

Exhibit RWE-012

Expert Report of Aldo Milano

December 22, 2014

English Translation

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

*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 and Glen Gremillion
(Claimants)*

vs.

Republic of Costa Rica.

(Respondent)

ICSID Case No. UNCT/13/2

Expert Report Aldo Milano Sánchez

Expert in Costa Rican Administrative Law

December 22, 2014

I. INTRODUCTION

1. My name is Aldo MILANO SÁNCHEZ, and I am a Costa Rican citizen residing in San Rafael de Montes de Oca, a lawyer by profession, with over twenty-three years of experience in litigation and legal consulting, specializing in public law. In addition to my bachelor's degree in law earned in 1989, I hold a Doctorate in Law, *cum laude*, from the Universidad Latinoamericana de Ciencia y Tecnología (Latin American University of Science and Technology, ULACIT), Latin American Doctorate in Law Program in conjunction with Universidad Complutense de Madrid (Complutense University of Madrid), as well as a Certificate in Advanced Studies in Constitutional Law from the Universidad Nacional de Educación a Distancia (National University of Distance Education), Madrid, Spain. I have published multiple articles and books on public law topics in Costa Rica and Spain. I have taught courses in administrative procedure and constitutional procedure at the university level. I have served as a Constitutional Division judge *pro tempore*, and I co-edited the current Code of Administrative Procedure Law, which governs judicial proceedings concerning actions of public administration. I have also been a member of the Administrative Law Committee of the Bar Association of Costa Rica for several years, at the request by the Bar Association president. I attach my *curriculum vitae* as Appendix 1 to this report.

2. In my capacity as an expert in administrative law, the Ministry of Foreign Trade (COMEX) asked me to prepare a report on: the legal basis of the actions of the Costa Rican government in relation to the international arbitration proceedings *Spence International Investments LLC. et al. v. Republic of Costa Rica* (ICSID Case No. UNCT/13/12).

3. I issue this opinion objectively and independently. I am not a government employee. I have participated in a large number of administrative law proceedings, the majority of them as a lawyer for a private party, but, in one case, as counsel for a governmental authority.

I have also had the opportunity to act as an arbitrator in proceedings involving a public party, in some cases named by that public party and in others named by the private party or by the arbitrators that constitute the arbitral tribunal. I should note that currently I am not a consultant paid by the government for any other matters; I note, however, that I provide legal services to the Technical Civil Aviation Council, contracted by the Corporación Centroamericana de Servicios de Navegación Aérea [Central American Corporation for Air Navigation Services], an international non-profit public service organization with Central American members, with legal status and financial autonomy, which provides services in the areas of air navigation, aviation training and aviation safety.

4. To provide this opinion, COMEX provided me with the list of documents attached as Appendix 2.

5. In this report, I will respond to Claimants' allegations and, in particular, those by Mr. Miguel Ruiz. First, I will describe the creation process of the *Las Baulas* National Marine Park (*Parque Nacional Marino Las Baulas*, the "Park"). Specifically, I will explain that the Park was legally created by executive decree in 1991 and by law in 1995 to protect the nesting sites of the leatherback sea turtle. I will also explain that, through the creation of the Park, the government legally determined that it would expropriate any private lots inside the boundaries of the Park. Second, I will review the opinions of the *Procuraduría* regarding the interpretation of Article 1 of the Law Creating the *Las Baulas* National Marine Park. Third, I will explain the registration duties of the government for the properties it has declared to be of public interest. Fourth, I will discuss the topic of the expropriation proceedings as a result of the February 2010 *Contraloría's* Report. Fifth, I will explain the effect of the decisions of the Constitutional

Division of the Supreme Court in Costa Rica, particularly focusing on its December 16, 2008 decision.

II. CREATION OF THE *LAS BAULAS DE GUANACASTE* NATIONAL MARINE PARK AND ITS CONSOLIDATION PROCESS

6. Mr. Miguel Ruiz has alleged in his expert report that, in his opinion, the *Las Baulas* National Marine Park has not been created.¹ He also alleges that, under Article 16 of the Expropriation Law, the creation of the *Las Baulas* National Marine Park (the "Park") is not viable.² In my opinion, these claims are equivocal and inaccurate. Below I explain the process for creating a national park under Costa Rican law.

7. Pursuant to Article 32 of the Organic Law on the Environment, Law No. 7554 ("LOA"), the Costa Rican government has the power to create "protected wilderness areas" and to subject them to any of the "management categories" provided for by the aforementioned law. These management categories include the national parks.³

8. The mechanism for creating protected wilderness areas is provided for by the LOA in Article 37. The Executive Branch, through the Ministry of Environment and Energy, is responsible for geographically delimiting the area of these protected areas, which may involve private property. Thus, ". . . [t]he private properties affected as provided by this article, due to their location in national parks, biological reserves, wildlife refuges, forest reserves and buffer zones, will be included within the national protected areas only beginning as of the moment they have been paid for or legally expropriated, except where they voluntarily submit to the Forest Regime."⁴ In other words, land that has been identified as part of a National Park only becomes

¹ See Expert Report of Miguel Ruiz, September 29, 2014 ("Ruiz Report"), p. 9.

² See Ruiz Report, p. 9.

³ See Organic Law on the Environment, Law No. 7554, October 4, 1995, Art. 32 [Exhibit R-004].

⁴ See Organic Law on the Environment, Law No. 7554, October 4, 1995, Art. 37 [Exhibit R-004].

Natural Heritage of the Nation after expropriation under Costa Rican law (for example, after payment in full of due compensation). Before this happens, the land is considered part the Park, but it may be used by its owners as they see fit, since it still is not part of the Natural Heritage of the Nation.

9. In this sense, the Constitutional Division has established that

pursuant to Article 37 of the Organic Law on the Environment, private lands that are within the boundaries of a National Park are not part of the Natural Heritage of the Nation until they have been acquired thereby by purchase or expropriation; therefore, until expropriation or until the persons whose rights are protected voluntarily accept payment for forest services, their properties are not subject to any limitations beyond general limitations, *i.e.*, not those intended for the protected wilderness areas with the status of protected areas.⁵

10. Therefore, the government has the discretion to define which of the private lands that are within the spatial boundaries of a national park will be expropriated on a priority basis. Clearly, the government cannot carry out all expropriations simultaneously. Therefore, the government establishes, at its discretion, the levels of priority of expropriation of lands, depending on budget availability or donations that facilitate the acquisition of such lands.⁶

11. In the specific case of the *Las Baulas* National Marine Park of Guanacaste, the Park was created in 1991 by Executive Decree and in 1995 by Law No. 7524. Article 1 of the Law Creating the Park, as well as the Executive Decree, established the boundaries of the Park, while Article 2 of the Law stipulated a provision similar to the aforementioned Article 37 of the LOA. Thus, the law defined a geographical delimitation of the area of the Park, providing that this delimitation included private property. This private property did not automatically become

⁵ See Supreme Court, Constitutional Chamber, Resolution No. 2004-5857, May 28, 2004, p. 3 [Exhibit R-142].

⁶ See Supreme Court, Constitutional Chamber, Resolution No. 2009-5408, May 28, 2004, p. 11 [Exhibit C1i].

part of the Natural Heritage of the Nation, but rather this status would only come at the moment of expropriation or voluntary acceptance.

12. Consequently, the government was authorized to proceed with the expropriation of private land situated wholly or partly within the boundaries of the Park, in such a way that it has the power to decide when to start expropriations and on what properties, subject to the limits established by law. Among them, in accordance with Article 16 of the General Law of the Public Administration, the government must not act contrary to the elementary principles of justice, logic or appropriateness.⁷

13. For this reason, it is possible and legitimate for the Executive or the Legislature to establish the spatial definition of a protected area including private land whose final integration into the Natural Heritage of the Nation is subject to prior compensation through an expropriation procedure in which the property is appraised. This does not violate, *per se*, Constitutional law, although it does not justify excessive delays.⁸ Therefore, a park is created as of its delimitation by Decree or Law, whereby the government considers that the private land included therein belongs to the protected area; but it is fully consolidated when all private lands within it have been expropriated.

