

UNDER THE UNCITRAL ARBITRATION RULES AND SECTION B OF
CHAPTER 10 OF THE DOMINICAN REPUBLIC - CENTRAL AMERICA
- UNITED STATES FREE TRADE AGREEMENT

- - - - - x
 In the Matter of Arbitration :
 Between: :
 :
 SPENCE INTERNATIONAL :
 INVESTMENTS LLC, BOB F. SPENCE, :
 JOSEPH M. HOLSTEN, BRENDA K. :
 COPHER, RONALD E. COPHER, :
 BRETT E. BERKOWITZ, TREVOR B. :
 BERKOWITZ, AARON C. BERKOWITZ, : ICSID Case No.
 and GLEN GREMILLION, : UNCT/13/2
 :
 Claimants, :
 :
 and :
 :
 REPUBLIC OF COSTA RICA, :
 :
 Respondent. :
 - - - - - x Volume 3

HEARING ON THE MERITS AND JURISDICTION

Wednesday, April 22, 2015

The World Bank
1818 H Street, N.W.
Conference Room 4-800
Washington, D.C.

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

SIR DANIEL BETHLEHEM, QC, President of
the Tribunal

MR. MARK KANTOR, Co-Arbitrator

DR. RAÚL E. VINUESA, Co-Arbitrator

Also Present:

MS. GIULIANA CANÈ
Secretary to the Tribunal

Court Reporters:

MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
(202) 544-1903

MS. MARTA RINALDI
MS. ELIZABETH CICORIA
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. JUDITH LETENDRE

MS. STELLA COVRE

MR. CHARLIE ROBERTS

APPEARANCES: (Continued)

On behalf of the Respondent:

MS. GEORGINA CHAVES
Procuraduría General de la República

MR. STANIMIR A. ALEXANDROV
MS. AVERY ARMACHAMBO
MS. MARÍA CAROLINA DURÁN
MS. JENNIFER HAWORTH MCCANDLESS
MS. COURTNEY HIKAWA
MR. CALEB RASPLER
MS. SAMANTHA TAYLOR
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005
United States of America

Representing COMEX:

MS. ADRIANA GONZÁLEZ

MR. JOSÉ CARLOS QUIRCE

MS. KARIMA SAUMA

MS. ANDREA ZUMBADO

APPEARANCES:

On behalf of the Claimants:

DR. TODD WEILER
#19 - 2014 Valleyrun Boulevard
London, ON N6G 5N8
Canada

MR. GEOFFREY COWPER, QC
MS. TINA CICCHETTI
MS. TRACEY COHEN
MS. ALEXANDRA MITRETODIS
Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C0A3
Canada

LIC. VIANNEY SABORÍO HERNÁNDEZ
SaboríoLaw
Barrio Maynard #56
San Rafael, Escazú
San José, Costa Rica

Claimants and Claimants' Representative:

MR. ROBERT REDDY

MR. BOB SPENCE

MR. RONALD COPHER

MR. BRETT BERKOWITZ

APPEARANCES: (Continued)

On behalf of the United States of America:

MR. JEREMY K. SHARPE
Chief, Investment Arbitration,
Office of International Claims
and Investment Disputes
MS. NICOLE C. THORNTON
MS. ALICIA L. CATE
MR. GARY SAMPLINER
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

On behalf of the Republic of El Salvador:

MR. LUIS A. PARADA
MS. ERIN ARGUETA
Foley Hoag LLP
1717 K Street, N.W.
Washington, D.C. 20006-45350
United States of America

C O N T E N T S

PAGE

WITNESSES

ROTNEY PIEDRA

Direct examination by Ms. McCandless 488
Cross-examination by Mr. Cowper 500
Questions from the Tribunal 528

JULIO JURADO

Direct examination by Ms. McCandless 552
Cross-examination by Mr. Cowper 559
Questions from the Tribunal 621

GEORGINA CHAVES

Direct examination by Ms. McCandless 640
Cross-examination by Ms. Cicchetti 646
Questions from the Tribunal 684

PROCEDURAL MATTERS 693

09:31:28 1 Could you please look behind Tabs 1 and 2 in
2 the binder in front of you.
3 A. (Witness reviews documents.) Yes.
4 Q. Do you recognize those documents?
5 A. Yes. They are my two Witness Statements.
6 Q. Are those statements based on your personal
7 knowledge and experience?
8 A. Yes, that is correct.
9 Q. Is there anything you wish to correct in your
10 Witness Statement?
11 A. Yes. In the First Statement, the second
12 footnote. It's at Paragraph 17. At the end it should
13 say, "The authors of this publication have not done
14 field research in the Las Baulas National Marine Park.
15 The publication is known in the area by researchers
16 working there."
17 Q. Where are you currently working?
18 A. I work at Las Baulas National Marine Park in
19 Guanacaste.
20 Q. In what position?
21 A. I'm the Administrator of the Park.
22 Q. For how long have you held this position?

1 P R O C E E D I N G S
2 PRESIDENT BETHLEHEM: Good morning, ladies
3 and gentlemen, to the third day of our Hearing. We've
4 got the Respondent's fact witnesses today. We have
5 Mr. Piedra, I think, in the witness seat.
6 ROTNEY PIEDRA, RESPONDENT'S WITNESS, CALLED
7 PRESIDENT BETHLEHEM: Mr. Piedra, you have
8 the witness declaration in front of you. I would be
9 grateful if you could read that, please.
10 THE WITNESS: Of course. I hereby declare
11 upon my honor and conscience that I will tell the
12 truth, the whole truth, and nothing but the truth.
13 PRESIDENT BETHLEHEM: Thank you very much.
14 Mr. Alexandrov.
15 MR. ALEXANDROV: Mr. President,
16 Ms. McCandless will conduct the direct examination.
17 DIRECT EXAMINATION
18 BY MS. McCANDLESS:
19 Q. Good morning.
20 A. Good morning.
21 Q. We're going to pass around some binders, and
22 I'll ask some questions once those are passed around.

09:33:19 1 A. I've held this position since 1998.
2 Q. Could you please describe your
3 responsibilities as the Administrator of the Las
4 Baulas National Park?
5 A. Of course. I'd be pleased to do so.
6 Well, I have staff who work under me. That
7 means that I need to organize their work and their
8 work activities. I also draw up the work plans, the
9 annual work plans, for the management plan of this
10 National Park.
11 I also prepare studies. I conduct research
12 in the Park. We also provide technical advisory
13 services and technical opinions when we're requested
14 to do so by either private or public actors. We work
15 to ensure conservation of resources and to see to
16 enforcement of national environmental legislation in
17 the Las Baulas National Park, among other activities.
18 Q. Thank you.
19 Could you please describe your educational
20 background?
21 A. Yes. I have an undergraduate degree in
22 biology with an emphasis on resource management and a

09:34:42 1 masters in marine and coastal resources.
 2 Q. What is the current situation of the
 3 leatherback sea turtle from the Eastern Pacific Ocean?
 4 A. The leatherback turtles are critically
 5 endangered in the Tropical Eastern Pacific. At least
 6 90 percent of the population has disappeared. And
 7 this population of leatherbacks is very important for
 8 Costa Rica and for several countries in the Eastern
 9 Tropical Pacific because it's such a critical
 10 situation that requires immediate action in order to
 11 ensure the recovery of the population.
 12 This category of critically endangered, in
 13 danger of extinction, has been given by the
 14 International Union for the Conservation of Nature,
 15 and it's also very important in general in the
 16 discussions on preservation and conservation of marine
 17 turtles.
 18 Q. What are the main threats faced by the
 19 leatherback sea turtle in Costa Rica?
 20 A. The leatherbacks in the Eastern Tropical
 21 Pacific and in Costa Rica as well, it's the whole--in
 22 the whole Pacific face several threats. We could

09:36:03 1 divide them into two main categories, some which act
 2 directly on the population and others which will act
 3 on the state of the population in the future.
 4 We have the fisheries. They have a major
 5 impact in terms of removing waves. The pillage of the
 6 coastal areas in the National Park of Las Baulas
 7 National Park is a major threat to the future of this
 8 population.
 9 Climate change also has a fundamental impact
 10 on the future of these populations, not just in Costa
 11 Rica, but in respect of all populations worldwide.
 12 Those are the main ones. There are others
 13 being considered, but we don't yet have sufficient
 14 information in this regard.
 15 Q. What is the effect of coastal development on
 16 nesting habitat of the leatherback sea turtles?
 17 A. When we have such a critical state of the
 18 population and have identified threats, then we need
 19 to address those threats. If we don't address them
 20 immediately, then the population will continue to be
 21 very, very vulnerable.
 22 As I was explaining, development has an

09:37:22 1 impact on the nesting habitat, and that habitat refers
 2 not just to light. It is also associated with the
 3 loss or the fragmentation of that habitat due to
 4 erosion or due to lack of plant cover.
 5 Then there are the flatter beaches. Well,
 6 flatter beaches means that the nesting areas can be
 7 flooded by the tide. Things such as that have a
 8 fundamental impact on the development of the
 9 individual.
 10 So, the issue of reproduction when you have
 11 such a small population is fundamental. And with that
 12 very small, reduced population, reproduction fills a
 13 very important role because it--one should foster the
 14 production of the largest--or reproduction of the
 15 largest number of small turtles so as to face the
 16 threat.
 17 So if there's a threat such as this within
 18 the Park, then we have to attack it because otherwise
 19 the threat goes to constituting an even greater risk,
 20 and it would be disastrous in terms of the turtle
 21 population, especially when you have a population as
 22 delicate as is ours at this time.

09:38:29 1 Q. You mentioned lights. What do artificial
 2 lights have--what effect do artificial lights have on
 3 the development of leatherback sea turtles?
 4 A. Artificial lighting has different effects.
 5 If the light has a direct impact, then the turtles
 6 will not emerge; and if they do emerge, then they will
 7 become disoriented. This in terms of the adults.
 8 And the babies are newborns. Instead
 9 of--with the brilliant light is going to compete with
 10 the natural light. So instead of looking to the
 11 horizon or going seaward, instead they go inward,
 12 land, towards the land. And this subjects them to a
 13 greater risk of predators for--well, the eggs--the
 14 success of emerging is best when they are fewer in
 15 number. So if they go inward land, towards the land,
 16 then they're going to be subject to predators,
 17 dehydration and mortality, which have negative impact
 18 on the population.
 19 Q. Could you please describe briefly what has
 20 been undertaken by Costa Rica in order to protect the
 21 leatherback sea turtles in the Eastern Pacific Ocean?
 22 A. Costa Rica has committed itself in different

09:40:04 1 ways to protecting marine turtles, especially when
 2 they are critically endangered, as in the case of the
 3 leatherbacks. They've signed a Convention for the
 4 conservation and protection of marine turtles. There
 5 are several countries that have signed on to this
 6 Convention, including the United States, Costa Rica,
 7 Mexico, have played an important role in this
 8 conservation effort.

9 Locally, Costa Rica has played a very
 10 important role, for in 1987--and specifically with
 11 respect to Playa Grande and the Las Baulas National
 12 Park, in 1987 the Costa Rican State decided to create
 13 a wildlife refuge that--a wildlife refuge including
 14 Playa Grande. Playa Grande is also included there.

15 Subsequently in 1991, by Executive Decree,
 16 the Costa Rican State considered that it should be a
 17 national park and so it included this protected area
 18 as--with this even higher threshold for preservation.
 19 And in '95, it created the National Park. So, you see
 20 a sequence of initiatives in which Costa Rica has
 21 taken ever stronger initiatives for protection.

22 In terms of the National Park, we've worked

09:41:16 1 on the management plan and on different work plans to
 2 address the different needs and to confront the
 3 different threats.

4 Q. What is the main purpose of the Las Baulas
 5 National Park?

6 A. The main purpose originally was to protect
 7 the marine turtles, specifically the leatherbacks and
 8 their nesting habitat. Nonetheless, if you turn to
 9 the Decree and the Statute, you see that other
 10 important ecosystems are mentioned: Mango swamps,
 11 certain plants and animals. So, important to the
 12 ecosystem, the systems level approach is taken so as
 13 to tackle the issue of the marine turtles in a
 14 comprehensive fashion.

15 Q. When was Las Baulas National Park created?

16 A. The National Park was created in 1991 by
 17 Executive Decree, and in 1995 by statute.

18 Q. According to the 1991 Decree, what were the
 19 boundaries of the Park?

20 MR. COWPER: I'm sorry, I object to the--
 21 (Overlapping interpretation.)

22 PRESIDENT BETHLEHEM: Mr. Cowper, could you

09:42:38 1 just repeat what you said?

2 MR. COWPER: Yes. I object to questions
 3 intended to elicit interpretation of the Parks Law or
 4 the Decree from the Witness. He's not been qualified
 5 to give that opinion.

6 MS. MCCANDLESS: I'll rephrase my question.

7 BY MS. MCCANDLESS:

8 Q. In your position as the Administrator of the
 9 Las Baulas National Park, what was your understanding
 10 of the borders of the 1991 Decree in regards to the
 11 Park?

12 A. According to the '91 Decree, there was a
 13 125-meter strip along the beach. There was a marine
 14 area included between two points. There was also a
 15 protective zone.

16 THE INTERPRETER: Could you please repeat? I
 17 didn't understand what you said, says the transcriber
 18 in Spanish.

19 A. There was--according to the Executive Decree,
 20 there's a 125-meter strip at Playa Grande in the
 21 Ventanas sector, a protected zone of marine area
 22 between Punta Conejo and the extreme southern point of

09:44:01 1 Playa Langosta.

2 Q. From your perspective as the Administrator of
 3 the Las Baulas National Park, what was the purpose of
 4 the 1995 Law?

5 MR. COWPER: I'm sorry; I'd like some
 6 foundation for that question.

7 MS. MCCANDLESS: It's his understanding.
 8 What foundation do you need other than the fact that
 9 he's a member--

10 MR. COWPER: I don't believe he was the
 11 Administrator in 1995. Did he have any understanding
 12 or basis for believing what the purpose of a 1995 law
 13 was?

14 MS. MCCANDLESS: I'll rephrase my question.

15 BY MS. MCCANDLESS:

16 Q. In--when you began in the Park in 1998, were
 17 you informed about the nature of the 1995 Park Law?

18 A. Yes. We discussed the importance of
 19 protecting the marine turtles, particularly
 20 leatherbacks, and the importance of protecting their
 21 nesting habitat.

22 Q. And was that your understanding as to what

09:45:05 1 the purpose of the 1995 Law was?
 2 A. Yes, and there was mention of the boundaries
 3 of the Park as such at that time.
 4 Q. What was your understanding as the
 5 administrator of Las Baulas National Park as to what
 6 the borders of the Park were in 1995 with respect to
 7 the 1995 Park Law?
 8 A. Well, that there is a 125-meter strip that
 9 ran between two points. That the Ventanas sector,
 10 which previously was a protected zone, was now in the
 11 National Park, and there was a marine area between
 12 Punta Conejo and the far south of Playa Langosta.
 13 That it included Cerro el Morro, the land that was the
 14 hill behind Punta Ventanas, the mangroves, the
 15 Tamarindo with its estuary, and a public zone which
 16 are the 50 meters from high tide as between two
 17 points, which are Punta San Francisco and the outlet
 18 of the San Francisco estuary.
 19 Q. Could you please explain briefly why the
 20 125-meter strip of land along the coastline is
 21 required in order to be--protect the nesting habitat
 22 of the sea turtle?

09:46:35 1 A. In that 125-meter strip--well, it includes
 2 the nesting habitat. It's a critical habitat. And
 3 that means that one must maintain appropriate
 4 conditions for the reproduction of the turtles.
 5 But in order to maintain that critical
 6 habitat, we also need to have a 75-meter buffer zone
 7 to serve as an area or zone for protection in the face
 8 of the growth of development. And that protective
 9 zone will help a great deal to ensure the beaches do
 10 not erode and maintain the plant cover.
 11 It is very helpful for controlling direct
 12 light and light, the shining light, but it also helps
 13 maintain temperatures and it helps to maintain
 14 healthier beaches because they are not eroded beaches.
 15 MS. McCANDLESS: Thank you. I have no
 16 further questions.
 17 PRESIDENT BETHLEHEM: Thank you.
 18 Mr. Cowper.
 19 CROSS-EXAMINATION
 20 BY MR. COWPER:
 21 Q. Thank you, Mr. Piedra. As you may know, my
 22 name is Jeff Cowper, and I appear for the Claimants in

09:47:53 1 this proceeding.
 2 Just to make it clear, we did not call you
 3 for cross-examination; but having attended and being
 4 present for the Tribunal, we have some questions for
 5 you.
 6 I'm wondering, Mr. Chairman, I think the
 7 Witness is probably--I wonder if we could move that
 8 screen, which is sort of between the Witness and I.
 9 Thank you.
 10 Is that better, Mr. Piedra?
 11 A. Yes, it's fine.
 12 Q. A few moments ago you described the 1995 Law,
 13 but you did not mention that the 1995 Law described
 14 that the protected area proceeds 125 meters towards
 15 the sea.
 16 A. What are you referring to when you
 17 say "protected zone"?
 18 Q. In respect of the boundaries of the Park.
 19 Your answer a few minutes ago in relation to
 20 the 1995 Law, you did not mention the 1995 Law
 21 describes the boundary of the Park as proceeding
 22 seawards from the coordinates.

09:49:09 1 MS. McCANDLESS: Could you please ask a
 2 question? What was the question?
 3 BY MR. COWPER:
 4 Q. That's correct, isn't it?
 5 A. That I didn't mention what? I'm sorry.
 6 Something about seaward?
 7 Q. Yes.
 8 A. I didn't mention it, but we do consider that
 9 the 125 meters ran between two points, one situated at
 10 Carbon and at the far south of Playa Grande landward,
 11 not seaward.
 12 Q. Okay. And so you were aware that the Law
 13 specified that the 125 meters went seaward, that the
 14 word "seaward" is in the 1995 Law?
 15 A. Yes. But when we analyzed the Law in light
 16 of protection of the turtles and their nesting
 17 habitat, we discovered that there was a mistake.
 18 Technically speaking, there was a mistake. The line
 19 as between those two points did not go seaward but
 20 landward. So, for us, that was fundamental.
 21 One important aspect is that in 2003 the
 22 Minister of Environment and Energy had said that that

09:50:34 1 line ran landward, and in 2004 the Office of the
 2 Attorney General issued such an opinion. And in 2005
 3 an opinion saying that 125-meter strip was landward.
 4 So, we weren't so mistaken, technically
 5 speaking.
 6 Q. Okay. The treatment of the "seaward"
 7 expression in the 1995 Law has a long legal history
 8 which you must know something about, but I take you're
 9 not a lawyer?
 10 A. No, I'm not a lawyer.
 11 Q. Okay. And when you--you're speaking about
 12 your understanding as the Park Administrator about the
 13 Law?
 14 A. Of course. As the Park Administrator.
 15 Q. And as a matter of the history, did you know
 16 that the reference to "seaward" was inserted by
 17 Congress during the debate of the bill? Did you know
 18 that at all? Had you ever known that before today?
 19 A. Yes, I did know that. I found out
 20 afterwards. Well, after '98, '99, that's when I found
 21 out about that.
 22 Q. Now, let me discuss--and I think this might

09:52:00 1 be an appropriate time. Could we hand the binder to
 2 the Witness, please.
 3 Mr. Piedra, I have asked for a binder to be
 4 put before you. If you could just put that in front
 5 of you, I'll be referring to some of the documents in
 6 your cross-examination.
 7 Let me change topics and talk about your role
 8 in advocating for the turtles. Let me suggest this to
 9 you, sir, that you see yourself as a champion of the
 10 leatherback turtles?
 11 A. No. Why do you say that?
 12 Q. I don't mean this negatively. I'll use a
 13 different phrase, maybe it translates better.
 14 You see yourself as a strong advocate for the
 15 preservation and restoration of the population of
 16 leatherback turtles in the Eastern Pacific Ocean?
 17 A. That is correct.
 18 Q. And during your career you have advocated for
 19 and been in favor of the expansion of the Park?
 20 A. That I was in favor of what? The planning of
 21 the Park? What are you referring to specifically?
 22 Q. That you have in your career been in favor of

09:54:08 1 the expansion of the Park beyond its legal boundaries
 2 to broader boundaries?
 3 A. If you're referring to the bill that came up
 4 at some point in 2002, I do recall at the end of the
 5 day we did not draft the final document. That was a
 6 document that was introduced by the Tropical Science
 7 Center.
 8 We did participate in some meetings. We did
 9 give our opinion in this regard. And I recall
 10 perfectly well that one issue that was of great
 11 interest was that marine turtles would refer, not just
 12 to the area of Playa Grande and Playa Langosta, but it
 13 could also refer to beaches that were northward
 14 because there were especially important nesting
 15 habitat for other marine turtles, particularly the
 16 black turtles.
 17 So the idea was to expand, if possible, to
 18 have a conservation effort in those beaches. The
 19 idea -- in the public ones, the idea was to have some
 20 management area, and the others were given in
 21 concession, and so they were subject to private
 22 property considerations. I remember we did that.

09:55:27 1 Now, others proposed an expansion
 2 1,000 meters, depending on the boundaries--bounds of
 3 the Park. But the official position of the Ministry
 4 in response to that point was negative. It was not
 5 favorable.
 6 Q. As the Park Administrator, you would like to
 7 have as broad a protection of the turtles with respect
 8 to the broadest possible Park boundaries?
 9 A. As Park Administrator, as per the Decree and
 10 as per the 1995 Law, that 75-meter strip is important
 11 for conserving the nesting area, and that's what we're
 12 focusing on. That is what is under discussion right
 13 now.
 14 For me, it is fundamental that that 125-meter
 15 strip, specifically the 75 meters, be protected for
 16 the reasons that I mentioned earlier regarding the
 17 threats.
 18 When it's a species that has suffered such a
 19 sharp population decline with such radical threats as
 20 it faces, this provokes a certain level of
 21 vulnerability. If you don't attack that threat, then
 22 it is going to become not just a problem, so we need

09:56:52 1 to act.
 2 And we are focusing at this time on what
 3 Law 7524 says. Anything else that appears are bills;
 4 unless the Legislative Assembly adopts them, that's
 5 what will be applied. But until such time as that
 6 happens, our responsibility as administrator, as the
 7 staff of the Las Baulas National Marine Park, is to
 8 see to the 75 meters and to foster the idea of any
 9 developments being friendly, be low density; and all
 10 of the briefs, all of the discussions are focused on
 11 that.
 12 Now, but the 75 meters or the 125 meters are
 13 fundamental.
 14 Q. As the Park Administrator, your job is to
 15 administer the Park that has been defined by the
 16 Government?
 17 A. As defined by the Government and by the 1995
 18 Law.
 19 Q. Now, in the bill that was part of the 2002
 20 projective law, the buffer zone would have been
 21 increased to 1,000 meters if that had been approved.
 22 That was the proposal?

09:58:17 1 A. Yes. But as I explained earlier, the law
 2 approved--7524--any proposal, unless it's adopted by
 3 Legislative Assembly, is of no relevance for us. As
 4 Administrator and as public officials, we are going to
 5 apply what the 1995 Law says.
 6 Q. Now, with respect to that proposal, it also
 7 proposed a trust to hold funds to promote conservation
 8 within the Park?
 9 A. That was in the proposal, if my memory serves
 10 me well, the creation of a trust to seek funds. To
 11 seek funds, if I recall, it had to do with operational
 12 issues and consolidation of the Park.
 13 Q. And there would have been representatives
 14 from the Park Administration on that trust?
 15 A. I don't recall the details of that bill
 16 actually; and at the end of the day, it wasn't
 17 approved.
 18 So, that was in 2002. Now it's 2015. That
 19 was never approved. So, I can't refer to something
 20 that wasn't approved by the Legislative Assembly.
 21 Q. Thank you, Mr. Piedra.
 22 Could you turn to Tab 23 in your binder.

09:59:50 1 A. Two?
 2 Q. 23. You've commented on this video interview
 3 in your Witness Statement. I just have a couple of
 4 questions, and there's a Spanish transcript and an
 5 English transcript.
 6 Do you recall this being mentioned in your
 7 Witness Statement?
 8 A. On the video, yes.
 9 Q. And would you agree with me that you do not
 10 mention the 75-meter area in the interview?
 11 A. What I see here is an excerpt, that 6 or 7
 12 seconds or maybe 10 seconds of a 17-minute video
 13 where, at the end of 17 minutes and 29 seconds, and
 14 you're extracting here a particular sentence.
 15 But I don't see any mention that the woman
 16 who was speaking on the video says that the State is
 17 going to seek the funds. And at the end, I mentioned
 18 the effort the State needs to make to purchase the
 19 lands. I say it there.
 20 As a public official, I cannot just go out to
 21 buy lands if it's not in a law, especially in the
 22 National Park. So, at the end in the video we

10:01:27 1 described--and I would hope that you could see it at
 2 some point--where I--that's one of the first videos in
 3 which I was interviewed, and I did say that.
 4 Q. In this passage you don't refer to the
 5 75 meters; correct?
 6 A. Yes, in this excerpt I don't make such a
 7 reference. But also in that video, there's talk of
 8 marine turtles and leatherbacks in the Park.
 9 Q. Okay. In the passage that later appears, the
 10 hope is expressed to purchase land. It does not
 11 explicitly refer to a 125-meter area, does it?
 12 A. That's right, I don't make an explicit
 13 reference to the 125 meters.
 14 Q. Could you then, sir--I'd like to turn you to
 15 Tab 21. And you refer to this in your Second Witness
 16 Statement. And if you look at the second page and the
 17 third bullet below the text, it says--and I'll read it
 18 in English and then you can have it translated.
 19 "In the private areas declared as a National
 20 Park in 1991 and 1995, we would like to promote a
 21 voluntary conservation regime instead of resorting to
 22 the respective expropriations."

10:03:36 1 Do you see that?
 2 A. Yes, correct.
 3 Q. Okay. And if you turn back to Page 1, at the
 4 bottom of Page 1, third bullet, do you see it says,
 5 "Las Baulas National Marine Park in Guanacaste shall
 6 not include Cerro el Morro and Playa Tamarindo because
 7 they are not significant turtle nesting areas and the
 8 willingness of the owner of Cerro el Morro to submit
 9 to a private conservation regime."
 10 Do you see that reference?
 11 A. Yes, correct.
 12 Q. You will agree that Cerro el Morro represents
 13 private lands within the Park on your understanding of
 14 the Park boundaries?
 15 A. Correct.
 16 Q. And Isla Verde also represents land within
 17 the Park?
 18 A. Yes, correct.
 19 Q. To this day, has Cerro el Morro been
 20 expropriated?
 21 A. No. To date, no. Right now it hasn't been.
 22 Q. Did you have discussions yourself with the

10:05:21 1 owner of Cerro el Morro and his willingness to adhere
 2 to a voluntary private conservation regime?
 3 A. No, that was not something I did.
 4 Q. Okay. Now, let me just suggest this to you,
 5 sir. I understand that as of today there is actually
 6 no official Government map of the Park.
 7 A. Yes, there is a map, a map that was drawn up
 8 in 2013 showing details of the external limits, the
 9 two limits of the National Park.
 10 Q. Has that been approved by the Government, to
 11 your understanding?
 12 A. That map was approved. We presented a
 13 proposal. It was sent to the regional council for the
 14 beachscape conservation area that the council looks at
 15 it, reviews it, approves it, sends it then to the
 16 National Council for Conservation Areas. The council
 17 reviews it. If they concur, then they issue an
 18 agreement; if they don't, they return it.
 19 Q. My understanding from the Government
 20 production in this case is that process is still
 21 underway.
 22 A. "The process" what? I don't understand.

