

THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF  
INVESTMENT DISPUTES

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:  
In the Matter of Arbitration :  
Between: :  
:  
LUPAKA GOLD CORP., :  
:  
Claimant, : Case No. ARB/20/46  
and :  
:  
THE REPUBLIC OF PERÚ, :  
:  
Respondent. :  
:  
- - - - -x Volume 2

HEARING ON THE MERITS

Tuesday, March 28, 2023

The World Bank Group  
1125 Connecticut Avenue, N.W.  
Conference Room C3-150  
Washington, D.C.

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

PROF. JOHN R. CROOK, President

MR. OSCAR M. GARIBALDI, Co-Arbitrator

DR. GAVAN GRIFFITH KC, Co-Arbitrator

ALSO PRESENT:

ICSID Secretariat:

MS. LUISA FERNANDA TORRES  
Secretary to the Tribunal

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P R O C E E D I N G S

PRESIDENT CROOK: I'll make the bold assumption that my colleagues are ready and so welcome you all to this second session in the hearing in the case.

Before we begin, I have a couple of procedural things to raise with you.

One, we have actually a pair of pending procedural issues, one of them we didn't quite get to this morning, and that's the question of the notes on the expert reports. We will address that at our next opportunity, and get back to you on that.

On the second question, we have the Claimant's expression of view that the report of Ms. Dufour should be stricken. Now, we've had a formal application to this effect, but they've expressed themselves on the question.

The Tribunal has been sort of wrestling with what to do with this in light of two competing considerations. One, of course, is Procedural Order Number 1, 14.4, where we specified we thought with some precision what was to be included in the second

1 round of pleadings.

2           We also have ICSID Arbitration Rule 27,  
3 which applies in this proceedings spelling out waiver,  
4 and I will invite you to consult the rule. The  
5 secretary, I think, has copies if you are not--don't  
6 have it ready to hand. I will not read it out.

7           So, we've got a question of whether there  
8 was, in the first instance at least, whether there was  
9 compliance with the Procedural Order, and whether  
10 there may have been waiver for purposes of the rule.

11           So what we'd like to do is proceed as  
12 follows: We'd invite the Claimants to indicate with  
13 precision, after lunch today, precisely what it is  
14 they are applying for. Let's frame this in terms of a  
15 precise application, if that is your intention, and if  
16 not, then, fine, we'll just simply move on.

17           But on the basis of a clear expression of  
18 what it is you're asking for, we will have a short  
19 exchange of oral submissions tomorrow morning at the  
20 start of the day in which Claimants can put forward  
21 the grounds for their submission and address the  
22 questions I described earlier. Respondent can then



1 respond.

2           Now, we do not have a great deal of time for  
3 this, but on the other hand, I think the issues are  
4 fairly clearly drawn. We have read the record, so we  
5 are where we are. But we will hear from you, and I'm  
6 sorry, but we're going to try to limit you to five to  
7 seven minutes each on this. We will then deliberate  
8 and rule. We will advise you of our finding, if--and  
9 I do not wish to anticipate what we will do--but  
10 should we decide that the report should be stricken,  
11 we will ask the Claimants to identify the  
12 corresponding provisions of the Rejoinder that they  
13 think should not be taken into account by the  
14 Tribunal, and to confer with the Respondent regarding  
15 those. If there are disagreements regarding the  
16 necessary implications of any ruling by the Tribunal,  
17 and there is disagreement, we will take the question  
18 up.

19           All right, let me ask my colleagues, is that  
20 a reasonable statement of where we have arrived?

21           ARBITRATOR GRIFFITH: Yes.

22           PRESIDENT CROOK: I hear affirming nods.

1           Are the parties clear on what we have in  
2 mind? Claimants? Respondent?

3           MR. GRANÉ: We are. Thank you,  
4 Mr. President. We are clear, but we will reserve our  
5 rights, of course, based on what we may hear from  
6 opposing--

7           PRESIDENT CROOK: I would have expected  
8 nothing else.

9           MR. GRANÉ: Thank you.

10          PRESIDENT CROOK: All right. Is there any  
11 other administrative business to take care of?

12          MR. GRANÉ: Yes, Mr. President, yes.

13          PRESIDENT CROOK: Yes, please.

14          MR. GRANÉ: We have a couple of minor  
15 administrative housekeeping issues.

16          One, in respect of the invitation to submit  
17 Mon delve into the record, that will be introduced  
18 with the Tribunal's authorization as RLA-194.

19          PRESIDENT CROOK: Okay. Thank you.

20          MR. GRANÉ: We can upload it into the Box,  
21 with your authorization.

22          PRESIDENT CROOK: If you have the

1 opportunity to do so, please do so.