14. Mr. Ruiz alleges that, under Article 16 of the Expropriation Law, the existence of the Park is currently unviable.⁹ He argues that, according to the aforementioned article, the government has a period of 10 years to carry out the expropriation of the Park after its spatial delimitation. In my judgment, this is clearly incorrect. The fact of over ten years elapsing after

⁷ See General Law of the Public Administration, Law No. 6227 of May 2, 1978 ("General Law of the Public Administration"), Art. 16 [Exhibit R-089].

⁸ See Supreme Court, Constitutional Chamber, Resolution No. 7549-2008 [Exhibit C-1.zb]; see also Supreme Court, Constitutional Chamber, Resolution No. 2008-8770, dated May 27, 2008 [Exhibit R-141].

⁹ See Ruiz Report, p. 9.

spatial delimitation of the Park without exercise of the power to expropriate private land does not invalidate the aforementioned legal authorization or cause it to expire due to non-exercise.

15. It should be noted that the exercise of the government power of expropriation, as with any other, is not subject to a limitation period. In other words, the power to expropriate does not expire if not exercised for over ten years. Pursuant to Article 66 of the General Law of Public Administration, public powers do not expire.¹⁰ This is a basic legal principle of public law uneventfully accepted in case law¹¹ and legal scholarship.¹² With regard to the matter at hand, legal scholarship has established that the administrative power

(...) iv. Is inalienable, intransmissible and does not expire, because that would entail a decrease in the capacity or minimum, elemental source of legal action of the holder (...) The laws may authorize a waiver or dispensation, inasmuch as they allow the agency to not exercise its power in a particular case, but never the extinguishment of the power with respect to all future cases, which is equivalent to a decrease in the authoritative capacity of the government. In light of the foregoing reasons, the power is not transmissible or subject to a limitation period either.¹³

16. It is therefore impossible to agree with the opinion that, pursuant to Article 16 of the Expropriation Law, Law No. 7495, if over ten years elapse without expropriation of private lands after the geographical delimitation of the *Las Baulas* de Guanacaste National Marine Park by Executive Decree and then by law, the government has lost the power to expropriate. Article 16 of the Expropriation Law provides that "[a]fter ten years from expropriation, the expropriator will return, to the original owners . . . that so requested in writing, the properties or the remaining

¹⁰ See General Law of the Public Administration, Law No. 6227, May 2, 1978, Art. 66 [Exhibit R-089].

¹¹ See, e.g., Supreme Court, Constitutional Chamber, Resolution No. 2003-6320, July 3, 2003 [Exhibit R-129].

¹² See, e.g., Ortiz, E., THESIS OF ADMINISTRATIVE LAW, VOLUME II, San José, Costa Rica: Stradtman, 2002, at pp. 229-230 [Exhibit R-128].

¹³ Ortiz, E., THESIS OF ADMINISTRATIVE LAW, VOLUME II, San José, Costa Rica: Stradtman, 2002, at pp. 229-230 [Exhibit R-128].

portions that have not been fully utilized for the respective purpose."¹⁴ A correct interpretation of this provision prevents arriving at such a conclusion, not only because of the prevalence of the aforementioned legal principle that public powers do not expire, but also because the text, sense and spirit of the law do not point in that direction. The aforementioned law deals with a scenario that has nothing at all to do with the scenario being examined.

17. Article 16 of the Expropriation Law, Law No. 7495, governs the principle that case law and legal scholarship identify as the right of reversion or retrocession; *i.e.*, when the property has been expropriated but it must be reverted to its owner. Indeed, as noted by the First Division of the Supreme Court,

Reversion or retrocession constitutes a right of the party who has had property expropriated arising from the inviolability of private property as a constitutional guarantee established by the Constitution (Article 45), to demand the return of the expropriated property upon reimbursement of the compensation received. This right is usually exercised after the expropriation process has been completed, if the expropriating government authority fails to fulfill the intended purpose of the expropriation (*causa expropriandi*) given the instrumental nature of expropriation for attainment of public interest. This is a real estate action of public law insofar as it seeks to reinstate, in the assets of the party subject to expropriation, the expropriated property, on account of falling under the regime of expropriation.¹⁵

18. As can be seen, the operative fact governed by the aforementioned provision differs markedly from that which concerns us in the case. Article 16 of the Expropriation Law refers to cases where property has already been expropriated (*i.e.*, it is already part of the National Heritage of the Nation), but must be returned to the owners if its use is not necessary for public purposes. For example, when land is expropriated for the construction of a road, if that

¹⁴ Expropriation Law, Law No. 7495 of May 3, 1995, Art. 16 [Exhibit C-1c].

¹⁵ Supreme Court, Constitutional Chamber, Resolution No. 101-1996, September 30, 1996, p. 18 [Exhibit R-130]; *see generally*, Supreme Court, Constitutional Chamber, Resolution No. 799-F-S1-2010, July 1, 2010 [Exhibit R-131].

road is not built in a period of ten years, the property must be reverted to its original owner. Unlike the case provided for in the resolution, in this case the expropriation of the land has not taken place, so there is therefore no possibility of reversion. Much less could it be affirmed, on the basis of the aforementioned provision, that the government's power to expropriate has been extinguished due to not having been exercised for over ten years. In conclusion, the legal existence of the Park is indeed viable.

19. Finally, Mr. Ruiz alleges that the fact of the lands being in the Park should not be considered by the judges when determining the fair price to pay for the expropriation of the properties.¹⁶ In this particular case, I disagree with Mr. Ruiz. It is my understanding that all the Claimants bought the lots to which this case pertains years after the Park was created by executive decree in 1991 and by law in 1995. Therefore, the Claimants bought knowing that their properties had restrictions on account of being inside the area of a national park, area classified as environmentally fragile. Under those conditions, it is not possible to consider potential income from the development of the lands in the fair price, since they were lands that were going to be expropriated on account of being part of the area recognized as a national park because of their environmental fragility. Any expectation of income under those conditions is baseless.

20. Thus, on defining the fair price at which the government must compensate the owner, we may consider the land's environmental purpose, since this had already been determined at the time of delimiting the area of the Park and known by the owner at the time of acquiring the property.

¹⁶ See Ruiz Report, pp. 14-16.

III. EFFECT AND VALIDITY OF LEGAL OPINION OJ-015-2004 AND OF BINDING OPINION C-444-2005 OF THE *PROCURADURÍA*

21. Mr. Ruiz alleges that the pronouncements issued by the *Procuraduría* regarding the interpretation of the Law Creating the *Las Baulas* National Marine Park were issued in a manner contrary to Costa Rican law.¹⁷ This is incorrect. After my review of the records of the opinions issued in 2004 and 2005, I consider that the *Procuraduría* has acted correctly, legally speaking, in issuing these two opinions.

22. In February 2004, the *Procuraduría* issued legal opinion No. OJ-015-2004, in which it interpreted Article 1 of the Law Creating the *Las Baulas* National Marine Park ("Law Creating the Park").¹⁸ This opinion was issued at the request made by the then-Minister of Environment and Energy, who requested an opinion regarding the proper interpretation of Article 1 of the Law, specifically as to whether the term "seawards" is correct or should be understood rather as "inland."¹⁹ In this opinion, the *Procuraduría* concluded that there was a contradiction in the Law Creating the Park, since the "seawards" reference was contrary to the purpose of creating the Park and was contrary to the text of the Law which establishes inland coordinates as points of reference. Therefore, the *Procuraduría* considered that the "seawards" reference was an obvious error in the Law Creating the Park, and that it should be understood that the 125-meter strip ran inland.²⁰

23. I consider that the interpretation of the *Procuraduría* was the correct one according to the rules of legal interpretation provided for in Costa Rican law. Additionally, we

¹⁷ See Ruiz Report, pp. 10-16.