10:07:04 1 What we sent was a map, a map that we prepared within
 2 the Park that complied with the process, was issued as
 3 a report showing the limits of the National Park. And
 4 it's a proposal for the limits.
 5 Q. I'll take this up, perhaps, with another
 6 witness, but let me just try one more time.
 7 My understanding is that the process of
 8 settling and deciding upon an official map by the
 9 Government has not been completed. Is that not right?
 10 A. Within my area of jurisdiction, we conducted
 11 the analysis by an interdisciplinary group. We
 12 prepared a proposal, complied with the necessary
 13 steps, the regional council, national council, that
 14 includes all the conservation areas. It is reviewed
 15 in the national council, who will ultimately decide if
 16 they concur with the process or not, and if they agree
 17 with what is presented.
 18 Q. Okay. That's helpful, sir. And from your
 19 perspective, your work was finished in 2013, isn't it?
 20 A. The Report? We did submit it, yes, in 2013.
 21 Q. Were you familiar, Mr. Piedra, with various
 22 bills to obtain an interpretation of the 1995 Law

10:08:48 1 which failed before Congress?
 2 A. Yes, that's correct.
 3 Q. And that some of those bills were--one of
 4 those bills, at least, was to make it clear that it
 5 went inland?
 6 A. Could you refer me to the correct one?
 7 Q. I'll try. If you go to Tab 11, and if you
 8 turn, sir, to the last page, the bottom of the
 9 resolution?
 10 A. Yes, correct.
 11 Q. That's landward?
 12 A. Yes.
 13 PRESIDENT BETHLEHEM: I'm sorry; Mr. Cowper,
 14 for our benefit. I'm not quite sure we're following
 15 what you're referring to.
 16 MR. COWPER: This is Tab 11, the last page.
 17 PRESIDENT BETHLEHEM: A Spanish text only.
 18 MR. COWPER: Yes.
 19 PRESIDENT BETHLEHEM: Page 7?
 20 MR. COWPER: No, it is Page 6 of 7.
 21 PRESIDENT BETHLEHEM: Right. Could you just
 22 identify what you are--

10:10:20 1 MR. COWPER: Yes. The last two lines of
 2 text, Mr. Chairman. I'm sorry.
 3 PRESIDENT BETHLEHEM: Thank you very much.
 4 MR. COWPER: (In Spanish.)
 5 BY MR. COWPER:
 6 Q. Mr. Piedra, Tab 12, please, sir.
 7 A. Yes.
 8 Q. Page 4 of 4, please. And at the end of that
 9 Article, proposed Article, aguas adentro?
 10 A. Correct.
 11 Q. And that's seaward?
 12 A. Correct.
 13 Q. And you'll agree both of those bills failed
 14 as far as you know?
 15 A. To my knowledge, yes, that's correct, neither
 16 one was approved. But, if you allow me, I do recall a
 17 general review--and I hope to not make a mistake--but
 18 in one of the decisions, one of the final decisions
 19 relating to both or, perhaps, one of these bills, it
 20 was stated that the Procuraduría had issued its
 21 opinion and its criterion having to do with this
 22 issue, in particular, the issue of seaward, and that

10:12:01 1 was in 2005 with a decision.
 2 For our own purposes, it was a mandatory
 3 enforcement; and, therefore, we had to comply with
 4 what the Procuraduría had pointed out.
 5 Q. Now, let me change topics to the turtles.
 6 And Mr. Piedra, in your evidence that
 7 the--just to be clear, you talked about the risk of
 8 fisheries. And that's the risk of adults being killed
 9 as part of an ocean fishery?
 10 A. Yes, of course, fishery is a significant
 11 threat to the condition and status of population.
 12 Q. And to be clear, the leatherback turtle
 13 population as a species is worldwide?
 14 A. Yes. It has a broad distribution worldwide.
 15 Q. And when you speak of the Eastern Pacific
 16 population, that's a subpopulation of the worldwide
 17 species?
 18 A. That's correct. All the populations are
 19 divided in subpopulations, and that of the Tropical
 20 Eastern Pacific is one of those seven populations.
 21 Q. Now, with respect to the catastrophic decline
 22 in leatherback turtle populations, that occurred in

10:13:40 1 Costa Rica substantially in the years leading up to
 2 the creation of the Park in 1991; is that right?
 3 A. Yes, indeed. There was a strong impact from
 4 two of the threats, and this affected the numbers in
 5 the population. One was fisheries; and as I explained
 6 earlier, the threats--well, if we imagine the life
 7 cycle of turtles, we can realize that threats
 8 strongly--will strongly impact different stages.
 9 When they're adults, undoubtedly the fishery
 10 will have an immediate impact on the population. Why
 11 immediate? Because there are not sufficient turtles.
 12 In the particular case of the Eastern
 13 Tropical Pacific, egg poaching has been a key threat
 14 to the stages of population. Why? Because without
 15 any hatchlings or juveniles, with the impact of
 16 fisheries, there are no longer individuals that can be
 17 added to the population. So, we had high levels of
 18 mortality, insufficient birth, in order to restore the
 19 population levels.
 20 But there are other threats that I mentioned
 21 earlier, such as--and the development along the
 22 coastline is important. When you have such a reduced

10:15:18 1 population down by 90 percent, then you definitely
 2 have to protect and ensure the success of reproduction
 3 for the species. You cannot risk and wait to see that
 4 total failure in births because then we will be faced
 5 with the extinction of the species and the population.
 6 Q. With respect to poaching, my
 7 understanding--and, perhaps, you would turn to
 8 article--Tab 2 of your book. My question,
 9 Mr. Piedra--let me take it one step at a time.
 10 This is an article that you coauthored?
 11 A. Correct.
 12 Q. And you carefully point out here, that with
 13 respect to mortality and loss of turtles in the
 14 19 years that the study covers, that there was very
 15 high levels of illegal harvesting in Playa Grande?
 16 A. Correct.
 17 Q. And my understanding is that one of the first
 18 steps as Park Administrator that would have to be done
 19 would be to end the poaching?
 20 A. Yes. The purpose of creating the National
 21 Park is precisely to address threats.
 22 Q. And just in terms of timing, Mr. Piedra, by

10:17:09 1 the time the Park was created in 1991, a great deal of
2 loss had already occurred to the population of Playa
3 Grande by reason of, among other things, high levels
4 of egg poaching?

5 A. Yes. As I explained--and I want to spend
6 some time on this. I think it's important if we're
7 talking about turtles.

8 As I explained earlier, threats will have a
9 determining effect on the adults through fisheries,
10 and this will obviously impact the population because
11 there are no more adults to come and lay eggs on the
12 beaches. But egg poaching is an effect that will be
13 felt in the medium and long term. The effects will be
14 seen later on.

15 And when you have lots of harvesting of eggs,
16 even before the creation of the Park, then it is later
17 that we will start seeing the effect. There was no
18 impact prior to the creation of the Park. I'm talking
19 about prior to 1987.

20 So, that activity of egg poaching before and
21 potentially left a certain percentage on the beaches
22 which was able to maintain some levels of population

10:18:31 1 in the future, the impact of that is felt in today's
2 population. If you look at the population graph, what
3 you see is that over the longer-term--and this is one
4 of the advantages of the monitoring program, that we
5 are able to determine and analyze the population
6 trends.

7 That is, when you have data over many years,
8 then it's interesting to see how the population trends
9 take place and how one can identify threats.

10 As I explained earlier, the impact, depending
11 on the threat, will either be an immediate impact in
12 the case of the adults and medium- or longer-term
13 impact you're talking about hatchlings.

14 Q. Could I ask you to turn to Tab 3. This is an
15 article dealing with marine turtle nesting in Santa
16 Rosa Park in Costa Rica?

17 A. Correct.

18 Q. Are you familiar with this study?

19 A. I had read it, but I don't recall right now
20 the details of the study.

21 Q. Am I right that Santa Rosa, in respect of the
22 nesting beach, does not have any development next to

10:19:59 1 the nesting beach?

2 A. No. It's a national park, that is correct.

3 Q. And in this study it is noted that high
4 losses of leatherback turtle nests were associated
5 with coyotes that live in the National Park. Is that
6 your understanding?

7 A. Yes. That is natural predatory activity that
8 affects the population.

9 Q. And is it your understanding there has been,
10 as reported in this report, a decline of nesting
11 leatherback turtles up to the '99 season as well?

12 A. Yes. We identified that this population is
13 from the Tropical Pacific, and there was a drop in the
14 population.

15 But there is something else I'd like to point
16 out here that I think is crucial, and that is the
17 turtles' faithfulness and faithful return to a given
18 site. We consider that 50 percent of the turtle
19 population of the Pacific population is the nesting on
20 the--in our Park.

21 So 80 percent of the Costa Rican Pacific is
22 on this beach. So in a normal resting period, October

10:21:30 1 to March for a given season, we will find turtles in
2 Ostional and Camaronal, and we'll also find them in
3 Naranjo. We'll find the leatherbacks even
4 12 kilometers north of the National Park.

5 What's important is to determine that ever
6 since the monitoring program began, all the turtles
7 are marked with microchips. That way, we're able to
8 determine when a turtle returns to the same beach.

9 We have a nesting frequency of 9, 7, 6,
10 opportunities in one given season by the same turtle
11 over a nine-day period. The turtle curiously leaves
12 and then comes back nine days later, leaves and comes
13 back nine days later, and finally migrates to the
14 international waters.

15 With this, we're able to determine that,
16 along six kilometers of beach, you can maintain the
17 population. If we compare this to the other
18 population, the one in Mexico, in the framework of the
19 Tropical Pacific Ocean, those turtles have nesting
20 areas in Mexico. There they have long kilometers of
21 monitored beach, kilometers and kilometers, and their
22 figures are very similar to ours.

10:22:49 1 What does this mean? It mean that's
 2 turtle--the hatchbacks are really focusing their
 3 nesting on those six kilometers. This is something
 4 that we can see from the data. It's shown by the
 5 data, by the scientific data that is available.
 6 Therefore, the National Park as such--and
 7 that's what's referred to here. The State of Costa
 8 Rica decided in 1991 and 1995 that we needed to
 9 conserve this Park for the turtles, and that is what
 10 we're doing. We're undertaking efforts as required to
 11 ensure that, if there is a catastrophic event such as
 12 what we're seeing in the population, we can ensure the
 13 reproductive success of the species.
 14 That's what we need. We need to protect
 15 those 125 meters to protect the nesting habitat. We
 16 need it to not jeopardize this success. We cannot
 17 endanger it.
 18 Developments come, yes. They are there. And
 19 abide by the regulations. Let's make sure that it is
 20 environmentally friendly, but let us protect this
 21 buffer zone, the 125-meters. That means that with all
 22 the pressure that is coming in the future, we'll be

10:24:14 1 able to safeguard this area. That's all we're asking
 2 for, no more, no less.
 3 And that's not only for the Costa Rican
 4 people. Leatherbacks are not a resource of Costa Rica
 5 only. It's a shared resource, shared by many
 6 countries.
 7 What we have to do is to add our grain of
 8 salt in this area to protect our beaches. And that is
 9 what we believe is crucial when we talk about
 10 conservation. And I think it is really key to ensure
 11 that the leatherbacks can recover over time.
 12 Q. One last question or area of questioning,
 13 Mr. Piedra. You've spoken several times now of the
 14 75 meters being a buffer zone?
 15 A. I have said that the 75 meters are National
 16 Park based on the law, and at the same time, it's a
 17 buffer area for this critical nesting area. It's a
 18 buffer to avoid erosion, to maintain stability, to
 19 ensure the ecosystem connectivity, to maintain the
 20 ecological unity, and also for the enjoyment of all
 21 citizens, people who live on the--because of this.
 22 The people who have appeared here talking

10:25:37 1 about the beauty, the natural beauty of the region, we
 2 have to preserve it. We have to improve it. That's
 3 what we want to do, and then we'll all enjoy it. All
 4 of us who live there, those who live in the
 5 neighboring areas to the Park will be near that
 6 125-meter strip. And we have to agree on how to
 7 improve and to make sure that there is no impact on
 8 those 75 meters--no negative impact in the Park
 9 because we're all going to enjoy.
 10 We'll enjoy the ecosystem, we'll enjoy the
 11 turtles, and we're also talking about human
 12 well-being. If we have a healthy ecosystem, we'll
 13 also have healthier communities, communities protected
 14 in their living. We need to exist--
 15 THE INTERPRETER: "Could you speak a little
 16 bit slower, please," says the Court Reporter.
 17 THE WITNESS: I apologize," says Mr. Piedra.
 18 MR. COWPER: Mr. Chairman, I think it's fair
 19 to say that the Witness has answered well beyond the
 20 bounds of my question.
 21 BY MR. COWPER:
 22 Q. Mr. Piedra, perhaps I could just ask you--and

10:26:41 1 I'm trying to deal with the buffer zone as a buffer
 2 zone.
 3 As the Park Administrator, your concerns
 4 about development go far beyond the 125 meters, don't
 5 they?
 6 A. As administrator, my main concern of the
 7 75 meters, because that is what I administer. That is
 8 the strip of 125 meters.
 9 But that does not mean that we are not
 10 concerned about what happens beyond the 125 meters
 11 because, after all, the protection of protected areas,
 12 ultimately, that protection of the protective areas
 13 will depend very strongly on whatever happens outside
 14 of the area.
 15 Q. Have you spoken of a 500-meter buffer zone in
 16 respect of the Park?
 17 A. Yes, that's true. That was in the first plan
 18 that was developed. We determined that there were a
 19 number of areas that had an influence on the National
 20 Park. That was an immediate influence area, and
 21 that's the 500-meter strip.
 22 Q. Within the buffer zone--however you define

10:28:01 1 it, whether it's 75 meters, 500 meters, 1,000
 2 meters--one of the principal concerns would be to
 3 control lighting; correct?
 4 A. The buffer zone, we need to understand that
 5 the 75 meters of the National Park is protecting the
 6 nesting habitat. Yes, obviously, the lighting issue
 7 is a matter that the Park has to address.
 8 Q. With respect to other parks, have you read
 9 the literature about managing adjacent development and
 10 minimizing interference with nesting through managing
 11 the lights of neighboring developments? Have you
 12 studied that literature?
 13 A. Yes, of course.
 14 Q. So, with respect to your duty as a Park
 15 Administrator, your goal would be to manage, as best
 16 you could, any adjacent development? And I'm
 17 suggesting to you the principal concern would be to
 18 manage lighting so it did not interfere with nesting
 19 activity?
 20 A. As responsible for managing the Park, I have
 21 to protect the entire Park, protect that 75-meter
 22 strip or the 125-meter strip and, of course, minimize

10:29:32 1 the impact of threats caused by development.
 2 MR. COWPER: Those are my questions,
 3 Mr. Chairman--sorry, Mr. President.
 4 MS. McCANDLESS: We have no further
 5 questions.
 6 PRESIDENT BETHLEHEM: Mr. Piedra, let me just
 7 inquire of my colleagues whether we have any
 8 questions.
 9 ARBITRATOR KANTOR: Yes.
 10 ARBITRATOR VINUESA: No.
 11 PRESIDENT BETHLEHEM: We have questions from
 12 Mr. Kantor and then I'll have some questions as well.
 13 QUESTIONS FROM THE TRIBUNAL
 14 ARBITRATOR KANTOR: I apologize, but I cannot
 15 speak Spanish. So, I will continue in English. Thank
 16 you for taking the time to testify today. I am Mark
 17 Kantor, one of the Arbitrators.
 18 Could I ask you please to turn to your First
 19 Witness Statement, Paragraph 56. While you turn, I'll
 20 be looking at the English translation because my
 21 Spanish is so poor, but of course I understand you may
 22 be looking at the Spanish original.

10:31:08 1 In Paragraph 56, you describe a strategy
 2 relating to priorities for expropriation. Could you
 3 describe for me what the function of that strategy is?
 4 THE WITNESS: The strategy sought to
 5 establish priorities based on ecosystem approach, the
 6 issue of expropriations based on sea turtles
 7 specifically. So, that's why we established several
 8 priorities. The first one has to do to all open areas
 9 in the southern part of Playa Grande.
 10 Why? Because if we look at the space,
 11 distribution of nests throughout history, we can see
 12 that the beach is subdivided 3.6 kilometers. If we go
 13 from a 3.8 south, that's where you have the highest
 14 density of nests all the way--all throughout the
 15 beach. So that was considered Priority Number 1.
 16 And specifically because there was a very
 17 important coverage of that private area, it was very
 18 well conserved. There were no homes. There was no
 19 development. So, that's why we established this
 20 priority.
 21 Then we have Priority 2 that has to do with
 22 the Ventanas sector, open beaches, areas with no

10:32:57 1 homes. And then we have--okay. So that was for Playa
 2 Grande North.
 3 Then Number 4 is Isla Verde, which is private
 4 property on Playa Langosta, and then the Cerro el
 5 Morro, or the hills. Cerro el Morro and Cerro
 6 Ventanas.
 7 And Priority 6 was homes, homes that were
 8 already in the National Park.
 9 ARBITRATOR KANTOR: When you say "priorities"
 10 in your answer, what activities are prioritized by
 11 this list?
 12 THE WITNESS: Are you talking about on
 13 biological terms or regarding expropriations?
 14 ARBITRATOR KANTOR: I was first thinking of
 15 expropriation, but it would be useful as well if you
 16 could also describe the biological terms. So, if you
 17 could address both areas, that would be useful.
 18 THE WITNESS: I focused mainly on biological
 19 issues and that--and then legal aspects are analyzed
 20 by other people. That is not my area.
 21 One of the main things is the nest
 22 distribution. Nests are distributed throughout that

10:34:31 1 sector, so it was important to preserve that strip in
 2 order to maintain that behavior. This is also related
 3 to the vegetable coverage to avoid beach erosion and
 4 to maintain that area that was quite protected in view
 5 of the fact that there was no development at the time
 6 and in view of the time that--we wouldn't have that
 7 impact or threat in that place.

8 So that's why we were focusing on ecological
 9 integrity, to maintain the ecosystem and the
 10 connectivity and to maintain beach stability In order
 11 to continue with the space distribution of nests.

12 ARBITRATOR KANTOR: With respect to the
 13 expropriation aspect of the strategy, I appreciate you
 14 are not a lawyer. In your capacity as administrator,
 15 what is your understanding of the impact of this
 16 document on the expropriation process?

17 THE WITNESS: What I understand is that the
 18 issue of priorities in land expropriation would take
 19 into account the priorities focusing on different
 20 sectors in compliance with each sector along the
 21 process. But the legal aspects and the complications,
 22 that is something that I'm not aware of and I cannot

10:36:14 1 get involved with.

2 ARBITRATOR KANTOR: Do you know whether this
 3 strategy applied only to properties in the
 4 administrative phase of expropriation or also the
 5 properties in the judicial phase of expropriation?

6 THE WITNESS: That's something that I cannot
 7 answer. I'm not familiar with that.

8 ARBITRATOR KANTOR: Your Witness Statement
 9 describes this as a "strategy." Can you explain your
 10 understanding of what the idea of a "strategy" means?

11 THE WITNESS: What I was asked to do was to
 12 establish priorities, the justification for each
 13 sector, and that's exactly what I did. That's what I
 14 sent; that is, that justification and priorities is
 15 what I sent to the subregional office in Nicoya and
 16 the officials there continue with the process.

17 My involvement consisted of developing a
 18 first draft. That first draft was sent to the office
 19 and it was improved there. But what I did was I
 20 identified priorities in a technical basis in
 21 accordance with biological aspects and distribution
 22 aspects.

10:37:47 1 ARBITRATOR KANTOR: The documents which are
 2 R-9 and R-10 and your Witness testimony appear to
 3 suggest that this strategy is applicable to both SINAC
 4 and to MINAE, which, of course, is the parent of
 5 SINAC. Is that understanding correct, or am I
 6 misunderstanding something?

7 THE WITNESS: You are correct. I'm part of
 8 SINAC, SINAC. I establish priorities, I send them to
 9 SINAC, and SINAC continues with the process.

10 ARBITRATOR KANTOR: And MINAE?

11 THE WITNESS: MINAE is Ministry of
 12 Environment and Energy, and also it covers the marine
 13 park.

14 ARBITRATOR KANTOR: I understand. I'm just
 15 trying to appreciate the impact of this document.
 16 Does the document have an impact only on SINAC, or
 17 does it also have an impact on MINAE?

18 THE WITNESS: I would not know. In the
 19 command chain I'm at the bottom, and I'm a technical
 20 officer.

21 ARBITRATOR KANTOR: Also in Paragraph 56, you
 22 say the strategy became official in 2012. Did it

10:39:16 1 become public at any point and, if so, when?

2 THE WITNESS: I am not aware of that. I am
 3 not familiar with those details. I was told it had
 4 become official, but as to communication to third
 5 parties, I don't know anything about it.

6 ARBITRATOR KANTOR: When you say it becomes
 7 "official," can you help me understand what you mean
 8 by the term "official"? What does that mean?

9 THE WITNESS: I think that there has to be an
 10 approval by the agency in charge or by the agency that
 11 has jurisdiction.

12 ARBITRATOR KANTOR: Thank you. Gracias. I
 13 have no additional questions.

14 PRESIDENT BETHLEHEM: Thank you, Mr. Piedra.
 15 I have one or two questions that I'd like to put to
 16 you mostly for clarification.

17 Counsel for the Claimants put to you some
 18 questions about a map that's in the process of being
 19 approved. Do you recall the precise date? I think
 20 you mentioned that the map was a 2013 map, but do you
 21 recall more precisely the date that you transmitted
 22 that map to the Ministry?

10:40:46 1 THE WITNESS: That map was done in 2013. I
 2 don't have the detail, the precise date right now, but
 3 I can tell you what happened. A committee was set up
 4 by the SINAC director at the time to study the issue
 5 of boundaries. We did that focusing on the two hills,
 6 Cerro el Morro and Cerro Ventanas, which required
 7 special attention because the law did not establish
 8 the external boundary. There were no coordinates as
 9 opposed to the 125-meter strip where there were
 10 coordinates and the Procuraduría had issued an opinion
 11 as to what it covered. So, what was--what became
 12 official was the complete park. Part by part was
 13 analyzed, and that document was submitted to the
 14 SINAC.

15 The national council is where all
 16 conservation areas are included as well as other
 17 agencies. The presentation was made there. I did not
 18 do that. There were other colleagues from the office.
 19 They made the presentation of the document. The
 20 document was analyzed and then an agreement was
 21 reached. As to the date, I don't remember.

22 PRESIDENT BETHLEHEM: I understand from your

10:42:14 1 response to counsel for the Claimants that that map
 2 has not been formally finalized; is that correct?

3 THE WITNESS: That's a boundary map. What
 4 the map shows is a line based on coordinates. That's
 5 all. It just shows the coordinates to what we send to
 6 SINAC.

7 PRESIDENT BETHLEHEM: I understand that. I'm
 8 just inquiring whether SINAC has finally signed off on
 9 that map. In other words, is that map official? I
 10 understood from your response to counsel for the
 11 Claimants that it is still going through the
 12 Governmental process.

13 THE WITNESS: I don't know that. What I know
 14 is that we received the approval by the national
 15 council approving that document that we had sent.

16 PRESIDENT BETHLEHEM: May I ask--you may not
 17 know the answer to this, but do you know whether that
 18 map is in the record of this arbitration?

19 THE WITNESS: I don't know.

20 PRESIDENT BETHLEHEM: Thank you. We'll have
 21 an opportunity to, perhaps, raise that with counsel
 22 for the Respondent at another point.

10:43:30 1 A second question. You commented a moment
 2 ago in response to a question from Mr. Kantor
 3 addressing, as you put it, your place in the command
 4 chain. My question to you is, you advised the
 5 Minister and the Ministry on all matters relating to
 6 the Park, I presume; is that correct?

7 THE WITNESS: Actually, they consult. If
 8 they ask me, then I provide them my view.

9 PRESIDENT BETHLEHEM: Would you expect them
 10 to consult with you on all matters formally of
 11 importance to the Park? I mean, for example, before
 12 correspondence is issued, before laws are brought
 13 forward, would you expect them to consult with you?

14 THE WITNESS: No.

15 PRESIDENT BETHLEHEM: Do you have a liaison,
 16 a point of contact, in the Ministry with whom you deal
 17 on such matters? So, for example, if you wanted
 18 clarification of an issue of policy or because the
 19 Minister had said something publicly, do you have a
 20 point of contact in the Ministry to whom you speak on
 21 a regular basis?

22 THE WITNESS: No. If it's an official issue,

10:44:52 1 we go through the regional office of the legal
 2 department. If I have a question, a specific
 3 question, then we send it to the legal department.
 4 But the Minister decides whether he's going to consult
 5 with us or not.

6 PRESIDENT BETHLEHEM: Mr. Piedra, some of us
 7 in this room have experience of dealing with
 8 governments, and we understand your answer very well.

9 Let me move beyond that to ask you about the
 10 protected zone. Whether we're talking about 50 meters
 11 or 125 meters, am I correct in understanding that that
 12 is 125 meters or 50 meters from high tide?

13 THE WITNESS: Actually, the 125 meters go
 14 from the high tide, but the 125 meters and the 50--
 15 it's 50 meters of public zone plus 75 meters.

16 PRESIDENT BETHLEHEM: Yes. I understand
 17 that. I just want to be sure that I understand that
 18 the starting point of the 50 meters and then followed
 19 by the 75 meters is from high tide.

20 THE WITNESS: Yes, correct.

21 PRESIDENT BETHLEHEM: I appreciate that you
 22 won't know, perhaps, the precise answer to this, and

10:46:14 1 also I appreciate that it will vary from place to
2 place, but you can give an approximation of how broad
3 the beach is, the white sand part of the beach, before
4 you reach the vegetation?

