IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993 (THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

In the Matter of Arbitration Between: CHEVRON CORPORATION (U.S.A.), TEXACO PETROLEUM COMPANY (U.S.A.), Claimants, and THE REPUBLIC OF ECUADOR, Respondent.	PCA Case No. 2009-23 Volume 3

TRACK 1 MERITS HEARING

Wednesday, November 28, 2012

Church House Conference Center
Westminster
Hoare Memorial Hall
London, England

The hearing in the above-entitled matter convened at 9:34 a.m. before:

MR. V.V. VEEDER, Q.C., President

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

Permanent Court of Arbitration:

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C O N T E N T S

P R O C E E D I N G S

PRESIDENT VEEDER: Good morning, ladies and gentlemen. We'll start Day 3 of this hearing.

Unless there are any housekeeping matters which either party wishes to raise, we'll start with the closing oral submissions from the Claimants.

CLOSING ARGUMENT BY COUNSEL FOR CLAIMANTS

MR. BISHOP: Thank you, Mr. Chairman.

Let me just very briefly introduce the order of presentation of the Claimants this morning.

Mr. Hew Pate is going to begin our presentation and discuss the status of the enforcement proceedings, which is what the Tribunal--one of the issues the Tribunal asked us to address today. I think he is in probably the best position to get into some of those details with the Tribunal.

Then Professor Crawford is going to discuss the breach of the Interim Awards and the scope of the Settlement Agreements.

And then I will address the issue of the nature of diffuse rights, the res judicata issues, the fact that the Lago Agrio complaint vindicates diffuse rights and Ecuador's breaches.

Then Professor Crawford will conclude by discussing the relief that we're seeking.

And, with that, let me turn the floor over to

09:33 Mr. Pate.

MR. PATE: Thank you very much, Mr. President and Members of the Tribunal. Chevron appreciates an opportunity to share with you some background on what the company and its affiliate and subsidiary companies are facing in a variety of jurisdictions at the present.

If we can turn to the first slide, I think it's important before I go country by country for the Tribunal to have an understanding of the nature of the campaign that is being conducted as a result of the active and passive support of the Republic. It is not simply a matter of defense enforcement actions that may be filed in different countries, but a concerted campaign which, as announced by the Parties themselves, the Plaintiffs themselves, is intended to cause pressure and disruption and threats in a way calculated to force Chevron to pay them money to get the campaign to stop, and I refer you to the Plaintiffs' Invictus Memorandum which set forth that strategy quite clearly.

I think it's important to understand also that in addition to the legal proceedings themselves, there is a very persistent media campaign to characterize the enforcement actions in a way meant to cause the maximum disruption and concern to investor, employees, and other stakeholders of the company by casting those enforcement actions in the most outlandish way possible.

09:35 What do I mean by that? For example, a Chevron finance employee, Rex Mitchell, gave a declaration in Court, saying that under the legal definition of irreparable harm, which is that the Plaintiffs would never be in a position to pay back any damage that was caused, and, therefore, the legal definition of irreparable harm was met, the Plaintiffs have launched press statements saying that Chevron's Treasury officials have admitted that the company is irreparably damaged by what has gone on in this case and will never be the same, or words to that effect.

And that's the type of thing that's happening.

And I would direct you--I don't ordinarily encourage folks to go to these Web sites, but if you take a look at the Chevron Pit or ChevronToxico, or TexacoToxico and the things that are posted there and then disseminated to the media on a daily basis, I think that gives a flavor of how these things are being characterized.

Now, I don't suggest to you--I hope you don't believe the personal ad hominem material about me on the Web sites, nor do you need to believe what the talking kangaroo says about you on the Web site, but I do suggest that it's worth understanding what the campaign is about.

And, with that, I'll turn, frankly so far, to the alphabet. I can take you through A, B, C, D, and E. You didn't expect D, but you'll understand what I mean by that in a

moment, and we'll start with A and Argentina.

October 15th, the Lago Agrio Court ex parte, again without participation, notice, argument by Chevron, issued an order purporting under the Inter-American Convention on Preventative Measures to proceed against the assets of Chevron Corporation and various subsidiaries and Affiliates. The Plaintiffs immediately took that, and on November 5th commenced an ex parte action in Argentina to execute the Lago Agrio Court's preventative measures, alleged preventative measures, and sought to embargo the Argentine assets of certain Chevron subsidiaries which are both Argentine and Danish, as it happens.

An Argentine court, a temporary judge, in fact, on that court issued ex parte without notice an embargo order attaching various assets, including shares, bank accounts, and receivables of the Argentine and Danish subsidiaries.

Now, Chevron Affiliates in these various countries in each of these cases are seeking to work through the court systems of those countries to address these enforcement actions. The Argentine and Danish subsidiaries in that case filed motions to reverse the embargo order. There's a briefing schedule. The Plaintiffs are required to respond in December, and that matter is proceeding.

On the next slide, I do think it is perhaps useful to the Tribunal to understand the practical effect of this

particular one of the enforcement proceedings. Under the Argentine embargo, 40 percent of the funds in Chevron Argentina's bank accounts are frozen. The business partners of Chevron Argentina, the companies with whom Chevron Argentina does business have themselves been ordered to withhold 40 percent of any amounts that are owed to Chevron Argentina. Banks then must reapply the 40 percent embargo figure to the 60 percent of receivables that then come into Chevron Argentina's accounts.

I should say, this is an order that was crafted and applied for in a 300-page application which Chevron was not able to see until several days after the Order was entered. But under the way it's designed, the net effect is that 64 percent of Chevron Argentina's receivables end up being withheld. At some point in time that will have a sufficient cash impact as to impact the ability of Chevron Argentina to conduct business. I think it remains to be seen what the impact of that, but to give you some idea of the importance of what's at stake, Chevron Argentina has operated in Argentina for over 20 years. It currently produces 35,000 barrels of crude oil per day and 6 million cubic feet of natural gas each day. If those operations cannot go forward, it's not difficult taking a commodity price table and doing the math to understand the overall stakes in the matter, and what happens remains to be seen.

Turning to the next slide and Brazil--

PRESIDENT VEEDER: Just pausing before we get to Brazil, two questions. One is, if you can explain a little bit more about the legal effect of these interim orders in Argentina. For example, two issues come to mind. Is there any cross-undertaking in damages by the Plaintiffs in case it is decided by the Argentinian courts that they were not entitled to these freezing Orders?

MR. PATE: I have to tell you we've had some difficulty getting the papers involved, but I'm not aware of anything that requires the posting of a bond or any cross-undertaking of that type prior to the entry of this embargo order.

PRESIDENT VEEDER: Is there anything so stated in the formal Orders of the Argentinian courts?

MR. PATE: Not to my knowledge. No, I don't know of any such thing.

PRESIDENT VEEDER: And what is the legal of status of the Order trans-border under the International Convention or any other way in which an order from an Argentinean Court, an interim order, could be enforced outside Argentina?

MR. PATE: I don't know that I'm in a position to answer a question--the--what the effect of the Argentinian order might be, if that's taken elsewhere.

I'm advised by Ecuadorian and Argentine counsel that

the Ecuadorian order that was the basis for the Argentine embargo was improperly issued, and we have revocation papers on file in Argentina, which I'd be happy to try to convey to the Tribunal which present the reasons why in Chevron, in the Chevron Argentina's view, the embargo order is itself unlawful, but I think rather than try to wade through that myself, it would be easier to provide that, if the Tribunal is interested.

PRESIDENT VEEDER: Thank you.

MR. PATE: In Brazil, in June, the Plaintiffs filed an exequatur action against Chevron Corporation only. One of the things about these proceedings is that in various places it has been determined to file against subsidiary companies that have had no connection to the Ecuador litigation. In other of the proceedings the decision has been made to file against Chevron Corporation, which in the case of Brazil, has no business in Brazil or connection there, but was, of course, the Judgment debtor in the Ecuadorian case. I can't speculate as to why the cases have been designed in the way they have other than the intent of maximum disruption, as the Plaintiffs have stated themselves.

So, in June, an action filed in Superior Court in Brasilia, various attempts were made to serve Chevron Corporation. Not surprisingly, since Chevron Corporation is domiciled only in the United States and does not exist in Brazil, those service attempts were unsuccessful.

The Superior Court of Justice recently ordered service upon Chevron Corporations in California by letters rogatory. That will happen in its time. We can't predict when that will occur, but when it does, a clock will then start, and there will be working 15 days for Chevron Corporation to answer that case, and proceedings will begin there. So, in Brazil, there's an action underway, but I can't predict the timetable.

Continuing with the alphabet, as we move to Canada, in May the Plaintiffs filed a claim in the Ontario Superior Court seeking to recognize and enforce the Ecuadorian Judgment. That particular claim was filed against Chevron Corporation, against Chevron Canada Limited, and then against a company called Chevron Canada Finance Limited.

In July, Chevron Corporation, Chevron Canada, Chevron Canada Finance served the Plaintiffs with notices of motion declaring their intent to challenge jurisdiction. Evidentiary affidavits and discovery have proceeded on the jurisdictional issues of whether Chevron Corporation is properly served and whether or is properly a party and whether the Canadian subsidiaries have any connection to the Ecuadorian litigation. Those motions have been briefed and, in fact, will be argued in Canada tomorrow and Friday; and a ruling, I'm advised, is expected sometime by February on the jurisdictional issues.

I'll pause there and make a comment about a question I understood the Tribunal to have posed yesterday about whether

it might be constructive for Ecuador to intervene and seek a stay of proceedings in the countries I've mentioned. I would suggest in that connection simply that to have a stay of the proceedings in Argentina that would leave in place an embargo order would not in the least be helpful to the situation.

Likewise, in Canada, I question whether a stay order would provide effective relief to Chevron since we're headed toward jurisdictional rulings that have the promise of leading to dismissal of the Canadian case. So, I would urge the Tribunal to be careful about what would, indeed, be the practical effect of a stay at a different stage.

PRESIDENT VEEDER: I may have misspoken last night. What we had in mind was a stay of execution--i.e., the final step in these proceedings--not the stay itself. I understand the point you're making.

MR. PATE: Very well.

PRESIDENT VEEDER: Just whilst we're on Canada, we anticipate a ruling on jurisdiction next February. Is that subject to appeal, and what is the effect of a judgment pending appeal in these Canadian proceedings?

MR. PATE: Well, I think that's--I think that's hard to predict. I say that a decision is expected by February, it could come sooner. Certainly it would be subject to appeal in Canada. What the lower court would or could do pending an appeal is something I can't predict. I would suggest that if

jurisdictionally the cases are found to be without basis, I think ordinarily you would expect not much to happen in the lower court until the appeal took place--hard to imagine it. If the reverse were to happen, whether Chevron Canada would be able to get or Corp. would be able to get a stay pending appellate action is something I can't predict.

PRESIDENT VEEDER: I'm sorry to press you, but the decision would be limited to jurisdiction by February, or would it include a decision on enforcement?

MR. PATE: No. The motions that have been briefed and that are being argued this week are purely jurisdictional.

PRESIDENT VEEDER: If, as you say, jurisdiction was established by the Court, what would happen as regards any interim measures to be ordered by the Court? Would they do what the Argentinian court has done into five days, or is that not a procedure in Canada?

MR. PATE: In Canada, there is not presently a freezing or embargo order that is impacting the operations of the subsidiaries, and so what would be the prospect of one I can't say. But if the Court were to find that it is appropriate by breaching the separateness between Chevron Corp. and the subsidiaries, for the subsidiaries which had no connection to the Ecuadorian case to be answerable in Canada, or for Chevron Corp, which isn't present in Canada to be party to a case in Canada, then my understanding is the case would

move towards the merits and questions of enforceability or validity of the Ecuadorian Judgment would then in that later stage come into play. Those are not at issue now.

The procedure would be, as I understand it, different in Brazil, which is to say that under Brazilian procedure, once the clock starts, both jurisdictional and merits issues would begin to be argued simultaneously, so the answer varies jurisdiction to jurisdiction.

So, I think that covers Canada.

Move next to Ecuador itself. A good deal of activity continues by the Lago Agrio Court in close cooperation, I would say, with the American Plaintiffs lawyer Steven Donziger and others who are part of that operation.

The Lago Agrio Court, in October, ordered an embargo of assets allegedly owned by Chevron Corporation in Ecuador without notice to Chevron Corporation or any argument or ability to discuss the matter. The Court entered an order declaring that Chevron Corporation and dozens of its subsidiaries around the world are one and the same without any separateness, doing that largely on the basis of the definitional section found in Chevron Corporation's Annual Report but without, I would suggest, any analysis of corporate separateness without notice to Chevron or Chevron Affiliates.

An embargo order issued in the Ecuadorian Court then purported to attach various assets. That includes all bank

accounts or transfers through the Ecuadorian banking system; trademarks and other intellectual property which were held by Chevron, although licensed to companies who operate downstream under Texaco trademarks in Ecuador; and also the Court purported to attach the $96 million Commercial Cases Bilateral Investment Treaty Arbitration Award against the Government of Ecuador that Chevron had obtained. And as I mentioned in the opening, the attorneys--the Attorney General's Office then intervened to seek revocation of that order, but only as to the part that related to the BIT Award and not to the rest.

Now, as you know, Chevron Affiliates have very little operation in Chevron--excuse me, in Ecuador, other than to deal with legal matters that exist there. The bank account, one of the bank accounts that's been frozen, for example, contained about 350 U.S. dollars, so I want to be clear in what I have to say about the practical effect. Nonetheless, that's what's been happening within Ecuador in terms of the declarations that are being issued by the courts of Ecuador and how those are being used elsewhere.

Now, turning to the future, I think it's important for the Tribunal to be aware that the Plaintiffs, in a constant set of press releases and interviews, have declared their intent to file at least 30 claims in America, in Africa, in Asia, in Europe. They say they're currently preparing over 10 lawsuits on other continents.

On November 8, earlier this month, Pablo Fajardo said that in an interview. He said that as soon as the judicial strike that's currently taking place in Colombia ends, that they will be in Colombia filing the same sort of action they have filed in Argentina trying to get an embargo order against Chevron Affiliates in Colombia.

And then specific places where additional actions have been explicitly announced and threatened by the Plaintiffs include Australia, Congo, England, Kazakhstan, Panama, Singapore, South Africa, and Venezuela.

Now, turning to the next slide, I understand you're also interested in an update on the New York fraud and RICO action that is pending in which, as you know, Chevron Corp. has brought an action against Mr. Donziger and Mr. Fajardo, Stratus, the environmental consulting firm that assisted in the fraud with respect to the so-called "Cabrera Report."

The basics are that Judge Kaplan has set a trial date in that case for October 15th. He has indicated to us that he means for us to take that trial date seriously. He has, as I understand it, a terrorism trial that is scheduled for his courtroom right around that time, so that there may be some movement in that schedule.

I think it's also fair for me to say to the Tribunal, I expect the Defendants in that case to seek to delay the trial.

Nonetheless, the point I'm making there is this isn't a formal placeholder date. I think Judge Kaplan indicates that he wants to get on with this trial by the fall of 2013.

In terms of what's happening there, we're in a discovery and motions phase of that case. Just yesterday, for example, Judge Kaplan entered an order denying certain motions for Judgment on the pleadings that had been indicated or brought by the Defendants, granting others narrowing the case in part, but, you know, posturing it for trial preparation.

There is a deadline for the service of interrogatories and document requests of December 1, so that's coming right up.

Expert disclosures in late winter. Discovery cutoff of May 31, summary motions due by June. So, as you can see, that case is on a very active track toward pre-trial preparation.

As you recall, the claims Chevron is bringing against the Defendants in that case involve violation of the American so-called "RICO," Racketeer Influence Corrupt Organizations Act, conspiracy, common law fraud, violation of the New York Judiciary Act Section 487, commonly referred to as the "lying lawyers statute," and civil conspiracy under New York law.

Just with respect to that case, the last thing I'll say on the next slide is that Judge Kaplan continues to evaluate the evidence that's being brought forth and continues to be developed as to what has happened in the Lago Agrio Court

in Ecuador. In late July, he granted in part and denied in part a summary Judgment motion with respect to the validity of the Ecuadorian Judgment, and made the observation that is on the slide you see before you and that will have. The main point of that slide is not only that he reiterated his earlier factual findings about the secret drafting of the Cabrera Report. There is certainly material that can be read about the payments made through the self-described by the Plaintiffs "secret bank account" that was used to pay Mr. Cabrera for this service, allowing the ghost-writing of his report, the use of code names for the Court and the judicial officers there, the restaurant, the cook, and the waiter being the terms that were used to refer in the Plaintiffs' own e-mails to what was going on in the Court; and that material is in Judge Kaplan's various opinions in the case.

But importantly, in this most recent ruling, he noted that there are serious questions concerning not just the Cabrera Report, but serious questions concerning the preparation of the Judgment itself that was issued by the judicial organ of Ecuador, due to the identity of portions of that Judgment and the so-called "Unfiled Fusión Memo." That's a memo that was only located in the private files of the Plaintiffs' lawyers and which appears in the Judgment that was issued by the Court identically word for word, and he said that, in view of the undisputed pattern of ex parte advocacy

and coercion and duress on one of the judges to obtain a desired result, he found serious questions about with it.

He did not grant Chevron's summary motion with respect to that Judgment, but that issue remains as we head towards trial.

So, I hope that's responsive to your questions about New York.

PRESIDENT VEEDER: Just one further question. How many of the orders or judgments of Judge Kaplan are currently under appeal, or has the appeal/appellate process been exhausted?

MR. PATE: I'm not aware of anything that is currently under appeal, and what's going on right now is largely discovery. I'm pretty sure that's right. As you recall, he had issued an injunction. That was reversed by the Second Circuit, but his fact findings were not disturbed in any way. There have been other Orders that have been affirmed by the Second Circuit, but I don't think there is anything pending, and we are largely in a discovery stage.

If I anticipate your question, I can't exclude it, but I don't foresee any issue that under the procedural rules would seem likely to derail the progress of the trial of the main action.

PRESIDENT VEEDER: Just one final question. Are there any appeals pending from any judgment of the Second Circuit?

MR. PATE: Okay, there is an appeal pending with respect to Judge Kaplan's order discharging the bond that had originally been set with respect to his injunction order. I could explain that further, but it would delve into--maybe further into the weeds of the New York Action than you would want.

PRESIDENT VEEDER: You could leave it there, but is there any appeal from the Second Circuit or application for appeal?

MR. PATE: Not pending--the U.S. Supreme Court denied Chevron's cert petition with respect to the Second Circuit's reversal of Judge Kaplan's injunction order earlier this fall, so there is nothing pending there.

I guess the final thing I would share before turning it over to Professor Crawford to talk about interim relief and other issues is just a comment on the progress of the Orders here. I have returned back to Chevron in California a couple of times with Orders which seemed measured, but quite strong, and calculated to provide Chevron with some protection of its ability to have the merits heard by this Tribunal. I have been asked, frankly, by people there why it is that I seem to return with orders that read very seriously, but yet no protection is given about the--with respect to the alphabet of legal actions and the fallout from those actions that I've told you about.

I explained in response to questions like that that

when a tribunal is dealing with a sovereign nation, it is appropriate to be respectful, deliberate, and incremental in what has been done, and that takes some time, and the Tribunal has done that.

But I would say that at some point, in order to defend Chevron's ability to get a judgment here on the merits, the Tribunal needs to take some action that will be effective. Professor Crawford will cover this better than I can, but I would suggest to you at this point the opportunity is to have prevented the Judgment leaving Ecuador. Having been missed, the most effective thing that could be done is a direct Declaration by this Tribunal that, as a matter of international law, the Judgment should be held unenforceable pending this Tribunal's ability to review the merits for itself.

We also think fees and costs with respect to these premature actions are appropriate.

I end with respect to declaration of breach of the Treaty. I think the breach, the failure to follow this Tribunal's order is clear, but I take very seriously the statements that have been made by the Attorney General and others about the potential harm of the trade status consequences of such a declaration. I would simply repeat there that it is of no benefit of Chevron for there to be harm to Ecuador. That is not something that benefits Chevron at all. What Chevron seeks is for Ecuador to follow this

Tribunal's orders and to prevent the enforcement actions that are taking place.

And I suggest to you that a declaration of breach certainly would not lead immediately to any change in trade status and if Ecuador were able to take actions to come into compliance with the Tribunal's orders, it could give notice of a cure of that breach, and then incentives set up by such a situation might be positive.

With that, I thank very much the Tribunal for its time and attention.

ARBITRATOR LOWE: Is there any mechanism by which the New York Court here in the fraud and RICO actions is able to take steps in Brazil, Argentina, or Ecuador in aid of your position?

MR. PATE: I think it's difficult, in light of the Second Circuit's order. I think the findings of the New York Court are likely to have persuasive effect if the merits stage of any of these enforcement cases are reached. If you recall the Second Circuit's order vacating Judge Kaplan's injunction, it found--Chevron thinks incorrectly--as a matter of the Declaratory Judgments Act in the United States, but the Supreme Court has denied cert on that, that that act did not provide a vehicle for Judge Kaplan to issue an injunction that would prevent enforcement efforts without the United States.

The Court also, as a matter of international comity,

said that it had concerns about a New York Court issuing an order that purported to prevent/forestall litigation in other countries.

