMESTO: And so, I come

to my last question: Is there any breach of due process to which you would like to draw the Tribunal's attention at this stage?

Mr. Friedman, any breach on your side?

MR. FRIEDMAN: No. In fact, while we did feel pressed for time sometimes--I think we all experienced it--I would like to express our gratitude for the Tribunal's attention, including late into the night, and for the support of everybody else--the Secretariat, the Secretariat to the Tribunal, the Court Reporters, the Interpreters--in helping us get through a very substantial amount of information over the course of these days. We really do appreciate the efforts that you went to to extend yourself to make it possible. So, we have no objections as to how this Hearing has been conducted.

PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

And on the Republic of Perú, Mr. Hamilton, is there any worry about due process?

MR. HAMILTON: Thank you very much, Mr. President. Perú, as we've expressed, has a lot of concerns about this case, but we very much

appreciate your good disposition during the course of this Hearing to manage the pressure. Your attention to detail through long hours, each one of you, is very much appreciated, and good humor as well, including--because I think that we are all part of the same curious type of creature who finds it interesting to go through these intense processes. Thank you very much to each Member of the Tribunal, and to my counterparts.

PRESIDENT FERNÁNDEZ ARMESTO: "Curiosity" is the expression.

So, I think I have--I would like to--the Interpreters to come out. Can I ask the interpreters to step out to say hello to them? Can the interpreters come out?

THE INTERPRETER: The interpreters are interpreting.

PRESIDENT FERNÁNDEZ ARMESTO: We would like to ask that they stop interpreting and they should all step out.

THE INTERPRETER: It's not within our remit. Sorry.

PRESIDENT FERNÁNDEZ ARMESTO: I just want to put a face to them, because they are the faceless people, and I think they have done an amazing job, and they do not seem--this is off the record now.

(Comments off the record.)

PRESIDENT FERNÁNDEZ ARMESTO: All right. We are finished.

(Whereupon, at 2:50 p.m., the Hearing was concluded.)

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