5 THE WITNESS: Of course. Well, that will
6 depend on the sector where you are. If you are in the
7 center, which is very well conserved with good slopes,
8 we're talking about 15, 20 meters depending on the
9 sector. In the north sector, for example, that is
10 broader because it abuts the houses. So that is more
11 prone to flooding. In the southern sector, that area
12 is much narrower in some sectors in the south. So, it
13 varies a lot. In the center, the beach is wide, 15 to
14 20 meters, and then in the north end--because all
15 vegetation was cut, then it abuts the homes.

16 PRESIDENT BETHLEHEM: And I presume as well
17 but ask for your clarification, that the slope of the
18 beach is going to vary. So at some point it is going
19 to be steeper, and some point it is going to be
20 flatter.

21 THE WITNESS: If you're in the southern part
22 and compare with the northern part, this is very

10:47:46 1 interesting. In spite of the fact that in the south
2 we have the Tamarindo Estuary, there's a very good
3 slope. In the north, there's a very steep slope. A
4 scientific study was done comparing the different
5 sectors--center, north, and south--and not only the
6 slope, but also physical and chemical properties. So
7 there is variation in physical and chemical properties
8 in the beach, and in order to select a nesting site
9 for turtles, the essential beach with a good slope.
10 And slope is very essential to avoid flooding and also
11 the height of the beach.

12 What do I mean by the height? It's the depth
13 of the sand layer so that the embryos can develop. If
14 the layer is narrower, then it can be subject to
15 flooding. For example, with the climate change and
16 high temperature, it is important to have water in
17 order to reduce the temperature. But the depth of the
18 sand is important for the embryo development. It's
19 important to understand that we're talking about the
20 70 centimeters--70, 75 centimeters of depth where
21 turtles lay eggs. That's where you have the chamber
22 and the embryo development, and that is essential for

10:49:15 1 the development. So if you have beaches that are very
2 thin, that are too shallow, then that has an impact.

3 PRESIDENT BETHLEHEM: Do I understand
4 correctly that the nesting area of the turtles is
5 always beyond high tide, but that it does not take
6 place within the vegetation area? So it's in the
7 space on the sandy part of the beach between high tide
8 and the vegetation?

9 THE WITNESS: Yes. There's a habitat where
10 the eggs are laid, so to speak. The egg laying will
11 depend on the species. The smaller type of turtles,
12 the lora turtles, they lay eggs closer to the high
13 tide or in the center of the beach. The leatherbacks
14 go further up. And black turtles, they go into the
15 vegetation. They go into the vegetation to lay eggs.

16 So, we have divided the area in three zones:
17 From low tide to high tide, the middle area from high
18 tide to the vegetation line, and the third area which
19 is vegetation. So, leatherbacks would nest in area
20 two, that is from high tide to vegetation.

21 PRESIDENT BETHLEHEM: Do I understand
22 correctly from your evidence that the 75 meters--the

10:50:48 1 75 meters beyond the 50 meters, is purely a buffer
2 zone? It's not an area where the turtles nest?

3 THE WITNESS: Correct. If we talk about the
4 75 meters, turtles do not nest there within the
5 75 meters. That strip is essential to preserve the
6 beach, and that is important. I don't know to go
7 elsewhere to see the impact. If you cut all the
8 vegetation in order to build, then you have an erosion
9 problem, wind erosion, tide erosion, and those beaches
10 that had a good slope become smaller and smaller. So
11 that doesn't happen overnight. That's why we said
12 that development has an impact on the ecosystem. It's
13 a degradation of the ecosystem. You're not improving
14 it. You're not maintaining it. You're degrading it.
15 So that happens over time.

16 Our concern is that, if there is a
17 development in the short or longer term, you'll have
18 an impact on the population, but you will see an
19 impact in the future. As we have seen with egg
20 poaching, the effect was not immediate. It was seen
21 over time, over the years. So when you have an impact
22 on the nesting habitat, you don't see the impact right

10:52:16 1 away, but you will see it over time.
 2 So when you have a population that has been
 3 so dramatically reduced, it will suffer a greater
 4 impact because in that case, every single leatherback
 5 nest is valuable and should be preserved. Whether
 6 there is one or two, it's important. We don't know if
 7 one or two will reach adulthood.
 8 A leatherback can lay 60 eggs every
 9 nine days. A turtle lays eggs seven times, up to
 10 eight, over a nine-day period, on average, 60 eggs per
 11 turtle. So, if you have a large number of
 12 reproductive turtles and a larger number of turtles
 13 being born, the better the chances for conservation.
 14 So in the framework of the Convention, we're trying to
 15 pay attention to reproductive success.
 16 So, as a State, we should not delegate those
 17 responsibilities. That is, the State has the
 18 responsibility because it's a signatory to this
 19 international Convention, and it's essential to
 20 respect it and to do our best to implement it.
 21 And development, we're not saying that there
 22 should be no development. We're applying good

10:53:42 1 conservation measures. Let's do everything that can
 2 be done to minimize impact, but let's protect this
 3 strip of 75 meters and give the National Park that
 4 land breather. Give them that breather. Let's not
 5 put so much pressure on that population to the point
 6 that we won't be able to recover it. If we lose the
 7 nesting habitat, there will be extinction because
 8 there is only 6 kilometers of beach. So, it is
 9 essential to achieve that.
 10 We have made an effort for so many years.
 11 It's been so hard, but it's not just for Costa Rica;
 12 it is for everybody, for everybody who wants to go to
 13 Costa Rica. They are welcome. They will see the
 14 turtles. They will see the ecosystems, and they will
 15 see the beautiful environment that our friends have
 16 mentioned. And we are working to that end.
 17 PRESIDENT BETHLEHEM: I just have one or two
 18 further brief questions. As part of your role, do you
 19 work with homeowners, with property owners, in the
 20 area of the Park--whether or not in the Park or just
 21 outside the Park--in order to ensure that they manage
 22 their property and conduct themselves in a way which

10:54:59 1 is conducive for conservation purposes?
 2 THE WITNESS: We have been conducting an
 3 effort to take measures. I remember the SETENA, the
 4 National Technical Environmental Secretariat, at some
 5 point drafted some guidelines for infrastructure,
 6 particularly for that buffer zone of 500 meters to
 7 minimize impact on the Baulas Park. The Baulas Park
 8 we want to help people become aware of the National
 9 Park.
 10 At this point we have a serious problem with
 11 domestic animals, for example, dogs that enter the
 12 protected area, and in the past we have reported dogs
 13 that were harming nests. So, this awareness has not
 14 been easy. And lighting of houses within the Park.
 15 Some people have helped. Others have not. So,
 16 this--you have to be consistent. You have to keep
 17 working to help people become aware. Many people do,
 18 but there are a large number of people who won't. So
 19 that generates a very strong pressure.
 20 PRESIDENT BETHLEHEM: But this is--part of
 21 your official function is to work with property
 22 owners, with homeowners, to advise and assist them on

10:56:34 1 these issues?
 2 THE WITNESS: I will give you an example,
 3 something we have just concluded. We are developing
 4 the management plan, and this management plan--for
 5 this management plan we invited all actors to discuss
 6 different issues in the framework of the strategy
 7 regarding the National Park. There has been a lot of
 8 community participation. They are represented in the
 9 process, and, to me, this has been essential. And
 10 something very important is that we have a very
 11 clear--in terms of the national park officials--to
 12 explain very clearly and very strongly our position
 13 regarding that 75-meter strip and the need to conserve
 14 and protect it. And I think our friends know that, if
 15 we have said we have to protect that beach, we have to
 16 protect that buffer zone as a 75-meter strip, we have
 17 always said that. We have invited them to participate
 18 in the management plan process, and right now we're
 19 studying the document. They all have the documents.
 20 They are reading them. Some of them have made
 21 comments, and we're moving forward.
 22 PRESIDENT BETHLEHEM: Just one last question.

10:58:12 1 I'd like to take you back to the binder of material
 2 that the Claimants put in front of you and ask you to
 3 turn back to Tab 21. It's the thick binder, which was
 4 the document that counsel for the Claimants took you
 5 to. That's Exhibit C-53. It's the Ayuda Memoria note
 6 of the 16th of July 2003. And I'd like to take you
 7 back to that bullet point on the second page, which in
 8 English reads, "In the private areas declared as
 9 National Park in 1991 and 1995, we would like to
 10 promote a voluntary conservation regime instead of
 11 resorting to the respective expropriations."
 12 Do you have that language?
 13 THE WITNESS: Yes.
 14 PRESIDENT BETHLEHEM: So my question is a
 15 very simple question: Do you think that a voluntary
 16 conservation regime as referred to here is an
 17 inadequate way of protecting the conservation of the
 18 turtles? In other words, do you think that
 19 expropriation is necessary?
 20 THE WITNESS: I will give you my opinion, not
 21 only as an administrator but also as a biologist. In
 22 my view, it is essential to protect and conserve those

10:59:42 1 75 meters so as not to have an impact on the nesting
 2 habitat. If we have a nondeveloped area, I do not
 3 want to inject threats if that is already there
 4 because the State decided with the law and the Decree
 5 that we should protect it. I cannot understand why,
 6 if it's already protected, why are we going to create
 7 a pressure? It doesn't make any sense to me.
 8 If it's already protected, well, let's
 9 consolidate the protection because that was the
 10 purpose of the law. I, in particular, would be very
 11 sad to find out that, as human beings, we're going to
 12 put--to add a threat, a risk, for a population that is
 13 in such critically endangered.
 14 PRESIDENT BETHLEHEM: Mr. Piedra, thank you.
 15 I've just had a note from Mr. Kantor who would like to
 16 have a further brief set of questions to you, and then
 17 we will conclude.
 18 ARBITRATOR KANTOR: With apologies,
 19 Mr. Piedra.
 20 The properties for which the expropriation
 21 proceedings have not been completed, does the Park
 22 patrol those properties today, the portion of them in

11:01:30 1 the 75-meter area?
 2 THE WITNESS: What we do is we pass through,
 3 and if there is an impact on an area, independent of
 4 whether it's within the Park, then we inform the
 5 proper institutions. What I mean to say is, if it's
 6 private property, then the Park rangers aren't going
 7 to be going onto the private properties. They have
 8 their property, and if there's some impairment or
 9 impact--well, if, for example, we're called and
 10 someone is cutting down a tree, whether it's within or
 11 without, well, we'll go and check, and the first thing
 12 we'll verify is whether there's a permit. And if
 13 there is a permit, then we verify that those permits
 14 have been properly issued, wherever they may be.
 15 ARBITRATOR KANTOR: Does the Park
 16 Administration treat properties inside the 75-meter
 17 area different from properties outside the 75-meter
 18 area?
 19 THE WITNESS: The properties that are within
 20 the 75 meters are not under our administration. We do
 21 not administer those properties, and it's equal
 22 treatment for all. If there's an impairment in a

11:02:56 1 given site, then we go and address it, and we address
 2 even things that are happening, say, 20 meters outside
 3 the Park. So, there's general attention to what's
 4 happening in the area, surveillance, whether it is
 5 within the boundaries of the Park or not. Either way,
 6 we conduct surveillance.
 7 ARBITRATOR KANTOR: Is that surveillance
 8 different between properties in the 75-meter area and
 9 the land inside the 50-meter area?
 10 THE WITNESS: Well, we conduct general
 11 surveillance, so it shouldn't be different. If there
 12 is an impairment, for example, and they don't have the
 13 respective permits, then we include in the complaint
 14 to the public Ministry, which is what we have to do.
 15 And if it's within what the law says as the bounds as
 16 per Law 7524, then we act accordingly. If it's
 17 not--if it's outside it, we don't say it--we don't
 18 indicate whether it is in or outside the Park. We
 19 just file the complaint with the appropriate
 20 description.
 21 ARBITRATOR KANTOR: Is there signage or other
 22 marking to show the boundary of the Park?

11:04:24 1 THE WITNESS: No. Well, there are signs on
 2 the properties that have been transferred to us. For
 3 example, to the left in one location, there is a sign.
 4 But in general at 75 meters, we generally don't have
 5 signage. We have signage at the main entrances, but
 6 it's general signage. It is very general with
 7 information for tourists.
 8 ARBITRATOR KANTOR: Thank you very much for
 9 your patience.
 10 PRESIDENT BETHLEHEM: Mr. Piedra, thank you
 11 very much for your testimony.
 12 (Witness steps down.)
 13 PRESIDENT BETHLEHEM: I think we will take a
 14 break now until 20 minutes past 11:00.
 15 (Brief recess.)
 16 JULIO JURADO, RESPONDENT'S WITNESS, CALLED
 17 PRESIDENT BETHLEHEM: Mr. Jurado, welcome.
 18 Thank you for being here.
 19 You have a witness declaration in front of
 20 you on the table. I would be grateful if you could
 21 take that and read that into the record, please.
 22 THE WITNESS: Yes, of course. I hereby

11:22:30 1 declare upon my honor and conscience that I will tell
 2 the truth, the whole truth, and nothing but the truth.
 3 PRESIDENT BETHLEHEM: Thank you.
 4 Ms. Haworth McCandless.
 5 MS. McCANDLESS: Thank you, Mr. President.
 6 We're passing out binders right now, and then we'll
 7 ask you a few questions, Mr. Jurado.
 8 DIRECT EXAMINATION
 9 BY MS. McCANDLESS:
 10 Q. Could you please look at the document behind
 11 Tab 1 in the binder in front of you. Do you recognize
 12 that document?
 13 A. Yes, it's my statement.
 14 THE INTERPRETER: Interpreter asks that the
 15 Witness speak closer to the microphone. It is very
 16 faint.
 17 PRESIDENT BETHLEHEM: Could you speak closer
 18 to the microphone?
 19 THE WITNESS: Yes, it is my statement.
 20 BY MS. McCANDLESS:
 21 Q. Is your Statement based on your personal
 22 knowledge and experience?

11:23:52 1 A. Yes.
 2 Q. Is there anything that you would like to
 3 correct to your Witness Statement?
 4 A. Yes. I'd like to make two corrections. At
 5 Paragraph 2, I'd like to add, in addition to what's
 6 indicated there, that I've been a professor at the
 7 University of Costa Rica for more than 20 years.
 8 And at Paragraph 13, where it says that the
 9 consultation sent by the Minister in 2003--or "the
 10 query sent by the Ministry in 2003 and 2005 was
 11 randomly assigned to me by the Procurador General,
 12 just as many other queries were assigned to me." I
 13 want to clarify that that is what happened in the
 14 respect of the query of 2003, but not in 2005. That
 15 was--the 2005 one was assigned to me because I had
 16 handled the earlier query from 2003.
 17 Q. Where are you currently working?
 18 A. At this time I work at the SINAC.
 19 Q. And what is your position?
 20 A. I'm the Executive Director.
 21 Q. For how long have you held this position?
 22 A. Since June of 2014.

11:25:12 1 Q. And what did you do before your current
 2 position?
 3 A. I was the Procurador at the Procuraduría
 4 General of the Republic, and as I indicated earlier,
 5 professor at the University of Costa Rica.
 6 Q. Could you please describe your work in the
 7 Procuraduría's office?
 8 A. Well, as Procurador, I am to issue
 9 pronouncements on queries or consultations that are
 10 raised by the different entities of the public
 11 administration. I represent the State in trial, and I
 12 issue reports to the Constitutional Chamber on actions
 13 challenging the constitutionality of statutes.
 14 Q. Thank you.
 15 Could you please describe your work at SINAC?
 16 A. At SINAC, as I said, I am Executive Director,
 17 which means I need to carry out the agreements or
 18 decisions of the national conservation system board,
 19 which is like a Board of Directors of the system, plus
 20 I oversee the work of the staff of the Executive
 21 Secretariat and generally direct the work of the
 22 system.

11:26:35 1 Q. Could you please describe your educational
 2 background?
 3 A. Yes. I received a law degree from the
 4 University of Costa Rica, and then I got a doctorate
 5 in law from Universidad Carlos III of Madrid.
 6 Q. Please explain briefly the main functions of
 7 the office was Procuraduría.
 8 A. The main functions of the Procuraduría, as I
 9 indicated--or as are indicated by its Organic Law are
 10 to handle queries as an advisory organ of high rank of
 11 the public administration, represent the State in
 12 legal actions, issue reports to the Constitutional
 13 Chamber on actions challenging the constitutionality
 14 of legislation. In that regard, the Procuraduría is
 15 an advisory body to the Constitutional Chamber, which
 16 is Costa Rica's Constitutional Court.
 17 Q. While working at the Procuraduría's office,
 18 did you work on writing opinions concerning the
 19 interpretation of the 1995 Park Law?
 20 A. Yes. I issued two pronouncements.
 21 Q. Could you briefly summarize the
 22 Procuraduría's opinion with respect to the 1995 Park

11:29:25 1 established, which is to protect the nesting sites of
 2 leatherback turtles, and in view of other provisions
 3 governing the Park, that the most correct way to
 4 interpret that article was to look to what was
 5 established by the coordinates, and so--accordingly,
 6 the line parallel to the coast had to run along the
 7 coast for the Park to have a terrestrial portion.
 8 Q. Were the opinions binding?
 9 A. The first is not, strictly speaking, because
 10 it was not for the organ that raised the consultation
 11 of the query. The second one was. But both sent
 12 their pronouncements by the Procuraduría, become part
 13 of the administrative case law, and become guidance
 14 for action of the public administration.
 15 Q. Were the opinions made public at the time?
 16 A. Yes. They were publicized at the time
 17 because the opinions of the Procuraduría are published
 18 at a Web site, official Web site, the national system
 19 of legislation enforce, which is part of the Costa
 20 Rican legal information system.
 21 Q. And when were they made public?
 22 A. Once they are communicated to the Minister,

11:27:57 1 Law?
 2 A. Yes, very briefly. The opinion that I issued
 3 in 2004 and also in 2005 was a response to a query put
 4 by Carlos Manuel Rodriguez, then Environment Minister,
 5 regarding interpretation, in particular, of Article 1
 6 of the Law establishing the Las Baulas National Park
 7 in 1995. The question that was put at that time was
 8 whether or not there was a mistake in Article 1 in the
 9 use of the term "aguas adentro," seaward. I undertook
 10 a legal analysis of the provisions in Article 1. I
 11 found that the article did contain an error because it
 12 had two contradictory provisions.
 13 On the one hand, it established coordinates
 14 regarding the line parallel to the coast, according to
 15 which that line ran inland. Yet it also used the
 16 expression "seaward" to describe that same line that
 17 runs along the coast. Those were two contradictory
 18 provisions. They could not both be implemented at the
 19 same time. One had to trump the other.
 20 By way of interpretation, as I considered
 21 appropriate, I interpreted the law to mean that--well,
 22 in view of the purpose for which the law was

11:30:52 1 then they are made public.
 2 Q. Could you please explain briefly the main
 3 functions of SINAC?
 4 A. SINAC, by law, has to protect wildlife and
 5 forestry resources, the water basins, and administer
 6 the protected areas.
 7 Q. Are you familiar with the Contraloría's
 8 office?
 9 A. Yes.
 10 Q. What are the general responsibilities of the
 11 office of the Contraloría?
 12 A. Well, the Contraloría is an entity that
 13 supports the legislative, and it has to control and
 14 monitor public finances and property.
 15 Q. Are you aware of the Contraloría's report
 16 that was issued in 2010 regarding the Las Baulas
 17 National Park?
 18 A. Yes, I do know it in general terms.
 19 Q. Are you aware that the report made certain
 20 recommendations and that, in response, SINAC suspended
 21 the expropriation proceedings it's responsible for
 22 overseeing?

11:32:03 1 A. Yes. I know about the recommendations made
2 by the Contraloría, and it's my understanding
3 that--and this happened actually before I took over
4 this position--that it meant that the administrative
5 process in a way had to be suspended.

6 Q. What is the current status of SINAC's
7 compliance with the Contraloría's recommendations?

8 A. At this point, a number have already been
9 complied with, but there are still a number that need
10 to be enforced.

11 MS. McCANDLESS: Thank you. I have no
12 further questions.

13 PRESIDENT BETHLEHEM: Thank you.

14 Mr. Cowper.

15 CROSS-EXAMINATION

16 BY MR. COWPER:

17 Q. Thank you, Mr. Jurado, and my name is Jeff
18 Cowper, and I'm counsel for the Claimants. Let me
19 start with the opinions. And if you could, there's a
20 binder, a white binder, in front of you, sir. If you
21 could have that binder instead of the--or in addition
22 to the binder given to you by Respondent's counsel.

11:36:09 1 from the Legal Department of the Ministry.

2 A. Correct. In order to issue a mandatory
3 opinion, there wasn't that requirement of having a
4 legal opinion from the Legal Department of the
5 Ministry. One always requests, when there is a
6 consultation in order that it may become binding, that
7 it had a legal opinion attached, issued by the legal
8 body of the entity supporting the consultation that is
9 being presented.

10 Q. My understanding of Costa Rican Law is that
11 any query is supposed to be supported by a legal
12 study. Is that not right?

13 A. Not exactly in that way. There are two kinds
14 of pronouncements by the Procuraduría: Those that are
15 binding for the body that is submitting the request or
16 consultation, and they are identified with the letter
17 "C," and they are known as a decision or dictamen, and
18 they do require a prior legal decision by the entity
19 making the consultation. And then there are those
20 that are known as juridical opinions, which are
21 identified with the letter "J."

22 These pronouncements, also by the

11:33:12 1 Please turn to Tab 24. And this is the opinion. You
2 refer to it in your Witness Statement of February 12,
3 2004; correct?

4 A. No. This is another Legal Opinion.

5 Q. Well, let me--I will get this right. Let me
6 turn to Tab 25, and I'm going to start one step back.
7 If I'm right, this document of May 5, 2003, was the
8 original request for an opinion on the boundaries of
9 the Park.

10 A. Yes, that's correct.

11 Q. Okay. Let me start with this then. As
12 I--and I only have the English translation, sir, but
13 in support of your work, the request included five
14 considerations?

15 A. Yes.

16 Q. And all five of those considerations were, in
17 the terms of this letter, said to be in support of the
18 boundary of the Park proceeding inland; is that right?

19 A. Yes.

20 Q. Now, with respect to this request, I'm right
21 in thinking that it was not in conformity with proper
22 procedure, and that it did not include a legal study

11:37:38 1 Procuraduría, are part of the administrative system
2 and part of the activities of the Procuraduría, but
3 they are not binding. Legal opinions are frequently
4 issued where, for whatever reason, there can be a
5 consultation such as there was in this case. Given
6 its importance and the hierarchy of the person who is
7 requesting it--the Minister of the Government, in this
8 case--pronouncement is always provided, but it is not
9 binding. It can be through a pronouncement such as
10 this, and that is still along the lines of the normal
11 functioning of the Procuraduría, and it is perfectly
12 legal.

13 Q. Could you please turn to Tab 28. This is
14 your letter of March 4, 2004, to the Ministry?

15 A. Yes.

16 Q. In the second paragraph, in the middle of the
17 paragraph, you speak about the Organic Law, and
18 you--in English, the translation says, "This means
19 that, in principle, any query that is not accompanied
20 by the opinion of the corresponding legal counsel
21 cannot be examined."

22 A. Would you allow me to read it, please.

11:39:19 1 That's what it says, "in principle," but let me add
2 that it has been--the practice in this entity that a
3 nonbinding Legal Opinion is issued.

4 Q. I appreciate that, and I accept that, but my
5 understanding is that the requests here were the same
6 for an opinion, but in the absence of legal study,
7 your answer could not be binding; is that correct?

8 A. Correct. But what I explained is the first
9 answer is not binding upon the Minister, and that is
10 what had been pointed out. It is important because
11 it's part of the administrative jurisprudence that
12 must be taken into account as a guideline for action,
13 but it was not binding. That is why it's a legal
14 opinion and not a decision. I made a difference
15 between the two kind of pronouncements when I spoke
16 earlier. This one had to be issued as a pronouncement
17 and as a legal opinion, but not as a decision.

18 Q. If you would look at Tab 27, please, sir. If
19 I understand it correctly, this letter is the letter
20 you responded to that we just looked at under Tab 28.

21 A. This letter that I see here is the letter to
22 which I responded to the letter that we analyzed

11:43:12 1 wasn't accepted. And then he expected at the time--he
2 thought that by attaching the Legal Opinion a priori,
3 then the first opinion would receive a binding nature,
4 but I responded that that cannot be done a priori.
5 That's all I'm saying. But that the pronouncement may
6 serve as a guide of action because it's part of the
7 administrative jurisprudence.

8 Q. So eventually that was fixed and you
9 pronounced, as you said in your evidence earlier, you
10 gave a binding opinion which was to the same effect as
11 the earlier opinion; is that correct?

12 A. Yes. What the Minister did ultimately was to
13 do things correctly, as he should have done them from
14 outset. He submitted the consultation attaching the
15 Legal Opinion from his legal department. The
16 consultation was accepted, and I'm not who decides
17 which consultations are admitted. That is done by the
18 Procurador, and then it was given to me to prepare a
19 draft, and at that point I issued a second
20 pronouncement that now, yes, could be issued as a
21 binding opinion for the Minister. That's the
22 difference. It's binding for the Minister or upon the

11:41:10 1 previously.

2 Q. Now, this letter attaches a legal study,
3 dated February 18, 2004, if you start at Page 2 of the
4 tab.

5 A. Yes, sir.

6 Q. And would you agree with me that that legal
7 study sets out the five considerations which were set
8 out in the request of May 5, 2003?

9 A. Yes, that's correct.

10 Q. And if I then turn back, to understand this
11 history going back to Tab 28, your letter of March 4
12 required a new request before you would issue a
13 binding opinion; is that correct?

14 A. Let me clarify this. In this letter that I
15 sent to the Minister responding to the previous
16 letter, I'm pointing out that he cannot amend the
17 mistake that was made in the first consultation. In
18 that consultation, he made his own interpretation of
19 the Park Law. What happens is that the Procuraduría
20 wants a decision that has been prepared by the legal
21 Department of the Ministry. It's not sufficient to
22 have the opinion of the Minister. That's why it

11:44:48 1 Minister, this second opinion.

2 Q. Am I right, sir, that there were no material
3 differences between your first and second opinion?

4 A. As far as the substance, no, because what I
5 did was transcribe the same legal analysis. So it was
6 practically word for word of what I had said in the
7 first one, and added an additional argument when I
8 issued the second opinion.

9 Q. Now, with respect to the--let's deal with the
10 two opinions, and it may be most convenient to have
11 your black binder that you identified earlier. If you
12 have that in front of you, go to Tab 3--in the black
13 binder.

14 Now, is this the opinion of the 10th of
15 February, 2004?

16 A. Yes.

17 Q. Okay. Now, with respect--we looked at the
18 2003 request, which is referred to at the beginning of
19 the letter of February 10, 2004, would you agree with
20 me that the considerations expressed in the letter of
21 May 5, 2003, are included in your Opinion?

22 A. What do you mean by "included"?

11:46:48 1 Q. Okay. The considerations which were sent to
2 you are matters which are reflected in your Opinion
3 and concluding that the--there was a mistake in the
4 wording of Article 1.