¹⁸ See Legal Opinion of the *Procuraduría* on the Law Creating the *Las Baulas* National Marine Park, OJ-015-2004, February 10, 2004 [Exhibit C-1t].

¹⁹ See Request of Consultation from MINAE to the *Procuraduría*, DM-821-2003, May 5, 2003 [Exhibit R-093].

²⁰ See Legal Opinion of the *Procuraduría* on the Law Creating the *Las Baulas* National Marine Park, OJ-015-2004, February 10, 2004 [Exhibit C-1t].

should bear in mind that the Law Creating the Park could not have decreased the limits established in the 1991 Decree, since it did not fulfill the legal requirements to do so. Article 38 of the Organic Law on the Environment establishes that a protected wilderness area cannot be reduced, except by a law of the Republic that is supported by technical studies.²¹ The Law Creating the Park was not supported by any such studies, and, therefore, it could not have reduced the area established in the 1991 Decree, which clearly included a 125-meter strip of land along the coast.

24. The opinion of the *Procuraduría* is produced through the aforementioned legal opinion – not by a binding opinion. The legal opinion itself makes it clear that this is due to the fact that the consultation made was not accompanied by the legal analysis of the consulting body, which is required for issuance of a binding opinion.²² The opinion also makes it clear that, because of the importance of the topic of the consultation, the consultation was accepted for review. This is a long-standing administrative practice of the *Procuraduría*. Although its Organic Law does not mention this possibility, in cases where any of the requirements for admissibility of consultations is not met (for the consultation to be made by the head of the consulting body; for it to be accompanied by a legal analysis, and for it to not deal with a specific case), if the matter is of importance, it is normal for the opinion to be called a legal opinion and not a binding opinion (*dictamen*). Therefore, the procedure followed to issue the aforementioned legal opinion contains no defects that would invalidate such opinion.

²¹ See Organic Law on the Environment, Law No. 7554, October 4, 1995, Art. 38 [Exhibit R-004].

²² See Organic Law of the Office of the Attorney General, Law No. 6815, September 27, 1982, Art. 4 [Exhibit C-10].

25. It is, in any case, of interest to note that even where the legal opinion is not binding, it can be considered a guide with respect to the correct interpretation of the Law Creating the Park.

26. In December 2005, the *Procuraduría* issued a binding opinion (*dictamen*), C-444-2005, on the interpretation of Article 1 of the Law Creating the Park.²³ On this occasion, the Ministry of Environment and Energy again consulted on the interpretation of the aforementioned article.²⁴ In its consultation, it is noted that the previous opinion request is reiterated, since, because of the Ministry's failure to submit its own legal analysis, the previous request was answered by the issuance of a legal opinion and not a binding opinion (*dictamen*). Therefore, this second time, the Ministry's legal analysis, which was issued in September 2005, was provided.²⁵

27. After examining the administrative file relating to said binding opinion (*dictamen*), I find no reason to conclude that it is invalid. The consultation came from the senior officer of the Ministry of Environment and Energy, it did not deal with a specific case, and, on this occasion, it was indeed accompanied by the Ministry's legal analysis. Therefore, all of the legal requirements for issuance of a binding opinion (*dictamen*) by the *Procuraduría* were met. Thus, this time, the opinion issued is indeed binding, unlike the legal opinion mentioned above.

28. Claimants allege that these opinions were never notified to them.²⁶ However, these opinions did not have to be notified to the Claimants. The opinions of the *Procuraduría* are not to be notified to third parties, since the *Procuraduría* only answers consultations from

²³ See Letter from the Attorney General to the Minister of the Environment and Energy (MINAE) (Carta del Procurador al Ministro), December 23, 2005 [Exhibit C-1g].

²⁴ See Request from MINAE to the *Procuraduría* on the Interpretation of the Law Creating the *Las Baulas* National Park, Attaching Study from Legal Department, DM-1725-05, October 19, 2005 [Exhibit R-094].

²⁵ See Request from MINAE to the *Procuraduría* on the Interpretation of the Law Creating the *Las Baulas* National Park, Attaching Study from Legal Department, DM-1725-05, October 19, 2005 [Exhibit R-094].

²⁶ See Claimants' Reply, para. 103.

government bodies or agencies, and it only notifies its opinions to them, not to private parties. The *Procuraduría* is classified, in its Organic Law, as the Highest Advisory Body of the Government, and therefore its opinions are not required to be notified to private parties. However, the *Procuraduría* publishes all of its opinions through the National System of Valid Legislation, which can be accessed freely by any interested private party.

29. Finally, Mr. Ruiz makes several statements regarding the actions of the then-*Procurador*, Dr. Julio Jurado, who drafted both opinions from the *Procuraduría*. With respect thereto, it should be noted that Mr. Ruiz has not presented evidence of the alleged conflict of interest of the then-*Procurador* Jurado, and I therefore consider that his claims are unfounded. In any case, both opinions were not only drafted by the then-*Procurador* Jurado, but they were also approved by the *Procurador General Adjunto* (2004 opinion) or the *Procurador General* (2005 Opinion), as required under Costa Rican law.

IV. NOTICE OF EFFECT ON PROPERTY RIGHTS OF POTENTIAL INVESTORS BY CREATION OF THE PARK

30. Mr. Ruiz argues in his expert report that Costa Rica did not fulfill its obligations to provide notice of the effect on property under Costa Rican law.²⁷ He argues that the government should have given notice of the creation of the Park to the owners of the lots that were inside the Park.²⁸ These affirmations are incorrect. The government is not obligated to record, in the registry entry of each particular lot, the creation of a national park. The notice of the creation of the Park is made by publication in the Official Gazette of the law or the decree that has created the Park.

²⁷ See Ruiz Report, pp. 3-7.

²⁸ See Ruiz Report, pp. 3-7.

31. In the specific case under review, there are two statutory provisions that delimited the boundaries of the *Las Baulas* National Marine Park of Guanacaste, which included private property: Executive Decree No. 20518-MINEREM of 1991 and Law No. 7524 of 1995. These statutory provisions, being an executive decree and a law, were notified by their publication in the Official Gazette. In the case of the executive decree, notice thereof is governed by Article 240.1 of the General Law of the Public Administration, according to which general acts – such as the executive decree in question – must be notified by publication.²⁹ In the case of the law, the Constitution itself provides, in Article 129, the duty to publish laws, to the extent that they enter into force and effect, in the absence of any provision to the contrary, upon publication in the Official Gazette.³⁰

32. Thus, no one interested in acquiring land within the area of the *Las Baulas de Guanacaste* National Marine Park could claim ignorance of the limitations on private property which that entailed, since the statutory provisions that delimited the Park were notified in accordance with the Constitution and the General Law of Public Administration. Consequently, as well provided for in the aforementioned Article 129 of the Constitution, no one can claim ignorance of the law except in cases that it expressly authorizes.³¹

33. Mr. Ruiz also alleges that, under Article 268 of the Civil Code, the government was obligated to record the creation of the Park in the public registry entry of each affected property.³² This is not correct either. As understood by the Administrative Law Court, Section II, in matters of expropriation, the provisions of the Civil Code are inapplicable, "because

²⁹ See General Law of the Public Administration, Law No. 6227, May 2, 1978, Art. 240.1 [Exhibit R-089].

³⁰ See Political Constitution of the Republic of Costa Rica, November 8, 1949, Art. 129 [Exhibit R-018].

³¹ See Political Constitution of the Republic of Costa Rica, November 8, 1949, Art. 129 [Exhibit R-018].