Now, the Plaintiffs in that New York Litigation are in the habit of filing papers any time Judge Kaplan does anything they don't like, saying that he's acting in defiance of the Second Circuit's order, but I must say I think the main effect of his action will be with respect to the factual findings that emerge in the trial.

It is the case that for procedural reasons that I can unpack, if you like, one of the issues before Judge Kaplan would be his assessment of the enforceability or validity of the underlying Ecuadorian Judgment due to the fraud that took place in that Judgment. That's an issue that's before him as a result of the Plaintiffs' invocation of a res judicata defense. They have been arguing in various places that the Ecuadorian Court Judgment is entitled to deference from other tribunals.

Judge Kaplan gets to decide whether, in his Judgment, he owes deference to the Ecuadorian Tribunal, so that issue of resolve might have some effect, but in terms of a direct injunctive order or other things that might give us a different avenue of relief, that would mean we have an alternative of seeking protection from this Tribunal. I frankly don't see what it would be in New York at this time. We certainly tried that.

PRESIDENT VEEDER: Apart from this Tribunal, is there any other court or tribunal who could receive similar applications for interim relief that were made on the first day of this hearing?

MR. PATE: Well, obviously you mean apart from the company taking each enforcement action as it comes?

PRESIDENT VEEDER: Of course.

MR. PATE: I'm open to ideas, but I'm not aware of any place that Chevron can go. That was--that's why our request--that's why we view with such importance the request to this Tribunal as an international body, particularly in view of the Second Circuit's view of the capacities of the U.S. judiciary, if you put it that way; that's why we take so serious this application to the Tribunal because as an international body, perhaps it is the only one that can give any relief from the campaign I've been describing.

PRESIDENT VEEDER: And you said the cert was denied by the Supreme Court from your Judgment of the Second Circuit. That was done summarily without any intervention by the Solicitor General? There's nothing--

MR. PATE: No, the Solicitor General didn't participate. I mean, that was a denial of cert order. As you know, our Supreme Court gets about 5,000 decisions a year, grants about 90. Ours wasn't one of the 90 that were granted, but that's the nature of that order. It's not--you will read

on some of the Web sites that I'm directing you to press releases from the Plaintiff that the United States Supreme Court has in some way endorsed the case against Chevron. I would suggest to you that nobody who is familiar with cert practice in the U.S. Supreme Court would take that view.

PRESIDENT VEEDER: And one final question, the RICO trial, is it a period of days or weeks that has been set by Judge Kaplan?

MR. PATE: It's certainly going to be a several-week trial.

MS. NEUMAN: We anticipate that it will be a three-week trial.

PRESIDENT VEEDER: Thank you very much.

MR. PATE: Thank you, Mr. President.

PROFESSOR CRAWFORD: Mr. President and Members of the Tribunal, I note on the first day with the Interim Award Mr. Douglas' absence today we regret and didn't bother to respond. There have been numerous breaches of the Interim Awards, as I've said. We haven't heard yet from the Respondent who repeated what I might describe as their sigh pray theory compliance with Interim Awards without having regard to the record, it's not sigh pray, it's sigh distant, one might think.

Whatever I feel like doing on the day or more, I usually do not feel like doing.

Your awards were issued to the Ecuadorian State, and

they have been violated or not complied with by various organs of the State. The judiciary, which issued the certificate of enforceability, and later it issued and later expanded the order against various subsidiaries in satisfaction of the now $19 billion Judgment. The Attorney General, who was swift to revoke the embargo, to move to remove the embargo order before the Lago Agrio Court when it concerned the Government of Ecuador, but has not done nothing to comply with your Award.

The Minister of Foreign Affairs who has apostiled at least four documents in support of the proceedings--

PRESIDENT VEEDER: Can I just interrupt there, is that pursuant to some treaty obligation?

PROFESSOR CRAWFORD: That's a question I would have to ask one of my colleagues.

PRESIDENT VEEDER: We can come back to it later.

PROFESSOR CRAWFORD: Yes.

The Ecuadorian banking agency which issued a freezing order against bank accounts of Chevron subsidiaries in Ecuador, the transitional Judicial Council and the canton of Lago Agrio.

It's a feature of Ecuador's behavior and of the Claimants' strategy that where it matches the corporate veil is taken seriously, so the action--sorry, the corporate veil is ignored, and yet when we make points about the corporate veil, we are regarded as taking legalistic points.

Ecuador knows how to take affirmative steps when its

interests are at stake. The Attorney General's motion of 22 October was on PGE letterhead. It did not mention this Tribunal's Awards directing Ecuador to take all measures necessary, and it contradicts Ecuador's insistence that the Government does not give orders to the judiciary on how to proceed in the case. Well, the Government doesn't give orders to the judiciary, but it certainly intervenes with the judiciary when it sees it fit.

I will turn to this issue when we get to the remedies at the end of today.

And I want to say something because there is a limit to what we can say in response to Mr. Douglas since he didn't deal with these issues of Interim Measures. I want to say something more generally about the various three Parties' presentation in relation to the Track 1 issues.

The Claimants present a coherent theory on Track 1:

First, the diffuse rights of the community must be vindicated by a representative.

Second, at the time it executed the Settlement Agreements, Ecuador was, A, we would say the legitimate representative of its citizens diffuse environmental rights.

Three, settlement of diffuse rights claims on behalf of the community have res judicata erga omnes effect.

Four, the Settlement Agreements intended to release, and did release, the diffuse environmental claims of the

Ecuadorian community. I will come back to that.

And, therefore, five, the Lago Agrio Plaintiffs' claim seeking to vindicate this is exactly the same diffuse rights claim above.

Generally, the response of Ecuador to this coherent theory has been a series of verbal gymnastics, improbable construction, and mere assertion.

For example, Ecuador can't make up its mind what sort of contracts these are. In its Reply Memorial, in Paragraph 158, Ecuador said that the breach-of-contract claims are undeniably based upon breach of a public contract between the Government and private parties. Mr. Douglas on Monday said that the Settlement Agreement is a private-law contract between three Parties. It's not an administrative act. It's not a decree or something of that nature, and certainly not a piece of legislation.

If one of the Parties to that Agreement was acting in the public constitutional capacity, then surely in a country like Ecuador you would find some form of recognition in that document, perhaps a reference to the Constitution's preambular statement. The coat of arms of Ecuador, or something, but Ecuador--something, but there's nothing. In fact, the 1995 Agreement has the Republic's coat of arms at the top of every page.

Ecuador takes completely inconsistent positions on

diffuse rights. In its Opening Statement, it was said that there was no law in existence in 1995 that recognized diffuse or collective rights of anyone. The first time the concept of collective rights was introduced into Ecuadorian law is by the 1998 Constitution.

ARBITRATOR LOWE: Just before you move on, the question of the coat of arms on the top of every page, are you ascribing any legal effect to that, and if so, what?

PROFESSOR CRAWFORD: I'm just pointing out that the Douglas private-law contract theory is wrong, in fact. There was a coat of arms, but the whole thing is presented as if this is a private-law transaction, and it plainly was not. It was in discharge of public law liabilities under a concession of 1973, which was affirmed by an ordinance, which was a matter of public law.

Dr. Eguiguren said in his Declaration with Dr. Albán that the EMA Article 43 was hardly a novel concept in Ecuadorian law; it's premised on pre-existing constitutional rights incorporated by amendment into the Ecuadorian Constitution in 1983.

Ecuador's Expert, Professor Crespo, said that the public interest nature of the right to live in a pollution-free environment, already regulated by the law of 1976, by the Constitution in force in 1995 is a public interest collective human right. That was what Mr. Crespo said in 2006.

Ecuador takes inconsistent positions on Article 19.2 of the Constitution. In its Opening Statement, the Respondent said that Article 19.2 of the Constitution creates a right for individuals and imposes a correlative duty on the State to protect that right. That was why it was included in the Release. It's as simple as that.

Then Dr. Eguiguren said, as a general matter--it was asked, "As a general matter, under Ecuadorian law, in 1995, you would agree that the Government had standing under Article 19.2 of the Constitution to seek reparation for environmental damage from any party."

He responded: "I think that, as a public action, he could have done it.

"Did the Government have standing to do this under Article 19.2?

"In 1995, the State?

"Yes.

"Yes. You want me to concede? Yes. The State had that standing."

Yet he suggested that these rights did not exist.

There is a fundamental fallacy in the Respondent's position, which is that because the operations of the Consortium arose from a contract, therefore, the issues of liability which were faced in 1995 were exclusively contractual in character. It simply does not follow.

10:18 The Respondent said in its opening, the 1995 Agreement expressly released contractual claims; that's true. So, the Government had to be acting in a contractual capacity; that's untrue. If it means that that was the only capacity in which the Government was acting, and I will go into the text of the 1995 Agreement in a moment to show that cannot be true.

It was winding down the 1973 Concession, but it was a winding down of the 1973 Concession in relation to liabilities of the Government--of Texaco, TexPet, which arose under a variety of instruments, public law instruments, the general law of Ecuador, which related to matters of public concern.

In the Respondent's Counter-Memorial on Jurisdiction, we heard a different story. TexPet, it was said at Paragraph 65, negotiated and entered into these Agreements simply to resolve potential tort claims then being considered by the Republic. Tort claims, or tort claims, contractual claims, or any sort of claims.

I should deal incidentally with the misstatement by Mr. Douglas on Monday of the U.S. Court findings on the Lago Agrio fraud. These were the Section 1782 proceedings in relation to the Cabrera Reports. All seven courts in the U.S. which addressed the Cabrera Reports in such proceedings considered the reports to meet the crime-fraud test. Twelve other courts found it unnecessary to reach that issue because they ordered production of documents on other grounds; and,

10:19 therefore, the issue of the crime-fraud question in relation to privilege didn't arise.

Those courts nonetheless spoke to both the Cabrera fraud and the Judgment fraud. Only four U.S. courts declined to apply the crime-fraud exception, and they did not conclude that no crime or fraud had occurred. To give you an example, Chevron and Shefftz, where the Court said portions of a film revealed Cabrera in an H.R. meeting with Plaintiff's counsel and their consultants two weeks before Cabrera's March 19 appointment, but Petitioner has not presented evidence that Respondent--that's Shefftz--knew of an alleged fraud in Cabrera's report or that Shefftz knew he was participating in alleged fraud by relying on certain sources. There has been no finding of a U.S. Court adverse to the crime-fraud hypothesis.

PRESIDENT VEEDER: You mentioned this was a passage in Professor Douglas's opening submissions on Monday. Do you have the reference to the transcript?

PROFESSOR CRAWFORD: Sorry, I don't.

PRESIDENT VEEDER: You can give it to us later. It would be useful.

PROFESSOR CRAWFORD: Professor Douglas also said, and I'm sorry I don't have this reference either, maybe with advancing age I'm getting worse at references, he says, "In effect, we hadn't referred to the text of the Settlement Agreement," and he said, in effect, "Man, just give me the

10:21 text. All I want is the text," which is a good common law approach, of course.

Well, let me take you to the text. And I'm reinforced in doing so by the support of my Ecuadorian law colleagues and civil law colleagues who actually pay quite close attention to the text as well. I think the idea of wandering in the mists of abstraction when it comes to the construction of contractual documents is itself a myth.

Let's start with the Preamble, "Whereas the scope of the Environmental Remedial Work to be undertaken by TexPet to discharge all of its legal and contractual obligations and liability Environmental Impact arising out of the Consortium's operations has been determined and agreed to by the Parties."

I note incidentally the word "for" is missing, but I suppose the entire Agreement prevents me from inserting it.

"Discharge all of its legal and contractual obligations and liabilities." You can't, integration clause or not, you can't, you simply can't read that phrase as limited to contractual obligations.

Whereas TexPet agrees to undertake such Environmental Remedial Work, a defined word to which I will return, in consideration for being released and discharged of all of its legal and contractual obligations and liability for Environmental Impact. Release and discharged of all of its legal and contractual obligations and liability.

10:22 PRESIDENT VEEDER: Professor Crawford, you can take this very lightly.

PROFESSOR CRAWFORD: I take your point, sir. Well, I'll refer to the same phrase and scope of work.

ARBITRATOR LOWE: I've got one question. And supposing that TexPet were under legal obligations under U.S. law in relation to environmental matters in Ecuador. Would you say that this extended to the exclusion of its liability arising under U.S. law?

PROFESSOR CRAWFORD: No, sir. I wouldn't say that.

ARBITRATOR LOWE: So, what's the basis of the defined limitation?

PROFESSOR CRAWFORD: The basis is this is an agreement governed by Ecuadorian law which refers to Ecuadorian laws of various sorts as a basis of liability, including non-contractual liability. Obviously the Parties could only discharge TexPet in relation to liabilities that existed within be their sphere of competence. If the sphere of competence the Ecuadorians say related to all Ecuadorian legal liabilities. And that's what you would expect in a discharge agreement relating to Ecuadorian law and Government.

ARBITRATOR LOWE: So, that takes us back to the question of the competence and the role in which the Government is acting in this case, doesn't it?

PROFESSOR CRAWFORD: No, sir. It simply means that

the Parties didn't intend to discharge any entirely hypothetical liability under foreign law.

But, I mean, the Tribunal asked what should the parties have done. It would have been helpful if Ecuador had been of the view that we could be sued repeatedly in respect of liabilities other than contractual liabilities, if that had been pointed out in the text.

The Release is in 1.12, the same formula: Any claims that the Government and Petroecuador have or may have against TexPet arising out of the Consortium Agreements, all legal and contractual obligations towards the Government and Petroecuador.

The 1995 Settlement Agreement released TexPet from all Environmental Impact outside the Scope of Work. This was a release in two stages. All Environmental Impact outside the Scope of Work was released in 1995, and then 1998, it was certified, but after independent examination, that TexPet had carried out the Scope of Work satisfactorily.

Article 5.2 released all of Ecuador's legal claims, including causes of action under a series of decrees that are listed in Article 5.2, which the law is confirming Ecuador's sovereignty over all environmental matters and its authority to vindicate diffuse rights.

That authority in some sense derives from the very conception of the Government as representing its people

expressed in Article 1, of the Constitution, Ecuador is a sovereign, independent, democratic, indivisible State. Sovereignty rests with the people who exercise it through the branches of Government.

We heard from Mr. Douglas a picture of Rousseau, who wrote a very famous book called, "The Promotional Contract," edited by Douglas. Well, I show you here some more pictures of Democrats. As a matter of trivial pursuit, the committee--the Tribunal might like to identify them and rank them in order to magnitude. Some of them are Republicans, but they're all great Democrats.

Ecuador's legal claims include claims relating to its duty to protect the environment for the public interest.

Article 19.2 of the Constitution specifically referred to in the '95 Agreement the right to live in an environment free of contamination. It is the duty of the State to ensure this right is not negatively affected and to foster the preservation of nature. How can that duty be performed if the Government had no authority to act in release of an obligation?

Environmental protection has been testified to be a norm enshrined in the Ecuadorian Constitution. I refer to Dr. Rosania on Day 1 of the transcript at 115. I won't read the exhibit because I think that issue is, I hope, not in dispute.

Ecuador's legal claims include claims under laws

exercising its sovereignty over oil and the environmental matters. Reservoirs of hydrocarbons are the inalienable property of the State that the State can deal with them. The hydrocarbons industry is a matter of the public interest in all its phases. The State represents the public interest. The Executive Branch is responsible for development of the hydrocarbons policy, including the policy of cleanup at the end of the Consortium. The contractors have the obligations to take necessary actions for the protection of flora, fauna, and other Natural Resources, preventative measures to prevent water, atmosphere, and land pollution. Apparently these are subject to incessant claims arising from that activity, no matter how discharged.

The 1976 law for the prevention of pollution--all of these quotations come from laws which are referred to in the 1995 Settlement Agreement, the 1976 Law for prevention and control of environmental pollution. These are all public laws.

The liability comes from the public liabilities. They were purported to be discharged by the agreement, and then the additional ones referred to on the next slide, Slide 27, which I won't go through.

Ecuador's Undersecretary of the Environment, the person who negotiated the Agreement, understood this was a matter of public interest and not merely a contractual matter or a matter of private law. The Constitution's special laws

and decrees give the Government the authority to compel remediation, and we have to fulfill all this legislation.

Mr. Rosania understood that the Ecuadorian State negotiated the Settlement Agreement. It appears like I'm the negotiator, he said. No, the negotiator was the State, through its Minister, its Legal Department, the President of Petroecuador, and the rest of the people. It was a crowded room.

The definition of Environmental Impact, which could hardly be broader: "Any solid, liquid, or gaseous substance present or released into the environment in such concentration or position, the presence or Release of which causes or has the potential to cause harm to human health or the environment."And I refer to Mr. Veiga's Second Witness Statement at Paragraph 7.

The specific works listed under Annex A of the 1995 Settlement Agreement, these were not works which were limited to the performance of contractual responsibilities or to questions of private law. They included the closing of well-fired pits, the nullification of production stations, the re-examination of abandoned installations. It was exactly what you'd expect from a general public law-driven remediation program.

It required the establishment of Natural Resources Fund of $1 million, which has not yet been spent. How are they going to spend $19 billion on remediation? Perhaps

Mr. Donziger will be able to tell you.

Mr. Rosania said, the people in one way or another live around the roads and the ponds and the other facilities and were the subject of socioeconomic compensations. The Parties intended that the socioeconomic projects would compensate the inhabitants in the affected areas, that were not just concerned with bilateral matters of commercial contract.

The 1998, Final Release from any liability and claims for items relating to obligations assumed in the aforementioned Contract which has been fully performed. Now, that was the remaining liability under the Scope of Work. It has to be read against the 1995 general discharge.

Now, the Tribunal asked a number of questions yesterday about the Settlement Agreement. First of all, it was noted--and it's true--that it was bipartite and not tripartite. As a matter of form, we accept that. Of course, the Treaty was a failure with three tripartite agreements. That's a matter of form and not substance, the great public law treaty at the beginning of the modern period.

But, of course, the Government was a party, and Petroecuador, which was not a party to the original 1973 Agreement, was there in its own capacity under Government supervision. The Joint Operating Agreement was the Agreement entered into by Petroecuador, but the complexity of the agreements required them both to be there. But the language of

the Agreement goes well beyond anything that could be described as purely contractual.

The Tribunal asked, what could the Claimants have done better in hindsight, and Mr. Veiga said candidly, "Perhaps we could have taken it to a court." In fact, the municipal agreements were taken to Court because they were in settlement of litigation.

PRESIDENT VEEDER: Help us on that. Was that only for those that were settlement for litigation, or did they extend to the other businesses short of litigation?

PROFESSOR CRAWFORD: My understand is that at least they were pending legal claims in the case of each of the Municipal Agreements, and that was why they were submitted to courts, but I would have to obtain clarification on that.

MR. BISHOP: Yes, perhaps I could clarify. My understanding is that there were six settlements of municipalities and provinces. There were four municipal lawsuits that were filed, and each of those four went to Court for Court approval. I don't think that the other two did, to the best of my knowledge.

PRESIDENT VEEDER: And just help us, why is it necessary under Ecuadorian law to have a Settlement Agreement to prove by a court if a claim is made in pending investigation but not otherwise?

MR. BISHOP: My understanding is it's not necessary.

My understanding is that that was simply--because there were already lawsuits pending, that they agreed as part of the settlement to do it that way, to make everything clear, but that was because the lawsuits were already pending. My understanding is that wasn't necessary because of Ecuadorian law.

PROFESSOR CRAWFORD: Of course, Ecuadorian law on res judicata treats Settlement Agreements in the same way as a judgment, so, in hindsight, one might have done it, but it's not something that should be regarded as crucial.

How could the Settlement Agreement have been better worded, in hindsight? Well, it could have said this agreement will not allow proceedings to be brought subsequently for the same claims as those which are discharged in this agreement. He could have said that in express words, but in fact the discharge is itself relatively clear. It could have referred to all its legal and contractual obligations and liability for Environmental Impact arising out of the Consortium's operations, but I can't think of another way of saying that, which would be more ample or cover more ground.

It has to be read in the light of the law as it was at the time and as it was represented to TexPet as being; that is, that this was a matter for the Government to resolve. That was represented, as Mr. Bishop will show, and that was, indeed, the law, as we have demonstrated.

But you might ask what should the Respondents have done in hindsight to sustain the position they now take? They should have said to TexPet, of course, you understand that this discharge will not affect any proceeding brought under any subsequent legislation by individuals purporting to represent the public interest. That would have been excluded. Such an inference as that would have been excluded by the integration clause, beyond a doubt.

Mr. President, Members of the Tribunal, unfortunately for lawyers, hindsight is not a criteria of interpretation. You have to interpret the instrument in the light of the law and the circumstances at the time, and the fact that we might now, sitting here after vast amounts of money that has been spent on litigation, have done it a slightly different way is not a basis for saying that the instrument should not be given its full and practical effect.

Mr. Douglas makes much of there being no hold-harmless clause, but again whom was TexPet to be held harmless other than the Government or persons representing the public interest in relation to diffuse claims? It wasn't that there was a potential group of unrepresented persons with claims of the sort covered by the Agreement, which are not the cow claims, which are the claims to general liability in relation to the environment as a whole.

Then there is the integration clause. The Tribunal is

obviously being concerned with the integration clause. We were asked yesterday about it, asked to locate the discussions by any of the Experts on Ecuadorian comparative law. In fact, as far as we could see, there was no discussion of the integration clause by the experts. We asked our Experts and they informed us that there is no tradition under Ecuadorian or Chilean law on the subject of the whole-contract provisions, and that the clause should be interpreted in accordance with the rules of contract interpretation that are used to interpret all contract obligations under Ecuadorian law.