5 A. As I said before, the consultations must be
6 accompanied by legal opinions. In the first case,
7 they didn't come with that legal report, but in the
8 first letter in which the Minister asked a question,
9 he was establishing a position. This is not the
10 normal procedure. Normally, the consultation has to
11 come accompanied with a legal opinion as to the
12 identification. Sometimes the pronouncement agrees
13 with what has been expressed in the consultation.
14 Other times, they don't concur. In this case, there
15 were some similar understandings, but that was not the
16 legal reasoning.

17 Q. Let me--I want to understand in my questions
18 what work you did to complete your first opinion.

19 Did you make reference to any other
20 considerations than those which were reflected in the
21 letter of May 5, 2003?

22 A. Yes, of course.

11:48:23 1 Well, I analyzed the competence of the
2 Procuraduría to address a question such as the one we
3 had received. I consulted the legislative file that
4 was part of the preparation of the draft bill, and I
5 had a meeting with the National Geographic Institute
6 director to understand the issue of the coordinator
7 and to see if those coordinates meant that the line
8 that is parallel to the coastline, whether or not they
9 included a land portion. In other words, did they
10 include the beach?

11 And those were the basic tasks I carried out,
12 and as an outcome my meeting with the director of the
13 National Geographic Institute, and based on what he
14 told me then, following the coordinates meant that
15 that line parallel to the coast did encompass the
16 beach. It was 125 meters inward land; on the land, in
17 other words.

18 Q. I'm going to get to that in a moment. But
19 let me ask this question, sir: Is there any
20 reference--I don't see any reference in your letter of
21 10 February 2004 to the history of the law in the
22 legislature.

11:49:51 1 A. Yes. As far as I recall, there is some
2 reference. We speak about it in the approval in the
3 commission when it was--a motion was presented to
4 include the expression of "seaward."

5 PRESIDENT BETHLEHEM: May I just interrupt
6 you for a moment. I just want to clarify something
7 with respect to this document that we're looking at,
8 which is a document that is the Claimants' exhibit in
9 the Claimants' bundle at three. And as I understand
10 it, it's intended to have an English translation, and
11 behind it the Spanish original. The English
12 translation is a translation which runs to six pages.
13 The Spanish original runs to 21 pages.

14 I'm just consulting the document that was
15 actually submitted electronically, and it's the same.
16 So I just want to understand, if I may, what the
17 difference is between the English translation and the
18 Spanish document because there seems to be some
19 discordance between them.

20 So, Mr. Cowper, I don't know whether this is
21 a question that you can answer. It may be a question
22 that can be put to Respondent. But as you have the

11:51:03 1 floor, let me put that question to you first and see
2 whether you can provide any clarity, and then we'll
3 turn to the Respondent.

4 MR. COWPER: No, Mr. President, that was one
5 of the questions I was going to come to. But let
6 me--maybe I could stay on this topic for a couple
7 minutes, and we can sort out documentary issues.

8 PRESIDENT BETHLEHEM: Sure.

9 MR. COWPER: Just so that we're all on the
10 same, I'm using the document which was in the
11 Respondent's binder Tab 3.

12 PRESIDENT BETHLEHEM: Yes, indeed, that's the
13 one that I'm referring to.

14 MR. COWPER: Okay. And--

15 MS. McCANDLESS: Sorry. Can I just--just to
16 clarify. It's in Respondent's binder Tab 3, but it is
17 an exhibit that was submitted on the record by
18 Claimants. That is their Exhibit Number C-001T.

19 MR. COWPER: Yes.

20 PRESIDENT BETHLEHEM: Yes, I'm looking at
21 that. Excuse me. I'm looking at that, but also
22 looking at what--as it was submitted by Claimants, and

11:51:53 1 there is a discordance between those documents.
 2 MS. McCANDLESS: Understood.
 3 MR. COWPER: Well, let's clear that up.
 4 BY MR. COWPER:
 5 Q. Mr. Jurado, the first part is an English
 6 translation. Is the Spanish original, behind the blue
 7 binder of Tab 3, the entire text of your opinion of
 8 the 10th of February 2004?
 9 PRESIDENT BETHLEHEM: I think the Witness
 10 needs to put the microphone on.
 11 THE WITNESS: I apologize. Let me look
 12 through it. It seems to be the complete document,
 13 yes.
 14 BY MR. COWPER:
 15 Q. Let me ask some discrete questions then.
 16 When you prepared this opinion, you were aware that in
 17 the committee, in the Congress, an amendment had been
 18 made to the bill which formed part of the 1995 Law,
 19 which inserted the reference "seaward" in the
 20 description of the boundaries parallel to the coast.
 21 A. Yes, I did consider the--studied the binder.
 22 It was for the--in views of the law and to establish

11:54:11 1 the objectives that were covered by the law, and in
 2 the process of creating that law, at the first session
 3 of the plenary commission that was looking into the
 4 matter after it had been reviewed by the Environmental
 5 Committee--that's a permanent, special committee where
 6 the most important amendments are made to the
 7 bill--when it comes to the last phase, the last step,
 8 there was a motion that introduced the term "seaward."
 9 Q. And that term ended up being part of the 1995
 10 Law?
 11 A. Yes.
 12 Q. Thank you.
 13 And from your review of the Committee
 14 minutes, it is correct to say that that was inserted
 15 because it was reflected in the discussion that the
 16 Committee did not want to preserve the terrestrial
 17 portion behind the 50-meter public zone. Is that not
 18 correct?
 19 A. Yes. As I said before, that motion was
 20 introduced in the final phases of the approval of the
 21 bill, and one can see through the legislative actions
 22 it was not a major discussion, just presentation of

11:55:37 1 the motion. It was put to vote and approved, and then
 2 there was an intervention of another congressman
 3 saying and explaining why the vote had been in that
 4 manner.
 5 Q. The purpose of the amendment was to move the
 6 boundary of the Park offshore; isn't that correct?
 7 A. According to the motion presented by the
 8 Congressman, who formulated that proposal, the
 9 intention was for the line along the coastline to be
 10 offshore, that is true.
 11 Q. Now, with respect to your reference to the
 12 coordinates, there are only two points referred to in
 13 the 1995 Law by reason of coordinates; correct?
 14 A. Yes. There are two points.
 15 Q. And in respect of the area that's defined as
 16 running along the coastline, there would be four
 17 corners of that area?
 18 A. I suppose so. I'm not an expert in
 19 geographics. That's a technical issue about which I
 20 have no knowledge. As I said earlier, I consulted the
 21 meaning of the coordinates with the director of the
 22 National Geographic Institute in order to know whether

11:57:18 1 the line, as described by the coordinates, if it was
 2 offshore or inland, and based on the explanation I was
 3 given at the time and that other Experts and
 4 geographers and topographers have told me, that,
 5 according to those coordinates, it is inland, which is
 6 contradictory to the expression of "offshore."
 7 Furthermore, it's the same coordinates that appeared
 8 in the Decree of 1991, and there was no doubt about
 9 that being inland. It's the same coordinates.
 10 Q. I understand that. There are--I think we've
 11 already got to the point. There's only two
 12 coordinates. The way in which the '91 Law was
 13 described would be two coordinates "inshore," and then
 14 the corners that would be defined by the "inshore"
 15 were not defined by coordinates; correct?
 16 A. I didn't understand your question. I
 17 apologize.
 18 Q. If you look at the--if you recall the 1991
 19 Law, and you said that it's the same coordinates.
 20 That's not quite right, but if you take it--in 1991,
 21 there were two coordinates given as well; correct?
 22 A. As far as I recall, it is the same

11:58:39 1 coordinates, yes.
 2 Q. Did the 1995 Law expand the Park northward to
 3 include Ventanas?
 4 A. As far as I recall, yes, it included Playa
 5 Ventanas. I'd have to read the text of the '95 Law to
 6 be sure.
 7 Q. Let me ask you: Did you inquire whether
 8 there was an official map of the Park in 2004?
 9 A. I was told that there was no official map.
 10 Q. So returning to my question, and, perhaps,
 11 you can answer this or not, but what I'm suggesting to
 12 you, sir, is what the Committee did was to use two
 13 coordinates, and by changing the reference "onshore"
 14 to "offshore," they created an area that would have
 15 four corners that would proceed offshore.
 16 A. There are other elements in that article that
 17 would indicate that it could not be seaward because it
 18 wouldn't make sense. If we understand that the line
 19 goes 125 meters seaward from high tide, that would be
 20 the beginning of the east boundary of the Park.
 21 Therefore, the west boundary would be 125 meters, so
 22 125-meter strip offshore.

12:00:39 1 But the article says that all the territorial
 2 waters are part of the Park, so what sense would it
 3 make to create a 125-meter strip if all the waters
 4 were in the Park? And so Park would start at the high
 5 tide, and it would go 12 miles inland, if we take that
 6 into account. So, this supports the thesis that the
 7 125 meters had to be inland because you're
 8 adding--you're maintaining, rather, a land portion
 9 when you create a 125-meter strip in the Park that, in
 10 and of itself, covers all the Tamarindo area waters,
 11 then it's an issue not only of coordinates. It had to
 12 be interpreted this way.
 13 Another way to be interpreted was that the
 14 Park started at 125 meters inland from--rather,
 15 seaward from high tide, and that that was the east
 16 boundary, whereas the west boundary was the
 17 territorial waters of Tamarindo Bay. And that was an
 18 interpretation that would not make much sense because
 19 the Park would end 125 meters before high tide, and it
 20 would be 125 meters that would not be protected, and
 21 the turtles would have to arrive at the beach and nest
 22 only within the 50 meters.

12:02:08 1 So, the interpretation of the word "seaward"
 2 created a contradiction with the coordinates, with the
 3 provisions of the article--for example, the inclusion
 4 of the Tamarindo Bay to territorial waters--and with
 5 the purpose itself of the law, which was to create a
 6 Park where nesting sites were protected for
 7 leatherback turtles. And even though leatherback
 8 turtles nest in that 50-meter strip, it is clear that
 9 that 50-meter strip, which according to a version that
 10 says that the Park did not contain any land components
 11 and it was only a marine park, those 50 meters are
 12 public property. But if they are not included in the
 13 Park, the Legal Framework does not provide protection.
 14 So, it is regulated by maritime and land law that does
 15 not seek to provide protection, but, rather, to
 16 promote tourism.
 17 Those 50 meters are for public use, and that
 18 cannot be compatible with the creation of a Park. So,
 19 if we accept the thesis whereby the line--the
 20 imaginary line--was 125 meters inland, then that would
 21 be absolutely no protection for nesting turtles, not
 22 even within the 50 meters because, as I said, the

12:03:45 1 50 meters is not in the environmental protection area.
 2 They belong to the State, but people can circulate.
 3 They can walk freely. It is for public use, and the
 4 Legal Framework for that, for those 50 meters is not
 5 one of environmental protection.
 6 That's why I determined that, if it was a
 7 mistake in the drafting of the article, it was not in
 8 the coordinates, it was not in the fact that the
 9 territorial sea was part of the Park. The only
 10 mistake, the only error that that article could
 11 contain was the mention of "seaward" and also the way
 12 in which the bill was handled.
 13 The bill is discussed within the
 14 environmental commission. That's where opinions are
 15 heard from Experts. And then basic and essential
 16 amendments are done so that you obtain a text that
 17 goes to the main legislative body that will approve
 18 the loan.
 19 So, the term "seaward," discussed in the
 20 committee, was not in the original draft. The
 21 original draft included a 200-meter protection area.
 22 But this was reduced to 125 meters so that it would be

12:05:02 1 the same as the '91 Decree. All technical opinions
 2 were heard as to how the Park should be constituted
 3 and nobody said that the Park should not have inland
 4 component. Rather, the draft included 200 meters of
 5 protected beach, and this was reduced to 125 meters.
 6 So, through this process, and this was not discussed.
 7 The word "seaward" was introduced.

8 In the end, after the conclusion of the
 9 discussion, at the very, very end of the discussion,
 10 there was some motion that was submitted, and a
 11 suggestion was made, or a proposal was made to exclude
 12 the coastline. And I reiterate, in the analysis of
 13 this article, I thought the most adequate and logical
 14 solution that would fit the purpose of the law was
 15 that, if there was an error, there was an error that
 16 would hamper the application of the law that was
 17 contradictory. So, the error was in the use of the
 18 term "seaward."

19 PRESIDENT BETHLEHEM: I've just been handed a
 20 note to ask you to speak slowly for purposes of
 21 interpretation. Thank you.

22 THE WITNESS: Yes. Pardon.

12:06:27 1 BY MR. COWPER:
 2 Q. Have you finished the answer to my question,
 3 sir? Do you remember what my question was?

4 THE WITNESS:
 5 A. If what I said was understood, yes.
 6 Otherwise, I could repeat it.

7 Q. I don't think it's necessary to repeat it.
 8 Let me just--I will try to ask you more narrow
 9 questions, if I haven't succeeded at doing that.

10 If you look in the black binder--because I
 11 may have--I want to go to the 1991 Law, and if you
 12 look in the black binder, at the front of the binder,
 13 is, I think, a copy of Exhibit C-1b. Sorry, yours is
 14 white and mine is black. I apologize, sir. The big
 15 binder that we gave to you.

16 A. The white one?
 17 Q. Yes, blanca. It's not that I'm color-blind.
 18 It is just that we have different colors of binders.

19 If you look at the front of the binder,
 20 there's two stapled documents. I put that there for
 21 your reference so we can use it.

22 Do you have the Exhibit C-1b, which is the

12:07:39 1 translation of the 1991 Law?
 2 A. I'm sorry. I can't find it. Where is it?
 3 Q. Have you found it now, sir?
 4 A. C-1b. Yes.
 5 Q. Thank you.
 6 Just returning, I think I said to you that
 7 there were two coordinates given in the 1991 Law. If
 8 you look at Article 1 of the 1991 Law, if I read it
 9 correctly, there is no geographic coordinate given for
 10 the point at the south of Playa Ventanas. Do you see
 11 that?

12 A. There's a coordinate to the southeast.
 13 Q. Yes. So in the 1991 Law, there is only one
 14 geographic coordinate provided at the southern part of
 15 the area described. The northern part is simply
 16 described as a point in the southern end of Playa
 17 Ventanas?

18 A. Correct.
 19 Q. And I take it, to your knowledge, that point
 20 was "never settled"?
 21 A. What are you talking about when you say that
 22 it was never settled?

12:09:21 1 Q. It was never defined in an official way
 2 between 1991 and 1995.
 3 A. I don't know.
 4 Q. Did you see any map of the Park described in
 5 the 1991 Decree that was an official map starting with
 6 and describing the point, the southern end of the
 7 Playa Ventanas?

8 A. No. No, I didn't see any official map.
 9 Q. Now, if we return to the coordinates that you
 10 had to consider in your work, if you look at the
 11 northern coordinates, sir, am I right in thinking that
 12 that coordinate does not describe a point at the high
 13 tide?

14 MS. MCCANDLESS: Sorry; could you please put
 15 the document maybe in front of him so he can refresh
 16 his recollection?

17 BY MR. COWPER:
 18 Q. Return to your Opinion, sir--that is,
 19 perhaps, a place to do it--under Tab 3 of the black
 20 binder.

21 I'll repeat the question. My understanding
 22 is that the point described as the north of that area

12:11:12 1 is not indicating a point at the high tide. It's
 2 indicating a point over the coastal reefs?
 3 A. No, not the high tide.
 4 Q. And am I right in thinking that this southern
 5 coordinate is also an area that is not technically a
 6 point exactly at the high tide?
 7 A. I don't know. Those are technical questions.
 8 I'm a lawyer. I'm not a geographer.
 9 Q. Could you turn to--keep that beside you, if
 10 you like, but if you go to Tab 25 of the white binder,
 11 and I'm dealing with the English translation of the
 12 request of May 5, 2003. But in Paragraph 1 of the
 13 first consideration for your attention, it says that
 14 the coordinates where the coastal strip begins are
 15 located over the coastal reefs.
 16 Do you see that under Paragraph 1?
 17 A. I don't have any document in Tab 5.
 18 THE INTERPRETER: Neither does the
 19 interpreter.
 20 BY MR. COWPER:
 21 Q. I'm sorry if I said 5. I'm mistaken. 25. I
 22 apologize. We're going back to 25.

12:13:18 1 A. Yes, there's a legal opinion here, but...
 2 Q. I think we've already been to this document.
 3 This is, I thought, the original request to you, to
 4 your department, and my only question, sir, is, the
 5 coordinate at the north in this letter is described as
 6 beginning over the coastal reefs, which is not the
 7 high tide mark; correct?
 8 At the bottom of the first page.
 9 A. Could you please point out where you're
 10 reading?
 11 Q. In the English translation, Paragraph 1, at
 12 the bottom of the first page, and I'll read the
 13 English, and then you can take a moment if you want.
 14 It says, "Though the coordinates where the coastal
 15 strip begins, north 259.100 and east 332.000 are
 16 located over the coastal reefs."
 17 Do you see that?
 18 A. I apologize, I can't find that paragraph.
 19 Q. Just to be clear, I'm in 25, Tab 25, and in
 20 both the English and the French, I see this--the
 21 English and the Spanish, I see the same Paragraph 1.
 22 Maybe Ms. Mitretodis could just help to make

12:15:08 1 sure we're on the same tab.
 2 (Overlapping interpretation.)
 3 A. Yes, okay.
 4 Q. My question, sir, was that the first
 5 coordinates referred to in the request of May 5, 2003,
 6 are said to be located over the coastal reefs and not
 7 the high tide line; correct?
 8 A. Correct.
 9 Q. And at the top of the next page, the second
 10 coordinates are said to be inland 120 meters from the
 11 center of the coastal strip, but not from the high
 12 tide line. There's no reference to it either be
 13 120 meters from the high tide line or being the high
 14 tide line; correct?
 15 A. According to the Minister's question? No.
 16 Q. So let me just suggest this to you, sir.
 17 From a cartographic point of view, whether the Park
 18 extended into the marine area or into the land area,
 19 it would require cartographic fixing in either event
 20 to coordinate it with the high tide line?
 21 A. I don't know that. That's not my field of
 22 expertise. I'm not a geographer, I'm not a

12:17:15 1 topographer. The interpretation I was making was that
 2 the high tide was the starting point of 125 meters,
 3 whether they go inland or seaward. The mean high tide
 4 has already been established. It's already
 5 established.
 6 Q. Let me turn to a different point then. With
 7 respect to the comment you made earlier of the
 8 duplication of an area that would go seaward in the
 9 same law that also protects the waters offshore, okay,
 10 you made that comment earlier that that would be a
 11 duplication; correct?
 12 A. No. What I explained is the following:
 13 Article 1 of the law establishing the Park establishes
 14 that the territorial waters of the Tamarindo Bay were
 15 part of the Park. So beyond that, if you understand
 16 that this parallel line to high tide goes seaward and
 17 that that is the Park--a strip of 125 meters--it
 18 doesn't make any sense because that article has
 19 already stated that all territorial waters of the
 20 Tamarindo Bay are part of the Park. So why do you
 21 need to create 125-meter strip declaring to a Park if
 22 it's already part of the Park?

12:19:04 1 Therefore, the 125 meters--for those
 2 125 meters to make sense in the context of that
 3 article is for the 125 meters to be inland. It would
 4 make no sense to say that they are seaward because
 5 those waters are already part of the Park because all
 6 territorial waters of the Tamarindo Bay are already
 7 part of the Park in accordance with Article 1. If you
 8 look at Article 1, you will see that.
 9 Q. Okay. So returning to the--and let me put
 10 this question to you directly. I suggest to you, sir,
 11 that, with respect to your conclusion that there was a
 12 mistake in the wording of Article 1, that, if there
 13 was any mistake, it was an intentional mistake
 14 introduced into the law by the deputies who
 15 unanimously voted in favor of an area defined towards
 16 the sea.
 17 A. I don't know whether it's intentional or not.
 18 I cannot speak to that. What I can say is that the
 19 article contains an error, and it can be solved
 20 through interpretation of the rule.
 21 Q. Let me try this a different way, sir. I'm
 22 suggesting to you that it was not unintentional that

12:20:24 1 the word "seaward" was included in the law, and that
 2 the Congress intended the area defined by the
 3 boundaries to proceed to the sea from the coordinates
 4 rather than inland. It was not a typographical error
 5 or an unintentional error. It was an intentional
 6 introduction to the law.
 7 MS. McCANDLESS: Do you have a question for
 8 the Witness?
 9 PRESIDENT BETHLEHEM: I think he put a
 10 question to the Witness.
 11 MS. McCANDLESS: I didn't hear.
 12 THE WITNESS: So what is the question?
 13 MR. COWPER: That's good coaching.
 14 BY MR. COWPER:
 15 Q. I'll try it again, and I apologize if the
 16 question was not as well expressed as it might.
 17 Mr. Jurado, I'm suggesting to you that when
 18 you reviewed this, you knew that this was not a
 19 mistake in the sense that the law was referring to
 20 "seawards" as a mistaken intent, but, rather, that the
 21 deputies had decided to change the boundaries to the
 22 "seaward."

12:21:35 1 A. But I also knew that the deputies had
 2 approved in the same law other provisions that
 3 contradicted that term "seaward." So, what was the
 4 right one? "Seaward" or protecting the turtles laying
 5 eggs? That could not be done. If you create
 6 125 meters in an area that was not part of the Park,
 7 then you are protecting the turtles that were not
 8 protected by the 50 meters, so the legal issue here
 9 was the purpose of the legislature was the totality of
 10 the law.
 11 Q. Mr. Jurado, you, of course, have the
 12 responsibility today with SINAC; correct?
 13 A. Yes, sir.
 14 Q. And is there a publicly available, official
 15 Government map of this Park available today?
 16 A. Publicly available? No, because it has not
 17 been published, but it has already been drafted.
 18 Q. This will get on to something I'll get to
 19 after lunch, but I take it that the preparation of an
 20 official cartographic map was one of the
 21 recommendations of the Contraloría?
 22 A. Yes.

12:23:31 1 Q. And I'm correct that that process is still
 2 underway?
 3 A. The only thing that is missing is the
 4 publication of the map. It's already been drafted.
 5 Q. Someone is going to ask: It has not been
 6 filed in these proceedings, has it?
 7 A. As far as I know, no, but I don't know.
 8 Q. Just before we take the lunch break, let me
 9 deal with a couple other matters arising out of your
 10 evidence, Mr. Jurado. Firstly, I suggest to you, sir,
 11 that there was no environmental report accompanying
 12 the file that supported the necessity of a Park that
 13 proceeded 125 meters inland rather than 125 meters
 14 offshore.
 15 A. Is that your Opinion, or are you asking me a
 16 question?
 17 Q. I'm asking you to agree with me that, in the
 18 material that was sent to you, you said earlier about
 19 the necessity of 125 meters to protect the nesting
 20 sites of the turtles. I'm just suggesting to you that
 21 there wasn't any Technical Report that supported that
 22 conclusion.

12:25:23 1 A. I don't know.
 2 Q. Do you recall one?
 3 A. No. The creation of a park does not always
 4 entail a Technical Report.
 5 MR. COWPER: Mr. Chairman, I'm not going to
 6 finish before lunch, so I'd appreciate, perhaps,
 7 taking a lunch break now, and I'll endeavor to finish
 8 in the afternoon.
 9 PRESIDENT BETHLEHEM: Could we just suspend
 10 for a moment, and I'd like to see lead counsel for
 11 both sides. Off the record, please.
 12 (Pause.)
 13 PRESIDENT BETHLEHEM: I think what we will do
 14 now, we would like to get the evidence complete before
 15 the lunch break, but we will take a 15-minute recess
 16 at this point, and then we'll reconvene at a quarter
 17 to--in other words, at 12:45, for the continuation of
 18 the cross-examination.
 19 And just before we break, Dr. Jurado, let me
 20 remind you that you are still a witness subject to
 21 your declaration, and please do not discuss your
 22 evidence with any of your colleagues or any of your

12:28:31 1 counsel until we reconvene. Thank you very much.
 2 We'll reconvene in 15 minutes' time.
 3 (Brief recess.)
 4 PRESIDENT BETHLEHEM: We can recommence.
 5 Mr. Cowper, you were in the middle of your
 6 cross-examination.
 7 BY MR. COWPER:
 8 Q. Thank you, Mr. Jurado. We're back. And let
 9 me just pick up something from what you said before
 10 the break.
 11 You said that you were concerned about legal
 12 protection for the beach if the Law of 1995 was
 13 properly read as having the boundaries extend seaward,
 14 and let me ask you this question--and I, of course, am
 15 not a Costa Rican lawyer, but my understanding is that
 16 the Refuge Law relating to Tamarindo, which preceded
 17 the 1991 Decree and the 1995 Park Law, protected the
 18 beach in the Tamarindo Refuge area. Is that not
 19 correct?
 20 A. But not with the legal regime of a Park.
 21 Q. Okay. But it did represent legal protection
 22 for the beach area; correct?

12:45:52 1 A. I'm not sure whether the Refuge included that
 2 part. I know there's a Refuge for Tamarindo, but I
 3 don't know if it extended to that part. I don't
 4 recall right now. I can't give you an opinion in that
 5 regard.
 6 What I can tell you is that the 50-meter
 7 strip alone does not have any environmental protection
 8 provisions. It would have to be incorporated into
 9 some legal regime for environmental protection. In
 10 this case, the Park is the most conservationist regime
 11 that we have in the Costa Rican legal system.
 12 Refuges don't enjoy the same degree of
 13 protection.
 14 Q. I'll ask it one more time. The
 15 pre--if--if--and you said you don't recall. But if it
 16 was an area within the Tamarindo Refuge, which I'm
 17 instructed it is, then it would have had legal
 18 protection, just not as high of legal protection as a
 19 Park; correct?
 20 A. It would have had a level of protection, that
 21 is correct.
 22 Q. A couple of other different topics. With

12:47:10 1 respect to the reference in the 1995 Park Law to
 2 territorial waters, would you agree with me that under
 3 Costa Rican Law, there's a difference between
 4 "territorial waters" and "interior waters"?
 5 A. There is a difference, yes. But the law has
 6 to do with, or speaks of, territorial waters.
 7 Q. In the general sense, is it not the case that
 8 territorial waters are defined in Costa Rican Law in
 9 respect of bays, to headland to headland lines
 10 proceeding out into the ocean?
 11 A. The territorial waters are the 12 miles out
 12 from the coast and seaward.
 13 Q. Yes. And in respect of a bay, is it not the
 14 case that the line defining the territorial waters
 15 proceeds from headland to headland in respect of a bay
 16 and then out to the ocean in the respect of
 17 territorial waters?
 18 A. Yes, but the internal waters are also part of
 19 territorial waters. They are part of Costa Rica
 20 territory.
 21 Q. The next point, sir. In relation to the 1995
 22 Law, there's a reference in the instructions to you

12:48:50 1 concerning private land in the Park. On your review,
2 will you agree with me that there was private land in
3 the Park, whether or not the description of the
4 boundaries proceeded inland or offshore?