³² See Ruiz Report, p. 4.

expropriation is specially regulated, specifically by the Expropriation Law, Law No. 7495 . . . and the Law of Acquisitions, Expropriations and Establishment of Easements of the *Instituto Costarricense de Electricidad* [Costa Rican Electricity Institute] . . . , which are laws created specifically to guarantee the respect of a fundamental right, contained in and guaranteed by Article 45 of the Constitution."³³

34. Indeed, under the aforementioned Law No. 7495, the Expropriation Law, the duty to notify and publish comes when the decision has been made to initiate the expropriation procedure by the declaration of public interest.³⁴ This did not happen automatically at the time of the enactment of the Executive Decree and the Law Creating the *Las Baulas de Guanacaste* National Marine Park, but must rather be done for each of the properties individually.

35. When the declaration of public interest with regard to each property is made, this decision must be notified and published, and then the provisional administrative registration or, as appropriate, the final registration, must be recorded.³⁵ These precautionary measures, as they do not impose restraints on the alienation of the property, are not required to allow the expropriation process to go forward.³⁶

36. Therefore, there is no legal duty to notify private owners of the incorporation of land owned thereby into the area of the *Las Baulas* National Marine Park of Guanacaste, since the statute requires no such notice. Moreover, publication in the Official Gazette of the Executive Decree and the Law Creating the Park prevents the owners of the land included in the area

³³ Administrative Court, Section II, Res. No. 570-2007, December 14, 2007, p.8 [Exhibit R-132].

³⁴ See Expropriation Law, Law No. 7495, June 8, 1995, Art. 18 [Exhibit C-1c].

³⁵ See Expropriation Law, Law No. 7495, June 8, 1995, Art. 20 [Exhibit C-1c].

³⁶ See Administrative Law Court, Section II, Resolution No. 570-2007, December 14, 2007 [Exhibit R-132].

delimited by these provisions from claiming ignorance of the boundaries implicitly created by such declaration, pursuant to Article 129 of the Constitution.

V. REGISTRATION OF THE DECLARATION OF PUBLIC INTEREST

37. As stated above, the government must only record an entry in the registration of each property when the expropriation process begins with the respective declaration of public interest. Mr. Ruiz considers that cases in which the registration of the Declaration of Public Interest has expired are cases in which the government can no longer proceed with expropriation.³⁷ This is incorrect. The declaration is the first step in any expropriation procedure.

38. This declaration, as rightly noted by the *Procuraduría* "... consists of a statement of intent by the government by which it is stated and demonstrated that a private asset must compulsorily be sold or the powers held by the owner over such property must be limited because the property is necessary to fulfill a public need."³⁸

39. As stated in the Expropriation Law, Article 20,

In the declaratory resolution of public interest of the asset, an order will be made to issue, in the respective public register, an interim order for annotation. After annotation, the transfer of ownership or the establishment of any real right over the asset will be understood as made without prejudice to the entity making the annotation. The annotation will expire and will be canceled *ex officio* if, within the following year, presentation is not made of the order for final annotation, issued by the administrative law and civil tax court.³⁹

40. As can be seen, under applicable law, at the time of the declaration of public interest, the administrative entity issuing such declaration will order the interim annotation of the

³⁷ See Ruiz Report, pp. 3-7.

³⁸ Attorney General of the Republic, Opinion 143-2002, June 7, 2002 [Exhibit R-133].

³⁹ Expropriation Law, No. 7495, Art. 20 [Exhibit C-1c].

expropriation decision. Such annotation may be ordered to be made final by the court hearing the expropriation proceeding where necessary.

41. For the Administrative Law Court, Section II,

...the interim annotation made by the expropriating authority has an extremely important function; *first*, to inform third parties of the decision to expropriate the property, implementing the *principles of good faith and registry notice*, it being understood that such annotation does not have the power to impose restraints on alienation of the property but rather to notify third parties that any transaction or encumbrance made thereon or to be made on a future date is subject to the outcome of the expropriation procedure; and, *secondly*, it establishes a validity period for the interim order for annotation of the expropriation – *not to be confused with a expropriation limitation period* – established at one year, so that, if there is any opposition of the party whose property is subject to expropriation with regard to the compensation amount, the expropriating authority is compelled to initiate proceedings before the competent judicial authority (Administrative Law Court), this being a guarantee in the interest of the party subject to expropriation to protect its right of property. Therefore, *it is not possible to affirm that the expropriation process is dependent on the final annotation, for which the court is responsible for ordering*, in such a way that if it is not done, the process would be shelved, as the appellant appears to argue.⁴⁰

42. Thus, in cases in which the registration of the declaration of public interest has expired, the government authority or the court may request registration again, if necessary. The registration of the declaration of public interest has the effect of providing notice of the expropriation process of the property, but if it is not carried out that does not affect the validity of the expropriation process.

⁴⁰ Administrative Law Court, Section II, Resolution No. 570-2007, dated December 14, 2007 (emphasis in original) [Exhibit R-132].

VI. SUSPENSION OF SOME EXPROPRIATION PROCEDURES IS A LEGITIMATE MEASURE

43. The Claimants and Mr. Ruiz allege that the National System of Conservation Areas ("SINAC") lacked the power to suspend the expropriation proceedings that were in the administrative phase.⁴¹ This is incorrect. The suspension decision implemented by SINAC for the expropriation proceedings in the administrative phase, as a result of the report that the *Contraloría General* issued in 2010, was made properly and was within the powers of the entity.

44. On February 26, 2010, the Area of General, Environmental and Agricultural Public Services in the Division of Operative and Evaluative Oversight of the *Contraloría General* ("CGR") adopted the report DFOE-PGAA-IF-3-2010. This report is the result of the exercise of oversight powers given to the *Contraloría General* by its Organic Law and the Constitution.⁴² In this report, the CGR reviews the expropriation proceedings and the management of the *Las Baulas* National Marine Park and issues a series of recommendations to improve these processes.

45. In accordance with the Organic Law of the *Contraloría General*, the CGR is authorized to bind parties subject to its Treasury oversight powers.⁴³ In other words, compliance with the determinations of the CGR is mandatory, and therefore failure to comply could result in administrative disciplinary liability for the responsible officers.

46. In the aforementioned report, the CGR identified a series of weaknesses in the Park management system and in the expropriation proceedings being carried out therein. Consequently, the CGR issued a series of binding orders, "... in order to remedy the

⁴¹ See Ruiz Report, pp. 16-18.

⁴² See Organic Law of the Office of the Comptroller General, Law No. 7428, September 7, 1994, Arts. 12, 21 [Exhibit R-059]; Constitution of Costa Rica, Arts. 183 and 184 [Exhibit R-018].

⁴³ See Organic Law of the Office of the Comptroller General, No. 7428, September 7, 1994, Arts. 12, 21 [Exhibit R-059].

weaknesses..."⁴⁴ Among these, the CGR recommended that SINAC consider suspension of the expropriation process, and it requested that SINAC carry out a series of actions, which included: devising a study of titles of properties inside the Park, preparing a manual for expropriations, devising a mapping study to determine the Park boundaries with absolute certainty, among others.⁴⁵ The CGR therefore issued a series of orders that could impact the present and future expropriation proceedings within the Park.

47. SINAC, acting within its legal powers, made the decision to suspend all proceedings that were in progress in the administrative phase. Pursuant to Costa Rican law, specifically Article 138 of the General Law of Public Administration, "a decision may be expressed through another that necessarily implies it."⁴⁶ This is the implementation of the theory of the implicit act, which may be applied in the case at hand.⁴⁷ According to this theory, it is possible to infer, from a declaration or the content of a formal administrative decision, another declaration of intent of the authority. Therefore, it is possible to infer that, although the aforementioned report does not include within its express "orders" the suspension of the expropriation procedures, this suspension becomes compulsory when we consider the necessary corrective actions ordered by the CGR.