In particular, one must analyze the text and context of Article 9.3 to determine the intent of the parties with respect to that provision and their endeavor to give effect to that intent. They stress that the integration clause did not exclude the general obligation of good faith, which exists as a matter of Ecuadorian law in relation to any Contract.

Article 9.3 is actually rather limited in scope. It says, "This Contract contains all the terms and conditions agreed to by the Parties hereto with respect to the Environmental Remedial Work, a defined term of general scope, and all matters which may affect said Environmental Remedial Work. No other agreements, oral or otherwise, regarding this Contract, shall be deemed to exist or to bind the Parties thereto.

That doesn't mean that you're not allowed to refer to

the context or the object and purpose of the Agreement. It simply means that there were no Agreements in addition to those set out in the text which the Parties had to discharge.

The first sentence is not necessarily limited to remedial works, but that's its focus. We say that we don't believe there is any discrepancy between the Spanish and English versions of Article 9.3, but the emphasis of the technical aspects of remedial work set out in Annex A is even clearer in the Spanish version.

The second sentence simply provides that no other Agreements regarding the Contract shall be deemed to exist or bind the Parties.

Article 9.3 bars the Parties from arguing that there are side agreements that create additional obligations or contradict the obligations set forth in the 1995 Agreement, but it doesn't prohibit the parties from relying on material outside of the 1995 Agreement in support of their interpretation of the Agreement.

It certainly would not bar the Tribunal from interpreting the Agreement in accordance with the broader legal framework in force at the time. In fact, both Drs. Barros and Coronel agreed with Dr. Salgado in their joint report that this interpretive principle applies to the 1995 Agreement.

Article 7, Number 18 of the Civic Code provides, "The laws in effect when the Agreement was executed must also be

understood to be incorporated into the Contract." That provision is not excluded by this integration clause.

Article 5.2 of the 1995 Agreement cites a number of laws including Article 19.2 of the Constitution. Thus, we must look to Ecuadorian law to interpret the scope of the Release, and Article 9.3 does not prevent you from doing so.

Ecuador has advanced two arguments based on Article 9.3. First, it's argued that 9.3 requires a hyper-textualist approach to the interpretation of the 1995 Agreement. For example, it argues that it bars reliance on Mr. Veiga's testimony regarding representations made to him during the negotiations. Mr. Veiga did not testify that there were representations made that contradicted or added to the 1995 Agreement. He testified that there were representations that confirmed the intents of the Parties as expressed in the terms of the 1995 Agreement and as provided for by contemporary--the contemporary law of Ecuador as referred to in the Agreement.

Ecuador argues in its Rejoinder that paragraph 9.3 bars the implied obligations. It does no such thing. It bars argument that there is a source of obligations extraneous to the Agreement, but the implied obligation is part of the Agreement. It doesn't mean that obligations, such as the obligation of good faith may not be implied into and given effect to in the interpretation of the Agreement.

Further, Ecuador argued that Article 9.3 supported its argument that it has not breached the 1995 Agreement because the Agreement does not spell out precisely what it must do to give it effect. That argument is flawed. The breaches of the 1995 Agreement are a result of obligations that flowed from it, which are a matter of interpretation for this Tribunal. Whether there have been breaches or not is not determined by a later misrepresentation to Agreements pre-dating the 1995 Agreement.

A few subsidiary points.

ARBITRATOR LOWE: Are you moving off the instrument now?

PROFESSOR CRAWFORD: I'm moving off the instrument.

ARBITRATOR LOWE: Then could I ask a point about Article 1.12, which is the definition of the term "Release." It says there that, "The Release under the provisions of Article 5 of this Contract of all legal and contractual obligations and liability, towards the Government and Petroecuador, for the Environmental Impact," and so on.

Now, it speaks there about obligations and liability towards the Government, not obligations to third parties that might be enforceable by the Government, and my question is twofold, and first is: Is that a distinction which you would accept; and, second, if it is a distinction that you would accept, what's the significance of the actual wording used in

1.12?

PROFESSOR CRAWFORD: It's not a distinction we would accept, sir. At the time this agreement was entered into, the legal liability in relation to diffuse claims was a liability towards the Government. The fact that the EMA, at the later stage, made changes in the law and procedure of Ecuador does not--did not mean that these obligations ceased to be obligations towards the Government. In any event, they were certainly obligations towards the Government and enforceable only by it in 1995.

Claimants want to assert a purely hypothetical obligation of an individual character, which was completely unenforceable, and, we would say, effectively inexistent in 1995, as a barrier to the operation of the Release.

Frankly, the idea that faced with this Release TexPet was subject to the potential for endless litigation--not even Mr. Donziger could release them--is incredible.

The phrase, "toward the Government and Petroecuador," was not a phrase of limitation in the sense of being understood as leaving open a scope of liability for diffuse environmental claims that anyone could bring. And it remains the case, even after the EMA, that the legal and contractual obligations and liability were still obligations towards the Government.

ARBITRATOR LOWE: Does that answer depend upon the impossibility of an individual action at the time that the

Contract was concluded in respect of environmental harm?

PROFESSOR CRAWFORD: Sir, it's accepted that individuals had the right to bring claims, cow claims, in respect to individual harm. But we say that it's clear that they do not have, and Ecuador at the time accepted that they did not have the claims--the right to represent the public interest in relation to a general environmental issue.

ARBITRATOR LOWE: But what about situations where the remedying of an individual injury can only be achieved by some means which necessarily also confers a benefit on the community as a whole, and the cessation of pollution, for example, would always be an erga omnes cessation. It could never be ceased as regards solely one Applicant.

PROFESSOR CRAWFORD: Sir, that's not necessarily true. It depends on the situation. A particular property could be projected against substance or seepage without a whole area being protected. There must, in the end, be a distinction between a situation which globally affects a community, benefits no individual member of the community any more than any other--the absence of sewage treatment, for example--and a situation in which an individual is individually harmed. That distinction is known to legal systems, and it simply follows from the normal situation that one has to tolerate background, pollutional background, levels of contamination.

If one is not individually affected more than anyone

else, one does not have an individual claim. There is no evidence that individual members of the Ecuadorian community or of the local community had the right to insist on the sorts of remediation which TexPet carried out which was carried out at their instance, in some cases, on a collective basis.

On any other view, you could never be released from liability because every Release would be subject to being second-, third-, and fourth-guessed as a consequence of later legislation--later litigation.

ARBITRATOR LOWE: Can I just follow that point. I understand that the Respondent's position is that that's not so, and it's not so for two reasons, one that the remediation might be effective so that the injury disappears; and, second, that you might be able to extinguish liability towards the Government and Petroecuador, which would take account of one large category, but that would leave you exposed to the possibility of individual claims, and my understanding is that both sides accept that a purely individual claim would subsist, which leads me into another point, which has interested us.

The Respondents referred in passing in their opening to the handling of the mass claims in Bhopal through legislation. And, of course, you've got the parallel in the United States with the Dames and Moore litigation over the Iran-U.S. claims.

Do you have anything to add to the point that here

we've got no evident handling of the question of the extinction of individual claims by virtue of the Government's action? Might we not have expected to see some evidence of the conscious elimination of those individual claims? And it may be that you say that there is evidence there, in which case I think it would be helpful to point to that evidence.

MR. BISHOP: If I could, my recollection of the record, which you can confirm or perhaps not, is that Ricardo Veiga, in his witness statements in this case, mentioned that there were some individual claims cases brought in Ecuador against TexPet, and those were resolved. I don't recall whether they were resolved by a court decision or by settlement, but those were resolved one way or another. So, there were some individual cases filed back in the 1990s and resolved one way or another. That is in evidence through his witness statements.

Beyond that, which the evidence is is that the Aguinda Plaintiffs brought cases, class action for their individual damages in the Southern District of New York. When that case was dismissed, it was dismissed with the expectation that they would refile individual claims in Ecuador. The Second Circuit said that expressly, the Southern District of New York District Court said that expressly. When they went back to Ecuador, that's not what they did. They, in fact, filed under the EMA for diffuse rights claims.

But in trying to respond to your question, that's my recollection of what the evidence is with regard to individual claims.

And I would point out that during this entire process of the negotiations, the Congress of Ecuador had been involved, and was involved, in the settlement process.

PROFESSOR CRAWFORD: If I could add something else, it's not enough to say, well, the remediation might, in fact, have solved the problem. The question would be, who will decide that, and in a situation in which the remediation has been carried out as negotiated and certified by a third party. If you simply say, well, there is still a problem, you negate the Release every time there is a change in standing or every time a fortuitous event occurs, which on some theory or another--no theory tested in Court, as happened--might be attributable to the operations. The whole issue is reopened. It's inconsistent with the conception of the Release.

ARBITRATOR LOWE: I think I can just make sure that I've got in particular Mr. Bishop's response clear in my mind. Your point is that it's the change in the cause of action that is critical in this case, the change from the individual Aguinda claims to the diffuse claims; even though it's the same material interest that's being protected, it's a different cause of action, and that is the legally crucial point? Is that what you're saying?

MR. BISHOP: I think you have the crux of it. The critical point is the difference in the rights that were being pursued. In the Aguinda Case, the rights that were being pursued were the individual rights of the people who brought the case and the purported members of the class that they were representing. They were suing for individual damages of the class members and of themselves, and they brought claims for incidental equitable relief, but all of the relief was sought in support of their individual claims, which was the crux of the case.

When they went to Ecuador because--well, I can't say for certain, but perhaps because there is no class action procedure in Ecuador for individual damage claims or perhaps because they couldn't prove individual damage claims, they chose, the lawyers chose, to file it as this diffuse-rights action under Ecuadorian law.

Before 1999, they had not had standing to bring a diffuse-rights action, although diffuse rights existed, but they had not had standing as Plaintiffs to bring that case. With the EMA, they were given that standing, and--but, as you say, the crux of the difference is in the rights that were being asserted, not in the relief. The Government continually argues about the relief, but they mix up the relief and the rights. The rights at stake in those two cases were entirely different.

ARBITRATOR LOWE: If I can give it one final twist, the difference in the rights, does that characterization depend upon how we draw the distinction between the question of the right and the entitlement to pursue the right? And you've referred to it partly as a question of standing, and I think one thing that troubles me is the analytical relationship between the right and the standing to enforce the right.

MR. BISHOP: I'm not entirely certain of the precise question, but I think I have the gist of it, and the point that we're making and certainly our position is that the diffuse right always existed. It existed in the Environmental Laws, in the right to a clean environment in the Constitution of 1983, so the diffuse right existed.

People were given, before 1995, popular actions by the Environmental Laws, various of the Environmental Laws, to denounce violations of those laws to the authorities. They were not given, however, a direct right of action to enforce the constitutional right or to enforce the Environmental Laws. That was maintained as the Government's purview. Only the Government had the right to enforce the Environmental Laws, to take people to Court, to use its administrative authority to do that.

Standing was given to people after 1999 to also enforce diffuse rights, but the key point is that the rights were there. It was simply a matter of who could enforce them.

But the fact that the diffuse rights existed, that the Government had the authority to represent them also means that the Government, in the course of that representation, had the ability to dispose of those rights in order to obtain benefits for the community such as in this case remediation and socioeconomic compensation.

And I hope that that long-winded answer was responsive to your question.

PROFESSOR CRAWFORD: Sir, just to change the subject slightly, you asked for a citation about the U.S. courts not finding crime-fraud in Mr. Douglas's opening. This is related to Slide 14. The reference is Day 1 at Page 91, Lines 6 to 11.

Mr. Douglas in his opening said that public environmental claims, he was mentioning the Union Carbide case, as settled through a parliamentary process, not through a private-law contract, but the Ecuadorian National Congress was involved in the settlement negotiations, as demonstrated by the deposition of Minister Abril at Page 76, and Mr. Veiga's Second Witness Statement. The references are contained on the slides, and I won't repeat them, given the passage of time. Mr. Rosania agreed with that, as can be seen from the next several slides.

Mr. Veiga said that the--the ROE insisted that TexPet not negotiate directly with individuals. This is in his Witness Statement at Paragraph 17. The Government insisted

that it was the only party that could legally negotiate the settlement of TexPet's environmental remediation obligations. We don't quite understand why the Government would have taken that position, especially in the absence of the EMA. Otherwise, there was the possibility of Texaco--TexPet buying off the opposition through minor concessions.

TexPet settled in 1995, confirmed in 1998, that the only party that could settle all public environmental claims, and again I refer again to Mr. Veiga's Witness Statement at Paragraph 28.

It was understood that the scope of the Release covered all but private individual claims, claims about individual cows or individual grandmothers. And again, I refer to Mr. Veiga's testimony. He was, I think, a credible witness, at Pages 286-287 of the transcript at Day 2.

So, we say that the scope of Release is clear, comprehensive, was made by a government which had the authority to make it, and which has since acted as if it had never made it.

Mr. President, Members of the Tribunal, that completes this part of my submission, unless you have any further questions.

PRESIDENT VEEDER: Thank you very much.

MR. BISHOP: Mr. President, I wonder if we might take a very short break before we finish our opening.

PRESIDENT VEEDER: How short is short?

MR. BISHOP: Three minutes, four minutes.

PRESIDENT VEEDER: Let's take five minutes.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

MR. BISHOP: Thank you, Mr. Chairman.

I expect in most of the remaining time to address four issues: The existence of diffuse rights in 1995, the fact that the Lago Agrio Case was vindicating diffuse rights and not individual rights, the res judicata effect of the Settlement Agreements and Ecuador's breaches of those Agreements. I intend to leave five minutes or so for Professor Crawford to discuss relief at the end. And if the Tribunal views that I am getting to that point, I would ask you to cut me off, quite frankly, in order to leave sufficient time for Professor Crawford to finish.

And I would also say that we have, I think, fully briefed these issues in our written submissions, and if I do not get to any of them in the oral submissions, they are nevertheless fully briefed, and I will leave them to the papers, if necessary.

The final point, introductory point, I want to make is that I view myself as being here primarily to address the questions and concerns that you may have about these issues, and I encourage to you ask me any questions you have on these

points. I think that's more important than what's in the PowerPoint.

But with that, let me move to the PowerPoint.

Now, on this issue of the nature of Article 19.2 and whether it encompasses diffuse rights, we view that Ecuador is essentially playing a word game, it's really playing a shell game here. Both it and its Expert have effectively agreed more than once that the right to an environment free of contamination is, in fact, a diffuse collective right. Now, they assert, however, without any real basis that individuals are entitled to assert Article 19.2 claims and, therefore, they assert again without any real basis that it must exclusively, they say, be an individual right. Well, they have only one textual point to make in support of this argument, and that is essentially a mistranslation of the title, Title II, Section 1 of the 1983 Constitution.

They translate the Section 1 title to be on the rights of individuals. Well, it says on the rights of las personas, which I believe means properly translated, people or persons, but it is not individual. It is, in fact, the rights of the people in general. It sets out a list of those rights.

Article 19.2 is written differently from all the rest of the rights set forth in Article 19. It's different because, after listing the right, the right to live in an environment free from contamination, it goes on to say, and this is the

only place it does this, that it is the duty of the State to ensure that this right will not be affected and to watch over the protection of nature. None of the other rights has included within the text that specific language that it's the duty of the State to protect this right, perhaps because all of the other rights are rights that would be violated by the State. This one is different. And by its very nature, it's different. The right to an environment free from contamination is essentially a diffuse right. It's an indivisible right of the community that cannot be apportioned among people on a specific basis and no one person can appropriate the environment to themselves as their own possession. That is not in the nature of this type of right. Professor Barros and Professor Oquendo have opined at length about this point in their Expert Reports, and I would note, of course, Professor Barros has written an extensive treatise on extra-contractual liability in Latin America, and the Respondent chose not to call him and question him about this issue.

But the very nature of this right itself, as I mentioned, is a different kind of right. It necessarily must be a diffuse right of the community, and it has this additional language that it's the State's duty to protect it, which you don't find in any of the other provisions of Article 19.

Now, with that, let me go to a slide that is perhaps familiar. I used it in the Opening Statement. I hope not to

use too many that you have already seen, but I think this was important because this is the definition of diffuse rights that was given to you in a Joint Expert Report, and it defines diffuse rights as the indivisible entitlements that pertain to the community as a whole, and it gives that example that I noted in the Opening that is very important. The example, the classic example, in fact, of diffuse rights are the community's collective right to live in a healthy and uncontaminated environment. And as we've just looked at Article 19.2 of the 1993 Constitution, we see that exactly that right was already encompassed in the Constitution, the right to live in an environment free of pollution. That is, by its nature, a matter of public interest. It's a fundamental right of Environmental Protection, as Professor Crespo noted in his Report, the one that I had quoted in the Opening Statement. He was, of course, an expert for the Government in another case.

We can see this also from still another Expert Report that Professor Crespo has given on behalf of the Government of Ecuador, this time in the Southern District of New York in 2006, and there I think he's very clear. He says that the public interest nature of the right to live in a pollution-free environment, which has already been regulated by the Law for the Prevention and Control of Environmental Pollution 1976, this is the fundamental Environmental Law of Ecuador that has been on the books since 1976, and he's noting that that already

has established the public interest nature of the right to live in a pollution-free environment, that same right in Article 19.2 that we're talking about.

And he goes on to say, also by the Constitution in force in 1995. That is Article 19.2.

And he goes on to say, this is a public interest collective human right.

Then he says, the public interest categorization established in Article 1 of the Law for the Prevention and Control of Environmental Pollution in 1976 and Article 86 of the present Constitution is not about the interest of the State but about the interest of the nation, of the community, or society. He's saying it very clearly that the Environmental Law of 1976, the 1983 Constitution that was in existence in 1995, Article 19.2, these are matters of public interest that establish collective rights--collective environmental rights on behalf of the population.

And Dr. Eguiguren, in his cross-examination in this case, as well as in Expert Reports he's given in other cases, has supported this point. He's recognized the diffuse nature of this right. He was asked, for example, about Article 19.2 on his cross-examination, and he said, well, the right to live in a healthy environment, because it's a shared right with other people or other persons, then the harm could also be a shared harm. Well, the conclusion to be drawn there is that he

is saying that Article 19.2 establishes a collective diffuse right. It's a right shared with other persons.

He recognized the same point again in his cross-examination when he was asked, "now there can be instances where the individual can succeed on a claim for violation of that right by showing that harm was connected only to other individuals, not to his own aspect."

And his answer was, "of course."

And he was asked, "and that was true in 1995."

And his answer was, "Yes."

Well, that is directly another recognition of the diffuse nature of the environmental right and I would point out here because, because of the argument that has been made, that the Aguinda Plaintiffs' lawyers during the Aguinda Case expressly told the Court in the Southern District of New York that they had no ability bring a claim for environmental remediation in Ecuador. I don't have a slide on this--I wish I did--but I don't have this before you, but it is in the record. It is in our briefing, and I will point that out to you after the lunch break. But they expressly told the Court at least four times and in four different ways, including two official briefs that they filed, that all they could do was complain to the authorities about environmental contamination, and then if the authorities didn't act, then they could sue the Government, but it was the Government's duty, and it was the Government's

obligation and power to act, but they could only complain to the Government.

And this again goes along with what I showed you in the Opening Statement, Article 29 of the 1976 Environmental Law, Article 114 of Decree 2144, which provide these popular actions, but these popular actions with respect to the Environmental Laws were only, at least as of 1995, they were only for people to denounce the violations to the authorities, and then the implication is clear, and in fact, it's provided in the laws and in the Constitution, that it was the duty of the Government to act and the power of the Government to act to enforce those Environmental Laws.

ARBITRATOR LOWE: I have a brief clarification on that. When they say that they had no ability to bring a claim for environmental remediation, was that because of the limitation on the remedies available for individual claims of harm resulting from pollution, or was it because of the nature of the right? I'm not sure if I've made the point correctly, but I'm wondering if there is a distinction between the scope of the right and the scope of the available remedies--well, there is a distinction between them. The question is which was engaged in this case.

MR. BISHOP: Well, perhaps both. As I understand it in individual cases in Ecuador, they could sue for their individual damages, whatever their individual personal damages

were, personal injuries, damage to their own property. I don't believe that they had the ability--the standing, that is--to bring an action for wider relief. But I don't think it has to do with the nature of the right itself, because the right did exist. The right was there. It's that the right could be exercised by the Government on behalf of the people to protect the people but there wasn't a direct action by the people to enforce that. I hope that that's responsive.

ARBITRATOR LOWE: Okay.

MR. BISHOP: Let me move to the next slide. Dr. Eguiguren also recognized this again and I think even more clearly, when he said, in answer to another question in cross-examination, the right to live in a healthy environment is the same of 1995. He says, in reality, since 1983, when it was introduced in the Ecuadorian Constitution--and he was being asked about Article 19.2--it's the same as 1998 and 2008. The essence of the right remains the same of 1995 and in 1998 and today.

So, he's saying--he's recognizing that the nature of this diffuse environmental right that existed in Article 19.2 of the Constitution has not changed. It's been there all along.

Now, moving to the issue of representation, Ecuador is seen to make a big point that they didn't have the right to represent the people in enforcing the environmental laws. That

seems quite surprising to me and disingenuous. It seems to be clearly established in the Constitution itself that they had this ability. Article 1 of the Constitution says, of course, that this is normal--that this is a representational Government that acts through the branches of the Government, exercising the sovereignty of the people. The President is appointed as the State's Representative in Article 74.