5 A. Yes, because the lands of the hills that were
6 incorporated with the '95 Law were included.

7 Q. Thank you.

8 I'd like to turn to the Contraloría Report,
9 and if you have your white binder, it's under Tab 15.

10 MR. COWPER: Mr. President, we do not have a
11 full translation of that report. We have a partial
12 translation. There is a full copy of the Spanish
13 original in the record.

14 I'm told, by the way, because we're going to
15 be finishing before lunch, that the translation of the
16 Opinion is partial at this point. We're looking. We
17 don't believe that Respondent filed a complete
18 translation of that, so we'll undertake to just find
19 out if that partial extract can be fixed.

20 BY MR. COWPER:

21 Q. Coming back to the Contraloría Report--and
22 I'm changing topics just a bit here, Mr. Jurado, and

12:52:08 1 general criticism of all of the boundaries described
2 in the 1995 Park Law.

3 A. Yes. I know that the Report mentions the
4 boundaries of the Park, but it's not the page you're
5 referring me to. I'm at 2.11.

6 Q. Mr. Jurado, I'm at Section 2.1 of the Report,
7 not 2.11, which is at Page 7 and Page 10 of 92. If
8 you go back three pages at Section 2.1. Okay. We're
9 now at the same place. Thank you. I'm sorry if I
10 wasn't helpful to you there.

11 I think you've already answered my question,
12 but I'll just restate it. In this section of the
13 Report, the Contraloría is actually critical of the
14 boundaries of the Park as it relates not only to the
15 question we've been dealing with, but also the
16 question of the description of lands, the use of the
17 term "territorial waters," and the references to
18 El Morro Hill, Verde Island, all which of are being
19 inadequately described.

20 Isn't that a fair summary?

21 A. Well, that is your way of understanding what
22 the Office of the--what the Contraloría has said.

12:50:34 1 I'm going to be working with the English language
2 translation.

3 But if you could, please, I'd like to start
4 with Page 7 of 92 from Tab 15, which is Exhibit C-1zk,
5 which I think then qualifies me as a Canadian.

6 A. I'm sorry. Are you referring to Page 7 of
7 the Report?

8 Q. No. I'm sorry. If we're using that, it is
9 Page 4 of the Report in English if we are looking at
10 the number in the middle. I'm looking to direct you
11 to the Section 2.1, "Weaknesses Related to Delimiting
12 the Park ."

13 PRESIDENT BETHLEHEM: Would you like to refer
14 to the page numbers at the top right-hand side corner
15 also for our benefit?

16 MR. COWPER: Yes. Page 7 of 92 from
17 Exhibit C-1zk.

18 THE WITNESS: Yes.

19 BY MR. COWPER:

20 Q. Thank you, Mr. Jurado. Now my question to
21 you is this, and that is: In the Contraloría's
22 Report, I'm going to suggest to you that there was a

12:54:17 1 What I would agree with you on is that the Contraloría
2 analyzes the weaknesses of the delimitation of the
3 Park. In that analysis, it agrees with the
4 Procuraduría that "aguas adentro," or "seaward," is an
5 error.

6 Q. Am I not right that by the date of this
7 Report in 2010, you actually have a binding decision
8 of your highest court on that question?

9 A. Yes, of course. There was a decision by the
10 Constitutional Court on this issue which reached a
11 conclusion similar to the conclusion I had reached in
12 my opinion. The Constitutional Court noted several
13 things. Among others, that a park could not be
14 reduced without a technical study, and the expression
15 "seaward" implied reduction in the area of the Park.
16 The Court reached a similar conclusion, yes.

17 Q. And to be clear, sir, I'm not appealing that
18 decision to you today. I'm just dealing with this
19 Report. So, on this Report in other areas there were
20 clearly boundary issues such as--and I'll break them
21 down--there was an inadequate description of El Morro.

22 A. Can you show me where it says that?

12:55:58 1 Q. I'm looking at Page 5 after the sentence you
 2 just referred to, the next sentence. Let me read the
 3 whole section. The language I'm relying on, sir,
 4 understanding, in the next sentence you refer to the
 5 typographical error passage. The next sentence
 6 includes this language (reading): Other zones like
 7 the hill behind Ventanas Beach, El Morro Hill, and the
 8 sector known as Verde Island are not clearly defined
 9 in terms of the location and geographic extent.
 10 Do you see that language?
 11 PRESIDENT BETHLEHEM: I think for the
 12 record--
 13 BY MR. COWPER:
 14 Q. I think you're nodding, sir, but it would be
 15 helpful if you say yes or no. I take it the answer is
 16 yes.
 17 A. Yes, that is correct. The Report says.
 18 Q. And I'm going to move on now to the
 19 Contraloría Report more broadly. But starting with
 20 this observation, as I understand it, one of the
 21 recommendations of the Contraloría was that SINAC
 22 would create an official map of the Park. And at the

12:57:32 1 end of that section, it's characterized as a
 2 fundamental element to determine the lands located
 3 within the Park; is that fair?
 4 A. That is correct.
 5 Q. Now, let me move to another topic.
 6 In the Contraloría Report, it is also very
 7 critical of the delays in processing expropriations;
 8 is that not correct?
 9 A. At what part of the Opinion or Report?
 10 Q. If you look at the very next part to the one
 11 we were dealing with--and I can look at specific
 12 language, if you like--but would you agree with me
 13 that there was generally a criticism of delays
 14 associated with the expropriation processes?
 15 A. From what I recall of the Report, it
 16 indicated that as a problem, yes.
 17 Q. Okay. Perhaps--let me take one passage to
 18 remind you. I'm sorry if I was taxing your memory.
 19 But at the top of Page 7, which is Page 10 of
 20 92, this report speaks about the process beginning in
 21 2005, nearly 14 years after the creation of the Park
 22 by Executive Decree and 10 years after the 1995 Park

12:59:20 1 Law. Do you see that criticism?
 2 A. Can you tell me exactly what the paragraph
 3 is? If you could point it out to me.
 4 Q. I'm sorry. It's the first paragraph on
 5 Page 7, over the next page.
 6 MR. ALEXANDROV: Mr. President, because
 7 counsel is operating on an English text translation,
 8 Mr. Jurado has a Spanish text. We would not object if
 9 someone on counsel's team points both the Witness and,
 10 perhaps, us to the language in the Spanish text so
 11 that we can quickly deal with that.
 12 PRESIDENT BETHLEHEM: I think that would be
 13 helpful. I think, as I read it, the numbers in the
 14 center of the page at the top, in fact, are
 15 corresponding. But it would be helpful if counsel for
 16 the Claimant could refer to both the Spanish and
 17 English version just to assist the Witness, please.
 18 MR. ALEXANDROV: And our only request is that
 19 he points us as well to the relevant Spanish text.
 20 PRESIDENT BETHLEHEM: He will say so orally.
 21 MR. COWPER: Yes, I'll do so. That is
 22 guaranteed not to speed it up, but that I will

01:00:33 1 absolutely do.
 2 BY MR. COWPER:
 3 Q. So, Mr. Jurado, the passage in Spanish as I
 4 read it is at Page 7 of the Spanish text.
 5 A. Yes.
 6 Q. Am I right in thinking, just before I pass on
 7 from the Cerro el Morro reference, that that property
 8 has never been expropriated?
 9 A. Quite sincerely, I don't know whether it has
 10 been expropriated.
 11 Q. It will help me if--maybe I should have asked
 12 this question: I assume in your current position, one
 13 of your responsibilities to implement this Report?
 14 A. Yes, sir. But, perhaps, I should explain how
 15 the system works. The SINAC is an organ that is
 16 regionalized. Each region has a director, and the
 17 directors are the ones--well, the director in the
 18 conservation area that corresponds to this area, which
 19 is Tempisque, is responsible for implementing the
 20 provisions of the Contraloría.
 21 My duty is general supervision. And as you
 22 know and as we have said here, the process is somewhat

01:02:19 1 suspended. Actually not much has happened since I've
2 been there. A lot of it is still in the judicial
3 process, and that process is not handled by SINAC but
4 by the Procuraduría. In the judicial part, I mean the
5 expropriations.

6 So, for purposes of this statement, I can
7 tell you which properties, which homes have been
8 expropriated, and which haven't. I don't have those
9 details at hand, but it's the details of those events
10 that I don't really have at hand right now.

11 Q. Let me move on to another topic then. And
12 keep your finger on the same page, but another topic
13 is the proposal to annul lands or to pursue the
14 annulment of private-property titles as part of the
15 implementation of the Report.

16 My understanding is that is still a proposal
17 under consideration by the Government of Costa Rica.

18 A. It's not exactly a proposal to annul title.
19 What the Contraloría does is recommend or ask that a
20 legal study be conducted as to the correct
21 registration of title. And that is a reasonable
22 request because potential annulment of titles would

01:03:51 1 mean that the property would revert to the State and,
2 therefore, it cannot be expropriated.

3 The Contraloría, who is the inspector who
4 controls the property, wants to focus that the
5 expropriation is only of the private property, and not
6 the property revert to the State. So they asked for a
7 study to be conducted, a study of the registration of
8 those titles to see if they were properly registered.

9 We don't yet have the outcome of that study.
10 And in any event, that would have to be determined by
11 a judge. It's not SINAC who can decide that.

12 The study would be prepared. It would be
13 remitted to the Procuraduría, and the Procuraduría
14 would then decide whether there are sufficient grounds
15 to initiate the judicial processes tending towards
16 annulation. But it's not that we are moving towards
17 an annulment or is there any annulment under
18 consideration. There is just a provision by the
19 Contraloría ordering that the study be carried out of
20 the registration of those titles to see if there is
21 any grounds to, perhaps, initiate a lawsuit.

22 Q. This recommendation was made in 2010?

01:05:08 1 A. It's included in the Contraloría's Report of
2 2010, yes.

3 Q. And that study that you just referred to is
4 still ongoing?

5 A. As far as I know, yes, it's still ongoing.

6 Q. And to be clear--and let me just summarize
7 that--that includes a study of the Claimants'
8 properties?

9 A. Yes, of course, it would include them.

10 Q. And to be clear: If annulment was
11 successful, then no payment would be made to the
12 Claimants in respect of those properties?

13 A. If the annulment were successful judicially,
14 if it were possible to demonstrate that the
15 registrations were incorrectly done at the time, that
16 would result in annulment of title. Should that
17 annulment imply that the property reverts to the
18 State, there would be no compensation for that, and
19 the holder is affected--and this can happen to any
20 person in Costa Rica. It is not particular to this
21 case only.

22 But anyone impacted by such a situation could

01:06:39 1 file suit against whoever sold the property to them
2 and when it was. Or they could also file for damages
3 from the State. If the incorrect registration of the
4 title, if the State had made a mistake, if there were
5 some responsibility in the registry system--because,
6 after all, in Costa Rica there is a centralized
7 property registry carried out by the State. And if
8 the mistake were made by the registry system, then the
9 State would have some responsibility.

10 If the error had not been a mistake, then
11 there would not be any State responsibility.

12 There are ways for holders who are affected
13 by such a situation may seek remedy for the economic
14 damage sustained by acquiring a property that is then
15 annulled.

16 But this is still hypothetical. The study
17 hasn't been completed. We don't know if this is the
18 case. We don't know if it applies to the property of
19 the Claimants or of anyone else, for that matter.

20 In order to reach that point, we'd have to go
21 back to Procuraduría for them to have a sufficiently
22 in-depth legal analysis. And these processes are not

01:07:54 1 easy. One has to be absolutely certain that there is
2 truly an annulment of the registry of the title that
3 could then lead to such annulment. And when the
4 Procuraduría reached such a decision, then there would
5 be a case to be brought.

6 And the State would have the burden of the
7 proof; they would have to prove the incorrect
8 registration of those titles. And the holders could
9 then defend themselves in that area, and nobody would
10 know what the outcome of such a process could
11 eventually be.

12 Q. Could you turn to Tab 29, sir. This is a
13 chart which discusses or charts the compliance of
14 MINAE and SINAC with the Contraloría Report. And if
15 you could turn to Page 5 of that exhibit. And I'm
16 going to use the English, but I will now search for
17 the Spanish.

18 A. Yes.

19 Q. Do you have the same thing? My note of this
20 is that it is under--it should have in the upper
21 right-hand corner the letter "B" and "llevar a cabo"
22 is the first three words in Spanish, if you're using

01:11:14 1 A. Yes.

2 Q. Now, my reading of that is that the
3 suspension was to enable that to occur and for
4 documents that included that appraisal to be finished
5 by 21 May 2010, and the suspension referred to there
6 was not an indefinite suspension. Is that not
7 correct?

8 A. Correct.

9 Q. If we could go back to the Contraloría
10 Report, please.

11 PRESIDENT BETHLEHEM: Could you remind us of
12 the tab number, please.

13 MR. COWPER: I apologize, Mr. President.
14 Tab 15.

15 BY MR. COWPER:

16 Q. And I'm going to ask you to go to Page 23.
17 And I believe, if you can just give me a moment, I'll
18 try to locate myself to make sure I'm in the same.
19 Yes, it's Page 23 in the Spanish, sir.

20 And I'm drawing your attention to a different
21 topic now under Paragraph B in the Contraloría Report,
22 it speaks about (reading): "An environment of

01:09:43 1 the Spanish. The Spanish version I have behind second
2 half of Tab 29.

3 And my question to you, sir, is this, and
4 that is--I want to ask you, firstly, my reading of
5 this Report was that there was to be a decision as to
6 whether to pursue annulment proceedings almost
7 five years ago. That the decision whether to do that
8 was to be made and reported to the Contraloría in the
9 spring of 2010; is that correct?

10 A. It is correct. April 30. That's not really
11 spring in Costa Rica, but that was the date, 30 April.

12 Q. If you look at the same page, at the third
13 paragraph, this is a paragraph referring to suspending
14 procedures in the administrative phase. Do you see
15 that?

16 A. Yes.

17 Q. And it says to abstain from new processes
18 with respect to PNMB lands and original plots. And
19 then if you drop down, it says, "Send a copy of the
20 documents that contain said appraisal to this
21 oversight agency no longer than the 21st of May 2010."
22 Do you see that?

01:12:43 1 misinformation at SINAC regarding the actions proposed
2 by those instances within the judicial phase of the
3 process which prevents effective monitoring of the
4 expropriations development."

5 Do you see that?

6 A. Yes, that sentence is here, yes.

7 Q. Well, let me break it down. You agree that
8 that was a criticism made of SINAC at this time by the
9 Contraloría?

10 A. Yes, it was a criticism made in that year.
11 Yes.

12 MR. COWPER: If I could just have a moment,
13 Mr. President. I'm wrapping up now.

14 (Pause.)

15 BY MR. COWPER:

16 Q. Mr. Jurado, just one more question, please,
17 sir. In the event that the boundary of the Park is
18 eventually delimited in an official way, is it part of
19 the obligation under Park Law to delineate that area
20 with fencing and to prevent the owners of private
21 lands passing directly into the beach area?

22 A. To be quite honest, I don't recall if there

01:15:39 1 was any express provision about that. But in any
 2 event, entry to parks is controlled by the
 3 conservation areas. There is no free entry into
 4 parks. It has to be an authorized entry, and it's
 5 SINAC personnel that authorizes such access.
 6 So it's an authorized entry. In other words,
 7 in order to enter, you need to have a permit. In some
 8 Parks there is also a fee to enter and enjoy the Park.
 9 But in any event, it's implicit in the creation of a
 10 Park that the limits have to be protected. Yes, of
 11 course, in order to be able to conduct the
 12 conservation work.
 13 MR. COWPER: Those are my questions,
 14 Mr. President.
 15 PRESIDENT BETHLEHEM: Thank you, Mr. Cowper.
 16 Respondent.
 17 MS. McCANDLESS: Can we take a couple
 18 minutes, and I will let you know if we have any
 19 additional questions?
 20 PRESIDENT BETHLEHEM: Sure.
 21 (Pause.)
 22 MS. McCANDLESS: Okay. We have no questions.

01:17:00 1 PRESIDENT BETHLEHEM: Thank you. I think the
 2 Members of the Tribunal do have some brief questions.
 3 Mr. Kantor.
 4 QUESTIONS FROM THE TRIBUNAL
 5 ARBITRATOR KANTOR: Mr. Jurado, gracias.
 6 Thank you, Mr. Jurado. As you know, I cannot express
 7 myself in Spanish. Thank you.
 8 I have a couple of questions about the Report
 9 of the Contraloría and also the chart, which is found
 10 in Tab 29 of the volume in front of you of compliance
 11 with the Report. First, on the Report itself, in the
 12 English language version, Page 7--also known as
 13 Page 10 of 92--the first paragraph.
 14 PRESIDENT BETHLEHEM: You might want to refer
 15 him to the Spanish one as well.
 16 ARBITRATOR KANTOR: Right.
 17 With apologies, that is also in Spanish.
 18 PRESIDENT BETHLEHEM: 40 of 92.
 19 ARBITRATOR KANTOR: 40 of 92? Thank you very
 20 much. Yes.
 21 40 of 92, Section 2.1.1. The very first
 22 paragraph of that section says that SINAC, during this

01:18:27 1 time, had 64 cases of land in the process of
 2 expropriation: 40 in administrative, 24 in judicial.
 3 Does that mean that all of the claims before this
 4 Arbitral Tribunal, whether in administrative phase or
 5 a judicial phase, are encompassed within this section?
 6 THE WITNESS: It is my understanding that
 7 that's the case.
 8 ARBITRATOR KANTOR: Thank you.
 9 Do I, therefore, also understand that the
 10 studies being undertaken on behalf of SINAC about
 11 whether it is or is not appropriate to annul title
 12 encompass all of the properties in this arbitration?
 13 THE WITNESS: My understanding is that those
 14 properties are included, yes.
 15 ARBITRATOR KANTOR: Thank you.
 16 Could you turn to Document Number 29 in the
 17 volume, which is the chart of compliance. In English,
 18 Page 8; in Spanish, an unnumbered page. But in each
 19 case, I'm looking at Section 4.2, "disposiciones a la
 20 directorate al hectita del fina." Apologies for my
 21 pronunciation. Let me know when you've arrived at the
 22 proper page.

01:20:40 1 Could you take a moment and read to yourself
 2 the left-hand column for Sections 4.2(a) and 4.2(b) on
 3 the next page. I need your help with these sections.
 4 THE WITNESS: I'm sorry, but I haven't yet
 5 found that section. Could you please repeat your
 6 instructions?
 7 ARBITRATOR KANTOR: Okay. There is no page
 8 number in the Spanish language. So, if you find the
 9 section on the left side marked 4.2.
 10 PRESIDENT BETHLEHEM: It's six from the back.
 11 ARBITRATOR KANTOR: Six from the back, he
 12 says. Okay. Do you have that section? There is a
 13 subclause (a), and then there's a subclause (b) on the
 14 next page. Could you please read both of them to
 15 yourself to become familiar with those two sections?
 16 THE WITNESS: Yes, sir.
 17 ARBITRATOR KANTOR: Thank you.
 18 Subclause (a), part of my problem is that
 19 there is a reference in the first paragraph to .2.2.2
 20 of the Contraloría Report. There is no such section
 21 in the Contraloría Report. There is a Section 2.1.2
 22 in the Contraloría Report in Spanish, but not in the

01:23:15 1 English translation.
 2 Because I don't speak Spanish very well, I'm
 3 having a hard time understanding what the actions are
 4 here that the Comptroller General recommended SINAC to
 5 undertake. So, for the first paragraph of
 6 subclause (a), can you explain to me your
 7 understanding of what it was the Comptroller General
 8 was stating as actions the Executive Board of SINAC
 9 should be undertaking?
 10 THE WITNESS: Let me first clarify one point.
 11 This compliance table was prepared by the Contraloría
 12 itself. If there is a mistake in this reference to
 13 2.2.2, it's a mistake made by the Contraloría.
 14 They're referring to the document.
 15 In any event, what I understand from this
 16 provision is that a manual has to be prepared showing
 17 which are the procedures that have to be followed
 18 administratively in order to conduct the expropriation
 19 that ensures interagency coordination relating to
 20 these processes and specifying the role of each one of
 21 the institutions that are involved in the
 22 administrative expropriation process. It's a manual

01:24:46 1 as to actions to be taken. The purpose is to have a
 2 uniform operation administratively when talking about
 3 these administrative processes.
 4 ARBITRATOR KANTOR: When I tried to
 5 understand the Comptroller General's report in
 6 Section 2.1.2, which is starting on Page 47 of 92--and
 7 that is Tab 15, Page 14 in the Spanish language
 8 version. And I'll wait until you get there.
 9 (Pause.)
 10 THE WITNESS: Page 14, 47 of 92?
 11 ARBITRATOR KANTOR: Correct. I understood
 12 that to be a series of comments about the absence of
 13 internal procedures in SINAC regarding the process of
 14 expropriation; is that correct?
 15 THE WITNESS: Yes.
 16 ARBITRATOR KANTOR: Okay. Does that comment
 17 relate to, among other matters, the properties at
 18 issue in this arbitration?
 19 THE WITNESS: Yes, it does affect them. The
 20 purpose of the Contraloría's Report was to improve the
 21 administrative process for expropriations. In this
 22 case, it's in general, but it also means everything

01:26:40 1 relating to baulas because there weren't uniform
 2 procedures, so the procedures had to be as closely
 3 linked to the legal standpoint and also to be
 4 administratively correct.
 5 ARBITRATOR KANTOR: Do I understand correctly
 6 that, in connection with the Comptroller General's
 7 report, the procedures, both administrative and
 8 judicial for these properties, were suspended?
 9 THE WITNESS: Only the administrative ones.
 10 The judicial ones cannot be suspended through a
 11 provision of the Contraloría.
 12 ARBITRATOR KANTOR: Do you know whether the
 13 Attorney General's office suspended its activities
 14 regarding the judicial proceedings in light of the
 15 Comptroller General's Report?
 16 THE WITNESS: I do not know it, based on
 17 personal experience, but I can assure you it was not
 18 done because he has no legal standing to do so. The
 19 Report of the Contraloría cannot suspend judicial
 20 procedures. And I presume it didn't do so. I think
 21 they are underway. They are ongoing.
 22 ARBITRATOR KANTOR: Okay. Thank you. Can

01:27:55 1 you turn back to Document 29 and explain to me, if you
 2 will, the second paragraph in Section 4.2.
 3 THE WITNESS: What I understand from this
 4 paragraph is that the manual must contain a procedure
 5 to be followed when there are significant differences
 6 between administrative assessments or valuations
 7 between themselves and also with regard to the
 8 judicial valuation, and these procedures have to be
 9 geared towards ensuring that SINAC can clarify with
 10 resources at hand why it has these differences.
 11 ARBITRATOR KANTOR: This paragraphs refers to
 12 .2.2.5 of the report. There is, again, no
 13 Section 2.2.5 of the report. There is a Section 2.1.5
 14 of the Report, which fortunately for me, has been
 15 translated into English. If you could turn back to
 16 Document 15, this section would be, in English, on
 17 Page 18 of 92 and, in Spanish, on Page 53 of 92.
 18 When I reviewed this section of the
 19 Comptroller General's Report, it appeared to me that
 20 the Comptroller General was raising issues about
 21 significant differences between the amounts of
 22 compensation specified in administrative appraisals

01:30:23 1 and the amounts of compensation specified in judicial
 2 review of the same properties. Did I correctly
 3 understand that?
 4 THE WITNESS: Correct.
 5 ARBITRATOR KANTOR: In response to
 6 this--going back now again to Document Number 29, the
 7 right-hand column for subclause (a)--the right-hand
 8 column says that SINAC, in fact, prepared an
 9 expropriation manual, and it was published in April of
 10 2013; is that correct?
 11 THE WITNESS: Yes.
 12 ARBITRATOR KANTOR: Is that manual in the
 13 record of this arbitration, do you know? I was unable
 14 to locate it, but I may be missing something.
 15 THE WITNESS: I don't know, sir.
 16 (No interpretation.)
 17 ARBITRATOR KANTOR: Apologies. I said, "I
 18 hope for guidance from counsel on that point."
 19 Do you know whether that manual published in
 20 2013 contained information about the computation of
 21 compensation for expropriated property?
 22 THE WITNESS: I don't know. I am not

01:32:14 1 familiar with the manual. This is not an excuse, but
 2 I have been in charge in this deposition for a short
 3 time, and because--and because of the leatherbacks, I
 4 have not been following the suspension--and this is
 5 managed, actually, by the conservation area and the
 6 regional offices.
 7 ARBITRATOR KANTOR: Thank you. And I'll move
 8 on to the next part of the chart, Clause B.
 9 Were you present when I asked questions of
 10 Mr. Piedra?
 11 THE WITNESS: Yes. Not all the time. I had
 12 to leave the room for a few seconds, but I was here
 13 most of the time.
 14 ARBITRATOR KANTOR: Do you recall what I
 15 asked him about certain documents, about expropriation
 16 priorities?
 17 THE WITNESS: Yes. Yeah. It's an
 18 expropriation strategy.
 19 ARBITRATOR KANTOR: Okay. Can you explain to
 20 me your understanding of what this strategy is
 21 intended to be?
 22 THE WITNESS: I would say that the basic

01:33:43 1 purpose is to establish priorities for the
 2 expropriations. What the properties--or what's the
 3 chronological order in which they must be
 4 expropriated? Which ones are more important to
 5 expropriate in terms of the conservation purposes of
 6 the Park? There should be a technical and scientific
 7 basis to establish that priority.
 8 ARBITRATOR KANTOR: If you could look on the
 9 left column in the description of Clause B, the
 10 English language description says that, in addition to
 11 relating to technical scientific variables, the
 12 strategy should also cover--and now I'm reading the
 13 English language--"a financial and legal nature,
 14 especially the legal status of land titles."
 15 Do you know if the strategy eventually
 16 adopted encompassed those subject areas?
 17 THE WITNESS: No. That strategy did not
 18 encompass these issues because these two purposes were
 19 divided. One is a technical and scientific grounds
 20 for the purchase or expropriation, and the other part
 21 requires a legal study that is being conducted
 22 separately. So, the legal study that is related to

01:35:11 1 this and should be incorporated in the strategy is
 2 what is missing. It's not been concluded yet.
 3 ARBITRATOR KANTOR: On the right-hand column,
 4 there's a reference to a document. Is that
 5 Document R-10 about which I asked Mr. Piedra, the 2002
 6 technical prioritization document?
 7 THE WITNESS: I apologize. I don't see a
 8 reference to Document R-10. Are you talking about the
 9 right-hand side?
 10 ARBITRATOR KANTOR: There is no reference to
 11 Document R-10. I apologize. I'm trying to connect
 12 the document described on the right-hand side to the
 13 exhibit in this arbitration known as R-10.
 14 Could someone please remind me where R-10 or
 15 its Claimant number equivalent might be in this volume
 16 so I can show the Witness?
 17 Perhaps, to expedite this matter, if someone
 18 has a copy of that document, which is
 19 Respondent's R-10, and I forget what it is on
 20 Claimants' side. If someone could just walk that over
 21 to Mr. Jurado, that might speed matters up. In
 22 Spanish, please.