48. Indeed, everything indicates, in accordance with the content and effects of the binding orders in the report from the CGR, that to continue with the expropriation procedures could be counterproductive and even cause harmful effects to the objectives of protecting the

⁴⁴ Report of the Comptroller General's Office, Report No. DFOE-PGAA-IF-3-2010, February 26, 2010, p. 45 [Exhibit C-1zk].

⁴⁵ See Report of the Comptroller General's Office, Report No. DFOE-PGAA-IF-3-2010, February 26, 2010 [Exhibit C-1zk].

⁴⁶ General Law of the Public Administration, Law No. 6227, May 2, 1978, Art. 138 [Exhibit R-089].

⁴⁷ Ortiz, E., THESIS OF ADMINISTRATIVE LAW, Volume II, San José, Costa Rica: Stradtman, pp. 321-322 [Exhibit R-128].

Park detailed in the report. Thus, while not one of the orders, the suspension of all or some of the expropriation procedures is a legitimate measure that the authority is able to take in the exercise of its discretion. Furthermore, none of the provisions in the Expropriation Law prevents the suspension of an expropriation procedure that has been initiated, much less if such suspension has the purpose of resolving compensation matters – for example – and determining whether the land is part of the Natural Heritage of the Nation or whether or not it was legitimately registered. It is my understanding that the suspension began before the formal issuance of the *Contraloría's* Report, as a result of several meetings held by SINAC officials with officials from the *Contraloría* when carrying out the audit process. I consider that this early suspension is not contrary to law either. SINAC officials were anticipating the final recommendations, which would be compulsory.

49. Finally, the suspension of the processes that were in the administrative phase is not a violation of the right to equality under Article 33 of the Constitution, as Mr. Ruiz alleges.⁴⁸ Under this principle, it is legitimate to treat that which is unequal unequally. If there are grounds to allow in some cases sufficient certainty to continue the expropriation procedures and not in others, the authority may clearly give unequal treatment in the face of unequal factual circumstances. Only the expropriations in the administrative phase were suspended, since the expropriations in the judicial phase were in a different factual situation and the report from the *Contraloría* only applied to the administrative phase of the expropriation process. Indeed, as the Constitutional Division of the Supreme Court has understood, "...violation of the principle of equality cannot be alleged when unequal subjects are given different treatments; what is more,

⁴⁸ See Ruiz Report, p. 17.

acting otherwise, by granting uniform privileges, would constitute a violation of said constitutional principle."⁴⁹

VII. FORCE AND EFFECT OF THE RULINGS OF THE CONSTITUTIONAL DIVISION

50. Claimants and Mr. Ruiz have alleged that the December 2008 decision of the Constitutional Division regarding the *Las Baulas* National Marine Park was only published in January 2009.⁵⁰ This is incorrect.

51. The Constitutional Division reports its decisions in three stages: first, when it makes the ruling in a session of the full court, it enters and publishes the operative part of the judgment; second, after formalization of the signatures of the members of the full court, it serves the full text of the judgment on the parties in the proceedings; and, third, it publishes the judgment through the National System of Valid Legislation ("SINALEVI").⁵¹ The first publication occurs on the day the ruling is issued, or, at the latest, the next day, and therefore any third party interested in such decision can access the system of the Constitutional Division and obtain the operative part of the judgment.⁵² Additionally, in cases where the Division deems it necessary because of the scope of the effects and the nature of the subject matter of the proceedings, the operative part of the judgment contains a "notification order," *i.e.*, an order is issued to notify the operative part of the decision immediately, so that it can be disseminated

⁴⁹ Supreme Court, Constitutional Chamber, Resolution No. 2002-8867, September 11, 2002 [Exhibit R-134]; *see also* Supreme Court, Constitutional Chamber, Resolution No. 2008-1001, January 23, 2008 [Exhibit R-110].

⁵⁰ *See* Ruiz Report, p. 20; Claimants' Reply, para. 94.

⁵¹ *See* http://jurisprudencia.poderjudicial.go.cr/SCIJ_PJ/main_jurisprudencia.aspx (last accessed December 21, 2014) [Exhibit R-107].

⁵² *See* Judicial Branch: Online Consultation System *available at* <https://pjenlinea.poderjudicial.go.cr/SistemaGestionEnLineaPJ/publica/> (last accessed December 20, 2014) [Exhibit R-121].

more quickly. In other words, in these cases, the Court does not wait until the signing of the judgment to notify the parties.

52. Additionally, the decisions of the Constitutional Division, because it is a constitutional court not subject to any higher court, have effect from the date they are issued. The Constitutional Division has referred on multiple occasions to the enforceability of its judgments. By way of example, in Resolution No. 3562, the following is stated:

Contrary to the contention of the appellant, since the decisions of this Division are unappealable, pursuant to Article 11 of the Law of Constitutional Jurisdiction, once the operative part of the judgment has been issued, even before it has been served on the interested parties, nothing prevents said interested parties from proceeding in accordance with the law, as they do in this case. Moreover, although it is true that judgments issued by the Division may be added to or clarified, in the understanding that this is necessary for the full enforcement of the judgment, within three days from the date of notification of the same when requested by either party, or *sua sponte* at any time by the Division itself, such a request, even if it were allowed, would not have the effect of amending the judgment.⁵³

53. Moreover, with regard to the conclusiveness and enforceability of the judgments issued by the Division, pursuant to Resolution No. 507-I-97, it should be understood that "(...) the rulings of the Division become conclusive and are enforceable as of the moment that the wherefore clause of the judgment is issued, regardless of whether the whereas clauses remain to be drafted, signed and notified, since these actions cannot have the effect of amending the ruling."⁵⁴

54. In the case at hand, the Constitutional Division issued Resolution No. 2008-18529 on December 16, 2008. In this decision, the Division ordered (i) the suspension of all

⁵³ Supreme Court, Constitutional Chamber, Resolution No. 3562-93, July 3, 1993, p.1 [Exhibit R-136].

⁵⁴ Supreme Court, Constitutional Chamber, Resolution No. 2000-08681, October 3, 2000 [Exhibit R-139].

environmental licenses in the *Las Baulas* National Marine Park, (ii) the suspension of all building permits in the Park; and (iii) immediate expropriation of the private lands in the Park, among other stipulations.⁵⁵ In accordance with the above explanation, this decision took effect *erga omnes* as of its issuance. It is also necessary to consider that, in this case, the Division decided to include the following in the operative part of the decision: "*Ordered to be served on all the parties and also the Contraloría General de la República, and the mayors of the municipalities of Santa Cruz, Carrillo and Nicoya.*" In my experience as a former judge *pro tempore* of the Division and as a trial lawyer, this stipulation causes the clerk of the Division to issue the respective official letters addressed to the parties and the entities named by the Division in the decision on the same day or the day after the justices give their opinions. In other words, the operative part of the judgment is made known, even before the final drafting of the ruling and collection of signatures of the participating justices. Moreover, since the complaint was filed by residents of Playa Grande and affected various public entities involved in the processing of environmental and construction permits and authorizations, it was ordered to be served on those administrative entities; we may infer that knowledge of the scope of this decision of the Division was very widespread from the time the decision was issued.

55. Claimants also allege that the Ministry of Environment and Energy has violated the order to "immediately" expropriate the private lands in the Park. In this regard, I should note that the orders of the Constitutional Division must be analyzed in the context in which they are issued. Therefore, considering that the government does not have the ability to carry out all the expropriations, simultaneously complying with all the legal requirements, it should be understood that the order of the Division is to be followed in accordance with the government's

⁵⁵ See Supreme Court, Constitutional Chamber, Resolution No. 2008-18529, December 16, 2008, pp. 20-21 [Exhibit C- 1j].

capabilities. In fact, in March 2009, the same Division clarified that it was not instructing the government with regard to when or which expropriations should be carried out, since this falls under government discretion.⁵⁶

VIII. CONCLUSIONS. BRIEF SUMMARY OF THE MAIN CONCLUSIONS IN THE PRECEDING SECTIONS

56. In accordance with the executive decree and the law establishing the *Las Baulas* National Marine Park of Guanacaste, the area of the Park was established including private lands that will remain private until they are expropriated. The particulars of the expropriation order may be determined by the Costa Rican government in accordance with discretionary criteria.