And in Article 79, the President's duties include enforcing the Constitution and laws. And, of course, the President does it by delegating to the Ministers.

And then you have the specific authority granted under Article 19.2 as we've looked at that not only says that the State guarantees this is right to live in an environment free of pollution, but then goes on to say, as it does in no other place, that the State has a specific duty to ensure that that right is not affected. That provides explicit authority to the Government to take whatever action is necessary to it protect the environment.

I would also point out in this regard that the Concession Contract itself is a sovereign act, as is the Settlement Agreement wrapping up the Concession Contract as well as resolving other liabilities as it did. But it is a matter of public interest. The oil industry itself was declared by the Hydrocarbons Law to be a matter of public interest. And I think that's relevant as well.

But let me take you back now to Dr. Eguiguren's cross-examination because he recognized this point directly. He was asked, as a general matter under Ecuadorian law in 1995, you would agree that the Government had standing under Article 19.2 of the Constitution to seek reparation for environmental damage from any party.

"ANSWER: I think as a public action, he could have done it."

He goes on to say, "In both cases the protected and legal right is the right to a healthy environment, to live in a healthy environment."

"QUESTION: I'm asking if the Government had standing to do this under Article 19.2 of the Constitution in 1995.

"ANSWER: The State?

"QUESTION: Yes.

"ANSWER: Yes. You want me to concede? Yes."

So, Dr. Eguiguren is directly conceding that the State did have the authority to bring a case to vindicate this diffuse right of the community as of 1995. And in fact, as we have already looked at in the Opening Statement, the Government did exactly that and recognized that it was doing precisely this contemporaneously.

In the official position that the Government took in the Aguinda Case in 1996, which was roughly contemporaneous

with the Settlement Agreement, I've already noted to you that the Ambassador, in a letter, said to the Court that the Republic is the legal protector--the legal protector--of the quality of the environment. Well, that obligation to be the legal protector comes from Article 19.2 of the Constitution as it existed at that time. And in an affidavit also representing the official Government at the time, he noted that it is the Republic's obligation to become involved in matters that directly impact the welfare of the Ecuadorian citizens. Again, that obligation is the obligation found Article 19.2 of the Constitution. The very context of his Affidavit here relates to the environmental case.

And then he went on to say this, in an express recognition of the point, the recent Agreement between the Republic and Texaco demonstrates the Republic's determination to fulfill this obligation. He's saying it directly, clearly, unambiguously, that the Government chose to carry out its duty, its obligation under Article 19.2 of the Constitution by entering into this Settlement Agreement and remediation Contract with TexPet in which the Government obtained a remediation and socioeconomic compensation.

Now, in summary on this point, all of the Legal Experts that have opined in this case on the nature of Article 19.2 of the Constitution agree that this is a diffuse environmental right. Dr. Oquendo, Dr. Barros, Dr. Coronel and

Dr. Romero all have said that.

Also, Dr. Eguiguren has recognized it very clearly when he said in his testimony that the right to live in a healthy environment is the same in 1995 and has been in the Ecuadorian Constitution since 1983.

Ecuador itself has recognized this point as has Dr. Eguiguren in another Expert Report when the Republic said, again, in the Southern District of New York in one of its filings, that the 1999 EMA Law draws primarily from the Ecuadorian Constitution and the Constitution's recognition of the fundamental right to enjoy a healthy and pollution-free environment first recognized following a reform of the Constitution in 1983.

So, I think you have it virtually unanimously, that there is agreement that this right in the Constitution was a diffuse environmental right.

With that, let me move to the issue that is raised by Ecuador, where they suggest that now that the Lago Agrio Case really was a case to vindicate individual rights and not diffuse rights.

And I will take you to a slide that I also showed you in the Opening Statement, which I believe is--

PRESIDENT VEEDER: Just a moment.

(Tribunal conferring.)

PRESIDENT VEEDER: We need to clear up something, just

give us a few minutes, and we will come back.

(Tribunal conferring outside the room.)

PRESIDENT VEEDER: Let's resume.

Mr. Bishop, we don't want to cut you off in any way, and you must be the Judge of whatever submissions your clients wish to make to us, but we're a little concerned that we shall only have five minutes with Professor Crawford for the last section of your submissions this morning. We have certain questions for him about that. So, if you could possibly cut your submissions somewhat shorter to allow, say, 10 minutes or so for Professor Crawford and the questions to him that we have in mind, that would assist us, but you're the Judge of what you need to do.

MR. BISHOP: I appreciate that, and I will do exactly that. I covered this section entirely, in fact, in the Opening Statement. And since I covered it in the Opening, I will move on to the next section, then, which is the res judicata section, which I had in the Opening but cut for time reasons there.

But could I ask how much time I have left, approximately?

PRESIDENT VEEDER: We will ask the Arbitrator Martin.

SECRETARY DOE: Approximately half an hour.

MR. BISHOP: Okay. Thank you, Mr. Chairman.

Let me move, then, to Slide 69. It's difficult to

read down there at the bottom, but this is on the issue of res judicata, in responds to the argument made by Ecuador, where they say that res judicata erga omnes doesn't apply to diffuse environmental claims in Ecuador.

Well, if their position was correct, then that would exempt a whole class of types of claims--that is, diffuse environmental claims--from the effect of res judicata virtually entirely, violating, we believe, universal legal principles.

It's important to look at what would be the consequences of this position. Each of Ecuador's 15 million people could again represent, litigate, and recover for the same acts, rights, and damages. There could be, and would be, no finality to litigation, no legal certainty and no legal predictability, at least with respect to environmental issues in Ecuador.

And as a practical matter, Defendants would have no incentive to settle. As a matter of fact, they could not settle any environmental claims under those conditions. And the Government, very importantly, would lose a valuable tool for environmental enforcement.

All Governments have finite resources, we know, and they have to use those resources in appropriate ways, and one of the ways that they can enforce all laws, whether it's Antitrust Laws, Environmental Laws, or any other ways, are through Settlement Agreements, but they have to be able to

offer in those Settlement Agreements legal finality and legal certainty; otherwise, there's simply no ability for the other Party to settle, and no incentive.

This erga omnes effect derives from the diffuse nature of the rights. When you have representative actions and shared rights, then the representative must be able to bind the class itself. We have the rules of res judicata provided in Ecuador; and, in this case, it is Article 2362, which provides that Settlements are res judicata. In other words, in Ecuadorian law, you have the same res judicata effect as if a court had condemned TexPet to provide the same Settlement Agreement benefits that it agreed to: Remediation and socioeconomic compensation. That's the res judicata aspect of it.

But if it were deemed necessary to have something more than res judicata erga omnes effect, then where would you look in Ecuadorian law to decide this issue? You would look to Article 18, Paragraph 7, which says that if there is no specific law on point, then you apply analogous cases or general principles of universal law. Well, the general principle we just looked at, which is Article 2362 that Settlements do have res judicata effect, that would apply directly, it would be the direct analogy also. But you have another analogy specifically for erga omnes, and that's in Article 95 of the Organic Act on Judicial Guarantees and Constitutional Review, which expressly provides an erga omnes

effect to constitutionality cases that come before the courts.

Also on this issue of general principles of universal law, I would hearken back to the old Roman law which expressly provided an erga omnes preclusive effect for popular actions, and since the Ecuadorian Civil Code ultimately descended in various ways from the Roman law, I think that provides an analogy and shows the universal principle of law for these types of actions.

And Professor Oquendo has said it directly in both of his Reports, but in his Second Report he noted that every single jurisdiction that has embraced these entitlements--and he was referring to diffuse rights--have invested them with an erga omnes preclusive effect. And as we can see logically, that must be the case because there must be a way to achieve legal finality and legal certainty to these situations.

Now, the logic of Ecuador's position, however, was played out by Dr. Eguiguren in his cross-examination. He was asked the question, what happens if a second individual comes along who disagrees with the resolution of a first case, a representative case, and his answer was, that if you didn't have a total solution to the problem, then it would be up to the Judge to decide it again. And then if you had a third case, it would be the same thing, and a fourth case and a fifth case. And under that situation, you never get to finality. You always have a cloud hanging over you or over anyone who

does business in the country, that if they have any environmental issues, they can never get to finality. They can never be certain that they have resolved them. There is always another case to be brought by another of the 15 million citizens of Ecuador.

Now, with that, let me take you directly to the elements of res judicata, and I will move through these quickly. They are, as I think you know, that it requires identity of Parties, causa petendi, that is both the facts and the legal basis and the object. In our case, all of those were met. The legal identity of the Parties is what is important, that is the real Party in interest here is the community.

And you had the Lago Agrio Plaintiffs acting in a representative capacity asserting the collective rights of the community, the Government, however, had already represented that same community in the Settlement Agreement.

You have the same factual basis, which is the oil operations of Consortium in Ecuador. And Ecuador, in its Counter-Memorial, had seemed to concede this essential fact, although it now seems to be backtracking, but I think even that issue was--has been sufficiently addressed.

The legal basis is also the same. The right to the--the diffuse right to live in a clean environment. Dr. Barros noted this directly in his Report, when he said that the nature of the rights at issue, that is diffuse rights, is

decisive, that the legal basis is the same for both, and I would note again that Ecuador chose not to call or cross-examine Dr. Barros.

And if we needed any further support for this point, we could go and look at the breadths of the Release in Article 5.2 of the Settlement Agreement, how broadly it was intend that the term "claims" be applied. It includes constitutional claims, statutory claims, regulatory claims--all of the types of claims that were asserted in the Lago Agrio Case had already been included within the scope of the Release by the Government.

The object is also the same, the legal benefit. We don't look to the material aspect of what was asked for, but the legal benefit, and here, as Dr. Barros and Dr. Coronel have pointed out in their Reports, that is the same in both the Lago Agrio Case, and the Settlement Agreements, namely the remediation of the environment.

Now, Ecuador has suggested at one time that because TexPet did not remediate every site in Ecuador, that maybe the object wasn't fulfilled. I think they have backed off of that position in the Rejoinder, but let me take it on directly. They have, themselves, recognized expressly that it was Petroecuador's responsibility to remediate the remaining pits. Mr. Muñoz, who is the Director of the National Environmental Protection Management for Ecuador, testified before Congress in

2006 that it was Petroecuador that had the responsibility to remediate the remaining pits. The General Manager of Petroecuador has also expressly recognized the same thing in his public statements, and other officers of both the Government and Petroecuador have recognized the same things.

Now, Ecuador has suggested to you that the remediation costs of TexPet just weren't sufficient to cover the public interest aspects of a Settlement. Well, I would point out that there was no specific amount that had to be spent by TexPet. That is, the Settlement wasn't for a specific amount. The Settlement was for remediation of certain agreed sites, whatever it cost. It could have cost much more or less, but whatever that cost was to be borne by TexPet. And, of course, also the socioeconomic benefits that were included.

But I would point out to you that we find this claim to be quite ironic, given Petroecuador's own budget, which is $96.74 million budget for total remediation of the oil sites in the Oriente. And the Ministry of the Environment when it announced this, said that Petroecuador's program will provide, and I quote, "comprehensive remediation of the areas contaminated by petroleum production since the Seventies, including the areas that are the subject of litigation against Chevron-Texaco." And the Ministry of the Environment has been certifying the remediation carried out by Petroecuador under this budget as sufficient to protect the health of the people

of the Oriente and the environment.

Petroecuador finally started its remediation program in 2006 and is nearing completion, in fact, of all of those sites in the Oriente at this time.

I'm going to skip the next slide in the interest of time and go to a point that perhaps I've already covered--I think I have, but just to be sure--Professor Lowe asked the question about the nature of the rights in the Aguinda and the Lago Cases, and I wanted to be sure I had resolved this, but that is exactly the point, that it was the nature of the rights that was different between the Aguinda Case and the Lago Case. The Aguinda Case involved individual rights. In their essence, the Lago Case involved diffuse rights. And I've pointed out that before the EMA in 1999, the Aguinda Plaintiffs did not have standing to vindicate the diffuse rights of the community. That was left to the Government, the Government had that power and that standing.

And what the Aguinda Plaintiffs filed in New York--and I think this is important--was an opt out class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure seeking their individual damages and incidental equitable relief. Each Plaintiff in this type of class action has to be identified. They have to be given notice of the case, and they have to be given a certain period of time in which to decide whether to opt out of the class. That is, since this was an individual's

rights case, each Plaintiff had to be identified, you had to know who they were, and they had to be able to control their own rights by deciding whether to stay in or to opt out of the class.

By contrast, the Lago Case was brought under the EMA for unidentified persons for diffuse rights.

Ecuador has made a point about the Second Circuit Decision on the stay, and let me address that directly. But before we address that one statement by the Second Circuit, it's notable to go back and see what the Southern District of New York and the Second Circuit were saying in 2001 and 2002. In dismissing the Aguinda Case, they both noted that each individual would have to go back to Ecuador and sue for their individual damages, that each, as the Second Circuit said, signed authorizations would need to be obtained from each individual Plaintiff, a signed Power of Attorney from each. But because, as they envisioned the case, given what was at stake in the Aguinda Case in New York, namely individual rights, they expected that it would be individual rights asserted in Ecuador, and they gave them a full year to be able to get the individual powers of attorney, but as I pointed out, that is not how that was pursued.

I think it's notable also that the Ministry of Foreign Affairs, in a letter to the Aguinda Court, noted that the people have exercised in the Aguinda Case their personal rights

by suing to indemnify themselves for damages to their property and health, thereby again recognizing that that was an individual-rights case.

Well, Ecuador has pointed to this Second Circuit dicta in a footnote in only two sentences, in the background section of the Stay Opinion. What you will find when you look at that, however, is no analysis of that point by the Second Circuit. They failed to consider or discuss in any way the type of rights that were asserted in Aguinda versus the type of rights that were asserted in the Lago Case. They don't consider them at all. And then at end of their Opinion, however, they make it clear that they are deferring to the Tribunal by saying, "We express no view on the merits of this or any of the other claims that Chevron has presented in the course of the BIT arbitration."

Now, very quickly, I will mention the breach point, and I want to leave time for Professor Crawford. Ecuador has suggested--we haven't discussed this--in fact, we discussed it at some length in our briefing, and I will leave this mostly to that point, but what you will find is that Ecuador, in the Settlement Agreements, released TexPet of all liability and responsibility for all sites and, thereby, assumed responsibility for all remaining Environmental Impact outside the Scope of Work. That's the effect of the 1995 Settlement Agreement.

And in the 1998 Final Acta they released TexPet of all liability for Environmental Impact for the Scope of Work.

And you have on the next slide, the provisions of the Agreement, but specifically we have presented to you Expert Reports from Drs. Coronel and Dr. Barros who were not called by Ecuador who have testified in this case that the Settlement Agreements created both positive and negative obligations for Ecuador. There was a negative obligation not to sue, but there was also a positive obligation to defend the Releases and to act in good faith under those Releases when called upon to do so.

It's also specifically provided in the Ecuadorian law, that we have the right to specific performance of a Contract, and here Ecuador has failed to specifically perform the Releases in the Settlement Agreements as provided in Articles 5.1 and 5.2, and through the various actions of the courts and the Government itself in supporting the Aguinda Litigation, they have breached those releases.

The consequences are that Ecuador is subject to all remedies for breach of contract, including specific performance, Declaration of a breach, and damages, and I think this is especially true since Ecuador has refused to specifically perform and has violated the Interim Awards provided by this Tribunal to maintain the Releases in effect.

There are at least seven ways that we have discussed

in our briefing as to how and why Ecuador has breached the Settlement Agreements. You will find that on Slide 88.

I will now pass the floor to Professor Crawford to finish our presentation.

PRESIDENT VEEDER: Thank you very much.

Professor Crawford.

PROFESSOR CRAWFORD: Sir, I dealt with remedies in the first round. Since then the Tribunal has made a suggestion as to what might be done by the Respondent in terms of its actions in other courts, and you heard what Chevron's counsel has had to say about that.

Frankly, having regard to the attempts or the failure by the Respondent to attend to your Interim Awards, it reminds me of a situation in which the Government is told by a tribunal not to push someone down the well, and when they push someone down the well, they said, "Well, you can remedy that by throwing a rope after them." If they caused the problem in the first place, it's not likely that the rope will help.

I was going to address a series of questions which, in are effect parallel to what I said on Monday, about the authority of international tribunals itself to declare domestic acts unenforceable or to annul them. But in light of the time, I think it might be better if I respond to your questions; and then, if there's anything left over after the questions, any time left over, I will deal with that.

PRESIDENT VEEDER: Let's start with the Claimants' Request for Relief, the two pages you handed in on the first day of this hearing.

PROFESSOR CRAWFORD: Yes.

PRESIDENT VEEDER: If you can look through, how you see this relief being ordered by this Tribunal. Under the first heading, Paragraph 1, a request for an immediate Interim Award as a result of Ecuador's breaches of the first and second Interim Awards on Interim Measures. Now, on Monday, we understood you to base that application on the basis of the Arbitration Agreement between the Parties and the UNCITRAL Arbitration Rules.

PROFESSOR CRAWFORD: Yes.

PRESIDENT VEEDER: Is there any power under Dutch law that is relevant?

PROFESSOR CRAWFORD: I'm sorry, sir, I should know the answer to that, and I do not.

PRESIDENT VEEDER: It just may be relevant as to whether that limits the way we should exercise our powers under the UNCITRAL Arbitration Rules or whether it enlarges those powers, but let's move on to the form of declaration.

PROFESSOR CRAWFORD: Could I reserve the right to come back to that? We will check it.

PRESIDENT VEEDER: Please.

But let's look at the form of declaration. How is the

Declaration going to be received in any useful way by a court in Canada, Brazil, or Argentina? We would like you just to expand upon that as to how any purpose would be served by a declaration from this Tribunal.

PROFESSOR CRAWFORD: Sir, I think there may be a distinction, depending on the local procedural law, between request of the jurisdiction of the Court in question and the question of the exercise of any discretion at the remedial level. I can see that a Declaration of breach of your interim measures order is unlikely to affect the jurisdiction over a foreign Court, but in the context of enforcement proceedings taken within that jurisdiction, there is likely to be--and again, I can come back with chapter and verse--there is likely to be at least some level of remedial discretion, and we think that the context in which this Tribunal has upheld its jurisdiction on the key question of merits, that it would be helpful to have that Declaration.

PRESIDENT VEEDER: It wouldn't go to a discretion as to whether to enforce a foreign Judgment, would it? It would simply affect the timing of the Court's decision, whether they were prepared to wait until the completion of these proceedings. Would you suggest that it would go further and it would affect the discretion whether or not to enforce the Ecuadorian Judgment?

PROFESSOR CRAWFORD: Sir, in marriage and in

litigation, timing is everything. And timing matters quite a bit here, as you are only too aware, because things are happening both in the New York proceedings and before you, which would give rise to very powerful reasons for, if we're right in what we say about this Judgment, there are powerful reasons for absolute non-recognition.

I appreciate that--we've looked in vain for much authority on these points, and in the end one is left with the premise that international law prevails over national law so far as an international tribunal is concerned.

PRESIDENT VEEDER: Could we turn to your Paragraph ii, headed, Legal Effect of the Settlement Agreement, and under Paragraph iv, declare that the Lago Agrio Judgment is a nullity as a matter of international law, and then you refer to the same Judgment in Paragraphs v, vi, vii.

And I raise this question, to what extent does that impede or go forward into Track 2 of our Procedural Order Number 10? Are we in a position to decide that at this stage of the arbitration proceedings?

PROFESSOR CRAWFORD: Sir, the distinction between Track 1 and Track 2 is obviously, with all due respect, an artifact of the proceedings, and I appreciate that if you're issuing an interim declaration, which wouldn't seem to make much sense. We are in unknown terrain. Through the Paulson Report and in the authorities cited in it, we've dealt with the

question of nullity and there is a view that an International Court simply can't nullify a domestic act, even though it can hold domestic acts to be unlawful in various ways. That seems to be an a priori limitation, which is inconsistent with the cardinal principle of the supremacy of international law. But I appreciate the difficulty of Track 1 of doing more than perhaps the Declaration of breach.

PRESIDENT VEEDER: Let's turn to the bottom of the page, the paragraph of interim relief, and this is where you come back to the wording used in our previous Orders and Interim Awards, order Ecuador to use all measures necessary.

Just now we heard Mr. Bishop talk about specific performance. Is that where this concept would fit in, under these Paragraphs B(1), B(2), B(3), B(4), and possibly B(5)? Is that an alternative way of formulating the relief that you seek?

PROFESSOR CRAWFORD: Yes, the phrase "specific performance" is specific to particular legal systems, but the concept of performance of an obligation is not. So, to that extent, we would say yes.

PRESIDENT VEEDER: Is it recognized under Ecuadorian law an order for specific performance? Was it used in a different--

PROFESSOR CRAWFORD: Let me just find out the answer to that.

MR. BISHOP: There is a provision of the Civil Code that provides for breach of contract. One can either sue for specific performance of the Contract and any damages that one has incurred, or sue to terminate the Contract and for damages. But specific performance is expressly recognized in the Civil Code as one of the primary remedies for breach of contract.

PRESIDENT VEEDER: Can you give us the provision in the Civil Code? If not now, later.