01:37:37 1 Is that the document referred to in the
 2 right-hand column? Do you know?
 3 THE WITNESS: This is the strategy, the
 4 expropriation strategy.
 5 ARBITRATOR KANTOR: Did I correctly
 6 understand you to tell me just a few minutes ago that,
 7 the portion of the action described in the left side,
 8 Clause B, relating to financial and legal nature,
 9 including legal status of land titles, is still to be
 10 completed, so the portion of the advice from
 11 Comptroller General relating to that subject matter is
 12 not yet fulfilled?
 13 THE WITNESS: Correct. If we need to add the
 14 legal part, well, that part is missing, obviously.
 15 ARBITRATOR KANTOR: And does that legal part
 16 also relate to the properties at issue in this
 17 arbitration?
 18 THE WITNESS: I understand so. I understand
 19 that that's the case.
 20 ARBITRATOR KANTOR: Mr. Jurado, thank you
 21 very much for your patience with me.
 22 No additional questions.

01:39:15 1 PRESIDENT BETHLEHEM: Questions from Raúl
 2 Vinuesa.
 3 ARBITRATOR VINUESA: Good morning,
 4 Mr. Jurado. Fortunately, I can speak directly. But
 5 you will hear an Argentinian that sometimes is harder
 6 than understanding English.
 7 (Laughter.)
 8 ARBITRATOR VINUESA: It was not a joke.
 9 (Laughter.)
 10 ARBITRATOR VINUESA: As a lawyer, I would
 11 like you to explain two things regarding the minutes
 12 of Session 004 that you had today in your hand. It
 13 was hidden in the large binder on this side,
 14 Exhibit C-1r.
 15 THE WITNESS: It was in the sleeve.
 16 ARBITRATOR VINUESA: Inside the sleeve in the
 17 big binder, the minutes of Session 004, Exhibit C-1r.
 18 It was just loose. It was a loose copy inside the
 19 sleeve of the large binder. It's the minutes of
 20 Session 004, Exhibit C-1r, and it's eight pages long.
 21 My first question is, to your understanding,
 22 is this the complete minutes, or are these the

01:40:50 1 complete minutes of the relevant part of discussion on
 2 the presentation by Deputy Fournier?
 3 So, I know that my--that the minutes are
 4 longer, the minutes of the discussion are longer, but
 5 what I'm asking is if these first debates, these
 6 discussions that are mentioned at the beginning, what
 7 Deputy Fournier says is everything regarding the
 8 subject that he has introducing; that is, the
 9 modification that he is introducing?
 10 THE WITNESS: Yes. This is everything that
 11 has been discussed regarding the expression "seaward."
 12 (Pause.)
 13 ARBITRATOR VINUESA: You have to wait a
 14 little bit to answer so that the interpretation is
 15 completed.
 16 I am going to read what Deputy Fournier
 17 says--or Deputy Fournier Origgi says, and then I'm
 18 going to ask a question, a question from a lawyer who
 19 has read this.
 20 So, Deputy Fournier Origgi says to support
 21 the justification is--and I am reading the text
 22 directly. Studying the original text, I think that

01:42:23 1 they cover--to comply with the requirements for this
 2 type of park, particularly the fact that it should
 3 have been a marine park because this is what's
 4 customary in this case; however, the "marine" word was
 5 not included. When the Park was defined, 125 meters
 6 is mentioned with an imaginary line, 125 meters from
 7 high tide, from mean and--mean high tide. This should
 8 be on those too as "seaward," and I think this is
 9 clarified like this.
 10 Do you remember having done an analysis when
 11 you were developing your Opinion, and if, in addition
 12 to this, there are other technical allegations or
 13 justifications or grounds for the introduction of
 14 those amendments, that would appear to be so
 15 substantial because on the following page, it is
 16 approved without further discussion.
 17 So, my question is, if you became aware or if
 18 there were other technical allegations or
 19 justifications for this?
 20 From what I read, from what I could read and
 21 research, I could not find any technical reasons or
 22 grounds other than the paragraph that you have just

01:43:40 1 read.
 2 PRESIDENT BETHLEHEM: Excuse me.
 3 (Overlapping interpretation.)
 4 THE WITNESS: So, from the research I did in
 5 the file, I did not find any Technical Report
 6 supporting that motion, nor any other discussion
 7 throughout the legislative process regarding that
 8 term. The only justification in the whole file to
 9 introduce the term "seaward" is the paragraph that he
 10 had just read.
 11 ARBITRATOR VINUESA: Those are all my
 12 questions. Thank you.
 13 PRESIDENT BETHLEHEM: Mr. Jurado, I just have
 14 a number of brief questions. You won't require any
 15 documents to answer the questions. They are simply an
 16 endeavor on my part to clarify one or two points.
 17 Most of them relate to your 2004-2005 interpretations.
 18 You began, I think, your testimony in
 19 response to questions indicating that there was an
 20 uncertainty in the 1995 Law; is that correct?
 21 THE WITNESS: Yes. There was uncertainty
 22 regarding the definition of the boundaries of the Park

01:45:16 1 because of the way that article first was drafted.
 2 PRESIDENT BETHLEHEM: So, my question to you,
 3 as a lawyer giving the opinions, then, in 2004-2005,
 4 rather than in respect of your current position, is
 5 what is the effect when there is a manifest
 6 uncertainty on the face of the law for private
 7 citizens? Can they choose which interpretation to
 8 adopt? What guidance do they have, if they are
 9 reading the law and they appreciate that there is an
 10 uncertainty?
 11 THE WITNESS: I think that in a situation
 12 like that, an individual should understand that there
 13 is confusion regarding the boundaries of the Park, and
 14 precisely in order to increase the certainty vis-à-vis
 15 third parties or third-party individuals, the Minister
 16 requests a legal opinion from the Procuraduría because
 17 that gave them a certain degree of authority in the
 18 interpretation it was providing.
 19 The Ministry itself can interpret what it
 20 understands as the Park boundaries, but the opinion by
 21 the Procuraduría gives them support because it's an
 22 opinion by the agency that, by law, must respond to

01:46:51 1 these consultations and provide an interpretation, at
 2 least in the administrative area. That is the meaning
 3 of the law for their application or implementation by
 4 Government agencies.
 5 And I believe individuals would understand
 6 that there is a confusion and that the boundaries are
 7 not clear, but once the Procuraduría has issued its
 8 view and it's being published, well, there is no
 9 longer confusion because this is an authority--this an
 10 agency that has enough authority to provide an
 11 interpretation, at least for the Ministry and what
 12 are--the considerations or whatever decisions made by
 13 the Minister in applying that law.
 14 PRESIDENT BETHLEHEM: I'll come back to one
 15 aspect that you just touched upon in just a moment,
 16 but we'd just like to clarify further because we have
 17 a period of 9 or 10 years in which, at least as you've
 18 testified, the law was uncertain because we have the
 19 reference to "seaward," but we have coordinates which
 20 seem to pull in a different direction, notwithstanding
 21 the question.
 22 So, we have a period of 10 years in which

01:48:00 1 there is uncertainty. That's correct, isn't it?
 2 THE WITNESS: There is uncertainty in the
 3 letter of the law, but the Administration always acted
 4 consistently. The Government always acted
 5 consistently, based on the understanding that the Park
 6 comprised 120 meters inland.
 7 PRESIDENT BETHLEHEM: We have evidence
 8 already in the record about the consistency or
 9 otherwise of the Government action. Private citizens
 10 are not in a position to request a clarification of
 11 the law from you. That could only have come from the
 12 Minister; is that correct?
 13 THE WITNESS: Correct. It must come from the
 14 Minister.
 15 PRESIDENT BETHLEHEM: Would you take the view
 16 that a private citizen reading the law and seeing the
 17 language of "seaward" would probably not make their
 18 own assessment by reference to technical geographic
 19 coordinates? So, my question to you is, do you think
 20 that there was uncertainty on the face of the law for
 21 a layperson reading the law?
 22 THE WITNESS: Before the Legal Opinion by the

01:49:25 1 Procuraduría? Yes, but after that, there is no
 2 uncertainty. Not even for private citizens, because
 3 the private citizens have access to the legal
 4 information system, and there's a direct reference to
 5 the Procuraduría's opinions.

6 PRESIDENT BETHLEHEM: I'll come back to the
 7 access to the Procuraduría's opinion in just a moment,
 8 but let me just clarify. I'm not sure that I
 9 understood.

10 Before your first opinion in 2004, would you
 11 take the view that for a layperson--so neither a
 12 geographer, nor a lawyer--that the law was clear or
 13 unclear?

14 THE WITNESS: Reading of article first,
 15 because that's the basis for the consultation and
 16 interpretation, obviously there was no clarity
 17 regarding the boundaries. That's why the consultation
 18 was done in order to clarify that point.

19 PRESIDENT BETHLEHEM: There was no clarity as
 20 regards the boundaries. We've heard evidence to that
 21 effect. I'm just wondering from the perspective to
 22 try and put yourself in the position of a layperson,

01:50:36 1 if they see the word "seaward," would that provide,
 2 did you think, sufficient clarity about the geographic
 3 extent, the trajectory of the area, which would have
 4 meant that they wouldn't have taken out their
 5 calculating devices to look at the geographic
 6 coordinates?

7 THE WITNESS: If I read the text of the law
 8 in its entirety, I would have doubts, and I could
 9 conclude that there is an error in article first. If
 10 I read only article first, that's not the case. But
 11 if I read the law, as in its entirety, I, as a private
 12 citizen, I could conclude that there is a problem with
 13 that law and the boundaries and that that term
 14 "seaward" may not be correct.

15 PRESIDENT BETHLEHEM: Thank you. When it
 16 came time for you to consider your Opinion in 2004 and
 17 then subsequently in the documents that were provided
 18 to you or other documents that you might have
 19 consulted, was this a strictly legal interpretation,
 20 or would you also have had in front of you information
 21 about the consequences of your interpretation; for
 22 example, for private landholders?

01:52:12 1 THE WITNESS: The Procuraduría issues
 2 strictly legal interpretations. It could not solve
 3 specific cases. It interprets the law only. I then
 4 take into account who were the owners, whether there
 5 were any landowners or not. Those are considerations
 6 that, in principle, are not taken into account in
 7 consultations because you give an objective opinion on
 8 the law, regardless of the specific circumstances or
 9 consequences of the implementation of the law. That's
 10 the Procuraduría's role.

11 PRESIDENT BETHLEHEM: So the issue of the
 12 consequences of your interpretation, who has
 13 responsibility for that?

14 THE WITNESS: In this case, it would be the
 15 Minister who does the consultation, because the
 16 Minister must make specific decisions based on that
 17 interpretation.

18 PRESIDENT BETHLEHEM: You gave evidence about
 19 the publication of your Opinion. Was the publication
 20 of your Opinion your responsibility or the
 21 responsibility of your department, or was it the
 22 responsibility of the requesting Ministry?

01:53:33 1 THE WITNESS: It is published automatically.
 2 The legal information system, where it is published,
 3 where all Procuraduría's opinions are published, were
 4 all current legislation in Costa Rica, is published,
 5 and all the Court decisions, is where it's published.
 6 So, I gave an opinion, the Procurador General reviews
 7 it and approves it because it is not just my decision.
 8 I actually do a draft, and the Procurador General
 9 gives the final green light, and it is sent to the
 10 system.

11 PRESIDENT BETHLEHEM: Thank you.

12 Are you aware of whether any special efforts
 13 were made to draw your Opinion to the attention of
 14 people who may be especially affected, or was it
 15 simply a question of publication of your Opinion?

16 THE WITNESS: I don't know. The
 17 Procuraduría's role would not have been that. The
 18 Procuraduría issues an opinion and makes it publicly
 19 available, and that's where the role of the
 20 Procuraduría ends, and it is communicated to the
 21 Minister who made the consultation.

22 PRESIDENT BETHLEHEM: One last question on

01:55:06 1 this. As a matter of Costa Rican Law, is it possible
 2 for your Opinion or such opinions, in general, to be
 3 challenged by way of judicial review or in any other
 4 way?
 5 THE WITNESS: Yes, of course. My decision is
 6 actually an administrative act that can be challenged
 7 because it may be unlawful before a regular court. In
 8 fact, at some point, it was--it has been challenged,
 9 and the Court did not find any unlawfulness in my
 10 opinion. It can be challenged before the
 11 Constitutional Court. I don't know whether it was or
 12 not, but the Constitutional Court--the Constitutional
 13 Chamber, which is part of the Supreme Court, studied
 14 the lawfulness of this opinion when it responded to an
 15 unconstitutionality challenge. But, of course, it's
 16 possible to challenge, to challenge it and to void it
 17 if it is illegal.
 18 PRESIDENT BETHLEHEM: And the judgment to the
 19 constitutional code to which you just referred, am I
 20 correct in remembering that that was the judgment or
 21 one of the judgments in 2008?
 22 THE WITNESS: I don't know if it is the 2008

01:56:28 1 Decision that was quoted here, but there are others.
 2 ARBITRATOR VINUESA: I am asking if it refers
 3 to the amparo, the amparo action or the real
 4 interpretation.
 5 THE WITNESS: I know that this was discussed
 6 in several decisions, but I remember one in which a
 7 regulatory plan for this area was challenged, and that
 8 regulatory plan discussed the Park boundaries and
 9 reached a similar conclusion that I had reached, not
 10 on the same grounds, but it reached a similar
 11 conclusion. And so in that analysis, my opinion is
 12 quoted.
 13 PRESIDENT BETHLEHEM: Just a footnote to
 14 counsel on both sides. I think it would be helpful if
 15 our attention could be drawn to specifically--to that
 16 judgment, just to clarify.
 17 Dr. Jurado, I just have one other question
 18 which relates to some other issues that you already
 19 testified about going to the SINAC study in respect of
 20 the Contraloría Report. You testified--but let me
 21 just clarify that the Claimants' properties are
 22 included as part of that study; is that correct?

01:57:58 1 THE WITNESS: Are you talking about the legal
 2 study on the lawfulness of the titles?
 3 PRESIDENT BETHLEHEM: Yes.
 4 THE WITNESS: I understand that they are
 5 included.
 6 PRESIDENT BETHLEHEM: Do you--I mean, that
 7 study, as I understand from your evidence, has been
 8 going on now for some years. Is it within your
 9 knowledge when that study is likely to report?
 10 THE WITNESS: I hope it will be ready
 11 sometime this year, as soon as possible.
 12 PRESIDENT BETHLEHEM: But your expectation is
 13 that it will report during the course of this year?
 14 THE WITNESS: That's what I hope, but I
 15 cannot assure you that that will be the case because
 16 SINAC hired an external consultant to do this study.
 17 PRESIDENT BETHLEHEM: One way or another, you
 18 would expect that report to be a decision-making
 19 report on the question of title?
 20 THE WITNESS: Yes. That would be a starting
 21 point. We would take it as a starting point, and then
 22 we should really go in depth to see if there are

01:59:19 1 enough legal grounds. As I said earlier, in a case
 2 like this, the burden of the State is upon the State.
 3 It has to show the unlawfulness of its titles, and you
 4 have to be very sure that the registration is tainted
 5 so badly that it merits a judicial proceeding.
 6 PRESIDENT BETHLEHEM: Dr. Jurado, thank you
 7 very much, indeed. Thank you for taking the time to
 8 assist us in illuminating these complex issues.
 9 To counsel on both sides, before we adjourn
 10 for the lunch break, I'd just like to have a sidebar
 11 with you both so that we can, before we adjourn,
 12 consider how to proceed during the course of the
 13 afternoon. So, can we just have a brief recess,
 14 please.
 15 (Comments off microphone.)
 16 PRESIDENT BETHLEHEM: Yes. Apologies.
 17 Dr. Jurado, you're excused. Thank you very much for
 18 your testimony.
 19 THE WITNESS: Gracias.
 20 (Witness steps down.)
 21 PRESIDENT BETHLEHEM: Thank you very much.
 22 It's now after 2:00. We've been going on for a very

02:01:30 1 long time, and it's not only the people who are
 2 putting the questions and answering the questions, but
 3 also the interpreters and others who, I think, are
 4 struggling with the length of the day. We're going to
 5 adjourn now until 3:30, and we'll recommence then.
 6 So, thank you very much.
 7 (Whereupon, at 2:01 p.m., the hearing
 8 was adjourned until 3:30 p.m., the same day.)
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22

1 AFTERNOON SESSION
 2 GEORGINA CHAVES, RESPONDENT'S WITNESS, CALLED
 3 PRESIDENT BETHLEHEM: Ms. Chaves, welcome.
 4 You have a witness declaration in front of
 5 you. I would be grateful if you could read that into
 6 the record, please.
 7 THE DEPONENT: Yes, sir.
 8 I hereby declare upon my honor and conscience
 9 that I will tell the truth, the whole truth, and
 10 nothing but the truth.
 11 PRESIDENT BETHLEHEM: Thank you very much.
 12 Respondents.
 13 MS. McCANDLESS: We're going to pass out some
 14 binders right now, and then I'll ask you a few
 15 questions, Ms. Chaves.
 16 DIRECT EXAMINATION
 17 BY MS. McCANDLESS:
 18 Q. Could you please look behind Tab 1 in the
 19 binder in front of you.
 20 A. Yes, ma'am.
 21 Q. Do you recognize this document?
 22 A. Yes, I do. It is my written Witness

03:31:26 1 Statement.
 2 Q. Is that Statement based on your personal
 3 knowledge and experience?
 4 A. Yes, it is.
 5 Q. Are there any corrections that you would like
 6 to make to your Witness Statement?
 7 A. I basically want to specify three points. At
 8 Paragraph 47, in the second sentence, the words, "the
 9 judge requests," should not there be. It should say:
 10 "Once the Court issues the final decision on the fair
 11 price, the State should make--should transfer the
 12 funds to the Court's account."
 13 That's because on some occasions the judge
 14 asks for the transfer, and other times it does not--he
 15 does not.
 16 Second, I would--my correction goes to
 17 Footnote 93 where it cited Article 693 of the Civil
 18 Code. But it should be 693 of the Code of Civil
 19 Procedure of Costa Rica.
 20 And the last is in the summary table on the
 21 last page, where there's a summary of the status of
 22 judicial expropriation proceedings. In the first box

03:33:05 1 on Lot A, by error, it said it began in 2017. Well,
 2 it should say "2007." That's it basically.
 3 Q. Thank you.
 4 MS. McCANDLESS: And for the record, the
 5 Civil Procedure Code is at Exhibit R-002.
 6 BY MS. McCANDLESS:
 7 Q. Where are you currently working?
 8 A. At the Procuraduría General de la República
 9 of Costa Rica.
 10 Q. What is your current position?
 11 A. I am a Deputy Procurador.
 12 Q. For how long have you held this position?
 13 A. Since 2004.
 14 Q. Could you please describe the work that you
 15 do in the office of the Procuraduría?
 16 A. We are the attorneys for the State. In my
 17 case, I represent the State in proceedings either
 18 brought by the State against third persons or in
 19 proceedings that are brought by third persons against
 20 the State. That is basically my function.
 21 Q. Could you please describe your educational
 22 background?

03:34:20 1 A. Yes. I have an undergraduate degree in law
 2 from the University of Costa Rica, a specialization in
 3 public law from that same university, University of
 4 Costa Rica, a master's degree in law from McGill
 5 University in Montreal, Canada. And I've also had
 6 other studies, various studies in the field of law.
 7 Q. Could you please explain briefly the judicial
 8 stage of the expropriation proceedings in Costa Rica?
 9 A. Yes. Initially there's a Declaration of
 10 Public Interest and an administrative appraisal is
 11 carried out which sets the fair market price of the
 12 good or property. And if there's an objection by the
 13 property owner against that appraisal, then one moves
 14 on to the judicial phase.
 15 First an Expropriation Decree is issued. It
 16 is put out by the executive, specifically the Ministry
 17 of Environment and Energy, and the money of the
 18 administrative appraisal is deposited in the court's
 19 account. And this is -- it is the Procuraduría
 20 General that establishes the lawsuit and files it
 21 before the Court for Contentious Administrative
 22 Affairs. That begins the judicial process.

03:35:40 1 The judicial process entails exclusively a
 2 review of the administrative appraisal. This
 3 proceeding respects the right of defense and the right
 4 of due process. A judicial expert is appointed whose
 5 function is to review the administrative appraisal.
 6 The Parties may also seek the appointment of a
 7 third-party expert.
 8 The Parties can present any evidence they
 9 consider relevant for determining the value of the
 10 property. Once the evidence is produced, a hearing is
 11 held with the Parties regarding all of the evidence in
 12 the file. A judgment is handed down.
 13 While the law establishes that the value of
 14 the property can be no less than the administrative
 15 appraisal, nor any greater than the amount of the
 16 judicial appraisal or no greater than the highest of
 17 the two judicial appraisals, if there were two. And
 18 one can appeal this decision.
 19 Q. What happens if an Expropriation Decree has
 20 not been issued within a year's time of when the
 21 Declaration of Public Interest has been registered?
 22 A. It expires as a matter of law.

03:37:01 1 Q. Were you the lawyer in charge of all the
 2 judicial proceedings of the Lots in this case?
 3 A. I've been the legal representative in only
 4 six. In some cases I've held this representation only
 5 during a part of the proceeding, not the entire
 6 proceeding.
 7 Q. And do you recall which ones you have
 8 overseen?
 9 A. Let me see. I have here, yes, A40, B3, B4,
 10 B6, and B8.
 11 Q. Have you reviewed the judicial files for the
 12 other proceedings?
 13 A. I reviewed them in preparation for this
 14 arbitration proceeding, basically.
 15 Q. Have there been any updates since you wrote
 16 your last Witness Statement?
 17 A. In Lot A40, legal interest owed was paid.
 18 And B3 there is a firm decision on the legal interest.
 19 On B5 there's a firm judgment. And in B7 there is a
 20 judgment, but it was appealed by the Procuraduría
 21 General, and these are as a judgment on compensation.
 22 Q. And one final question. Could you please

03:38:28 1 summarize the current status of the properties at
 2 issue in this case that are currently in or have been
 3 through the judicial proceedings?
 4 A. Yes, ma'am. In this case, we have nine
 5 judicial proceedings. Of those, in six there's a firm
 6 judgment, two have been suspended at the request of
 7 the expropriated Party, and one is under appeal. The
 8 judgment is being appealed.
 9 Of the six in respect of which there is a
 10 firm judgment, there are two in which compensation
 11 owed the owner has already been paid in keeping with
 12 the law on expropriation, and the other four payments
 13 are in process.
 14 So, this would be a general overview.
 15 MS. McCANDLESS: Thank you very much. I have
 16 no further questions.
 17 PRESIDENT BETHLEHEM: Thank you.
 18 Ms. Cicchetti.
 19 MS. CICCHETTI: Thank you, Mr. President.
 20 CROSS-EXAMINATION
 21 BY MS. CICCHETTI:
 22 Q. Welcome, Ms. Chaves. My name is Tina

03:39:35 1 Cicchetti. We've been in the same room all week, but
 2 I don't think we've introduced ourselves to each
 3 other. I'll be asking you a few questions on behalf
 4 of Claimants this afternoon.
 5 MS. CICCETTI: For the record, I'll note
 6 that the Claimants had not noticed Ms. Chaves for
 7 cross-examination, but since she has come all the way
 8 here, we will ask her a few questions.
 9 BY MS. CICCETTI:
 10 Q. I note that your Witness Statement says that
 11 you have worked at the Procuraduría since 2001; is
 12 that correct?
 13 A. Yes, ma'am.
 14 Q. But I just noticed in your direct examination
 15 in response to Ms. McCandless's question, you've been
 16 in your position, current position, since 2004. Does
 17 that mean that you were in a different position when
 18 you started with the Procuraduría in 2001?
 19 A. I began in 2001 as an Assistant Procuradora,
 20 and I was named Deputy Procuradora in 2004.
 21 Q. And I suggest to you that when you joined the
 22 Procuraduría's office in 2001, there were very few, if

03:40:48 1 any, expropriations related to the Las Baulas National
 2 Marine Park at that time. Would you agree?
 3 A. I'm not able to answer your question because
 4 at that time, if my memory serves me well, I was
 5 working with a Procuradora who only handled queries,
 6 and then it moved to litigation. So I actually don't
 7 know the answer to that question.
 8 Q. And you've given evidence in this proceeding,
 9 direct evidence, in response to a number of Lots where
 10 you are personally involved. For the Claimants' Lots
 11 and for the others, you've reviewed the files;
 12 correct?
 13 A. Yes, the ones I reviewed were basically for
 14 this arbitration. These are records that have more
 15 than a thousand pages.
 16 Q. And you've also reviewed any updates since
 17 you filed your last Witness Statement, as you've just
 18 indicated?
 19 A. Yes.
 20 Q. Thank you.
 21 I have a few questions about the
 22 expropriation process. MINAE is the Government

03:42:08 1 Ministry responsible for issuing the Expropriation
 2 Decree; correct?
 3 A. Yes. The expropriation decision, yes.
 4 Q. And at Paragraph 4 of your Witness Statement,
 5 you say, "The Court may order that the property enter
 6 into the State's possession if it has been more than
 7 two months since the deposit of the amount of the
 8 administrative appraisal."
 9 Do you see that?
 10 A. Yes, but that's once the judicial proceeding
 11 has already begun. Once it has begun and the
 12 administrative appraisal has been deposited, then it
 13 can be ordered that the State take possession. But
 14 the judge has to verify that the amount of the
 15 administrative appraisal has been deposited with the
 16 Court because that money belongs to the owner of the
 17 property.
 18 Q. Thank you. I take that clarification.
 19 My question is, does the Court order
 20 dispossession on its own motion, or is it the
 21 Procuraduría who requests possession of the property
 22 on behalf of the State?

03:43:51 1 A. The law says that once the judicial
 2 proceeding has begun, a resolution is issued to begin
 3 the process. The owner has two months to leave; and
 4 if he does not do so, the judge or the court orders
 5 that possession be taken--or sets a date for taking
 6 possession--for the State to take possession of the
 7 property.
 8 Q. And I'm still at Paragraph 4 of your Witness
 9 Statement, but now on the last sentence. And it
 10 says, "With the State taking possession of the
 11 property, the property owner loses possession of the
 12 property, but not the property itself."
 13 So, once a property owner has been
 14 dispossessed, the owner has no rights to use and enjoy
 15 the property, but they don't lose title to the
 16 property; correct?
 17 A. Yes. They do not lose title, they lose
 18 possession, use, enjoyment, so their rights are
 19 limited. That is why, first, an administrative
 20 appraisal has to take place, and it must be deposited
 21 with the court as a sort of preliminary payment for
 22 the process or proceeding.