57. The power of expropriation is not subject to any time limitation period. The period established by Article 16 of the Expropriation Law, Law No. 7475 of May 3, 1995, governs, rather, the period within which a private party may seek reversion or retrocession of an expropriation.

58. It is pertinent that, when establishing the fair price to pay for the property to be expropriated, its special condition of environmental fragility is considered, which would not allow taking into account potential income.

59. The opinions of the *Procuraduría*, OJ-015-2004 and C-444-2005, interpreting the Law Creating the Park, have no defects that would invalidate them. They are based on the superior advisory powers conferred on the *Procuraduría*.

60. The Costa Rican government has no obligation to notify the creation of a park or other conservation area to private landowners whose lands are within its geographic boundaries. The notice of such a decision is given by publication in the Official Gazette.

⁵⁶See generally Supreme Court, Constitutional Chamber, Resolution No. 2009-005408 [Exhibit C- 1zi].

61. The declaration of public interest that begins an expropriation procedure indeed must be published and also notified to each landowner, and the interim administrative annotation of such decision will subsequently be ordered, which does not impose restraints on alienation of the land.

62. In matters of expropriation procedures, the provisions of the Civil Code do not apply because the Civil Code is a general law that takes a secondary position to the special law.

63. SINAC's decision to suspend some administrative expropriation proceedings during the course of the investigation or audit that led to the report DFOE-PGAA-IF-3-2010 is legitimate, and it can even be deduced from the scope of said binding report that it is the result of an implicit decision.

64. The rulings of the Constitutional Division in *amparo* proceedings enter into effect as of the moment of their adoption by said Court, as they are not subject to appeal. They are notified in three stages: on being adopted in a session of the full court, the operative part of the judgment is entered; when the judgment is signed by the judges of the full court, it is served on the parties; and it is subsequently published in the National System of Valid Legislation (SINALEVI).

65. In the specific case of judgment No. 18529-2008, these three stages were fulfilled, with the special circumstance that the operative part of the judgment included the order to serve the judgment on the parties, the Comptroller General's Office and the mayors of Santa Cruz, Carrillo and Nicoya. The decision was thus widely disseminated locally and nationally from the time of issue.

66. I declare that, to the best of my knowledge and belief, my statements herein are the truth and nothing but the truth, and they are consistent with what I truly believe. No

government employee or official or external attorney for the government in this case has influenced my opinion. I make this statement in Spanish, and if called to testify at the hearing, I will do so in Spanish.

This opinion is based on my professional experience, and I certify that its contents are in accordance with my sincere beliefs.

[Signature]

[Round seal:]

Dr. Aldo MILANO SÁNCHEZ ATTORNEY

No. 4730

Aldo Milano

Date: December 22, 2014

Appendix 1

CURRICULUM VITAE

NAME: Aldo MILANO SÁNCHEZ

EDUCATION:

- Faculty of Law, Universidad de Costa Rica [University of Costa Rica]:
 - Bachelor of Law 1989;
 - Attorney-at-Law 1989 (admitted to Bar Association on October 2, 1989).
- Faculty of Social Sciences, School of Law, Universidad Latinoamericana de Ciencia y Tecnología [Latin American University of Science and Technology], Doctorate in Law (2007).
- Faculty of Law, Universidad de Estudios a Distancia [University of Distance Education], Madrid, Spain:
 - Certificate in Advanced Studies in Constitutional Law (2009);
 - Enrolled in Doctorate in Law program, Department of Political Law (2009).

OTHER COURSES:

- International Arbitration Seminar, "*International Arbitrator Training Program*," Organization of American States – Center for Conciliation and Arbitration, Chamber of Commerce of Costa Rica, July 19, 2000. Duration 16 hours.
- "*Project Finance*" Seminar conducted by the Instituto Centroamericano de Administración de Empresas (Central American Institute of Business Management, INCAE), Managua, from February 4 to 6, 2005.
- 20th Litigation Skills Academy, Workshop in Honor of Janeen Kerper, San Diego, CA, from February 18 to 22, 2011, Training Access, Institute for Criminal Defense Advocacy, California Western School of Law.

UNIVERSITY TEACHING EXPERIENCE:

- Senior Professor of Administrative Procedure, University of San José, 1990 to 1997.
- Professor of Administrative Procedure, School of Law, Universidad Latina [Latin University]. 01/May/2004 to 30/April/2005.
- Professor of Constitutional Procedure, Universidad Escuela Libre de Derecho [Free School of Law University], from 01/May/2010 to present.

EXPERIENCE AS AN INSTRUCTOR IN SHORT COURSES

- International Center for Conciliation and Arbitration, AMCHAM, Bar Association of Costa Rica, course "*Conciliation and Arbitration in Administrative Law, Case Resolution and Analysis*," June 6, 7 and 8, 2001.
- International Center for Conciliation and Arbitration, American Chamber of Commerce, in the course "*Alternative Dispute Resolution in the Public Administration*," July 9, 10 and 11, 2002.
- Bar Association, Costa Rican Institute of Legal Sciences. Course: "*Mechanisms of Challenging Municipal Decisions*." October 13, 20, 27 and November 3, 2003.
- Universidad para la Cooperación Internacional [University for International Cooperation] and Centro Latinoamericano de Arbitraje Empresarial [Latin American Business Arbitration Center] in the Latin American Training and Accreditation Program in Business Arbitration (2005 and 2006).
- Universidad de Costa Rica [University of Costa Rica]. National Environmental Technical Secretariat. Association of Engineers and Architects of Costa Rica. International Union for Conservation of Nature. Tropical Science Center "*Environmental Assessment and Management Training Program (PROCEGA)*." Instructor of the subject: "*National Environmental Legislation*," April and May 2006.
- Universidad para la Cooperación Internacional [University for International Cooperation], Course: "*Code of Administrative Law Procedure*." Instructor of the subject: "*Procedural Activity*," July 24, 2006.
- Bar Association of Costa Rica, Academic Department, course "*The New Administrative Law Process*." Instructor of the subject: "*Procedural Activity*," Academic Department of the Bar Association of Costa Rica, held on August 15, 22 and 29 and September 5, 2006.
- AGIO Gestoría de Negocios, in the course "*Environmental Management Systems ISO 14001:2004 and Environmental Provisions Applicable in Costa Rica*." April 2007; May 2008.
- Grupo Libertad S.A., in the course "*New Administrative Law Code*," September 2007; December 2007.
- AGIO Gestoría de Negocios, in the course "*The Paradigm Shift in Waste Management: Law No. 8839*," September 2011.

PUBLICATIONS:

Books authored or co-authored:

- *"Ensayos de Derecho Procesal Administrativo. Parte General"* [Essays on Administrative Procedure. General Topics]. Editorial Universidad de San José, San José, 1997, ISBN 9977-981-19-1, p. 272.
- *"El Principio Precautorio"* [The Precautionary Principle], Editorial Jurídica Continental, San José, 2005, ISBN 9968-784-66-4, p. 194.
- *"Arbitraje y Derecho Público"* [Arbitration and Public Law], co-author, Editorial Jurídica Continental, San José, 2008, ISBN 978-9968-561-02-0, pp. 89-180.

Books edited and updated:

- *"Tesis de Derecho Administrativo"* [Administrative Law Opinions], Volume I, Eduardo Ortiz, 421 p. ISBN-958-8075-58-0, 2002 edition (responsible for editing and updating).
- *"Tesis de Derecho Administrativo"* [Administrative Law Opinions], Volume II, Eduardo Ortiz Ortiz, 588 p. ISBN-958-8075-58-0, 2002 edition (responsible for editing and updating).
- *"Tesis de Derecho Administrativo"* [Administrative Law Opinions], Volume III, Eduardo Ortiz Ortiz, 297 p. ISBN-958-8075-58-0, 2002 edition (responsible for editing and updating).