MR. BISHOP: I can in just a moment, yes. We will find that and get that to you. I know it's in our papers, but I will find it for you now. Excuse me, it is Article 1505 of the Civil Code. 1505.

PROFESSOR CRAWFORD: Of course, it seems to be drawn between what you do in relation to the Provisional Measures Award and what you do in relation to the Track 1 issues.

PRESIDENT VEEDER: Yes.

PROFESSOR CRAWFORD: To the extent that any--that you make a final determination on the Track 1 issues, any remedy that follows from that determination is unconstrained by the distinction between Track 1 and Track 2.

PRESIDENT VEEDER: Yes. I see.

And B(5), if you could just turn to that--and this is an application that we order Ecuador to make a written representation to any court in which the Lago Agrio Plaintiffs attempt to recognize and enforce the Lago Agrio Judgment, and

then you set out in eight little numbered paragraphs where their representation should state.

PROFESSOR CRAWFORD: Sir, I wouldn't describe this as to the performance, no, at all. It's really an attempt to describe how the rope should be thrown, if I use my earlier analogy of the well. And we appreciate fully the constraints upon an international tribunal in making specific Orders directed at Governments. But we face a situation which is essentially no win. And as your final remark yesterday, the fifth remark indicated, we can be in a situation where no one can give us any remedy, despite the fact that we're right in our claim because the money will have been disbursed to the five major litigation funders of the world as to the five wins.

PRESIDENT VEEDER: Can we ask you just to explain that comment. These are monies that would not be--would not be repatriated to Ecuador?

PROFESSOR CRAWFORD: My instructions are that, although there is a fund set up by the local court, which is intended as a repository of this money, the foreign proceedings are being pursued by the individual lawyers, and there is no clarity whatever as to what happens when money is provided, where net money is provided. There is no certainty that the money will be kept in escrow in a safe place in its entirety or even in a large part, and there are enormous liabilities that have been incurred in the course of pursuance of the

liabilities I used in the general sense in pursuits of the Lago Agrio Litigation. We can have no confidence in the light of what has happened that this money would be in any way returnable.

PRESIDENT VEEDER: I thought I heard you use the word "funders." Are there funding agencies--

PROFESSOR CRAWFORD: I don't want to give testimony, but--no, I think perhaps I will let Mr. Bishop answer that question.

MR. BISHOP: Yes, I think I can answer that question, yes, there are funders for the litigation, for, I assume, the enforcement proceedings as well, and there has been discovery in the litigation in the United States about some of those Agreements. And there has been, I think, an Agreement, at least drafted--and I think entered into--that required that the funders required that any monies received be kept outside of Ecuador and not to go to the Court, which seems to be quite the opposite of what the court decision itself says.

There are percentages, I think, that would go to the funders and to the attorneys. Some of this is set out in the Invictus Memo that you have been referred to earlier in these proceedings.

And what I would end this pointed on is perhaps because--perhaps because you have no real Parties at interest in this case on the Plaintiffs' side. There is no class

certified, there were no people identified, they weren't bringing this case for an individual action. The case was controlled by the Plaintiffs' attorneys themselves and perhaps by the ADF, and they've entered into these Funding Agreements of various sorts, and they--we don't know where the money is going to go, I guess is the bottom line. I don't know whether anyone knows, but there is no confidence that it's going to go to a trust, whether it's going to go to someplace outside. That, I think, is entirely undetermined.

And I can refer you to Exhibits C-1217, which is a Funding Agreement with one of the funders of October 31, 2010; and another Agreement--it's an Inter-Creditor Agreement also of October 31, 2010, which is Exhibit C-1218 in the record.

I think that's what I can say about that issue. If you want more detail, I think there are other people who can provide that, if you would like.

PRESIDENT VEEDER: Thank you very much. We've raised the questions we can raise at this stage. You may conclude your closing oral submissions.

PROFESSOR CRAWFORD: I managed to say that I'm instructed that under Dutch law, if an Interim Measures Order is binding in accordance with the lex arbitri, this case of the UNCITRAL Rules, the Dutch Court may add to that a per diem penalty for violation. Whether that would be applicable to a State is another question. And I will have to provide further

detail for you on that.

PRESIDENT VEEDER: Thank you very much.

PROFESSOR CRAWFORD: Sir, I could be rhetorical, but I think that ends our submission.

PRESIDENT VEEDER: Thank you very much.

Now, it's 12:15, Mr. Bloom. We're in your hands. Would you like to have an early lunch break now, or would you like to start and then break at a time of your choosing? What would you refer?

MR. BLOOM: I think we prefer the lunch break now.

PRESIDENT VEEDER: Let's take the lunch break now.

MR. BLOOM: Thank you.

PRESIDENT VEEDER: Let's come back--we're just wondering about time. We're in your hands again, if you want 60 minutes, that's fine, but if you could do 45, it might take a certain time pressure off all of us this afternoon. But it's your choice. Forty-five minutes or 60 minutes.

MR. BLOOM: My colleague tells me that time flies, so we would ask to resume at 1:15, if that is acceptable.

PRESIDENT VEEDER: Thank you.

(Whereupon, at 12:14 p.m., the hearing was adjourned until 1:15 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT VEEDER: Let's resume.

Mr. Bloom, you have the floor.

CLOSING ARGUMENT BY COUNSEL FOR RESPONDENT

MR. BLOOM: Thank you, Mr. Chairman, Members of the Tribunal.

This afternoon's presentation will go as follows:

We will begin with Mr. Gonzalez, who will speak about the Interim Measures, and he will go first.

He will then pass the microphone to Mr. Leonard, who will discuss the issues of Ecuadorian law that you heard so much about the last couple of days.

And then the microphone will then return to me, and I will seek to cover in my time matters of comparative law, the facts and circumstances giving rise to the Settlement Agreement, perhaps most importantly the specific terms of the Settlement Agreement. We'll get into issues of breach, and we'll get into issues of res judicata.

And, with that, we'll turn the floor over to Mr. Gonzales.

PRESIDENT VEEDER: Thank you.

MR. GONZALES: Members of the Tribunal, I think it would be a good starting point if we look back to the Claimants' Request for Relief.

The Tribunal will appreciate the cover page, the first

page of the Claimants' Request for Relief. After the title, it says, "Track 1 Hearing on the Merits." And I think it would be perhaps to begin to clarify what is the purpose of this hearing. And, of course, we agree that it is for Track 1, but perhaps it would be best to clarify that Track 1 refers to the scope and effect of the Release Agreements and not to decide issues of breaches the investment treaty.

And that is, of course, as was agreed upon by the Tribunal; that is, all of those issues are for Track 2.

So, what I'm going to do this afternoon, I'm going to deal with precisely the first point of the request, and the request, as a request for an immediate Interim Award, and I'm going to deal with the first point, which is the Declaration, request to declare the Respondent breached the First and Second Interim Awards, and also the second issue, the Second Declaration, request for declaration of the Lago Agrio Judgment under both. This is the request, Ecuadorian and international law. So, I'm going to deal with those two issues, and briefly mention the--as was already mentioned by the President of the Tribunal, the issue of request for a partial Final Award on the scope of the Settlement Agreements in relation to Point 4 and Point 5.

Members of the Tribunal, the issue before you is whether the Claimants' request for Relief warrants a new order, an immediate Interim Award, and a Partial Award, in which you

would declare that the Respondent is in breach of the Interim Awards, and that is, of course, the breach of international obligations, the Respondent; and the second, which is the Claimants are asking that you declare that this is--that domestic Judgment is not conclusive or enforceable under not only international law, but also under Ecuadorian law and that is not subject to recognition and enforcement anywhere on planet Earth.

I want to deal with five points and will address the comment made by the President yesterday and the invitation by the President.

The first point I want to make is this: To understand why the Claimants are seeking a Declaration that the Republic is in breach of the Interim Awards, the Tribunal must place the Claimants' request in its entire context, not just the slice of context which the Claimant wishes to put before you, but the request, we say, ought not to be treated without looking first at the real purpose of the Claimants' request for relief.

Professor Crawford made reference in his opening submission to an alleged campaign of harassment, but this is interesting because I say this is precisely what this request is all about. The context of this request, the campaign of harassment from Chevron against the Republic. The purpose of this request is to disrupt the trade benefits that the Respondent currently receives from the U.S. under the Andean

Trade Preference Act, the ATPA. You will note, September 2012, Chevron requested to the USTR to suspend or withdraw the trade preferences. This was carried out notwithstanding the Tribunal's order not to exacerbate the dispute. Still Chevron decided to put pressure without even informing the Tribunal of such action.

Now, the trade pact under the APTA brings substantial benefits to the Republic and to the economy specifically, and as we have mentioned in some letters to the Tribunal. $9.6 billion in exports from Ecuador to the United States in 2012. And, of course, as a consequence, hundreds of thousands of jobs to Ecuadorians generated from such trade flows.

Now, what is the purpose of Chevron's campaign of disrupting the Republic in international trade? Well, the immediate purpose is, of course, to inflict severe economic harm on the Respondent, but by doing so it intends such negative effect on the economy will induce the Executive and politicians to put pressure and interfere with the Ecuadorian judiciary in connection with the Lago Agrio Judgment.

Now, the second point I want to make is this: Claimants are asking you to find a breach of the Interim Awards. This requires three responses:

Number 1, we say that we're in compliance with the Awards. Our interpretation of the Interim Awards we take it as one requiring the Executive and the judiciary to take actions

which are legally possible. And our reading of the Interim Awards does not impose on the Respondent an obligation that contradicts fundamental rights and principles of the Constitution and international human rights obligations of Ecuador.

And the second response is that we have not repudiated the Interim Awards. We have taken several actions, and I would like to go through some of the actions that we have taken, especially on the Executive and the judiciary.

Let me begin with the Executive. The Attorney General of Ecuador, after receiving the Awards, gave immediate notices to different agencies and institutions and organs of the Executive, including the President of the Republic of Ecuador, the Council for the Judiciary, the Ministry of Foreign Affairs, trade integration, the National Court of Justice, the National Assembly, the President of the Chamber of the Province of Sucumbíos, and the appellate panel, all of the Ministries that were relevant or could be relevant in any action connected to the proceedings of enforcement or execution of the Lago Agrio Judgment.

Now, it's not that we just sent letters and we crossed our arms. The obligation and the efforts taken by the Executive didn't stop there. And I should mention, though we have--we are bound by issues of privilege, we have had internal meetings and, of course, all the meetings with different

Ministries at different levels inside within the Government within the other agencies, within the other organs, different levels, even with outside counsels in order to determine what can the State, the Executive, what can the State do and cannot do. These I report as well as meetings and analysis of our obligations have been carried out since the Tribunal issued these Awards.

Now, we need to understand that the Tribunal cannot ask the Respondent to act as an authoritarian State where the Executive will interfere abruptly in total disregard of the law and impose its will to other entities and other organs of State. We cannot do that, and that's exactly the situation that faces the Executive.

Now, Professor Crawford this morning, he considered that the Government doesn't give orders to the judiciary. That's what he said this morning, and that's exactly our point. As in any other legal system of the world, public servants and different branches of the Government cannot operate outside the law to order a public servant to ignore its duties and to face potential personal liabilities. This is tantamount to what is legally impossible.

Now, the Claimants make reference to actions taken by the Ministry of Foreign Affairs and the Court such as the Certificate of Enforceability. But nothing of this allows action allows servants, public servants, any discretion as to

what they can or cannot do in regard to this administrative formalities of issuance of the certificate of enforceability.

Now, the conduct, functions of public servants, as I said, it should be, and they have taken it in accordance with their responsibilities and, as I said, they cannot go outside the law. As I said, acting outside the responsibilities who held them personally liable. Now, these are the actions of the Executive, other courts, the judiciary. It is important to mention some principles that are affected by the powers the constitutional mandate of the courts in Ecuador.

Article 226 of the Constitution of Ecuador says public servants, judges, are obliged to exercise only those powers and duties granted to them, and that includes the impossibility to relieve a party in a domestic proceeding from the application of the rules of procedure detriment of the opposing party. That would constitute, well, a violation of constitutional and human rights principles of due process.

Now, what are the steps that have been taken? Well, the Claimants suggest, kind of suggest, that this is the Respondent's fault that the Judgment is enforceable, but we must not forget that the enforceability of the Judgment happened as a matter of law as a result of Chevron's own choice not to pose the respected amount pending enforceability of the Judgment pending the adjudication of the Cassation Appeal. So, Chevron's own conduct cannot be imputed to the Court.

In the course of--now--well, when the application was made by Chevron in the Second Instance bringing the attention of the Court of Interim Awards, the Court heard the arguments of both Parties, and the Court identified a potential conflict between supranational norms, as it was the term used by the Court. The Court was concerned about competing legal obligations, as this Tribunal was in its analysis with respect to the monetary goal principle in the jurisdictional phase.

The Tribunal will recall--the Tribunal analyzed and discussed the issue of conflicting potential obligations arising from the Lago Agrio Plaintiffs, third parties to this arbitration, and spends an entire paragraph discussing this issue. Well, so the courts told the Ecuadorian courts.

So, as you know very well, the issue of competing rights is a complicated matter, and that struggle that the Tribunal, this Tribunal, faced, the same struggle happened in the Court.

Now, the Court concluded that human rates take precedent. It stated that an investment award cannot force a judge to violate the human rights of its citizens. Now, this afternoon, it was suggested that we don't have real Plaintiffs here, that what we have is funders bringing claims. Now, I do have to say, with all due respect, that we are talking about citizens, real people affected in the Lago Agrio area, and this has been considered by the Ecuadorian courts.

I also bring the attention of the Tribunal to Paragraph 4.67 of the jurisdiction and admissibility Award, and I quote: "If there were an inconsistency between the Respondent's obligations under the BIT and the Lago Agrio Plaintiffs' rights as determined by the courts in Ecuador, it would be for the Respondent to decide how to resolve that inconsistency." This is exactly what the courts have done.

I must say that we have acted as well in good faith. This demonstrates that the Executive and the judiciary have acted in good faith in compliance with interim awards. And although it was suggested on Monday by Professor Crawford that we were in willful defiance, I think it's clear that we're not in defiance and that all the discussions and actions that we were able to do in accordance to the law were done and are continuing--carried out by the authorities.

Now, my third response, that is the harassment that the Claimants have--

PRESIDENT VEEDER: Stop you there because there may be a question, if you've come to the end of that section. Forgive me if this question is more for Mr. Bloom than for you. If it is, we shall be patient, but you may recall one of the specific complaints made by the Claimants was that the Attorney General moved the Lago Agrio Court to lift the embargo order in regard to the 96 million-dollar Award obtained by Chevron in the Commercial Cases BIT arbitration, and the point was made by the

Claimant, if the Attorney General could do that, why couldn't he produce this Tribunal's Interim Award on Interim Measures or Orders on Interim Measures to the Tribunal?

Now, in the letter of the 21st of November we received from the Respondent, it was explained to us that in regard to the Commercial Cases, the Government had its standing to intervene, that it had a legally cognizable interest.

Now, what do you say whether or not the Government, the Executive, has a legally cognizable interest in bringing to the express attention to the Attorney General this Tribunal's Interim Awards and Orders on Interim Measures?

MR. GONZALES: On the issues of the--of the proceedings in Chevron II, I would defer the question--the answer to my colleague. I would address the issue of the powers of the Attorney General and also the letter of the Executive of October where it relates to the 96 million intervention, and they made reference this morning about the document, the letter that was sent to the Court by the Attorney General. I would just deal with this.

PRESIDENT VEEDER: My question was specifically limited to the point made by the Claimants in regard to the embargo order, but please take your own course. If it's not Mr. Bloom, it can be somebody else.

MR. GONZALES: I would argue about it. If the President allows me, I will only deal with that on the powers,

specific powers of the Attorney General and deal specifically with this point.

Now, the third response to this point is in relation to the harassment of the Claimants have alluded, and it relates to the efforts of the private individuals to enforce and execute the Judgment. And we say the Tribunal has no jurisdiction over the Lago Agrio Plaintiffs, so whatever action carried out by the Lago Agrio Plaintiffs, the Tribunal cannot decide or cannot held us responsible--cannot held the Republic responsible for those actions.

Now, Professor Crawford also made reference on Monday as to several statements made by President Correa that were in--part of this campaign, harassment campaign, and it must be said that those statements that Professor Crawford alluded were not related to this arbitration, not related to any decisions of this arbitration, but to the Chevron II proceedings, and the Tribunal must appreciate that there is a distinction between the two proceedings.

My third point--and this touches upon the request for a declaration that Ecuador is in breach of the First and Second Interim Awards and also force an issue that the request to declare the Lago Agrio Judgment--in violation of the Treaty, I think it necessarily requires the Tribunal--this requires--if the Tribunal is to decide to deal with this issue, the Tribunal would have to pre-judge the merits of this case, which is

entirely inappropriate and premature at this stage of the proceedings.

Now, whether or not the steps that we have taken are sufficient on the view of the Tribunal, we say this is an issue that should be decided by, in the Track 2, in the merits stage. Respondent deserves the right for a full defense on the merits on this particular issues where we could put full evidence and proper legal arguments on the alleged breach of international obligations regarding both the Interim Awards and whether the Lago Agrio Judgment is or not contrary to the obligations under the treaty.

But if the Tribunal is to accept the application, the request by the Claimant, that would mean that the Tribunal would have to pursue, one, that this time will prevail on the merits and what obligations may be imposed as part of an award on the merits.

The Tribunal will also have to assume that the courts, different courts in different places like the courts in Brazil, Canada, Argentina, that are going to render against the Claimant.

Not only that, they would also--you would have to pursue that the courts, these courts, aren't going to decide the issues imminently.

You would also ask to assume that there is a denial of justice of such proceedings by those courts in such

jurisdictions, and that this is also happening imminently.

And my fourth point is that there is no irreparable harm, and the argument is that if Chevron is right on the merits in this case, the Claimants are to prevail in Track 2 on the merits, with that decision with the Final Award, the Lago Agrio Judgment will not be enforceable anywhere. They would use the decision, the Final Award. They will go to the courts, respective courts, where there is an execution, an enforcement proceeding, and it would not be enforced. So, there is no irreparable harm.

Now, the fifth point that the Claimant is asking to decide whether the Judgment is enforceable under Ecuadorian law, and again we say that this Tribunal is prevented from doing that. Now, I go back to the decision in jurisdiction and divisibility in the Award as stated in Paragraph 4.67. The Tribunal ruled that it is clear that this Tribunal has only to decide upon questions of the Respondent liability to the Claimant under the BIT. Therefore, the Tribunal cannot decide whether it is or not enforceable under Ecuadorian law.

Now, the final point I will address is the question posed by the President, of course, the issue raised yesterday in relation to what the Republic can or cannot do in enforcement proceedings and in other jurisdictions. And we say, first of all, that we have, as we have already stated in our letters, that we have a legal impediment to act in the way

the Claimants asked us to do.

Now, Professor Crawford mentioned this morning that the PGE, the Attorney General's Office, intervenes with the judiciary when it sees fit. Now, this relates to the letter of the 22nd of October, where precisely the Attorney General responded to an application, an order that was addressed by the Court to the Attorney General asking the Attorney General to do--to act and do something about the freezing of the $96 million.

And going back to your question, Mr. President, I refer to the Articles 3 of the Organic Law of the PGE, and it is important that we look at these provisions that relate exactly what the Attorney General can and cannot do in international proceedings, in--in proceedings in foreign courts, but also in domestic courts.

And the key point here is whether the State has a public interest, whether the Attorney General can act when it considered there is a public interest, and for that it is very important to determine what do we mean by public interest.

Now, this is not something that an Attorney General would do every day. Well, I think that today, yes, this case assumes that there is a public interest, and I will intervene, and I will just argue that there is a public interest. It is an exceptional--an exceptional mechanism or possibility for the State to intervene.

But the interest, the word "interest" relates to rights, so it has to have a legal right. It has to have a legitimate right for the State to intervene, and this is exactly the point and the importance of what can and cannot do the Attorney General. It would have to show that there is a right at stake.

Now, it was suggested, of course, that just because there is a possibility or an expectation that we might have an award, that doesn't necessarily mean that there is a public interest. In Ecuadorian law, an interest for the expectation is not an interest, and that is precisely why in the case of the freezing order in which the Attorney General decided to petition because it was a petition to exclude the $96 million, it was because precisely there was an interest, and the interest was that it involved public funds, and that is a distinction that needs to be drawn which--in cases where the State--the Attorney General can intervene and in which cases the State's Attorney General cannot intervene.

PRESIDENT VEEDER: I just need a bit more explanation as to why it involved public funds.

MR. GONZALES: Because there is supposed to be a credit that--because there is Award, a decision against the Republic of Ecuador. It was an award that says the State has to pay. So, there is a final decision that might involve the funds of the State, public funds. Those 96 million come from

public funds, would have to come from public funds.

PRESIDENT VEEDER: The monies that were the subject of the Court's Order, the embargo order, were not public funds, were they?

MR. GONZALES: The 96 million relates to what it would be a credit in favor of Chevron. That money, if they would have been enforced or could be enforced in the U.S. courts, that is a credit that relates to money that would have to be--that would have to come from public funds. That is the legal ground why the Attorney General decided to petition to exclude that part because, of course, public funds cannot be freezed by--

PRESIDENT VEEDER: Forgive me, I'm being very slow, but I was looking at the Order made by the Court, which is Exhibit C-1532, and as I read that, and I may have misunderstood it, the embargo was directed to the assets of Chevron and its subsidiaries. That embargo order was not addressed towards public funds; that is, funds owned by or possessed by the Ecuadorian State.