651

03:45:25 1 Q. But a property owner who has been
2 dispossessed of his or her property continues to have
3 obligations related to the property, such as the
4 obligation to pay property taxes; correct?

5 A. Yes. It's my understanding that the answer
6 to that would be, yes.

7 Q. And is it possible that the date of
8 dispossession changes in some of the proceedings?

9 A. It happened that all of the B Lots were
10 processed by a lawyer who challenged all of the
11 resolutions to take possession. In those cases, a
12 motion to overturn or reconsider was brought.

13 The motion was rejected by the judge of first
14 instance, so then appeals were filed due to failure to
15 admit and due to the effects of the remedies. In the
16 resolution of the judge, it was indicated that the
17 taking of possession would have effect as of the
18 moment that these appeals were resolved.

19 Now, if I'm not mistaken, it occurred in only
20 one of those cases--if I'm not mistaken. I'd have to
21 review the documents. And I'm not certain that it's
22 in the cases of this proceeding because I handle other

653

03:48:36 1 A. If what is of interest is to look at the
2 specific situation of the owner's impact, then I need
3 to refer to the specific cases; right?

4 Q. All right. Perhaps I can just ask it as a
5 general question: Is it or is it not possible that
6 the date of dispossession can change?

7 A. I already answered that question.

8 Q. In terms of the overall judicial
9 expropriation process, dispossession is not the final
10 step, is it?

11 A. No, it's one of the first steps. As I
12 already explained, the judicial process has begun.
13 The owner has two months to evict or, rather, to
14 abandon the property. And if the administrative
15 appraisal has been deposited, then the judge can put
16 the State in possession of the property.

17 Q. And for five of nine of the Lots that you
18 discuss in your Witness Statements, Lots A40, SPG2,
19 B3, B6, and B8, your Witness Statements say that the
20 judicial proceeding has been completed. What do you
21 say is the final step in the judicial expropriation
22 process?

652

03:47:13 1 judicial proceedings related to expropriations as
2 well.

3 If you have any document to show me, then I
4 can take a look and give you a response with greater
5 certainty.

6 Q. Thank you.

7 I take your answer to my last question to
8 mean that it is possible that the date of
9 dispossession changes?

10 A. What we'd have to look at is what happened in
11 each specific case in these cases. Because the
12 specificity that the representation of all the B Lots
13 or the representative in all the B Lots filed these
14 appeals as well as any number of motions for nullity.
15 So I'd have to review the documents in order to see
16 and tell you specifically what happened in each case.

17 Q. All right.

18 A. 500 case files, and you'll understand that
19 I've not memorized all of it.

20 Q. Absolutely. My question was meant to be
21 general, Ms. Chaves. I wasn't trying to test your
22 memory specifically.

654

03:50:45 1 A. Well, in general terms, title can be
2 transferred when there is a firm judgment on the
3 amount of compensation.

4 Q. Ms. Chaves, you were in the room earlier when
5 we were talking about the possibility of annulling
6 title. What happens if title is annulled?

7 A. In these cases, as far as I know, there is no
8 process of nullity being pursued against these owners.
9 Rather, what you have is an expropriation proceeding
10 established by the State because of its police powers,
11 because there's a National Park, in order--well, what
12 is at issue is only and exclusively the value of the
13 property.

14 Q. Moving to a different topic. This is just a
15 point of clarification for me, if you don't mind,
16 Ms. Chaves.

17 If we look at your Witness Statement at
18 Paragraphs 3, 5, and 10, there's a slight difference
19 between the English translation and the Spanish
20 original. And I just want to confirm.

21 In the English translation it alternatively
22 refers to "Fair Market Value" and "Fair Value," and it

03:52:42 1 appears that the Spanish version consistently uses the
 2 term "justo apraisio." I just wanted to confirm
 3 whether you meant that term to have the same meaning
 4 throughout your Witness Statement.
 5 A. Yes. The law on expropriation speaks of the
 6 fair value or fair price by "lo justo apraisio" or
 7 "justo apraisio."
 8 Q. And you explained in your Witness Statement
 9 that value is determined in the expropriation process
 10 through a series of valuations; correct?
 11 A. No. I said that, first of all, an
 12 administrative appraisal is performed. In this
 13 administrative appraisal a determination is made of
 14 the fair price in the State's view. This value, this
 15 appraisal may or may not be accepted by the owner.
 16 There are many times when the owners accept
 17 the administrative appraisals.
 18 If the owner does not agree with the
 19 administrative appraisal, with that value or amount,
 20 then the State files a judicial proceeding. And there
 21 what is done is that there is a review of the
 22 administrative appraisal, and a determination is made

03:54:39 1 as to the final value.
 2 It is within the authority of the judge to
 3 determine the Fair Market Value or the value of the
 4 property or the amount of compensation, whatever we
 5 wish to call it.
 6 Q. So you would agree that the goal of the
 7 judicial process is to arrive at a fair value for the
 8 property; correct?
 9 A. Yes.
 10 Q. And on what basis does the court determine
 11 the Valuation Date for the property?
 12 A. There are two criteria. The law says that
 13 one should appraise it at the time it was valued.
 14 Nonetheless, there is another criterion in the case
 15 law that says it should be the current value--not at
 16 the time the administrative appraisal was made, but,
 17 rather, subsequently, at the time the judgment is
 18 issued.
 19 Q. Ms. Chaves, I heard you to just say that the
 20 administrative appraisal provides the State's view of
 21 what the fair value is for the property. Did I hear
 22 you correctly?

03:56:34 1 A. The administrative appraisal is done by the
 2 General Office of Tax Revenue, which is--it's a
 3 department that is devoted to appraisals. It's the
 4 value that is established--the value of the property
 5 as established administratively.
 6 Q. And then if the owner opposes or objects to
 7 that appraisal, then it moves over to the judicial
 8 process. And you've explained that through that
 9 process there are a number of appraisals where a judge
 10 determines fair value.
 11 Would you agree with me that this is an
 12 adversarial process?
 13 A. Yes. Once the Expropriation Decree has been
 14 issued by the Executive, that is the presupposition
 15 for beginning the judicial proceeding.
 16 Q. I just--I'm just going to pose my question
 17 one more time, Ms. Chaves, just to make sure that I've
 18 got your answer.
 19 A. (No interpretation.)
 20 Q. The judicial process where the Procuraduría
 21 presents appraisals and the owner proposes other
 22 appraisals and a judge eventually makes a

03:58:28 1 determination of fair value, would you agree with me
 2 that that is an adversarial process?
 3 A. Yes.
 4 Q. And would you agree that the goal of the
 5 Procuraduría in that adversarial process is to reduce
 6 the amount of compensation that needs to be paid for
 7 the property?
 8 A. No. Reduce it? No. The State has already
 9 admitted an administrative appraisal which cannot be
 10 reduced. It can be increased. And in these
 11 proceedings, what has been shown is that much more has
 12 been paid than was granted administratively. They've
 13 taken advantage of the proceedings, and an advantage
 14 not only in principle, but in the legal interest
 15 established by law. Because the law establishes that
 16 they must receive legal interest from the entry
 17 into--from taking possession to the moment of actual
 18 payment.
 19 And, as you can see, these proceedings have
 20 lasted over a certain time period, which means that
 21 there will be high interest, plus, they can charge
 22 costs with respect to both principal and interest.

03:59:54 1 Q. In direct examination, Doctora,
 2 Ms. McCandless asked you what happens in the event
 3 that a Decree of Expropriation is not issued within a
 4 year of the Decree of Public Interest. And I
 5 understood your answer to be that it expires; is that
 6 correct?
 7 A. Yes. It expires on its own. It ceases to
 8 have any value.
 9 Q. Your Witness Statement specifically addresses
 10 properties that are in the judicial phase of
 11 expropriation. Are you aware that the Claimants have
 12 a number of other Lots that are not currently in the
 13 judicial phase?
 14 A. No. During the hearing and based on the
 15 comments we've heard, there are certain matters in the
 16 administrative channel, but I am solely devoted to
 17 defending the State in the judicial process. So what
 18 I know about and what I can explain to you are the
 19 judicial proceedings.
 20 Q. You were telling us earlier about the date of
 21 dispossession and the effect of dispossession, and my
 22 question relates to interest. At Paragraph 49 of your

04:02:03 1 Witness Statement, you explain that interest is
 2 recognized from the time of the entry of the property
 3 into the possession of the State.
 4 So, you would agree with me that no interest
 5 is calculated or payable until the date of
 6 dispossession?
 7 A. Would you please repeat that question? I did
 8 not understand it.
 9 Q. At Paragraph 49 of your Witness Statement,
 10 you explain that: "Interest is recognized from the
 11 time of entry of the property into the possession of
 12 the State."
 13 My question is, it's true, isn't it, that no
 14 interest is calculated until the date of
 15 dispossession?
 16 A. I don't understand your question, but let me
 17 explain how the legal interests operate because there
 18 are legal interests and current interests.
 19 Once the administrative appraisal is
 20 deposited in the court's account, it owns to belong to
 21 the owner and generates current account--the interest.
 22 When they want to withdraw it, they can do such a

04:03:37 1 withdrawal once a process has begun. So they can
 2 withdraw the appraisal and can request payment of
 3 current interest.
 4 As damages, the law establishes in Article 11
 5 the recognition of legal interest. This is a
 6 recognition of damages, and these legal interests are
 7 recognized from the date of entry into possession
 8 until the payment of the compensation.
 9 Because there is a legal process. So, if
 10 there's a difference between the administrative
 11 appraisal and the final one, that is when on that
 12 final payment date one can calculate interest. It
 13 cannot be calculated before that. It's impossible to
 14 calculate before that.
 15 Q. So, in the expropriation process, one
 16 commences the calculation of interest, if there is a
 17 difference between the final valuation and the
 18 administrative appraisal on that difference from the
 19 date of dispossession; correct?
 20 A. Would you please repeat the question?
 21 Q. Within the expropriation process--not the
 22 legal process that you were just discussing--one

04:05:10 1 commences the calculation of interest if there is a
 2 difference between the final valuation and the
 3 administrative appraisal. If the final valuation is
 4 higher, interest is calculated on that difference in
 5 value from the date of dispossession; correct?
 6 A. Legal interest, if there is a confirmation of
 7 the administrative appraisal, this administrative
 8 appraisal has already been deposited in the name of
 9 the owner and the owner could withdraw it as of the
 10 time the process began. Because the administrative
 11 appraisal is deposited in advance. If they don't
 12 withdraw it, if the owner doesn't withdraw it, it's by
 13 his own decision.
 14 Q. My question was not about the interest
 15 payable on the administrative appraisal, so let me try
 16 to clean that up a bit.
 17 If at the end of the judicial process a final
 18 valuation is determined which is higher than the
 19 amount of the administrative appraisal, in the
 20 expropriation process, interest is payable only from
 21 the date of dispossession; correct?
 22 A. The legal interest starts to be calculated

04:06:44 1 from the day--the date of dispossession, and that is
2 provided by the law. And this is something that I've
3 already explained to you.

4 Q. All right. If we can look at one or two
5 examples together, please. And if you could turn to
6 Annex A to your Witness Statement.

7 Doctora, I take it you prepared this Report?

8 A. I prepared this with assistance from the
9 attorneys. It was done jointly.

10 Q. And the figures and dates in this chart
11 reflect the testimony in your Witness Statement; is
12 that correct?

13 A. Yes.

14 Q. And as far as you know, the chart is accurate
15 at least to the date of your Witness Statement; is
16 that correct?

17 A. As far as I know, yes. Now, at the beginning
18 I did refer to the updates on four issues.

19 Q. Yes, sorry. I'm just referring to the date
20 of your Witness Statement. So, I recognize that there
21 may have been changes to this since the date of your
22 Witness Statement.

04:09:52 1 want to look at is for A40.

2 A. Yes. In this table, the date of taking of
3 possession doesn't appear. I'd have to look at the
4 documents to see when the taking of possession
5 actually occurred. It's not referred to here at all.

6 Q. Yes, I can, except that I'm looking at a
7 slightly different issue now. I'm asking about the
8 calculation of interest. So, you'll see in the third
9 column from the right-hand side of the chart--and it's
10 footnoted Number 11, if that helps. In the English
11 translation, it says "calculation of interest."

12 My first question is just a clarification
13 that that calculation--that the dates that appear in
14 that column are the dates on which the Court
15 calculates the amount of interest that is owing. Is
16 that correct?

17 A. Which column, please?

18 Q. The third column from the right.

19 PRESIDENT BETHLEHEM: May I just remind you
20 both to turn your microphones off when you are not
21 speaking, please, for the Witness.

22 THE WITNESS: Okay. The third column talks

04:08:35 1 But, if--since your last answer was "yes,"
2 I'm just going to save a bit of time. Rather than
3 flipping through your Witness Statement, we can just
4 work through the example from the chart.

5 So, if we start with the top line in the
6 chart for Lot A40, the date for the calculation of
7 interest. So, this would be the date that the amount
8 of interest was calculated; correct?

9 A. I do not understand your question.

10 Q. I'm--

11 PRESIDENT BETHLEHEM: Ms. Cicchetti, just
12 before you continue, can I just ask both, to you and
13 to the Witness, when you've finished asking your
14 question, and you're waiting for a response, and to
15 the Witness, when you've responded and waiting for a
16 question, could you turn your microphones off, please?
17 Because we seem to be getting feedback, which is
18 making it difficult for the interpreters.

19 BY MS. CICCETTI:

20 Q. Doctora Chaves, I'm just trying to understand
21 the titles at the top of your chart at the moment.
22 So, if we're looking at the top line, the example I

04:11:35 1 about the appeals request. It has nothing to do with
2 the calculation of interest.

3 BY MS. CICCETTI:

4 Q. I think that the third column in Spanish is
5 "cálculo de los intereses," and the translation is
6 saying "calculo de interes, and it's not appearing on
7 that column. That may be part of the confusion.

8 PRESIDENT BETHLEHEM: May I just interject
9 here. I think, Ms. Cicchetti, you raised the question
10 to the Witness by reference to the footnote annotation
11 Footnote 11. Maybe you could just make progress by
12 both you and the Witness recognizing where Footnote 11
13 is noted.

14 MS. CICCETTI: Thank you for that
15 assistance.

16 BY MS. CICCETTI:

17 Q. Doctora Chaves, if you look at the footnotes
18 in the title column, the third column from the
19 right-hand side that in Spanish reads "cálculo de
20 interés," that's the column I'm interested in.

21 Are you with me?

22 A. Yes, I do.

04:13:01 1 Q. And I'm just trying to understand what that
 2 date is. Is that the date on which an owner submits a
 3 calculation of interest to the Court?
 4 A. Yes. That would be the date of request for
 5 the payment or calculation of the legal interest. It
 6 is a request that must be heard. It is presented to
 7 the Procuraduria. The judge will see it, and it is
 8 subject to appeal.
 9 Q. And then later there is a decision on
 10 calculation of interest, and that appears in the
 11 following column, which is footnoted Number 12 on your
 12 chart; is that correct?
 13 A. Yes.
 14 Q. And the final column is the date of the
 15 payment of interest, and that would be the date that
 16 that interest amount is put into a court account; is
 17 that correct?
 18 A. Yes. What we're referring here about the
 19 payment of interest, it's when the owner withdraws the
 20 funds.
 21 Q. Okay. Thank you.
 22 So, I just wanted to look at two examples

04:14:45 1 here, now that we understand what the column headings
 2 mean. For the first row, Lot A40, the date
 3 calculation of interest is June 7, 2012; correct?
 4 A. Yes.
 5 Q. And the date for the decision on calculation
 6 of interest is 17 January 2013; correct?
 7 A. Yes.
 8 Q. And the final column here has a notation "in
 9 progress," but I understand that, during your direct
 10 testimony, you mentioned that there was an update to
 11 Lot A40, and that interest has been paid; correct?
 12 A. Yes.
 13 Q. Are the documents related to the updates that
 14 you provided in your direct testimony in the record?
 15 A. I don't really know. I told you about the
 16 information I have.
 17 Q. Okay. So, if we can look at this chart,
 18 assuming--looking at it as of the date of your Witness
 19 Statement, it notes that the payment of interest is
 20 "in progress."
 21 Do you see that?
 22 A. Yes.

04:16:25 1 Q. And can you just remind us of the date of
 2 your Witness Statement, please.
 3 A. 22 December 2014.
 4 Q. So, from the date of the decision of
 5 calculation of interest until at least December 22,
 6 2014, and after that, the interest had yet to be paid;
 7 is that correct?
 8 A. Yes, but here there are a number of issues
 9 that I need to clarify. During that time, it's not
 10 that the judicial file wasn't proceeding further. At
 11 the same time as the request for interest was filed,
 12 there was also a request for the calculation of the
 13 costs. The State had a hearing--held a hearing on
 14 that and received a resolution that it was a sign that
 15 they would have to pay a certain amount in costs, and
 16 the State then filed a request of appeal to counter
 17 that resolution.
 18 Subsequently, a resolution was received
 19 stating that the appeal was denied, and the
 20 instruction was given that expenses, plus interest,
 21 was to be paid. So, first of all, I filed an appeal
 22 to the higher Tribunal directly having to do with the

04:18:24 1 costs, and then I filed an appeal to revoke the legal
 2 interest because I haven't been notified. The basic
 3 principle is that decisions have to be notified in
 4 order for one to take cognizance.
 5 The file is past in its entirety to the
 6 higher court. The Court hears the case and the
 7 appeal, admits it, and then sends it back to the
 8 Tribunal. The Tribunal then listens to the Parties of
 9 the appeal, and then it is sent to the higher court
 10 that will determine the decision as to the payment of
 11 costs as presented by the other party. This goes back
 12 to the Tribunal.
 13 Everything entails a role and formalities.
 14 There are many, many cases that are before the Courts,
 15 and when it is received, the Resolution is notified,
 16 as well as the payment of interest is also notified,
 17 and the costs are also paid in addition to interest.
 18 Q. If I understand your answer, Doctora, the two
 19 year--almost two-year delay between the decision on
 20 calculation of interest and the payment of interest
 21 related to State appeals to the process?
 22 A. This is a normal formality, and in any event,

04:20:17 1 let us not forget that the Civil Procedure Code of
 2 Costa Rica says that they have to--there is a filing
 3 of the case, and then there is the movement within the
 4 Court, plus the involvement of the Parties. Both the
 5 owner and the State can file different kinds of
 6 formalities in order for different requests to be
 7 resolved, if they feel that they haven't been resolved
 8 over time, or, if they, perhaps, believe there has
 9 been a breach or any delay.
 10 Q. Thank you, if we can just work through one
 11 more example, please.
 12 I'm looking at Lot SPG2 on your chart. The
 13 date of final determination of value in the judicial
 14 process was 14 December of 2012; correct?
 15 A. For the compensation? Yes.
 16 Q. And the calculation of interest was submitted
 17 on 17 December 2013; correct?
 18 A. Yes.
 19 Q. And the Court decided the calculation of
 20 interest on 13 August 2014; correct?
 21 A. Yes.
 22 Q. Thank you. A new topic, please.

04:22:03 1 At Paragraph 20 of your Witness Statement--at
 2 Paragraph 20 of your Witness Statement, you begin your
 3 discussion of Lot B1, and at Paragraph 22, you note
 4 that "the amount of the administrative appraisal was
 5 deposited in the court's account on 11 May 2006."
 6 Do you see that?
 7 A. Yes.
 8 Q. Then you state that the administrative
 9 valuation was updated in September--on September 22,
 10 2006, and a further deposit made on 16 November 2006.
 11 Would you agree with me that the administrative
 12 valuation for Lot B1 must have increased between the
 13 date of the first appraisal and the second appraisal?
 14 A. That's what it says here, that the
 15 administrative appraisal was updated.
 16 Q. And that first administrative appraisal is
 17 not in the record, is it?
 18 A. I don't know. I couldn't tell you.
 19 Q. But at Footnote 47 of your Witness Statement,
 20 you note that the first administrative appraisal for
 21 this lot was performed in March 2005; is that correct?
 22 A. Yes.

04:24:03 1 Q. Okay. Can I ask you to turn to Tab 19 in the
 2 white bundle that is in the corner of the desk in
 3 front of you there, please.
 4 MS. CICCHETTI: And for the benefit of the
 5 record, this is Exhibit C-23a, and hopefully over the
 6 lunch hour, they've been updated to contain the
 7 English translations of the stamps for those of us in
 8 the room who do better with English than Spanish.
 9 Oh. I apologize. I think I've been taken to
 10 the wrong tab. It's Tab 20.
 11 PRESIDENT BETHLEHEM: What's the exhibit
 12 number that you have for that?
 13 MS. CICCHETTI: C-24a.
 14 We can perform the other exercise in Spanish,
 15 but perhaps we'll start with English just to make it a
 16 little easier.
 17 BY MS. CICCHETTI:
 18 Q. So, I'm sorry, Doctora, if you can please go
 19 to Tab 20.
 20 A. Yes. C-24a is the--and it's the English
 21 translation?
 22 Q. And then behind the English translation you

04:26:03 1 should have the Spanish original of the registry
 2 documents. Do you have that?
 3 A. I have them before, not afterwards.
 4 Q. Okay.
 5 A. I don't know if it's the same documents. I'd
 6 have to check that.
 7 Q. In the top corner of the page, do you have
 8 the words "Exhibit C-24a, Spanish original"?
 9 A. Yes.
 10 Q. So we're looking the same document.
 11 I'm just going to pause and go back to your
 12 Witness Statement for a moment. If you could just
 13 leave that open for a moment because now we're talking
 14 about a slightly different lot, so I'd just like to go
 15 to your Witness Statement first, please.
 16 A. Yes.
 17 Q. And we're looking at Paragraph 23 this time,
 18 where you commence your discussion of Lot B3.
 19 A. Yes.
 20 Q. And the questions will sound familiar to you.
 21 At Paragraph 25, you note that the amount of the
 22 administrative appraisal was deposited in the court's

04:27:44 1 account on 11 May 2006. Do you see that?

2 A. Yes.

3 Q. And then you state that the administrative
4 valuation was updated on 22 September 2006, and a
5 further deposit made on 16 November 2006. Do you see
6 that?

7 A. Yes, and those deposit documents appear in
8 all the citations. If you want, we can go through
9 them.

10 Q. No. No, that's fine. I just wanted to
11 confirm that it's the same for these documents as
12 well.

13 And like the last administrative appraisal,
14 do you know that the first administrative appraisal
15 referred to for Lot B3 is not in the record, is it?

16 A. What is available is the 2006. In other
17 words, the updated appraisal. If I'm not mistaken, I
18 think that the first appraisal wasn't even notified to
19 the owners, and, thus, a second appraisal was
20 conducted precisely to update the value of the
21 property and to be able to start the judicial
22 proceedings in accordance with the law. So, I don't

04:30:41 1 at Footnote 54 of your Witness Statement.

2 A. Yes, it clearly says here that for this lot,
3 the State conducted two administrative appraisals,
4 March 2005 and September 2006. The
5 appraisal--administrative appraisal of September 22,
6 2006, is the final one.

7 Q. Thank you.

8 Now, if you can please turn back to Tab 20,
9 we're looking at Exhibit C-24a, and we've just been
10 talking about Lot B3. And this should be the Cadastre
11 document for Lot B3. Have you seen this document
12 before?

13 A. I think so, at some point. As I said, I am
14 conducting judicial proceedings, and other than the
15 expropriations related to the National Marine Park
16 Las Baulas, so I suppose I have seen this.

17 Q. This document was up yesterday during the
18 cross-examination of Mr. Berkowitz, and I believe you
19 were in the room then as well. So, I think, in
20 general, the format of these documents is familiar to
21 you; yes?

22 A. Overall.

04:29:07 1 really see what the problem is here.

2 Q. I'm just trying to confirm that an
3 administrative appraisal was performed in March 2005;
4 is that correct?

5 A. Well, it says that here, but it says that it
6 was an update. What we'd have to see is whether the
7 appraisal was notified, and, as far as I recall--if my
8 memory serves me--the appraisal that was notified was
9 that of 2006, which is an updated appraisal.

10 Q. But you're not saying that an appraisal was
11 not conducted in March of 2005, are you?

12 A. Excuse me?

13 Q. You're not saying that an appraisal was not
14 conducted in March 2005, are you?

15 A. I'm sorry, but I don't understand. If you
16 could please repeat that so that I can listen to the
17 translation.

18 Q. I'm not asking whether the appraisal was
19 notified, I'm asking whether there was an appraisal
20 conducted in March of 2005.

21 A. What paragraph are you referring to?

22 Q. Footnote 54 of your Witness Statement. It's

04:32:23 1 Q. And I represent to you that this is the
2 Cadastre documentation related to Lot B3, and I'd just
3 like to have you look at it with me, please.

4 If you could turn--start with the
5 first-in-time stamp. So, in the Spanish, if you go to
6 the back of the document.

7 A. Yes.

8 Q. And the same for those on the English copy of
9 the document. There's a stamp on the document that
10 refers to--a MINAE stamp that refers to the Park.

11 Do you see that?

12 A. On the front?

13 Q. Yes.

14 A. Users customer care office?

15 Q. No, the MINAE stamp on the top left-hand
16 side. To the left of the stamp you were just looking
17 at.

18 A. Or to the right. The one starting "Ministry
19 of Environmental and Energy," 02--it is stamped
20 02/19/2005? Is that the one you're talking about?

21 Q. No. It looks like the stamp has four numbers
22 above it, 4317.

04:34:37 1 Doctora, I just--you may not be on the right
 2 page. Ms. Mitretodis is just going to come and make
 3 sure you're on the same page of the document that I
 4 am, please.
 5 A. These pages are not numbered.
 6 PRESIDENT BETHLEHEM: Ms. Cicchetti, I'm
 7 looking at a document which has a number at the top,
 8 which is 4316. So...
 9 THE WITNESS: Yes, I can see that.
 10 (Comments off microphone.)
 11 PRESIDENT BETHLEHEM: The document with 4317
 12 is Tab 19 in our bundles.
 13 MS. CICCHETTI: Thank you.
 14 Everyone has 4316 at the moment?
 15 (Comments off microphone.)
 16 PRESIDENT BETHLEHEM: 4316 in my bundle is at
 17 Tab 20. 4317 in my bundle is at Tab 19.
 18 MS. CICCHETTI: Thank you. I hope everybody
 19 is on the same page.
 20 PRESIDENT BETHLEHEM: Well, I think you may
 21 need to clarify a little bit because you were
 22 referring to Exhibit C-24a, which, as I say, in my

04:36:44 1 bundle has a Number 4316. The 4317 refers to
 2 Exhibit C-23a. So, if you could just make sure that
 3 we all understand what we're dealing with, please.
 4 MS. CICCHETTI: Yes. So, we should be in
 5 Exhibit C-24a, and I misread the number corresponding.
 6 So, the number above the stamp should be 4316.
 7 PRESIDENT BETHLEHEM: Okay.
 8 MS. CICCHETTI: We are on the second-to-last
 9 page of the Spanish.
 10 PRESIDENT BETHLEHEM: That's fine. Thank
 11 you.
 12 MS. CICCHETTI: For which there is an English
 13 translation at the front.
 14 PRESIDENT BETHLEHEM: The stamps are at the
 15 back. The English translation is at the front.
 16 MS. CICCHETTI: Is at the front. Exactly.
 17 BY MS. CICCHETTI:
 18 Q. So, Doctora, I'm not--I'm hoping that you
 19 will be able to help us read this stamp, although I'm
 20 just realizing that the copy that I have may be a bit
 21 cut off. Are you familiar these stamps in general?
 22 A. Yes, ma'am.