Articles in collective publications:

- *"La Ruptura del Proceso Contencioso Administrativo objetivo al acto"* [The Rupture of the Administrative Law Process vis-à-vis the Administrative Decision], in La Gran Reforma Procesal [The Great Procedural Reform], Supreme Court of Justice, Editorial Guayacán, San José, 2000, pp. 207-214, ISBN-9968-770-25-6.
- *"Tratado de Libre Comercio entre República Dominicana, Centroamérica y Estados Unidos y Derecho de la Constitución"* [Free Trade Agreement between the Dominican Republic, Central America and the United States and Constitutional Law], in Estudios Jurídicos sobre el TLC entre República Dominicana, Centroamérica y Estados Unidos [Legal Studies on the FTA between the Dominican Republic, Central America and the United States], Asociación para el Estudio Jurídico del Tratado de Libre Comercio con EE.UU., pp. 109-146, ISBN 9977-47-312-9.
- *"Derecho Administrativo Costarricense"* [Costa Rican Administrative Law], in El Derecho Administrativo Iberoamericano, Colección Estudios y Comentarios [Ibero-American Administrative Law, Collection of Study and Commentary], Instituto Nacional de Administración Pública, No. 9, Publicaciones Unión Iberoamericana de Municipalistas, Granada, Spain, 2005, ISBN 84-933726-1-7, pp. 279-330.

- *"La actividad procesal" [Procedural Activity]* in the collective work *El Nuevo Proceso Contencioso Administrativo* [The New Administrative Law Process], Escuela Judicial, Poder Judicial, San José, ISBN 9968-77041-8, 2006, pp. 249-363.
- *"Tratamiento de las aguas en el Derecho constitucional costarricense" [Treatment of Waters in Costa Rican Constitutional Law]* in *El Nuevo Derecho de Aguas* [The New Law on Waters], Editorial Civitas, Madrid, ISBN 978-84-470-26159, 2007, pp. 657-684.
- *"Derecho Administrativo Costarricense" [Costa Rican Administrative Law]*, in *El Derecho Administrativo Iberoamericano* [Ibero-American Administrative Law], 2nd Edition, Instituto Nacional de Administración Pública, Madrid, Spain, 2012, at press.

Journal Articles:

- *"Contribución al Estudio del Derecho Urbanístico" [Contribution to the Study of City-Planning Law]*, Revista Universidad de San José, Vol. No 1., 1993;
- *"El Agotamiento de la Vía Administrativa, Crítica y Perspectivas" [The Exhaustion of Administrative Proceedings, Review and Perspectives]*. Revista IUSTITIA No. 104, August 1995;
- *"Vulnerabilidad, riesgo y ordenamiento territorial" [Vulnerability, Risk and Land-Use Planning]*, Revista de Derecho Público, January-June 2006, No. 3, San José, Costa Rica, pp. 11-32.
- *"El control directo y represivo de constitucionalidad" [Direct and Repressive Control of Constitutionality]*, Revista de Derecho Público, January-June 2007, San José, Costa Rica, pp. 11-32. 29-44.
- *"La igualdad como derecho fundamental" [Equality as a Fundamental Right]*, Revista de Derecho Público, January-December 2008, Nos. 7-8, San José, Costa Rica, pp. 99-109.
- *"Viabilidad jurídica de la concesión de obra pública con servicio público de un tren eléctrico metropolitano en Costa Rica" [Legal Viability of the Public Works Concession with Public Service of a Metropolitan Electric Train in Costa Rica]*, Revista de Regulación Económica, Empresas & Finanzas, Year 2, No. 2, 2010, Lima, Peru, pp. 213-245.
- *"La consulta facultativa de constitucionalidad a los veinte años de su creación" [The Discretionary Consultation of Constitutionality on the Twentieth Anniversary of its Creation]*, Revista de Derecho Público, January-December 2009, Nos. 9-10, San José, Costa Rica, pp. 29-37.

LECTURER IN THE FOLLOWING SEMINARS AND PANEL DISCUSSIONS:

- 10th National Legal Conference, Bar Association, Public Law Commission Coordinator, 1989.

- Seminar on the Government Procurement Bill, Coordinator and Rapporteur of the Means of Recourse Committee, Bar Association, 1994.
- Administrative Justice Symposium. Rapporteur of the Legality Protection Committee, November 1995.
- Seminar *"The Thirty Years of the Regulatory Law of the Administrative Law Court System."* Speaker at the Conference *"Effective Due Process and the Administrative Law Court System in Costa Rica,"* Bar Association of Costa Rica, November 1996.
- *"Consumer Rights" Seminar.* Speaker at the Conference: *"Deregulation and Competition Law,"* Bar Association of Costa Rica, April 1997.
- Seminar *"Practical Aspects of Civil Procedure."* Speaker at the Conference *"Provisional Remedies."* Costa Rican Union of Lawyers. April 1997.
- Seminar *"Scope of the Administrative Law Court System."*
- Speaker at the Conference: *"Trends and Counter-Trends in Administrative Case Law in relation to the Voie de Fait."* Bar Association of Costa Rica. September 1997.
- Seminar: *"Protection of Rights of Inhabitants."* Speaker on the topic: *"Deregulation and Complexity of Administrative Procedures."* Office of the Ombudsman, Legal Research Institute of the Universidad de Costa Rica [University of Costa Rica]. November 1998.
- *Dr. Eduardo Ortiz Ortiz "Administrative Justice,"* Ibero-American Seminar, Speaker on the topic: *"The Protection of Legality."* Bar Association, Supreme Court, Universidad de Costa Rica [University of Costa Rica], Universidad Carlos III de Madrid [Carlos III University of Madrid], Spain. April 1999.
- *"Procedural Reform" Seminar.* Speaker on the topic: *"The Rupture of the Administrative Law Process vis-à-vis the Administrative Decision."* Supreme Court. March 2000.
- Academic Dialogue *"Reform of Administrative Law Procedure in Costa Rica."* Speaker on the topic: *"Procedural Decisions."* Department of Administrative Law of the Faculty of Law, Universidad Alcalá de Henares [Alcalá de Henares University], Spain. May 2000.
- International Seminar *"Reform of Administrative Law Procedure."* Speaker on the topic: *"Evolution of Administrative Law."* Supreme Court. October 2000.
- International Seminar on *"Administrative Justice."* Speaker on the topic: *"The Subjectivization of Administrative Law Procedure Proposed in the Bill to Amend the Law Regulating the Administrative Law Court System,"* Costa Rican Administrative Law Association, November 14, 2001.