And again I may have misunderstood, but I thought the Attorney General moved the Court in order to exclude from that embargo order some $96 million. That $96 million wasn't the State's money, so I don't understand how public funds are involved as an explanation for this application to the Court by the Attorney General.

MR. LEONARD: If I may just clarify and supplement my colleague's explanation, the Order of Attachment directs the Attorney General to take certain measures to prevent payment to Chevron. Those funds are not yet in Chevron's account. They're not attaching assets in Chevron's account. Those funds are in a public account known as the sole account of the State. And by law, as a matter of law, those funds cannot be the subject of Attachment.

So, there's two grounds on the basis of which the Attorney General invoked these cognizable interests to appear before this Court; and, as my colleague explained, the Attorney General is the judicial representative of the State, is the only public official or officer empowered with the capacity to appear before a Court on behalf of the State, and it can only do that in proceedings where the State is stated as party, with one exception, when the State--in third-party litigation, where the State has a cognizable interest.

In this case, the Attorney General invoked two grounds. The first one is the Court's instructions to the Attorney General to take certain measures that are beyond the scope of the powers that are granted or vested with the Attorney General by virtue of this Organic Law of the Attorney General's Office. The second grounds was the fact that that order was directed to funds that are in this unique or so account of the State. And as a matter of law, those are--those

cannot the somebody subject of an attachment.

PRESIDENT VEEDER: I see. So, in English terminology, this was a garnishee order, effectively nisi seeking to attach monies otherwise payable by the Ecuadorian State to Chevron, which under this order would be diverted away from Chevron to the Lago Agrio Plaintiffs.

MR. LEONARD: That seems to be correct.

PRESIDENT VEEDER: I understand now. Thank you for the explanation.

MR. GONZALES: And just to conclude, Mr. President, we, of course, received the invitation by the Tribunal yesterday, and it is important to mention that we are taking note of that invitation and to also inform the Tribunal that this has not been the first time that we have been discussing internally and at different levels the importance of the possibility that the State, the Attorney General can do--to do whatever is possible, legally possible, to comply with the Interim Awards.

And although the invitation yesterday is extremely important, we take note of the importance that the Tribunal has indicated. We would like to, of course, take time. Of course, we cannot decide one day or another what to do with--what to respond to the Members of the Tribunal today on an issue that, of course, involves serious legal considerations; and, for that purpose, we would like to reflect on that, and we, of course,

cannot take a position right now. We need to go back. And, of course, the Attorney General cannot decide by himself issues as to determine whether there is a public interest, and whether it's justified. We're considering the options, the legal consequences, and then the constitutional limits that that would imply, and for that purpose, we would like and request the Tribunal if we could have some time to come back to the Tribunal and respond to that specific invitation.

PRESIDENT VEEDER: We will certainly address housekeeping later, but I wouldn't have thought that was a problem, subject to timing, obviously. This is a very important matter and a very important step to be very carefully considered.

MR. GONZALES: Of course, and we would take the issue immediately to the point where we--thinking that we could do this in a period of two weeks.

I will give the floor to my colleague Mr. Leonard.

MR. LEONARD: Thank you.

Just to elaborate on my clarification earlier, the reason why the funds are not yet in Chevron's account is because the Republic has initiated actions before the courts in The Netherlands to set aside the Commercial Cases Award. As you know, Mr. Bloom has sent the letter to the Claimants on behalf of the Republic indicating that the Republic intends to fully comply with its obligation under the Award should these

actions be not resolved in the setting aside of the Award. In the meantime, Chevron has instituted--initiated actions to have that award recognized and enforced in the United States. In the meantime, the Republic is--continues to go through the processes in The Netherlands.

Now, turning to the issues that I was assigned to address today, I construe the Tribunal's message of yesterday suggesting that the Tribunal is not especially interested in hearing about the issue of the principales and, in general terms, Claimants' standing or--

PRESIDENT VEEDER: Can I interrupt you? You're putting it too highly. Of course we're interested. It's just that we had a lot of material already, and given that there was a limited time today, it's entirely a matter for counsel and for the Parties to decide how to use that time, but given that there is a limited time, we were focusing you more towards new areas of which there is less written material than existing areas where there is a great deal of voluminous material, but it's a matter for you what you want to do.

MR. LEONARD: I understand. And we do not disagree.

I will just make one point, if I could take a couple of minutes to address that issue, and then I will move on.

With respect to the issue of standing, the Tribunal has made a number of findings. I will refer to two specifically. The first one is that it is settled that in

order to establish jurisdiction over Chevron's claims under Article VI(1)(a) of the Treaty, Chevron must prove that it has standing to assert rights under the Contract.

The second finding is that the Tribunal has confirmed that the term "principales" in Ecuadorian law does not refer to parent companies, controlling companies, or anything other than the principal and a principal-agent relationship.

From the perspective of an Ecuadorian Court, the argument that principales was used in a contract with this level of sophistication to refer to something that Ecuadorian law does not recognize as such, would be untenable. At most, Claimants' contention would create an ambiguity, and the rules of contract interpretation calls for or direct the Court to resolve the ambiguity against the position of the party who is raising or creating that ambiguity.

Now, the most important issue I want to address today was--that was by way of background, but if we could go to--if I could direct you to Slide 52 of our deck, you'll see a copy there of Article 9.4 of the Agreement. This particular provision has been subject to debate in terms of the different translations. There is one translation that is clearly wrong. There is another translation that we have submitted or provided in recent submissions that accurately reflects the language in the Spanish version. Now, this provision makes clear that no party, other than the Contracting Parties can assert

affirmatively that they are affirmative claims under the Contract.

There's two parents to this provision. You will see the first part reads: These contracts shall not be construed to confer benefits on third parties who are not a part of this Contract. That part of the provision is correctly drafted. As a matter of Ecuadorian law, the Parties to the Contract are only the signatories, and specifically the Parties who undertake mutual obligations--yeah, undertake mutual obligations and acquire rights are third-party beneficiaries, by definition not a party. These provisions drafted in that way, instead of using party, they use part, to report to the third party beneficiaries, the Releasees that are clearly--clearly benefit from the Release pursuant to Article 5.1 of the Release.

Now, the second part of the provision makes it clear that it shall not provide rights to third parties to enforce its provisions. Now, we read that as meaning no third party--there is a difference between the first part of the provision and the second part. The first part refers to Parties who are not part of the Contract. The second part of the provision contains no qualification and refers generally to third parties.

That includes third-party beneficiaries. Of course, the harmonic interpretation of this provision with 5.1 suggests

that obviously the Releasees would be able to enforce the Release or invoke the Release should they be sued. This Contract, the Release creates an obligation not to do something. That action is not to sue them.

Now, should the Government or Petroecuador sue TexPet or any of the other Releasees, then by all means that Releasee would be able to invoke as a defense the Release. However, this provision must be understood as meaning that no party other than the Contracting Parties can assert or enforce--assert affirmative claims on the basis of the Contract.

And with that, I will turn to--I will turn to the issue of the law in Ecuador as it existed in 1995 with respect to the scope of the Release and the existence of the diffuse rights, what diffuse rights mean, and whether the Government the State generally but specifically the Government and in this case the Ministry of Energy and Mines and Petroecuador were entrusted with the power of a legal capacity to act in the name and on behalf of the citizens in a way that would bind them to contractual provisions as if they were the real party in interest.

Now, there are several questions before this Tribunal in respect of this issue. The first one is whether the Government and Petroecuador signed the 1995 Settlement Agreement in that representative capacity on behalf of the

Ecuadorian people. It's this kind of representative capacity the kind that would bind its citizens to the 1995 Settlement Agreement as a party to it. Did the State or the Government have the power to do so under Ecuadorian law as it existed in 1995? Did the scope of the Settlement Agreement extend collective or diffuse rights, and whether such a concept existed at all under Ecuadorian law in 1995?

Now, at the heart of this case is the language contained in the 1995 Settlement Agreement; and, as Mr. Douglas did on Monday, I will take you to the relevant language of that agreement or through the relevant language that specifically gave rise to Claimants' theory of representation back in the New York Litigation and to the diffuse rights and res judicata arguments in these proceedings.

What I will not do, is I will not show you any special chapter, any particular section in this agreement addressing the Government representation or containing any representations that Government was acting on behalf of the citizens, and nowhere will I show you any language referring to collective rights, diffuse rights, or diffuse claims.

I wasn't able to find a section addressing any carve-out of Claimants' claims for personal injury and that would otherwise explain that only the so called diffuse claims are included within the scope of the Release. I have found and you will not find no--none of that language.

Claimants' theories in this case are the progeny of this provision, and specifically the phrase "including, but not limited to, causes of action under Article 19.2 of the Constitution in force at the time." That is the language that allows Claimants to bring this case, to develop the theories on this case. If we could show the language of Clause 19 or Article 19.2 of the Constitution.

You have seen this language yesterday. Section 2 of Article 19 is just one of 17 subsections of this provision. This provision is found in a section regarding the rights of individuals, and now we have debate about translation of this. The rights of the persons--that would be the proper translation. There is no word games here involved.

And as you can see, and as Dr. Eguiguren explained yesterday during his examination, this provision contains two parts, the first one conferring a right to the people to the persons, the right to live in an environment free of pollution; and the second part imposing certain obligations on the State to protect this right and to protect the environment, the nature.

Now, Mr. Douglas identified yesterday--on Monday nine different problems, independent problems with Claimants' argument. I will jump to problem Number 4. That's the fourth problem. He identified what I believe is now evident. There was no law in 1995 that recognized diffuse rights. The

concept of collective rights was introduced in Ecuadorian legislation for the first time in the 1998 Constitution, or the constitutional reform of 1998, and the concept of diffuse interest was defined for the first time in 1999, one year later, in the Environmental Management Act referred to as EMA.

Neither one of Claimants' experts identified a single constitutional provision or secondary statute that recognized even the notion of collective rights at the time. Professor Oquendo acknowledged that the phrase, "diffuse rights," is nowhere to be found in the text of the Constitution enforced in 1995. The Claimants' entire theory of diffuse rights rests on the language of this provision of Article 19.2, if we go back to that slide. They say that this provision is all about diffuse rights.

Now, as Mr. Douglas pointed out on Monday, neither Claimants nor their experts ever quoted this article in full. The English translation even omitted initially the heading of the chapter identifying the purpose of this section of the Constitution where Article 19 is found, in Chapter II, rights, duties, and guarantees, Section 1, regarding the rights of the persons. And the 17 subsections that you will find in Article 19 lists all the rights the Constitution and Ecuadorian law vested at the time--this provision reads slightly different today--on each one of the individual citizens of Ecuador.

Now, you will notice that Professor Douglas described

14:07 a few of his rights on Monday. I will not do that today, but you will notice when you review that, the entire or that provision in the entirety, that none of these 17 sections of Article 19 evinced any qualification that would single out a particular right as a right vested not with a person, but with the community as a whole--this is an entity that is different than the sum of its members. And going back to this translation issue that Claimants raised in their Closing Argument this morning, Article 41 of the Civil Code defines the person as each one of the individual citizens that comprise the community in Ecuador. There is absolutely no dispute that this section of the Constitution lists individual rights. And by "individual rights," I mean rights that are vested with each one of the citizens, not with the collective as a distinct entity.

Claimants nonetheless contend that only one of these rights, only one of these 17 subsections to diffuse, even though the Constitution makes no reference to the concepts of diffuse or collective rights, and I refer to the Constitution, of course, that it was in force in 1995. And again, the only authority they point to in support their diffuse rights theory is the language of Article 19.2 of the Constitution.

Let's go back to the text of that provision and examine the different propositions that Claimants and their experts extract or derive from this language. That's

14:09 5.2--19.2. I will refer to three main conclusions that probably summarizes the Claimants' case. The first one is that this particular right is not conferred to the individual persons, but to a different entity. I will refer to the community as something different than the individuals that conform the community. This right is in the words of Dr. Coronel Jones, "indivisible and trans-individual." This is what the language that you have in front of you suggests or tells us, according to the Claimants, but this proposition is obviously untenable. Claimants even mischaracterize the notion of collective rights as codified in Ecuadorian law at the time of the 1998 Constitution.

Now, Dr. Eguiguren referred us to Article 91 of the 1998 Constitution. Article 91 is contained in Chapter 5, Section 2, addressing--Section 2 of 3--addressing the three different types of collective rights, according to the new constitutional framework of Ecuador at the time. This is 1998 again. Section 2 refers to rights, the environmental rights. It contains a number of provisions ranging from Article 86 through Article 91. Almost every single one of these provisions refers to the duties of the State with respect to the environment, and the environmental--the constitutional right of individuals to live in a clean environment. And Dr. Eguiguren explained that in the text of the 1998 Constitution, this right continued to be codified in the

14:11 equivalent provision to Article 19, which is Article 23. In this case it was Article 23, Section 6. Those are equivalent provisions in the two different versions of the Constitution.

Now, if you go to Article 91, you will see that towards the end of that paragraph there is, without prejudice to the rights of those directly affected, any individual or corporation or group of people may exercise the actions provided for by law for the protection of the environment. And Dr. Eguiguren explained that this jurisdictional grant in Article 91 is what renders or what elevates this individual right to live in a clean environment to the category of a collective right. The collective dimension of this right lies in this provision.

And he further explained what this means. Essentially any person in Ecuador is now entitled or has--is conferred standing to file a claim provided for by the law for the protection of the environment. Now, that part of the provision begins with, "without prejudice to the rights of those directly affected." That language refutes--excludes any suggestion of representation. Claimants' position is that this right is trans-individual. It can only be asserted by a representative. That is not what, Tribunal Members, you will read in that provision.

Now, the second conclusion I touched upon already, and it's because this right is trans-individual and belongs to the

14:13 community, it can only be asserted through a representative, and again the only legal source for this proposition is the language of Article 19.2. There is nothing else at pointing to authority.

And again, once Ecuadorian law incorporates the concept of collective rights in the 1998 Constitution, it defines it in a provision that begins with language that refutes or rejects any suggestion of representation.

Now, the third conclusion, the credit Claimants derived from this language, the language of Article 19.2, is that the State had a monopoly. The State was the only representative of this right. So, we must infer from the second sentence or--yeah, the second sentence of Article 19.2 that the State is the only representative or the only party granted or vested with the right to assert or the legal ability and standing to assert this right; and, in doing so, it would act on behalf of the citizens, the individuals, the persons, in a binding capacity.

Now, of course, again, as I stated, they draw this proposition from the language of the provision, but they provide no other support for their contention. They haven't been able to point to a single case or commentary or statute supporting these propositions.

Now, in contrast, we have offered this Tribunal examples of cases where before 1998 individuals have sued on

the basis of Article 19.2 and have recovered damages. Claimants have not addressed these cases, not once, not their experts.

And Professor Douglas showed you a slide with an excerpt from one of the cases, if we could put it up, the Angel Gutierrez case, and, of course, he read this language to you. In evidence of this area.

Yes, this is the right slide. For the record, I refer to Slide 19. This is the language that Professor Douglas referred to during his Opening Argument.

Now, we've also offered another case, a case that is known as the Delfina Torres case. That's a landmark case, also predicated on the right to live in a clean environment. Now, this case, you will see from the decision which Claimants have kindly provided a full translation of recently, the complaint makes reference, or the decision, the judgment in the Delfina Torres case makes reference to the legal basis for the complaint. You will notice that in that reference or--yeah, in that cross-reference it makes reference to Article--Paragraph 2 of Article 22. Paragraph 2 of Article 22 is the equivalent of Article 19.2, and this is getting a little bit confusing because of the number of constitutional reforms that took place at the time. The Delfina Torres case was filed when the 1997 version of the--1997 version of the Constitution was in force. In that version of the Constitution, the equivalent provision

to Article 19.2 was Article 22, Subsection 2.

So, now, against this evidence, there is only the idea that the State has some sort of monopoly to assert the right of the individuals under 19.2 is demonstrably false.

Now, during examination, Dr. Oquendo admitted that he's aware of no case where the State has ever discharged its duties under 19.2 by way of a lawsuit, let alone any case where the State may have acted or attempted to act in litigation on behalf of the individuals. There is no such precedent in Ecuadorian law.

Now, during the cross-examination of Dr. Eguiguren, Claimants posed a question that was very well crafted. Mr. Bishop made reference to that part of the examination, and the question was whether the State had--and I'm rephrasing--whether the State had the power to act pursuant to Article 19.2, and Dr. Eguiguren's answer was, of course, yes. Now, Claimants take that exchange to mean that, of course, Dr. Eguiguren is admitting that the State has the ability to represent, to act on behalf of the people in the exercise of their right.

Now, on redirect, you will recall, I asked Eguiguren to explain again the distinction that he drew between the two parts of this provision, and I asked him to clarify whether his response was referred to, the first part, as Claimants' interpreted it, meaning the State does have the authority to

act on behalf of the people, or whether, when he referred to the actions that the State could take pursuant to 19.2, was referring to actions that the State could take to discharge its duties, to protect its rights, and to protect the environment. And, of course, Dr. Eguiguren confirmed that he answered or when he answered that question that was posed to him, he was thinking about the second part of Article 19.

Now, if we could go back to Section 5.2 of the 1995 Settlement Agreement, I go back to this language. This is the source of all the legal arguments that we've heard in this case, including, but not limited to causes of action under Article 19.2. I will submit that if we did not find this language in this Contract, we might not be having this debate, this legal argument.

Now, again, with the basis or on the basis of the sheer language of the provision of Article 19.2 of the Constitution in force in 1995, Claimants would have this Tribunal believe and uphold all these conclusions--essentially, the three conclusions that I described to you as inferred or implied in the language of that Agreement. With this background, we can conclude that no diffuse claims can be found within the scope of the Release. You will see, and we have discussed Section 1.12 of the Contract. There have been some questions asked. Section 1.12 refers to claims that arise from liability towards the Government and towards Petroecuador, not

towards the citizens.

Claimants' experts admitted on cross-examination--and I apologize because I cannot show you the relevant language, but I will try to provide the Tribunal with the references to the transcript. They have admitted that the claims that are stated or the legal provisions that are stated in the Lago Agrio complaint as the basis for the claim, and I refer specifically to Civil Code provisions 2214, 2229, 2236, and even Article 43 of the EMA, do not refer to claims of the State. The rights are vested with the persons. The cause of action to assert that right belongs to the person, not to the State.

Now, if I could turn to the significance of this argument because Claimants raised, as I stated before, two different legal theories, the first one is diffuse rights, and the second one is res judicata. Res judicata has three components. Their diffuse-rights theory is essential to the res judicata argument at least in two respects: The identity of the Parties. To have identity of the Parties, we need to accept as true the proposition that the right to live in a clean environment does not belong to individuals, but it's vested with the community with further need to accept as true that the enforcement of that right can only be made by representation. And we finally need to accept as true that the only legal representative or party entitled to assert its right

on behalf of the community is the State.

With those three premises, we conclude that the State executed the 1995 Settlement Agreement on behalf of the people, on behalf of the community. That's the most basic premise of Claimants' res judicata theory or argument in this case.

Essentially, the rights do not belong to the person, the rights belong to the community, can only be asserted by representative, and the valid representative is the State.

Therefore, the State in 1995 acted as the agent of the community. The community, the real party in interest, and the community therefore bound by the provision. Of course, the three premises cannot be accepted as true. There is no basis to support Claimants' proposition other than again the language of this provision. No case--I mean, Claimants do not cite to any case, and you have seen that at least the Gutierrez case and the Delfina Torres case, this proves the contention that the individuals were not entitled to assert this right because the right was not vested with them. It was vested with something different, which we referred to as the community.

Now, this theory allows Claimants to circumvent or at least try certain provisions in the Civil Code that expressly refute their arguments. During his examination, Professor Oquendo, in response to one of the questions posed by the Tribunal, explained that the law is very clear in Ecuador that settlements have res judicata effect.

All right. I'm showing a number of Civil Code provisions that are relevant to this part of the--of my presentation, and I promise that I will wrap up with this. Unfortunately, given Professor Douglas's absence, regrettable absence today, we had to--there is some overlap between what we agreed to do, so I think I'm overstepping on to Mr. Bloom's presentation.

But anyway, these provisions in the Civil Code specifically governed the issue of Settlement Agreements. Now, there was some debate today about Mr. Douglas' reference to the 1995 Settlement Agreement as a private-law contract. There might be some clarification to make there, but essentially what he was referring to is the fact that this notion that in administrative law principles or rules of civil law apply in a subsidiary matter, and there is no dispute between any of the Experts in these proceedings in this respect. I believe that it was from Dr. Romero Ponce who mentioned this yesterday during his examination. The provisions of the Civil Code apply in a subsidiary manner to administrative contracts on issues that are not specifically governed or regulated by administrative law. Settlement Agreements are governed and governed only by the Civil Code and, therefore, these provisions are applicable to a settlement agreement such as the 1995 Settlement Agreement.

Now, the law is clear that settlements have res

judicata effect, and we don't contend that. The issue is whether that res judicata effect has erga omnes effect, and that is the answer to that question is--can be found in the next provision of the Civil Code, which Claimants' experts omitted from their first round of Expert Reports. It settles the matter.

Settlement Agreements in Ecuador can never have res judicata--res judicata effect erga omnes. That prohibition contains no qualification.