04:37:56 1 Q. And on the copy that you have, are you able
 2 to read the stamp?
 3 A. It's cut off, but it says that at the
 4 location in this map is within the National Marine
 5 Park Las Baulas, approximately 45 percent, according
 6 to Executive Decree 2518, July 9, 1991. And then
 7 something the law really can't--what follows is not
 8 clear. It's cut off, but the rest can be--the rest is
 9 legible.
 10 Q. Okay.
 11 And you can see the date?
 12 A. The date?
 13 Q. The date of the stamp.
 14 A. September 2002.
 15 Q. Thank you.
 16 And if you look at the lot depicted on that
 17 page and then compare--now I'd like you to compare
 18 that page to the one a few pages ahead, which is going
 19 to be the registry document, the plano that is filed
 20 later. So, in the Spanish, I have a stamped document
 21 in the top right-hand corner with a Number 1707300.
 22 And then on the following page--we think you need to

04:40:03 1 flip two pages forward.
 2 And I'm just trying to understand the
 3 difference between these two planos, please, and I'm
 4 honing that you can help me because you're generally
 5 familiar with these documents.
 6 It appears to me that on the first plano that
 7 we looked at, where you read the stamp out, the lot is
 8 much larger than the lot depicted on the second plano.
 9 Can you see that?
 10 A. Yes, ma'am. Curiously, it doesn't show the
 11 measurement, this photocopy--well, this is 2336.77
 12 that was disputed. I imagine this is the "thing
 13 amare" (in Spanish) that is the part of the law that
 14 was over 7,000 square meters that was purchased by
 15 Mr. Berkowitz from Corporación Hotelera Playa Tortuga.
 16 It says so here.
 17 Q. And then the smaller lot that appears on the
 18 other map, would that relate to the portion of the lot
 19 that was eventually noticed for expropriation?
 20 A. It would appear so.
 21 Q. And on that map, there appears another MINAE
 22 stamp on the right-hand side. Could I ask you to read

04:42:11 1 that one, please.
 2 A. Ministry of Environmental Energy, stamped
 3 02/19/2005. Based on the location on this plan, the
 4 property described is within the National Marine Park
 5 Las Baulas, according to Executive Decree 2518,
 6 MIRENEM of 7 July 1991 and Law 5724 of August 16,
 7 1995, the provisions of Forestry Law 7575 and related
 8 law. This is for registry purposes. The registration
 9 of this plan is authorized.
 10 Q. Thank you.
 11 And the date of this stamp is what?
 12 A. May 13, 2005.
 13 Q. And the date of this stamp is just a few
 14 months after the first administrative appraisal was
 15 conducted on this lot; correct?
 16 A. It would appear so. But I must clarify that
 17 I work in the judicial proceedings. I receive the
 18 administrative file, a record. Well, yes, it says
 19 here 13 May 2005, and the date of the first
 20 administrative appraisal was--what was the footnote
 21 that you quoted?
 22 Q. I believe it was Footnote 54, Doctora.

04:44:22 1 A. Yes, March 2015--2005.
 2 Q. Thank you.
 3 MS. CICCHETTI: I have no further questions.
 4 PRESIDENT BETHLEHEM: Thank you.
 5 Ms. McCandless.
 6 MS. MCCANDLESS: Let me just confer with my
 7 colleagues for a minute or two.
 8 (Pause.)
 9 MS. MCCANDLESS: Okay. We have no further
 10 questions.
 11 PRESIDENT BETHLEHEM: Thank you.
 12 We have some brief questions by the Tribunal.
 13 Mr. Kantor.
 14 QUESTIONS FROM THE TRIBUNAL
 15 ARBITRATOR KANTOR: Good afternoon,
 16 Dr. Chaves.
 17 THE WITNESS: I apologize. I didn't hear
 18 you.
 19 ARBITRATOR KANTOR: I said, "Good afternoon,
 20 Dr. Chaves."
 21 THE WITNESS: Good afternoon.
 22 ARBITRATOR KANTOR: As you know, I do not

04:45:23 1 speak Spanish, so I will ask my questions in English,
 2 very short questions.
 3 Article 20 of the Expropriation Law appears
 4 to me to say that, if a definitive annotation of
 5 expropriation is not issued within one year after the
 6 notice of Public Interest and preliminary annotation,
 7 that the Declaration of Public Interest expires
 8 automatically; is that correct?
 9 THE WITNESS: Yes, sir--Yes, ma'am. Oh.
 10 Yes, sir, I apologize.
 11 ARBITRATOR KANTOR: What is the legal
 12 consequence of the expiration of the Declaration of
 13 Public Interest?
 14 THE WITNESS: That there's no indication
 15 regarding the--or no registration regarding the
 16 property. The owner can dispose fully of his
 17 property.
 18 ARBITRATOR KANTOR: In--are you familiar with
 19 the December 2008 Decision of the constitutional
 20 division relating to the decision of Procurador?
 21 THE WITNESS: Not in detail. If you can
 22 facilitate me a copy, that would be helpful.

04:47:11 1 ARBITRATOR KANTOR: Would someone kindly
 2 remind me which tab that decision is under in the
 3 volume that she has in front of her?
 4 MS. CICCHETTI: If we're correct, we think
 5 it's Tab 9.
 6 ARBITRATOR KANTOR: Tab 9 of the document--of
 7 the volume in front of you. And if you could turn to
 8 the Spanish language version.
 9 THE WITNESS: Yes, sir.
 10 ARBITRATOR KANTOR: Three pages before the
 11 end, the paragraph that begins "por tanto."
 12 MS. CICCHETTI: Just sorry to interrupt. I
 13 think for clarification, we're not sure, are you
 14 looking for Supreme Court Decision on the
 15 Procuraduría's opinion?
 16 ARBITRATOR KANTOR: This is the document at
 17 which I am looking. This is the document. I may have
 18 explained it incorrectly.
 19 MS. MCCANDLESS: This is the document you're
 20 looking for.
 21 ARBITRATOR KANTOR: Correct.
 22 MS. MCCANDLESS: Okay.

04:48:58 1 ARBITRATOR KANTOR: I'm sorry. You were
 2 about to say something, Doctora?
 3 THE WITNESS: No, sir.
 4 ARBITRATOR KANTOR: Okay. Do you have that
 5 page in front of you?
 6 THE WITNESS: Yes, sir.
 7 (Overlapping interpretation.)
 8 ARBITRATOR KANTOR: The first five lines in
 9 the paragraph that begins "por tanto."
 10 THE WITNESS: Yes, sir.
 11 ARBITRATOR KANTOR: Are you familiar with the
 12 orders of the Court that are contained in those lines?
 13 THE WITNESS: In Section A?
 14 ARBITRATOR KANTOR: Correct.
 15 THE WITNESS: Yes, I have seen that.
 16 ARBITRATOR KANTOR: If a notice of Public
 17 Interest for one of the properties that is covered by
 18 that language expires automatically, what, in your
 19 professional opinion, is the consequence for the
 20 instruction of the Court in Paragraph A?
 21 THE WITNESS: Well, perhaps, we can divide
 22 this. Here it says all the environmental permits

04:50:50 1 granted within the marine park Las Baulas are canceled
 2 and the Ministry of Environment and Mines is
 3 instructed to continue with the expropriation of these
 4 properties.
 5 This is a judicial decision that was made in
 6 protection of the national park, and I see that
 7 environmental permits are voided, but the property
 8 continues to be owned by the buyer, and the buyer
 9 purchased it being aware of the fact that it was
 10 within a national park, so much so that in regard to
 11 the question asked by counsel in three of the judicial
 12 records, the Deeds are included where Berkowitz is
 13 purchasing from Corporación Hotelera Playa Tortuga,
 14 and in that Deed whereby he's purchasing 24 Lots, he's
 15 purchasing all B Lots for \$80,000 each, and all the
 16 others for \$31,000.
 17 And in the Deed, the notary public witnesses
 18 to the fact that all land registry plans have the
 19 MINAE stamp that says that the laws are within the--or
 20 inside the National Park, and besides it's indicated
 21 that the owner knows, the buyer knows that those Lots
 22 are subjects to expropriation because of the

04:52:31 1 situation, and that he waives his right to bring a
 2 claim against seller. Therefore, obviously, this
 3 decision by the Constitutional Chamber is a logical
 4 consequence of the fact that these Lots are inside a
 5 National Park.
 6 ARBITRATOR KANTOR: And what is the consensus
 7 of the automatic expiration of the Declaration of
 8 Public Interest?
 9 THE WITNESS: In accordance to law, it's the
 10 expiration of the Decree whereby the Declaration of
 11 Public Interest is issued.
 12 ARBITRATOR KANTOR: Does that mean that the
 13 expropriation process must start again?
 14 THE WITNESS: Well, it depends on the
 15 specific case. We're talking here in hypothetical
 16 terms. I'm only in charge of judicial proceedings,
 17 and the ones that I have seen--in the ones I have
 18 seen, there is a declaration of public interest, and
 19 there's a subsequent Expropriation Decree, and then
 20 the judicial proceedings are started.
 21 I cannot talk about the administrative
 22 proceedings because I'm not aware of the situation. I

04:54:00 1 can only talk in general terms and what these first
 2 five lines say and what I have seen in judicial
 3 records. But, actually, I'm not an expert on other
 4 subjects, and I could not tell you what the situation
 5 regarding the Lots that are not subject to the--to a
 6 judicial expropriation.
 7 ARBITRATOR KANTOR: Do you have a
 8 professional view about the impact of the expiration
 9 of the Declaration of Public Interest under the
 10 Expropriation Law?
 11 THE WITNESS: The law says that it expires,
 12 and it means that that notation has no effect on the
 13 property; that is, the property continues to belong to
 14 the owner, and the owner can have full use and
 15 enjoyment. And, in fact, until a final notation is
 16 made within the judicial proceeding, the owner
 17 continues to have full use and enjoyment. And title
 18 is transferred when a final judgment is issued setting
 19 the amount of compensation.
 20 ARBITRATOR KANTOR: Gracias. Thank you very
 21 much.
 22 THE WITNESS: Thank you.

04:55:34 1 PRESIDENT BETHLEHEM: Dr. Chaves, just one
 2 small point of clarification from me in the light of
 3 the questions from Mr. Kantor. And this may be in the
 4 record already, so forgive me if I have missed it.
 5 Once a Declaration of Public Interest has
 6 been made, is an owner of property entitled to sell
 7 that property commercially?
 8 THE WITNESS: Yes, sir.
 9 PRESIDENT BETHLEHEM: They can sell that
 10 property commercially.
 11 THE WITNESS: Yes, sir.
 12 PRESIDENT BETHLEHEM: This may not be within
 13 your field of expertise. I'll ask the question, in
 14 any event. Would you expect there to be a reduction
 15 in the value, the price of that property, once a
 16 Declaration of Public Interest has been made if the
 17 owners sought to sell it commercially?
 18 THE WITNESS: It depends on the specific
 19 case. It depends on the specific case. If a lot is
 20 inside a national park, it is public knowledge that it
 21 is inside a public park. That has an impact on the
 22 price, of course. Additionally, Article 129 of the

04:57:00 1 Constitution of Costa Rica says that nobody can allege
 2 lack of knowledge or ignorance of the law. No
 3 citizens of Costa Rica cannot allege that he is--he
 4 does not--he has no knowledge of the Decree creating a
 5 national park. This is a constitution of principle.
 6 And in these cases, there's a constitution of
 7 principle, but also there's evidence that they knew
 8 when they bought that their Lots were inside a
 9 national Park, and there are stamps, and there's the
 10 public deed that says that they know.
 11 PRESIDENT BETHLEHEM: Dr. Chaves, I think
 12 that goes way beyond my question so--and to evidence
 13 that has already been addressed. I was simply
 14 inviting you to speculate on the consequences on the
 15 value of the property from a declaration of public
 16 interest. But thank you. You've responded to that.
 17 Let me just make sure that my colleague,
 18 Mr. Vinuesa, doesn't have any questions.
 19 ARBITRATOR VINUESA: No, I have no questions.
 20 PRESIDENT BETHLEHEM: Dr. Chaves, thank you
 21 very much, indeed, for assisting us, and you're
 22 excused from the witness chair. Thank you very much.

04:58:17 1 THE WITNESS: Thank you.
 2 (Witness steps down.)
 3 PRESIDENT BETHLEHEM: Counsel, I think there
 4 are one or two minor issues that would be helpful to
 5 deal with before we close for the day. I think that
 6 brings to the end the fact testimony of the Witnesses
 7 from both sides. We move tomorrow to the Expert
 8 Witnesses, the valuation Witnesses for each side.
 9 I would just like to clarify, I think, with
 10 counsel for the Claimant. We sought a clarification
 11 from you about the translation of a document that you
 12 had put into the record, and, perhaps, you
 13 could--that's the translation, I think, of the 2005
 14 Opinion, is it not?
 15 And you were going just clarify that for us
 16 whether you are going provide us with the full English
 17 translation, rather than just the four or five pages.
 18 MR. COWPER: I'll stand to be corrected, but
 19 I believe that in the record there's a full English
 20 translation of the 2004 Opinion in the record, and
 21 that's, I believe, C-1g, and we only did a partial
 22 translation of the 2005 because the only difference is

04:59:30 1 essentially the beginning of the document. So that
 2 was the basis for not translating both in the full
 3 form. I can confirm that overnight.
 4 PRESIDENT BETHLEHEM: Well, if you could
 5 confirm that overnight, but, otherwise, we understand
 6 that, as between the two documents, we've got the full
 7 English translation of that document.
 8 MR. COWPER: Yes.
 9 PRESIDENT BETHLEHEM: And then for counsel
 10 for Respondent, just a point of clarification, there
 11 was some reference to a map earlier on. Can you tell
 12 us whether that map is in the record? We're not
 13 seeking to ask you to put it into the record if it's
 14 not, but we'd just like to know whether it is in the
 15 record.
 16 MS. MCCANDLESS: For a point of
 17 clarification, what--the map that Mr. Piedra was
 18 discussing is on the record, and that is Annex C to
 19 Respondent's Memorial on Jurisdiction and
 20 Counter-Memorial on the Merits. That's the image.
 21 It's the second map on there, which is dated 2013.
 22 It's part of the first phase of the map that is

05:00:31 1 requested by the Contraloría, so this is identifying
2 the delimitation of the Park, and there is--what is
3 ongoing is identifying the parcels on that Park, and
4 that's what is still yet to be concluded. And
5 that--I'm sorry, that is not on the record.

6 PRESIDENT BETHLEHEM: And is that map that
7 Mr. Piedra referred to, which you've just identified,
8 the same as the map as Dr. Jurado referred to, which
9 he said is just waiting for publication?

10 MS. McCANDLESS: No. They are two
11 different--well, there are two different stages. I
12 guess the first stage is identifying the Park limits,
13 so the boundaries, and that's what Mr. Piedra was
14 discussing, which is complete. And what Mr. Jurado
15 was discussing was--it's a cadastral map, which is
16 identifying the properties that are located on top of
17 that map, and that is still in process, and that is
18 not on the record.

19 PRESIDENT BETHLEHEM: I see. Thank you very
20 much.

21 Let me just turn to Mr. Kantor because I
22 think he raised one or two questions about a document,

05:01:31 1 wanted a clarification of whether they were in the
2 record.

3 Have you got an answer to those?

4 ARBITRATOR KANTOR: I do not have an answer
5 to those, so I'll ask them again.

6 First, is there a full English translation of
7 the Report of the Contraloría in the record?

8 (Comment off microphone.)

9 MR. ALEXANDROV: It was submitted by
10 Claimants.

11 MR. COWPER: The Claimant's document is only
12 a partial translation, Mr. Kantor.

13 ARBITRATOR KANTOR: Okay. And, second, the
14 chart reporting on the status of various actions
15 called for under that report identified a 2013
16 expropriation manual. Is that in the record?

17 MS. McCANDLESS: I do not believe that's on
18 the record.

19 ARBITRATOR KANTOR: Thank you.

20 PRESIDENT BETHLEHEM: And just before we
21 close, I want to--

22 MR. COWPER: Mr. President, I did want to

05:02:37 1 make a note that I heard Ms. McCandless, and I'm not
2 doubting that she's testified accurately. I do want
3 to look at the transcript last evening--this evening.
4 I'm not sure that I understand her answers to be
5 consistent with those on the record that were produced
6 by the witnesses today. So, I'll just check that
7 overnight, if I may.

8 PRESIDENT BETHLEHEM: I'm not quite sure what
9 the issue is, but, no doubt, you'll come back to us
10 tomorrow with anything you'll want to raise with us.

11 Just a couple of housekeeping matters before
12 the next few days. Tomorrow we've got--we start off
13 with the witness testimony of Mr. Hedden, and we'll
14 start at 9:30 tomorrow, and we'll move from there to
15 Mr. Kaczmarek. For Friday--this is really just to put
16 counsel for both sides on notice because I'd like your
17 clarifications tomorrow. We put to you after your
18 Opening submissions--this was on Tuesday morning--I
19 think, quite detailed questions. We're mindful of
20 the fact that that time is our time. It doesn't
21 intrude into the two hours of closing time that each
22 of you have got. But I'm just reflecting on how we

05:03:53 1 arrange Friday. And my proposal to you--but I'd like
2 you to come back to us at the start of tomorrow just
3 to clarify that this is convenient--is that, instead
4 of the morning session running from 9:30 through until
5 12:00, which was just intended to be the Claimants'
6 Closing, that we would extend that by half an hour
7 running through until 12:30, which will hopefully give
8 you an additional period of time to respond to any
9 questions.

10 We would then have the lunch break from
11 12:30 through until 2:00 and extend the Respondent's
12 Closing from 2:00 through until 5:00, which will give
13 you symmetry of timing to give you some additional
14 time to respond to the questions. We would then take
15 the half-an-hour-coffee break, which is in the
16 schedule, which I should just explain is the
17 half-an-hour-coffee break to allow us, Members of the
18 Tribunal, to reflect on any last-minute formalities
19 that we will want to address with you before we bring
20 the Hearing to a close. And then I have a half an
21 hour's worth of closing formalities as required, which
22 would bring us through until 6:00. Now, what I would

05:05:08 1 like to reflect on is whether you think the additional
 2 half an hour, both in the morning and the afternoon,
 3 is going to be sufficient for you both to deal with
 4 the questions that we put to you orally. If not, if
 5 you feel that we'll need some extra time, then we'll
 6 have to think about starting a little earlier,
 7 shortening the lunch break and/or ending a little bit
 8 earlier, which is the reason I'm raising it with you
 9 now so you can reflect on it overnight and tell us
 10 tomorrow.

11 So, if you could just reflect on that, I know
 12 that, Claimants, you had flight plans, and this would
 13 really, then, put you on notice that flight plans are
 14 not going to work early on Friday evening. But, let
 15 me just, before we close, invite counsel for both
 16 sides just to raise with us any issues that you think
 17 need to be raised of a procedural nature.

18 So, for the Claimants, is there any issue
 19 that you'd like to raise with us?

20 MR. COWPER: Not this evening, Mr. President.

21 PRESIDENT BETHLEHEM: Mr. Alexandrov.

22 MR. ALEXANDROV: Thank you, Mr. President.

05:06:11 1 Two thoughts: One is, it's now five minutes
 2 past 5:00, which means we have close to an hour. We
 3 left open the question that you asked yesterday
 4 whether we wanted to address some of the questions on
 5 a preliminary basis today. We are prepared to do
 6 that--again on a preliminary basis--without foregoing
 7 the opportunity that the Tribunal is giving us on
 8 Friday. So, the first thought is would you like us to
 9 do that now?

10 The second thought that I want to throw out
 11 is, tomorrow we have two Experts. It may be that we
 12 may finish their examination early. Would you like us
 13 to also take that opportunity to--again on a
 14 preliminary basis--address some of the questions? As
 15 you said, the questions are not few and are
 16 complicated, and to the end tomorrow, we may be able
 17 to clarify, at least on a preliminary basis, some of
 18 our answers or outline them or, perhaps, give answers
 19 that will give rise to additional questions. I don't
 20 know, but there is some time and some window of
 21 opportunity for that.

22 PRESIDENT BETHLEHEM: Thank you,

05:07:23 1 Mr. Alexandrov. I think when we were reflecting
 2 yesterday on whether we should use the remaining
 3 period this afternoon for responses--as I indicated
 4 yesterday--in closing, we were certainly open to that
 5 possibility. I understood from both Parties--although
 6 this was not a discussion on the record--that, if we
 7 were to have ended early in the afternoon, you would
 8 have liked to use the time. But as we've now got
 9 already 50 minutes, in any event, we've been going for
 10 a long period and we probably want to take a break, I
 11 think probably anticipating that we'd have half an
 12 hour simply to address questions probably doesn't make
 13 a great deal of sense. But, I think we would be
 14 persuaded, if the two Parties were to agree, but
 15 otherwise, I think we would be inclined to draw this
 16 proceeding today to an end.

17 As regards the timing tomorrow, we are, to
 18 some extent, going to be in both of your hands in
 19 terms of the length of the cross-examination. We've
 20 got some very detailed Expert's Reports on valuation.
 21 I think the Tribunal would be undoubtedly content to
 22 have submissions from one or both of you in response

05:08:40 1 to the questions that we put in tomorrow's session to
 2 the extent that there is some free time, and we hope
 3 that there will be some free time. But, unless the
 4 two of you instantly put your heads together and say
 5 you'd like to use a remaining half hour today to start
 6 to address--well, I'm taking it from Mr. Copher who is
 7 shaking his head in the negative, that he would prefer
 8 not to proceed.

9 Mr. Alexandrov, I'm assuming that on that
 10 basis we should adjourn today. If we do end tomorrow
 11 with the Expert testimony leaving us with sufficient
 12 time for either or both sides to begin to answer the
 13 questions, I think we should proceed down that road.
 14 So let me suggest to both Parties that, do come
 15 prepared, at least to use what time is available at
 16 the end of tomorrow to begin to answer questions. But
 17 that still leaves the question that I put to both of
 18 you at the outset and that is: Do you think an extra
 19 half an hour in the morning session and the afternoon
 20 session on Friday is going to give you an adequate
 21 amount of time to roll in your answers to our
 22 questions, or do you think you will need additional

05:10:01 1 time?

2 I'm not asking for an immediate response to
3 that. You can give me a response to that tomorrow
4 morning.

5 MR. ALEXANDROV: Thank you, Mr. President.

6 Mr. President, working backwards, we're more
7 than happy to take the Tribunal's generous offer of
8 some additional time for Friday because we do believe
9 that the questions are important and worth spending
10 some additional time addressing them. So, we take
11 that opportunity, and I start backwards because the
12 answer to that question is, at least from the
13 perspective of Respondent, quite unambiguous. We
14 understand the Tribunal's concern that today we don't
15 have sufficient time, so we don't insist. I was just
16 throwing that thought out as a possibility.

17 With respect to tomorrow, we'll be prepared
18 to--again, I emphasize, only preliminary basis and
19 subject to further clarifications on Friday--to
20 address at least some of the questions and at least to
21 a certain extent. So, if we have the time
22 tomorrow--and we understand that we don't know that

05:12:07 1 allotted for closing. So, really, what I was trying
2 to gauge was whether you thought that 45 minutes was
3 enough additional time to do justice to the answers
4 that you want to give to 14 questions, or whether you
5 felt you needed more time than that.

6 But, really, reflect on that. If there is
7 anything you want to say to me tomorrow morning before
8 we start, please do so; otherwise, we'll proceed on
9 the basis that we've just discussed. If there's any
10 additional time after the witness evidence tomorrow,
11 we'll go to the questions and run that through into
12 Friday, but we will plan to start Friday at
13 12:30--sorry, at 9:30 in the morning, running through
14 until 12:30, then again start after the lunch break at
15 2:00 and running through until 5:00.

16 Mr. Alexandrov.

17 MR. ALEXANDROV: Just to address your
18 question, Mr. President, and to do the math wrongly,
19 but with some approximation, 45 minutes divided by 15,
20 assuming the questions were 15, would mean 3 minutes
21 per question which, of course, is insufficient in our
22 view. And we understand that we may end up without

05:11:06 1 yet today--but if we do have the time tomorrow, we
2 would be willing and prepared--again, I emphasize on a
3 preliminary basis, at least--to address some of the
4 Tribunal's questions.

5 PRESIDENT BETHLEHEM: Thank you very much.

6 If we do have the time tomorrow, we will take you up
7 on that offer.

8 Mr. Copher.

9 MR. COWPER: Yes, Mr. President. Just
10 offhand it would occur to me that if we do capture
11 time tomorrow, then we should revisit whether we need
12 any extra time on Friday. But if we don't do that, I
13 agree with my friend; I'll grab any offer for an extra
14 30 minutes that's on the table, but if we each
15 take--if we each get time, then we should revisit the
16 schedule on Friday.

17 PRESIDENT BETHLEHEM: Well, I'm happy to
18 revisit that at the end of tomorrow, but you need to
19 do something overnight. In fact, the extension of the
20 extra half an hour on Friday would mean that you would
21 each have, I think, 2 3/4 hours, which would give you
22 an additional 45 minutes on the 2 hours that has been

05:13:16 1 any extra time tomorrow, in which case we'll probably
2 take some time off our Closing to address the
3 questions more extensively, which is why we hope there
4 will be some time tomorrow to do that.

5 PRESIDENT BETHLEHEM: Mr. Alexandrov, having
6 been on, as it were, your side of the bar on numerous
7 occasions, I'm very well aware that questions can
8 somehow disappear off the agenda. So, I was not
9 asking you to do the addition and suddenly see that it
10 was going to be three minutes a question. Let's work
11 on that basis.

12 Thank you very much. We'll adjourn for this
13 evening, and we'll begin, again, at 9:30 tomorrow
14 morning. Thank you.

15 (Whereupon, at 5:14 p.m., the Hearing was
16 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