- Seminar "*Alternative Dispute Resolution in the Costa Rican Public Administration: Current Status.*" American Chamber of Commerce, International Center for Conciliation and Arbitration, July 9, 10 and 11, 2002.
- Panel Discussion "*De-Judicialization of Dispute Resolution.*" Speaker on topic: "*Extrajudicial Dispute Resolution by the Government,*" National Association for Economic Development, November 6, 2002.
- Seminar "*Updated Municipal Law*" Universidad Autónoma de Centroamérica [Autonomous University of Central America], Colegio Iñigo de Loyola [Iñigo de Loyola College], Guápiles Regional Office, Bufete Méndez y Asociados, November 2003.
- Analysis Workshop "*Alternative Dispute Resolution Amendment Bill.*" Speaker on the topic: "*Conciliation in the Proposed Code of Administrative Law Procedure,*" Alternative Dispute Resolution Committee, Supreme Court, April 2004.
- Workshop "*Past, Present and Future of Alternative Dispute Resolution in Costa Rica.*" Speaker on the topic "*Alternative Dispute Resolution Mechanisms, Present and Future,*" Alternative Dispute Resolution Committee, Supreme Court, December 2004.
- "*Administrative Law Videoconference Series.*" Speaker on the topic: "*Arbitration and Conciliation in Administrative Law.*" Appointment approved by the Superior Council of the Supreme Court, Administrative Law Committee of the Supreme Court, Judicial School, November 2004.
- 3rd Law School Symposium. Orality in Law. "*Implementation of Orality in the Costa Rican Legal System,*" with the presentation: "*Orality in the Proposed Code of Administrative Law Procedure,*" Universidad Latinoamericana de Ciencia y Tecnología [Latin American University of Science and Technology], on November 19, 2004.
- Seminar "*Ibero-American Administrative Law*"; speaker at the conference "*Notes on Costa Rican Administrative Law.*" Mario Benedetti Ibero-American Studies Center, Ministry of Science and Technology of the Government of Spain, Faculty of Law of Universidad de Alicante [University of Alicante], October 15, 2004.
- Presentation of the book "*Estudios Jurídicos sobre el TLC entre República Dominicana, Centroamérica y Estados Unidos*" [Legal Studies on the FTA between the Dominican Republic, Central America and the United States], with the presentation "*FTA and Constitutional Law,*" Association for the Legal Study of the FTA, May 23, 2005.
- 4th University Law Symposium; Economic Integration and Foreign Investment; Legal Perspective. Universidad Latinoamericana de Ciencia y Tecnología [Latin American University of Science and Technology], with the talk: "*Models of Economic Integration and Constitutional Law,*" November 18, 2005.

- Bioethics Fora; Innovative and Generic Medicines, with the talk: "*The Legal Framework on Medicines in Costa Rica*," Bioethics Committee of the Physicians and Surgeons Association of Costa Rica, May 24, 2006.
- Forum "*The New Administrative Justice from the Perspective of the Citizen and the Litigating Attorney*." Universidad Escuela Libre de Derecho [Free School of Law University], on May 31, 2006.
- Lecture Series on "*General Precepts of the Code of Administrative Law Procedure*," Judicial School, Administrative Law Committee 2006-2007. Speaker on the topic "*Procedural Activity*," on June 8, 15, 22 and 29, 2006.
- Encounter of Alternative Dispute Resolution Centers: Bar Association: "*Alternative Dispute Resolution in Administrative Law*," held on August 10, 2006.
- Debate on Administrative Law Procedure Reform, Bar Association of Costa Rica, on August 17, 2006.
- 5th University Law Symposium; "*Reflections on Administrative Law Procedure*," Universidad Latinoamericana de Ciencia y Tecnología [Latin American University of Science and Technology], with the talk: "*Proceedings by Hearing: the Case of the New Administrative Law Trial*," held on November 24, 2006.
- Lecture Series on the New Administrative Law Procedure, Judicial Branch, Edgar Cervantes Villalta Judicial School, held on September 7, 14, 21 and 28, 2007.
- 2nd Lecture Series on Registry Law: "*The Future of the Administrative Courts after the Entry into Force of the Code of Administrative Law Procedure*," Administrative Registry Law Court, held on October 10 and 11, 2007.
- International Seminar on the New Code of Administrative Law Procedure: "*Procedural Activity*," Judicial Branch, Costa Rican Association of Administrative Law, Konrad Adenauer Foundation, Edgar Cervantes Villalta Judicial School, held on November 28, 29 and 20 [sic], 2007.
- Administrative Law Symposium: 30 Years of the General Law of the Public Administration and the new Code of Administrative Law Procedure, Universidad de Costa Rica [University of Costa Rica], West Campus, October 1, 2 and 3, 2008.
- Panel Discussion: Alternative Dispute Resolution in the Administrative Law Court System, Procedural Law Conference "Present and Future in Costa Rican Procedural Law," Bar Association of Costa Rica, Universidad de Costa Rica [University of Costa Rica], Universidad Escuela Libre de Derecho [Free School of Law University], Supreme Court, November 18, 19 and 20, 2009.

- Conference on Environmental Improvement of the San José Metropolitan Area, talk: "*Legal Aspects of Land Use in Tunnels*," Costa Rican Water and Sewer Institute, San José Metropolitan Area Environmental Improvement Project, March 24, 2011.
- Panel Discussion: The Inviolability of Tax Information: Secrecy and its Scope, Bar Association,
- Panel Discussion: Precautionary Measures in the New Administrative Law Procedure, Bar Association, Administrative Law Committee, September 20, 2012;
- Panel Discussion: Orality in Administrative Law Procedure, Bar Association, Administrative Law Committee, September 15, 2012.

LANGUAGES:

- French: reading, writing and speaking;
- English: reading;
- Italian: reading.

OTHER ACTIVITIES:

- Member of the Amendments Preparation Committee for the Regulatory Law of the Administrative Law Court System, appointed by the Supreme Court Sitting *en Banc*. Article VII of the Session of the Full Court held on January 5, 1998;
- Founding Member and Secretary of the Board of Directors of the Costa Rican Association of Administrative Law, January 2000 to present.
- Contributor to the project "*Citizen Auditing on the Quality of Democracy*," as a analyst specialized in Administrative Law; program promoted by the Sustainable Human Development of the Nation State Project. March 2000.
- Contributor to the project "*Solutions for Costa Rica*," organized by the Schools of Planning and Social Promotion and International Relations of the Universidad Nacional [National University] and the newspaper La Nación, as an expert on constitutional and electoral law, La Nación, May 21, 2000.
- Arbitrator in law, specializing in administrative law, accredited on the list of impartial professionals of the International Center for Conciliation and Arbitration of the Costa Rican-American Chamber of Commerce (AMCHAM), June 2001.
- Arbitrator in law, specializing in administrative law, accredited on the list of impartial professionals of the Center for Alternative Dispute Resolution of the Costa Rican Chamber of Commerce, November 2001.

- Writer for the Legal Section, *El Financiero*, 2002.
- Judge *pro tempore* in the Constitutional Division, Supreme Court, 2001-2003.
- Co-founding partner of the firm *Consultores en Derecho Público, S.A.*, a company dedicated exclusively to consultations and litigation in Public Law. September 2002 to present.
- Advisor for the Subcommittee on Legal Affairs of the Legislative Assembly, which issued the Proposed Code of Administrative Law Procedure, Legislative File No. 15134, October 2004.
- Director and member of the Editorial Board of the *Revista de Derecho Público* journal, of the Costa Rican Administrative Law Association. January 2005 to present.
- Vice President of the Costa Rican Administrative Law Association, 2007 to present.
- Honorary Member of the Nicaraguan Administrative Law Association, June 2008.
- [Co-founding] member of the Costa Rican Association for the Study of Regulation (ACERE), 2009.
- Arbitrator in Law for the Center for Alternative Justice of the Bar Association, April 2011.
- Member of the Administrative Law Committee of the Bar Association of Costa Rica, 2012.
- Academic Coordinator of the seminar entitled "State Intervention in the Economy" organized by the Administrative Law Committee of the Bar Association of Costa Rica, 2012.

Appendix 2

APPENDIX No. 2
LIST OF DOCUMENTS PROVIDED BY
THE MINISTRY OF FOREIGN TRADE
FOR ISSUANCE OF LEGAL OPINION
IN ICSID Case No. UNCTAD/13/2

DOCUMENT	DESCRIPTION
No. 1	Official letter DFOE-PGAA-IF-3-2010, Comptroller General's Office
No. 2	Administrative file OJ-015-2004, <i>Procuraduría</i>
No. 3	Administrative file OJ-244-2005, <i>Procuraduría</i>
No. 4	Legal Opinion of Mr. Miguel RUIZ
No. 5	Reply memorial of the claimants
No. 6	List of the rulings of interest of the Constitutional Division