And I would submit further that the second paragraph of this provision is very important because it dispels any suggestion that a party to or a person who's part of a class could settle on behalf of the class. The second part of Article 2363 specifically states or governs any situation where there are many Parties that are interested in the subject matter of the settlement and states that the settlement by one does not affect any of the other Parties of the class.

Now, I tried--I don't know if--with how much success--during the redirect of Dr. Eguiguren to pose some questions on the basis of a hypothetical, a tree that caused a lot of trouble on that day and the day that followed in these proceedings.

It is clear, and the law is very clear on that topic, too. A member of the class cannot find other members of the class, cannot settle in effect and have the settlement affect

of the other members of the class.

So, in the interest of time, I will just--

ARBITRATOR GRIGERA NAÓN: I have a question. I think that the theory that the Claimants are advancing is that the Parties to the Settlement Agreement is the State. Which is the class here? The State is a member of the class, or the State stands for some sort of community interest that cannot be distinguished from the State itself? I do not understand what you mean by "class."

MR. LEONARD: If I may, I understand Claimants' argument as suggesting that--well, they do suggest that the State is the party to the Agreement. That should be clarified. It's not the State, it's the Government and Petroecuador, and that has certain legalism implications that Professor Douglas addressed during his opening.

But with that clarification in mind, I was trying to make the point or expand on the notion that Settlement Agreements can never have erga omnes effect, not even when there are many people such as in this case who might have an interest in the subject matter of the settlement. I wasn't making a specific reference to the State as being part of the class, but if I--if I had to, I would explain it as follows. And when I said "State," I meant Government.

The--one can read Claimants' argument as meaning that the State executed the 1995 Settlement Agreement both in its

personal capacity and in its capacity as the agent or only sole legal representative of the community in both capacities, and I believe that that became clear from the examination and cross-examination of Claimants' experts yesterday. And the distinction that they tried to draw between Petroecuador and the Ministry and the different capacities, the capacities in which they executed that agreement.

So, if we were to focus exclusively on the capacity of a State or the State executing the Contract in its own capacity and then also as a representative, then perhaps one could argue that the State could be included as one of the Parties interested in the subject matter of the settlement.

I am not particularly comfortable with this exercise right now. My reference was not intended to mean that the Government is part of a class, but rather to explain the meaning and the legal effect of Article 2363 of the Ecuadorian Civil Code.

There's other provisions. I will not walk you through them right now, and I will just conclude with a very brief answer to the main question of whether one can find or one can conclude that diffuse rights were included within the scope of the Release. There are many different problems with that proposition. None of the premises that would support it can be supported on the basis of Ecuadorian law.

With that, I will pass the floor on to my colleague,

Eric Bloom.

PRESIDENT VEEDER: Let's take a short break because I think our shorthand writers need it.

I think we're doing quite well on time, so let's have 10 minutes.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

Mr. Bloom, you have the floor.

MR. BLOOM: What Mr. Leonard giveth, he taketh away. I give the microphone back to Mr. Leonard.

MR. LEONARD: There are just three points that I just realized there is no overlap, so I will quickly cover them.

They referred to certain things that Claimants addressed or stated today during their Closing Argument. And if I may refer you to Slide Number 50 of Claimants' deck of slides for their Closing Argument--

PRESIDENT VEEDER: Forgive me, which slide is that? Slide 50 of whose slides?

MR. LEONARD: This is Claimants' slide, Closing slides.

Actually, Mr. Bloom has asked me to spend no more than two minutes, so I will move on to the next issue. This will be a little more complicated.

Now, Claimants made reference to the submission of pleadings supplied by the Lago Agrio Plaintiffs in the Aguinda

Litigation or in the context of the Aguinda Litigation, where they represented to the Court in the United States that pursuant to Ecuadorian law, they did not have any rights to bring claims of the nature that they were asserting in Aguinda, and the Tribunal will recall that the Second Circuit has already concluded that the Lago Agrio Case is a continuation of the Aguinda Case, so that there is no dispute that the claims--that the claims that the Claimants would characterize, diffuse claims in Aguinda, were also made in Lago Agrio.

But in any event, I would simply like to caution the Tribunal that this case was filed in 1993, five years before the 1998 Constitution, introduced for the first time the notion of collective rights. We don't know when these affidavits were filed, but obviously we do know that the New York Court rejected that position, and surely that must be because Claimants may have made their own submissions to the Court and, in fact, they did.

And if--I will refer the Tribunal to Exhibit R-420 containing an expert opinion of five of Claimants' Expert, and I will not go through that opinion at this point, but essentially those experts confirmed their opinion that the scope of the Release does not cover claims under any of the provisions of the Civil Code that has been mentioned or referenced by the Lago Agrio Plaintiffs in their respective complaint.

The last point, a reference was made to a letter that the Ecuadorian Ambassador submitted to the Court in Aguinda, and I will represent to the Tribunal that the Respondent has already offered evidence that that letter was drafted by Texaco's lawyers, and that the Ambassador was subsequently removed from his position, and the Republic set the record straight in terms of the legal position that he represented or expressed before the New York Court.

And with that, I will conclude and turn the floor over to Mr. Bloom.

PRESIDENT VEEDER: Thank you.

MR. BLOOM: Thank you, Mr. President, and Members of the Tribunal. And if it's any consolation to my colleague if I have any time remaining, I would be happy to cede it back. There is a lot to cover.

What I intend to start with is basically a completion of the legal discussion with Mr. Leonard having begun with Ecuadorian law, to look at what conclusions we can reasonably draw from a review of other jurisdictions and their treatment of so-called "collective rights." And in the interest of brevity, I will be necessarily brief. And I submit that there are at least six principles that we can glean from the record to date:

First, the concept of collective or diffuse rights is a new phenomenon. And parenthetically, I will note, that in

the litigation between the Republic of Ecuador and Chevron from 2005 until 2009 never once did they use the phrase "collective" or "diffuse rights."

Dr. Eguiguren noted in his Report that in Venezuela the concept was introduced in 1998. That is uncontradicted. Our French Expert noted that the concept was developed post-2000 in France. That, too, is uncontradicted. We know that in Argentina the concept was developed in 1994. And we know that in Ecuador, the 1998 Constitution was, in fact, the first time authority granted--I'm sorry, was the first time authority was granted permitting use of an amparo action to vindicate a collective right.

What we also know is that the term "collective rights" or "diffuse rights" was not found in Ecuadorian jurisprudence prior to that time.

Second, we can understand by reviewing the laws of Ecuador's neighbors that where a public official or public entity is granted standing to assert an environmental-diffuse claim on behalf of its citizens, it is in fact done expressly, and we see a slide of one such instance in Brazil, and indeed when Ecuador added the concept into its laws, it did so expressly in 1998, and standing was granted explicitly to the Ombudsman. And as you will recall from yesterday, the Ombudsman does not represent the Government, nor does the Ombudsman represent the State.

Third, whenever erga omnes is to be afforded a judgment in an environmental diffuse rights action, the law says so expressly. We have one example in the case of Argentina. We noted several others yesterday. No one needs to guess.

Fourth, in every instance in which erga omnes effect is accorded to environmental diffuse rights claims, it is always in the context of a final judgment. Claimants can offer not a single example of an environmental diffuse rights settlement being afforded erga omnes effect. It has not happened. Apparently, this would be the first.

Fifth, every State that grants standing to a Government official or entity to bring a diffuse rights environmental action specifically and expressly provides procedural safeguards to protect third-Party claims. Here, you will recall from my cross-examination of Professor Oquendo that he left open the possibility in that rather long hypothetical that I think put some of us to sleep, including me, but he left open the possibility that Mr. Bishop could bring a diffuse rights action against a chemical company, could initiate and negotiate a resolution without ever bringing a claim and could resolve a claim on my behalf without me ever even receiving notice of the negotiation or settlement. It is not enough for Claimants to contend that, in this particular case, there was quote-unquote "transparency." That transparency might well be

good Government, but does not constitute evidence that the Government was acting in a legally binding manner on behalf of the very citizens that it told it would not prejudice.

Sixth, Mr. Oquendo could not point to any alleged diffuse rights settlement in all of Ecuador, and again nor could Mr. Oquendo point to any instance in which a court afforded erga omnes effect to a decision in Ecuador other than in the context of the constitutionality challenge.

And if we take a step back, where the legislature has specifically and expressly stated that res judicata erga omnes will be afforded the constitutionality challenges, it demonstrates a willingness of that Legislature, in this case of the Ecuadorian lawmakers, to so state when that is, in fact, their intent. But this is the only place, in all of the entirety of Ecuadorian jurisprudence in which the lawmakers so determined.

The irony, of course, is that the Claimants make inference upon inference, argue implication upon implication, and they do so in a jurisdiction that explicitly determines the Governmental officials and entities do not have implied powers, that they can do only that which they are, in fact, authorized expressly to do.

And with that, I would like to turn to the remainder of the presentation in which I would like to alternate a bit between the big picture and some of the specific elements of

the Settlement Agreement, but I have to, as a preliminary matter, acknowledge that since Professor Douglas may be gone from the Chamber today that I do want the record to reflect in case he reads it one day that he's not forgotten, and it is in this spirit I hope that we have a slide that does remind this Tribunal of his nine points noted in his Opening, and we, in fact, do have that slide.

And with that nod to my fallen colleague, let me turn to what I think all of us do at the end of the hearing, and that is, it is a time for us to take a step back, to see the forest through the trees, dare I say in this case, individual trees. So I would like to begin with that forest and begin look at that big picture, and I would like to begin with what I will refer to as four big-picture points that we submit cannot be ignored by the Claimants, cannot be explained by the Claimants, and which cannot be reconciled with the Claimants' position in this arbitration.

Big Picture Number 1: At the time of the 1994 Memorandum of Understanding and the 1995 Settlement Agreement were negotiated and executed, Texaco found itself a Defendant in an action brought by these very same Plaintiffs in New York. And while the Claimants make light of the Plaintiffs' action in New York, referring to the claims brought there as merely individual claims, seeking merely personal injury damages and which only incidentally seek remediation in any form, the

15:00 Plaintiffs devote an entire cause of action seeking equitable relief, and that's Count 9, which is on the screen.

Now, Mr. Veiga referred to the equitable relief sought by the Plaintiffs in the New York Action as "unspecified", and that's at the transcript at Page 261. In fact, the Plaintiffs in 1994 were quite explicit, and I refer this Tribunal to Exhibit R-103, which are the interrogatory answers, when Chevron or Texaco asked them, what are the equitable remedies you are seeking, they responded--the Plaintiffs responded--on July 11, 1994 that they wanted the moon. They wanted extensive equitable relief, and you may recall the questions that I had of Mr. Oquendo yesterday. And many of them came directly from these interrogatory responses.

The Plaintiffs sought in New York, New York, the financing of an environmental cleanup sufficient to return the Plaintiffs to their quality of life.

What else did they want? They wanted the financing of an environmental cleanup sufficient to vindicate the right of the Plaintiffs to potable water and to adequate hunting and fishing grounds.

What else did they want? They wanted the creation of a fund for the reengineering of wells so that contaminated water is either reinjected into the wells or disposed of in a safe and appropriate manner.

What else did they want? And again, I'm referring to

15:02 New York--the creation and maintenance of a Medical Monitoring Fund to permit Plaintiffs to receive diagnostic tests and care designed to detect the onset of latent diseases associated with oil activities. They wanted the creation and maintenance for a period of years of an environmental monitoring fund to study the long-term effects of Ecuador's--I'm sorry, of--the long-term effects in Ecuador of Texaco's alleged conduct. They wanted the undertaking or financing of efforts to improve and repair the Trans-Ecuadorian Pipeline.

These are not unspecified, and each and every one of these was absolutely in play in the New York Action.

Now, most of that relief, if not all of that relief is sought in the Lago Agrio Litigation as well. And it's not, just to be clear, the Respondent who first observed that had it been the intent of the Contracting Parties in the 1995 Settlement Agreement to preclude the Plaintiffs from seeking this type of relief that the Contracting Parties would have referenced this New York Action in the Settlement Agreement, it was instead a United States District Court Judge in the Southern District of New York.

He said that in 2005--and Claimants have been running away from that statement ever since--that common sense tells us that the District Court Judge there was right. The Contracting Parties did not intend to prevent the Plaintiffs from asserting now in Ecuador what is effectively the same claims that they

15:03 were pursuing in New York after the case moved from New York to Ecuador.

The second big-picture point, again in taking a step back: Let us not forget the procedural posture of that New York case. Texaco sought dismissal on forum non conveniens grounds, and it is a fundamental proposition, I submit, of almost all jurisdictions, and certainly in the United States, that a forum non conveniens dismissal is only appropriate upon a finding that the proposed alternative form is, quote-unquote, "adequate." And if, in fact, the Plaintiffs could not seek the remedies in Ecuador that they sought in New York, then a fortiori, that forum, by definition, could not be an adequate forum.

Again, taking a step back, just thinking about it, the Plaintiffs' claims were dismissed in New York not so that they could go away, but instead precisely so that they could be reasserted in Ecuador. And that's precisely what the Plaintiffs did. And yet the Claimants want you to believe that the Plaintiffs' claims in New York--and I read to you the claims for equitable relief--were, in fact, procedurally barred in Ecuador, and I'm quite certain to represent to you that the New York Court, when it dismissed the case on forum non conveniens grounds, never would have or could have contemplated Texaco or Chevron assuming the position that the Claimants are assuming in this forum.

15:05 But let there be no doubt, as we noted in prior submissions and as Professor Douglas noted in his Opening, the United States Court of Appeals for the Second Circuit, the very Court that affirmed the dismissal on forum non conveniens grounds, quite explicitly addressed and rejected the very arguments that Claimants are making here. The Second Circuit found that Chevron's contention that the Lago Agrio Litigation is not the refiled Aguinda Action is without merit. The Lago Agrio Plaintiffs are substantially the same as those who brought suit in the Southern District of New York, and the claims now being asserted in Lago Agrio are the Ecuadorian equivalent of those dismissed on forum non conveniens grounds. And that's what they were permitted to do, to bring claims that were the functional equivalent of what was in New York.

This was not a dramatic or surprising finding. Recall, if you will, that Texaco's Notice of Agreement did not specify the specific legal bases of the claims that could be refiled. The claims simply had to arrive out of the same events and occurrences alleged in the complaint.

It would have been patently unreasonable to expect even a modicum of consistency in the way the claims were pleaded in New York and then in Lago Agrio. One of the claims in New York was under the Alien Tort Claims Statute, and it would have been most difficult, indeed, to replicate that formulation, given the fact that the ATS is not replicated in

any other forum in the world.

Third, third big-picture point: There is absolutely no evidence in this arbitration, either in the voluminous written submissions, the thousands now of exhibits or in the three days of this hearing showing that any of the actors who negotiated the 1995 Settlement Agreement discussed even the possibility that these claims would adversely affect the rights of the New York Plaintiffs. Everything to was to the contrary. Plaintiffs were, in fact, expressly assured, or the citizens, the communities were assured that this Agreement would pose no harm to any claims they wished to bring.

Mr. Veiga testified that he understood the two actions to be entirely separate. And Mr. Rosania testified that he considered the issues totally separate. And I'm not taking the time to read the slides given the time constraints, but they, of course, are in our little folder, and the Tribunal certainly would be encouraged to look at them either while I'm speaking or at your leisure.

Mr. Rosania, in fact, testified both in deposition and in his Witness Statement--so, this has been his position since 2006--that he and Texaco's legal representative in Ecuador, Mr. Rodrigo Pérez, spoke at community forums, that he advised them of the contents of the Settlement Agreement but always concluded that this would not affect whatever rights the third parties intended to pursue or were at the time then pursuing.

Now, Mr. Pérez, regretfully, passed away, I believe, about a year ago, but Mr. Rosania's testimony was in 2006. There is nothing in the record to dispute that.

The fourth big-picture item: Is Article 8 of the 1994 MOU. Now, in the Tribunal's Jurisdictional Decision, this Tribunal noted that the 2005 Settlement Agreement superseded the 1994 MOU, and we, of course readily accept that.

PRESIDENT VEEDER: Just for the sake of the future in 15 years, I think it's the 1995 Settlement Agreement.

MR. BLOOM: Yes, indeed.

PRESIDENT VEEDER: Not 2005.

MR. BLOOM: I am indeed corrected.

PRESIDENT VEEDER: Thank you.

MR. BLOOM: But if extrinsic evidence is to be considered, the negotiating history--and here not someone's uncorroborated testimony, but actually a written Agreement, that the Parties themselves in that MOU said should serve as the framework for the Settlement Agreement can be considered.

Now, Article 8 says that the provisions of this MOU shall apply without prejudice to the rights possibly held by third parties for the impact caused as a consequence of the operations of the former Consortium.

Claimants' response is that was only intended to exclude personal-injury claims.

Two observations:

First, that's not what the language says. There is no reference to merely personal-injury claims.

Second, the Claimant says, well, since individual claims are carved out, that's merely a restatement of existing law. And I find that an interesting answer because you will recall Mr. Oquendo's testimony yesterday where he advised the Tribunal at the conclusion of his testimony that we, Civil Code practitioners, tend not to put things in Agreements if we don't have to, if it merely replicates existing law. But that was exactly what Claimants say they did in Article 8, simply reaffirmation of existing law.

Then that lends one to wonder, then, if you accept their position that the Government, in fact, was operating on behalf of the people and that this document would have res judicata erga omnes effect for all of Ecuador, why not say that, but it's not there, either.

Now, with these four big-picture points in mind, I would like now to turn to the individual trees, namely to the terms of the 1995 Settlement Agreement.

And looking at the Settlement Agreement, one fact should strike every single one of us. At no time and in no provision does the Contract provide ever that the Government is acting as an agent of its citizens for the purpose of bringing or settling a right that belonged not to the Government but to the citizenry, which is purportedly a separate juridical

entity. It is not there.

And if you look at the first paragraph of the document, it identifies the only Parties to the Agreement. And what you do not see is a reference to the Ecuadorian citizenry. You do not see a reference to the Government acting as a representative, a legal representative, on behalf of the citizenry.

And when you look at the signature page, you do not see any Government representative signing as a representative of the citizenry. That is not a difficult thing to include.

Most fundamentally, and you've heard a lot of discussion both today and in previous days, but I think we need to look at a couple of these Articles. And what I consider the most important Articles, if you're talking about the Scope of Release, is, one, the definition of the Release; and, two, the Release itself.

Now, Article 1.12, which we have on the screen, is the definitive definition of the term negotiated between the Contracting Parties.

And what is being released? It is only the legal and contractual obligations and liability towards the Government and Petroecuador. And we submit that in and of itself is dispositive. Not towards society as a whole, not towards a large community, not towards the Ecuadorian citizenry.

And now let's jump to Paragraph 5.1, the actual

Release, and again what is being released?

Now, on the ninth line it refers to what claims that "all the Government's and Petroecuador's claims against the Releasees." Now, Mr. Bishop actually showed this language much earlier today. A lot of it was underlined, and we agree that it is a broad Release, but it is a broad Release as to the Government and Petroecuador. If we can turn to Paragraph 5.2 and this, of course, is where the Claimants like to spend much of their time, but the problem again for the Plaintiffs is that however broad of a Release it is, it is still confined at Lines 9 and 10 the claims that "the Government or Petroecuador have or ever may have against each Releasee."

So, we have three different times the Parties defining whose claims are being released, three times in the operative terms of the Contract itself of the 1995 Settlement Agreement. And there is no hint that any claim belonging to any Party other than the Government or Petroecuador is being released.

And to be clear, and let there be no mistake about it, what Claimants are asking you to do is rewrite the Contract, and to compel the Release of Claims that do not belong to the Government or to Petroecuador, even though theirs are the only claims the Parties agreed would be released.

Now, of course, all of this makes so much sense, and the pieces fit together, and why do I say this? Let's consider, as Mr. Rosania testified in 2006, and reiterated

again in his Witness Statement that was submitted on October 26th along with our Rejoinder, that the Settlement Agreement, which is really the last of a checklist of items to resolve or wind down the 1973 Concession Agreement. And even when we look into the 1995 Settlement Agreement, I believe that comes through quite powerfully.

Do we have Article 2?

Okay, if we don't have Article 2, let me find Article 2.

PRESIDENT VEEDER: We have many copies and versions of the Settlement Agreement, you don't need to put it on the screen.

MR. BLOOM: In Article 2, what do we see? That the Contracting Parties agreed that the Environmental Remedial Work which the Claimants allege cost them $40 million was required for a singular purpose: To satisfy and discharge TexPet's obligations under the Consortium Agreement. No other obligations are mentioned in Article 2. The Claimants tell us they spent about $40 million on remediation, about a million dollars for socioeconomic projects.

Clearly, then, there can be no real dispute that TexPet's primary obligation under the 1995 Settlement Agreement, statistically speaking, about 97.5 percent, was to perform the remediation, which the Contract expressly tells us was necessary to satisfy TexPet's obligations under the 1973

Contract, and only for that purpose.

There can be absolutely no doubt, in light of this, that this Settlement Agreement was first and foremost an effort to resolve TexPet's contractual obligations. That was the primary, in fact, overwhelmingly primary objective. There may have been political benefits to both Texaco and the Government if the Government could also obtained some dollars through some socioeconomic projects which I think only to only two NGOs, but I don't think there can be any doubt as to what motivated this Contract.