2 MR. GRANÉ: The other concerns the  
3 cross-examination of Mr. Retuerto tomorrow. It's  
4 going to be remote, as you know, and there is the  
5 witness declaration under Article 35.2 of the  
6 arbitration rules.

7 Now, we have two options, either that is  
8 projected to Mr. Retuerto or we have a hard copy for  
9 him to read. We're happy to do the second one, but  
10 since he the protocol indicated that he wouldn't have  
11 any other paper on the table, we wanted to clear that  
12 with you.

13 PRESIDENT CROOK: I think the Tribunal would  
14 have no objection to his having a paper copy in hand.

15 MR. GRANÉ: Perfect. We will do that.

16 The other issue is during the prehearing  
17 conference, the Tribunal had requested hard copies of  
18 the Treaty. We understand that that has not been  
19 handed to you, so it will be handed to you now, if you  
20 so wish.

21 PRESIDENT CROOK: Well, we may have resorted  
22 to some self-help here to get--but we need the

1 Treaty--what we're interested in is the Treaty in  
2 Spanish and in French.

3 MR. GRANÉ: We have all three versions.

4 PRESIDENT CROOK: You have all three  
5 versions. All right. We'd be pleased to have all  
6 three versions if there were conceivably a way to save  
7 some trees and not do all three versions in however  
8 pages, that's fine, but if you have all three  
9 versions, that's very much appreciated.

10 MR. GRANÉ: Thank you.

11 The last issue is in terms of translations,  
12 I am informed that we have a couple of translations to  
13 be used this afternoon during [REDACTED]'s  
14 cross-examination, and those are for R-74, and R-275,  
15 and they would be introduced as demonstratives 2.

16 The reason why I'm raising this is because  
17 we know that the instructions from the Tribunal was  
18 that any translations to be used on the day should be  
19 sent by 7:00 a.m. of that day.

20 Unfortunately, we did not have an  
21 opportunity to do that this morning, so that's why I'm  
22 raising it now.

1           PRESIDENT CROOK: Okay. Well, I think in  
2 the circumstances, we can probably proceed now.

3           Does the Tribunal have these translations?

4           MR. GRANÉ: No, they will be provided to  
5 you.

6           PRESIDENT CROOK: When?

7           MR. GRANÉ: Very shortly. Very, very  
8 shortly.

9           PRESIDENT CROOK: And the other party.

10          MR. GRANÉ: As well of course.

11          PRESIDENT CROOK: I think if you can get  
12 those into our hands we can live with that situation.

13          This is from [REDACTED] this afternoon.

14          MR. GRANÉ: Correct.

15          PRESIDENT CROOK: Anything further on our  
16 end?

17          SECRETARY: I just do have a clarification,  
18 Mr. Grané, you said you were going to introduce them  
19 as demonstratives.

20          MR. GRANÉ: That's what I understand, RD-02.

21          PRESIDENT CROOK: These are exhibits to the  
22 demonstrative?

1           MR. GRANÉ: The translations.

2           PRESIDENT CROOK: The translations of  
3 exhibits to the demonstrative. Okay.

4           MR. GRANÉ: Yes.

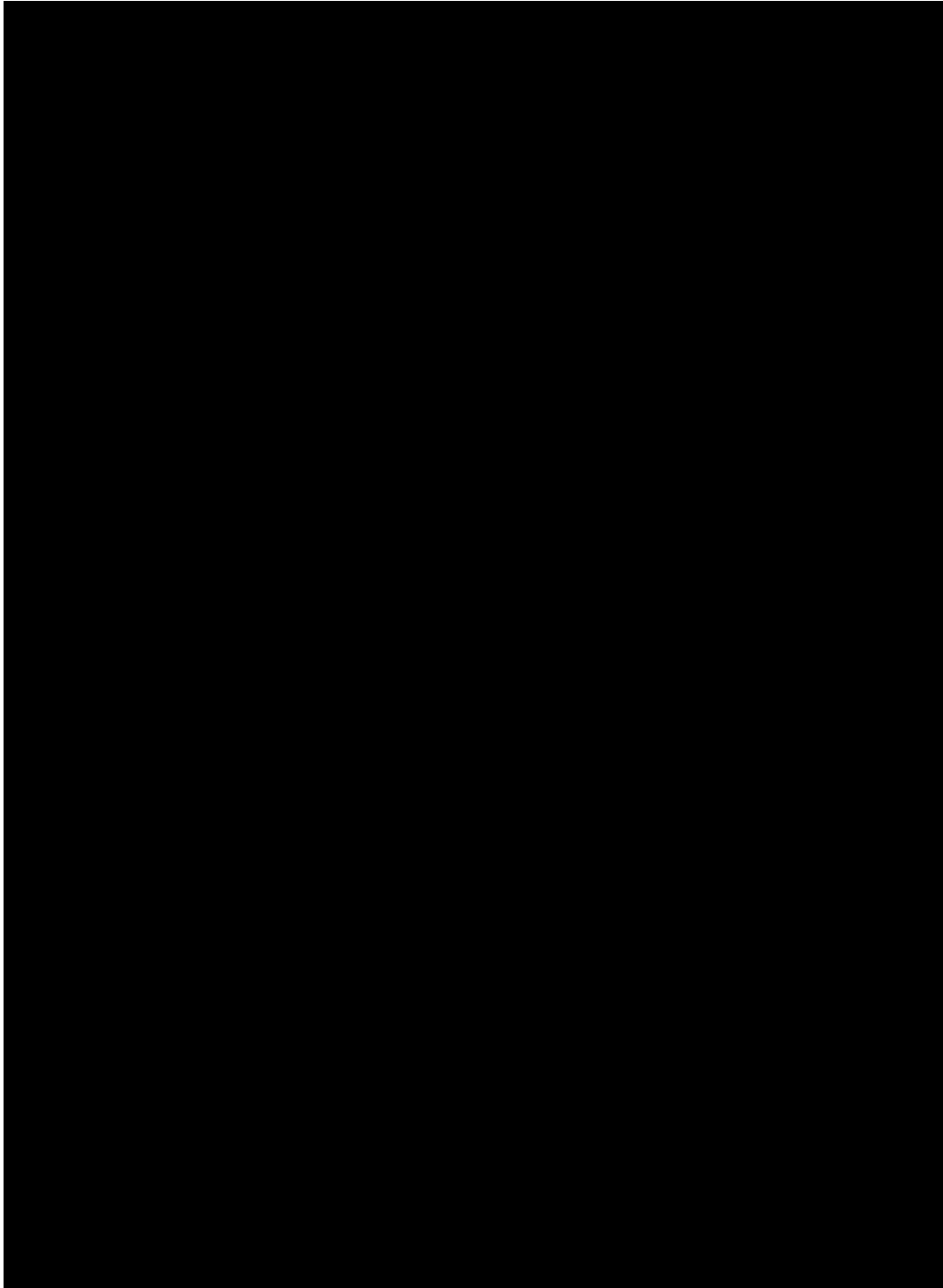
5           PRESIDENT CROOK: All right. Anything else?  
6 All right.

7           We're going to begin cross-examination  
8 today, and as we all know, cross-examination in  
9 multiple languages can sometimes get a little  
10 confused. So I would urge everyone to speak slowly,  
11 speak deliberately, to give the witness time to answer  
12 the question, and if the witness is speaking in  
13 Spanish, to--for those listening in English to hear  
14 the translation.

15           I know this is difficult, but we will try to  
16 do this. I would admonish the witnesses as well to  
17 answer the question that is asked, and no more. We  
18 will--I will not--I will not belabor that, but we do  
19 not encourage witnesses to enter into long expressions  
20 of their worldly views in response to questions.  
21 Please answer the question that is asked.

22           Now, having delivered myself of that, are

1 there any other matters we need to do, and can we  
2 proceed to swear in the witness? I think we can  
3 begin. All right.



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PRESIDENT CROOK: All right. Thank you.

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To regroup, then, we will rise,

11

Mr. Castañeda-- [REDACTED] will have to be alone,

12

spend a lonely night in Washington.

13

We will then reconvene tomorrow morning for

14

a brief argument on the expert report. We will then

15

revert to the remainder of the cross.

16

Counsel, can you remind me how long you

17

thought you might want to be?

18

MR. DI ROSA: About 45 minutes.

19

PRESIDENT CROOK: 45 minutes. Okay. Then

20

we will do the redirect.

21

So is that a correct understanding of where

22

we are?

1           MR. VELARDE:   Yes.

2           PRESIDENT CROOK:   Okay.   So I wish you all a  
3 nice evening, and see you at the same time, the usual  
4 time tomorrow morning.

5           MR. VELARDE:   So I just have to provide--

6           PRESIDENT CROOK:   I stand corrected.

7           MR. VELARDE:   The reference Mr. Griffith  
8 requested to slide 25.  It's transcript page 43, line  
9 11, until page 45, line 7.

10          PRESIDENT CROOK:   All right.  Thank you very  
11 much.  Any other last-minute administration?  Hearing  
12 none, we'll see you all in the morning.

13          (Whereupon, at 5:40 p.m. the Hearing on the  
14 Merits was adjourned until 9:30 a.m. the following  
15 day.)

POST-HEARING REVISIONS  
CERTIFICATE OF REPORTER

I, Marjorie Peters, FAPR, RMR-CRR, Court Reporter, do hereby attest that the foregoing English-speaking proceedings, after agreed-upon revisions submitted to me by the Parties, were revised and re-submitted to the Parties per their instructions.

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.

MARJORIE PETERS

MARJORIE PETERS