Now, with that said, what are the Claimants' responses?

When my kids were little, my youngest is still only 13--I used to read a wonderful book called "Something from nothing," about a grandfather who would receive something used and tattered from his grandson and would always make something wonderful out of it and give it back to his grandson. It's a wonderful children's book that I recommend to anyone who has small children or small grandchildren. In this arbitration, I submit that the Claimants have unsuccessfully tried to make something from nothing. And in this I allude to their two responses to these Settlement provisions:

First, the Claimants point to the Preamble. They misread it, and then they seek to use the non-binding preambular language and inject it into the operative terms.

And, second, they look to the litany of Release claims and take from that the conclusion that the Government was acting as an agent of the people. Let me take these two points, if I may, in turn:

First, Chevron relies on these two Whereas Clauses that they say that apply as the purpose of the Agreement, the resolution of "all" of TexPet's "legal and contractual obligations" as it relates to Environmental Impacts. I have to tell you, maybe confess, that I have entered into a number of Settlement Agreements with similarly broad language, oftentimes where the Parties to the Agreement are releasing all known and unknown claims that each may have. So, these Whereas Clauses must be read in the context of the Parties who execute this Agreement. That, we submit, would be the ordinary meaning of this language.

What the Whereas Clauses do not say is that the Contracting Parties intended to release claims belonging not only to the Government and Petroecuador, but to the collectivity, the Ecuadorian citizens. You're not going to find that in these Whereas Clauses.

But if there were, in fact, any ambiguity, we submit that the Whereas Clauses should be informed by the operative and binding terms of the Settlement Agreement, not the other way around. They have it backwards.

In our Rejoinder, we note and have cited the cases

that affirm that Whereas Clauses do not form "part of the real Agreement," "it cannot create any rights beyond those arising from the operative terms of the documents."

And think about this, too: If the intent really had been to preclude Ecuadorian citizens from asserting the claims that are being asserted in Lago Agrio, then why wouldn't Texaco's sophisticated and many attorneys negotiate a hold harmless or an indemnification up to a pre-authorized amount?

The Government does not control the actions of all of its citizens. It cannot stop someone from filing a suit. So even if their interpretation were right, if that had actually been the intent of the Parties, one would have imagined that they, in fact, would have negotiated for such a Clause.

And, then, second, the Claimants allude to the fact that 19.2 is one of many claims released by the Government and Petroecuador. Now, Mr. Leonard has already discussed the status of Ecuadorian law at the time. Leave it for me merely to say that the Government and Petroecuador committed not to bring any suit at any time against TexPet, and I could imagine, although we don't have the documentary background to know if this happened, that it may well have been Texaco saying hey, say, throw that in there, throw that in there, throw that in there, and the Government saying, we're not going to go after you.

So, the Government committed not to bring any suit of

any kind. That is all the Release says, and the Government and Petroecuador have honored that claim.

Now, I don't know if when we talked at the municipalities whether that is a fifth big-picture point, but I do think that I previously talked about facts and circumstances leading up to the execution of the Agreement, then we talked about the Agreement itself. So, now let's talk about after the Agreement, because these settlements occurred in 1996, about a year after the 1995 Settlement Agreement was executed. And we submit that Texaco's conduct in the face of the 1995 Settlement Agreement and after the 1995 Settlement Agreement confirms that Texaco knew and understood that that Agreement did not affect, and could not have affected, the rights of any other person other than the Government and Petroecuador:

First, after the execution of the Settlement Agreement, Texaco never filed a motion to dismiss the New York Action; we know that.

And then, two, with respect to the municipality, they never defended the municipality for the two provincial lawsuits on the basis of the 1995 Agreement. Now, you will recall that Mr. Kehoe tried to rehabilitate on redirect Mr. Veiga, by noting that Chevron filed its defenses to the municipality lawsuits prior to entry of the 1995 Settlement Agreement. He says, therefore, it would have been impossible to assert the res judicata defense before the 1995 Settlement Agreement was

executed. Fair enough.

But my point, then, and not addressed by the Claimants, is that there is absolutely no evidence after the 1995 Settlement Agreement was executed that Texaco ever amended their defenses. They did not. So, a year passes after the 1995 Settlement Agreement, and they never once defend any of these four municipality lawsuits or two provincial lawsuits on the basis of the 1995 Settlement Agreement. The only exception to that is there were two Lago Agrio municipality lawsuits. The first one settled. The second one that was brought, Mr. Veiga testified, by a succeeding Mayor. And that second Lago Agrio lawsuit was dismissed based on res judicata on the basis of the first Lago Agrio lawsuit that was settled. And, in fact, and we do have it on the screen, over 11 million sucres were expended to settle these claims; approximately three-and-a-half million dollars.

So, here are two points to consider:

First, while Texaco was clearly not lacking for legal talent, no one ever thought to defend any of these municipal cases or the New York Aguinda Action on the basis of res judicata.

And, second, not only did TexPet fail to defend on the basis of res judicata, but it actually decided to pay money and settle on these claims.

Now, before I turn to the last set of issues, let me

take a moment to respond to one of the Tribunal's questions of yesterday evening. The Tribunal inquired as to the effect of the whole contracts or Integration clause on these proceedings, and in particular the effect on the weight or consideration that the Tribunal may give to the Experts who appeared both in writing and in person before these proceedings.

The short answer, of course, is that we believe you should only consider the testimony that is helpful to us.

(Laughter.)

PRESIDENT VEEDER: What's your second point?

(Laughter.)

MR. BLOOM: Is the fallback position is to return to Ecuadorian law to guide us in answering the question.

And the starting point, the Civil Code Article Number 1561, which we have on the screen, and that provides that a Contract legally executed is the law for the Contracting Parties and cannot be invalidated but by their mutual agreement or by legal causes. This proposition, in fact, takes on added force in the context of an Agreement with the public entity. In other words, this provision was agreed upon by the Parties; and, once the Parties executed the 1995 Settlement Agreement, it took on the force of laws between them. By its terms or promises, understandings, agreements that are not a part of this Agreement, are to be excluded.

Now, to the extent the Contracting Parties identified

quite clearly in Paragraphs 1.12, 5.1, 5.2, whose claims would be released, there frankly is not a basis to import a different meaning. Put another way, we do not have an objection to legal experts opining on foreign law, but we do have objection to experts advising the Tribunal how to interpret the words of a contract when this Tribunal is quite capable of reading the terms for itself and especially whereas here those terms are quite clear.

If there were ever a case where the Parties' Experts had been relied upon to manufacture a meaning different than the plain terms of this Agreement, we submit this is that case.

What is clear to us is that the terms of the Contract cannot be altered and cannot be assigned a meaning from sources outside of the four corners of the documents, unless there is a genuine ambiguity. And even then, no new understandings or agreements may be imported into the Agreement.

I believe it was Mr. Bishop who addressed 9.3 this morning, and he said that 9.3, or maybe it was Professor Crawford--Professor Crawford--who spoke about it, and he said 9.3 has been used by the Respondent in two different ways. He says, first, as it relates to Mr. Veiga's alleged discussions with Mr. Rosania, Mr. Crawford told this Tribunal that Mr. Veiga's testimony is not inconsistent with the terms of the Contract, and we respectfully disagree. The Contract specifically advises whose claims are being released, and we

cannot, through alleged discussions and uncorroborated discussions change the terms of the Contract. 9.3 bars that. It absolutely precludes it.

And then 9.3 also relates to the issue of breach.

Now, for certain, there is nothing in the Settlement Agreement that anyone can point to that looks like, smells like an indemnity provision. It does not exist. 9.3 precludes that. There is no hold harmless, there is no duty to defend. Mr. Bishop referred to positive affirmations, positive commitments. The only commitment is that claims were being released, and 9.3 does address that.

And since I have taken a left-hand turn, just to finish on the issue of breach. And this has been a moving target, I should mention both when we litigated in New York and here, they put seven things on their screen, I think in their prior filings it was four. It has been a very moving target as to what constitutes a breach. But they now point to the Judgment of the Lago Agrio Court, and I daresay that I agree with Professor Douglas that this Contract was a contract with the Government. It was not--and there is no positive commitment there by the judiciary.

And I would also daresay, that if that could be the case, then that suggests that the Executive, through a contractual agreement, can now tell the independent courts how it should rule. And that, of course, is contrary to Ecuadorian

law and the law of most every jurisdiction.

Now, it may be a good time to put up a chart as it relates to res judicata, because I think in some respects this allows us to pull the respective issues together.

It is, of course, the Claimants' obligation to prove an identity of Parties, of claims, and of objects. Here, if you look at the Parties, the Claimants contend that, in fact, the 1995 Settlement Agreement was brought not by the Government--I'm sorry, the 1995 Settlement Agreement was executed effectively not by the Government but only in a representative capacity on behalf of the people, and we submit that there is no evidence to that effect. It is the Government and Petroecuador who are Parties to the 1995 Settlement. So, there could be no match, even if the Claimants were bringing their action in Lago Agrio entirely in a collective or representative capacity.

But I will also note that there is absolutely no question that the Lago Agrio Plaintiffs have pursued their case in Lago Agrio also through individual claims. And lest there be no mistake about it, one can look both in their Complaint and look in the Judgment because they asked for relief under Ecuadorian Civil Code Articles 2214, 2229, and 2236, you heard Mr. Oquendo say that these claims could be pursued, the claims that we discussed as individual claims.

If I may just take a moment on 2236, 2236 grants

standing to a Party to, in my terms, effectively seek an injunction to prevent contingent or imminent harm. So, if there is a danger across from my property line, and that danger is going to affect me and my family, I daresay that is as personal or as individual of a right as that could possibly be.

And nor would it be sufficient for anyone to merely come on to my eighth-of-an-acre lot and remediate my property, because if you don't remediate the source of the pit or the source of the pollution, that danger doesn't go away.

We also know that 2214, 2229 and 2236 are individual rights. How do we know that? Because Professor Oquendo also told us that these have been around since the 1860s. The idea of collective or diffuse rights were not here in the 1860s; I think we all can agree on that. He also testified that these actions were brought in the 1890s and 1990s.

So, if we return to the res judicata chart, we will see that there is no identity of Parties, and when you look at the claims, the Claimants allege that both the Government, in its alleged representative capacity, was seeking only a vindication of diffuse rights. Well, indeed, there can be no question that it was seeking primarily and overwhelmingly a vindication of its own rights, and we submit exclusively its own rights, and the Claimants, as I just described, clearly have brought claims for individual relief as well.

Then when we return to the bottom, to the object, what

was the purpose here? Mr. Rosania testified what that purpose was for the Government. It was contractual. He said that when he was deposed in 2006, he said it in his Witness Statement and he said it again this week. Now, I believe, again, that the document itself reflects that the purpose here, was to finalize the winding down efforts to resolve the 1973 Concession and specifically the contractual obligations under it. And then the object of the Claimants was to protect themselves.

Now, I understand that Claimants have tendered the argument that no recovery can be had under 2236 since Chevron does not now control and is not the owner of the land to be remediated. Professor Oquendo acknowledged that there is no case law on 2236. And if Claimants want to argue that the Court got it wrong, and that the Decision was outside the juridically possible, we can resolve that issue in Track 2. But the only issue here is the legal effect and legal interpretation of the 1995 Settlement. And here, five of Chevron's Experts affirmed that the Parties' Settlement Agreement would not affect claims brought by the citizens under 2214, and relief was granted under 2214.

And Mr. Veiga reaffirmed what the five Chevron Experts said. And they said that the Agreement reached by the Ecuadorian State and TexPet does not benefit, nor does it injure any third parties. Therefore, the possibility of bringing those claims is not affected. In fact, the Plaintiffs

brought those claims, and it obtained relief pursuant to those claims.

And the same five Chevron Experts led by Mr. Bustamante, Mr. Jijon Letort and others, likewise affirmed under penalty of perjury that the Settlement Agreement had no effect on the citizens' right to assert a claim under 2236, to the extent they have it because he didn't think they would have had a valid claim. The point here is that there can be no breach of Contract to the extent the Lago Agrio Award was predicated on the Civil Code provisions, provisions that Claimants' own Experts can see were not impaired in any manner by the Settlement Agreement.

So, we've offered a number of alternative reasons why Chevron's claim here cannot be sustained. Their interpretation of the Settlement Agreement is in error, their legal assertions are in error. But I try sometimes to make this very simple: No matter what anyone may think at this point about the Lago Agrio Decision, what we know is the Lago Agrio--I'm sorry, what we know is the 1995 Settlement Agreement does not affect those claims one whit.

Before I turn entirely from the res judicata argument, let me just address very briefly Mr. Bishop's policy argument. He argues--and this has been in some of Claimants' writings--that there would be no finality as a result.

My first reaction is that's a wonderful thing to argue

before the respective Legislatures that have this as their law. We heard that that, in fact, an issue of some concern in France. But there can be finality, certainly if there is no longer any harm, if it is all cleaned up, or again if you negotiate a hold harmless or indemnification, again under Ecuadorian law, cannot be an open-ended indemnification, it would have to be a pre-authorized amount, it could be up to a billion, 5 billion, that would have to be pre-authorized.

But there is a policy argument that goes both ways here. On the one hand, while there is more difficulty getting finality in a jurisdiction like France and a jurisdiction like Ecuador, there is a problem with the res judicata erga omnes effect that the Claimants want to impute to Ecuador, and that is this: If an individual has the right to assert a collective rights action but decides not to bring it to Court and there is simply a negotiation, that all the other affected persons have no avenue of relief.

And I will even say in the case of a documented procedure that Ecuadorian law in 1995 provided no such protections whereas all of the Civil Code countries that do allow for a diffuse rights environmental action do provide for safeguards to the citizenry, that that is lost, that is not there in Ecuador. Mr. Chairman, I believe I only have a couple of minutes, but before I do, may I just take a few moments to double-check my notes and confirm with my colleagues?

PRESIDENT VEEDER: You may. How long do you need for that?

MR. BLOOM: Ten minutes.

PRESIDENT VEEDER: Ten minutes will be great.

MR. BLOOM: Thank you.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

MR. BLOOM: Thank you, Mr. Chairman. I'm happy to report I will not have more than three to five minutes, so we are finally coming to a conclusion, and I appreciate everyone's patience with me.

We were already offered the inherent problems with Claimants' legal theories to try to achieve the result that would have the Government magically representing in the 1995 Settlement Agreement the collective citizenry as a matter of Ecuadorian law.

We've also, in some detail, addressed the specifics of the 1995 Settlement Agreement, such that whatever could theoretically be done under the law, certainly does not mean the Government, when it entered into the 1995 Settlement Agreement, even if it could have, did act in a representative capacity.

We also offer as yet another reason to reject Claimants' position today their failure to show any breach of this hypothetical contractual commitment.

There is yet another reason why we ask this Tribunal to reject Claimants' claims, and that is the statute of limitations has run. As you know, the Settlement Agreement was executed during the course of the New York Litigation in 1995; and had the 1995 Settlement Agreement meant and contractually committed the Republic, as Claimants contend, that would mean that the Republic, in 1995, immediately had a duty to indemnify, a duty to defend, a duty to duty to hold harmless, et cetera.

Their only response is that, in fact, the Lago Agrio Case is different than the case the Plaintiffs brought first in New York. And I think we have already seen that the claims were substantially identical. They are the Ecuadorian functional equivalent. The Second Circuit has so held. If that is the case, then the Claimants had to have brought its breach-of-contract claim either within five years, which is what we believe, or within 10 years, but in either event, their decision to bring the claims in 2009, 14 years after the alleged contractual rights would have been violated, is much too late.

And, finally, if I may turn briefly to what I would call the next stages, the Republic believes that, should the Republic prevail in Track 1, and if this Tribunal were to conclude that there is no breach of the 1995 Settlement Agreement, that that would have potentially far-reaching

implications for Track 2, and all I wish to ask for today is that if the Tribunal agrees with the Republic that there is no breach of the 1995 Settlement Agreement, that the Republic be afforded an opportunity to address the Tribunal at the appropriate time in whatever forum the Tribunal believes to be most advantageous to the members of this Tribunal.

And if you should instead reject the Republic's position and adopt the Claimants' position, then we would expect that this Tribunal would consider the Track 2 submission that we'll be making in February, which addresses the treaty claims, which includes consideration of the Umbrella Clause. As this Tribunal will recall, Procedural Order Number 10 was quite specific in saying that this was only a hearing on certain preliminary issues, and I believe twice assured us that in either event we would be going to a Track 2 and we would be afforded that opportunity.

And with that said, we will close the Respondent's case, and we are most appreciative for your attention and for your indulgence.

Apparently I misspoke, if you agree with the Republic. I think the Tribunal understands that if you agree with the Republic in Track 1, that we would be afforded an opportunity to address the further issues with the Tribunal as to the effect of that decision on Track 2; and if in contrast you agree with the Claimants, then we would at least make sure that

we have the opportunity to address the remaining issues, including the Umbrella Clause in our remaining submissions.

Thank you.

PRESIDENT VEEDER: Thank you very much to the Respondent. That brings to the end the Respondent's closing oral submission, and subject to certain housekeeping to which we will tend to now very briefly, that brings to an end the Parties' contribution to Track 1.

Now, as regards to these housekeeping issues, we have several on our agenda, but if there is anything you would like to raise first, we'll incorporate them into the list.

We ask the Claimants first.

MR. BISHOP: There is simply one issue which I don't think calls for an immediate decision from the Tribunal, but just to remind you, I think that if memory serves me correctly, I think the Parties had sent a letter about the Track 2 hearing.

PRESIDENT VEEDER: Anything else?

MR. BISHOP: No, nothing further.

PRESIDENT VEEDER: And the Respondent?

MR. BLOOM: Nothing else.

PRESIDENT VEEDER: This is going to be fairly laborious, but it's important for us that procedurally we understand clearly where we stand.

Obviously we have to make a decision on the respective

application from both sides regarding Interim Measures, and we have to make a decision as regards the Track 1 preliminary issues, for those are alive.

Turning now to the point raised by Mr. Bishop, the schedule for the Track 2 merits proceedings, we understand that the Parties are agreed with the following schedule, which is that by the 18th of February 2013, the Respondent's Counter-Memorial will be served on the merits as regards Track 2.

On the 5th of June, 2013, the Claimants will file their Reply Memorial on the merits, Track 2.

On the 20th of September 2013, the Respondents will file their Rejoinder on the merits of Track 2.

And, then, on the 20th of January, we will start the Track 2 hearing on the merits Track 2 up to and including the 7th of February 2014.

Now, is that agreed between the two of you? We ask the Claimants first.

MR. BISHOP: That was agreed, Mr. Chairman, of course, with the proviso that we had requested the Tribunal for an earlier date for the hearings, but we understood the Tribunal had decided that, and assuming that that is still the decision, and, yes, that is the Agreement.

PRESIDENT VEEDER: We're going to come back it to the last point you made, but on the Respondent's side, subject to

that it's agreed?

MR. BLOOM: And we too had asked for a longer period of time, but we did agree to that.

PRESIDENT VEEDER: What we're going to suggest is that after the Respondent's Counter-Memorial in February, and we needn't fix the date yet, but we may fix it in pencil, it might be useful just to take stock of where we are by telephone conference call with the Parties, so let's just think about taking some sort of event after the receipt of the Respondent's Counter-Memorial.

Can I raise another matter that the Tribunal has discussed, is that we are very concerned about being overtaken by events. There is no purpose in a procedure like this, which is complicated, expensive, and difficult for all concerned if at the end of the day the piece of paper that's produced by the Tribunal is completely irrelevant because events have overtaken the Tribunal. Now, we have discussed the possibility, depending on events over the next few weeks, of advancing the hearing date by six months. It's only fair to mention that to you now because there will be an enormous change in preparations for a hearing advanced by six months when we had anticipated that February was or January/February was the earliest date that could be fairly met by the Parties. But there is no point in having a hearing in 2014 for no purpose whatsoever.

So, we're not making any order at the moment, but we're just telling you that that is an option which we'll be considering in the light of the events that may take place over the next few weeks.

Now, we have not addressed a long outstanding matter which has caused us some difficulty, which is the Respondent's application regarding public statements and other actions tending to aggravate the dispute. This goes back to a letter written by the Respondents of the 1st of February 2012, I think it goes up at least until July 2012, backwards and forwards. We've had some difficulty because obviously the circumstances in which we first made our original order have been overtaken by events. It was never our purpose, it is not our purpose to stop, if you like, the leading individuals on both sides from speaking in public in any way they choose. That would include the Attorney General, it would include Mr. Pate, Chevron's General Counsel. But what we are concerned about, and we were at the beginning, and we still are, is that we need to keep the atmosphere in this room, in this hearing, in the relationships between counsel and with counsel and the Tribunal at a level which doesn't impede our work, that we have been trying to resolve this in the form of a draft, and we haven't done so yet, but again we think it's fair to tell you now that we intend to address the problem. It has not been a problem, but we don't want it to become one, and we'll certainly send that

to you in due course, I suggest, as a draft, speaking for myself at the moment, for you to comment on it, but that will be something we will address quite shortly.

Now, there was an application in regard to one of the Respondent counsel made by the Claimant. We understand that that fell away when it was clear that there was no attempt or no longer an attempt by the Claimants to exclude that counsel from the Respondent's team in this arbitration, but that's something again that we will pick up in this order. But as I understand it, and I may be mistaken, that is not a live aspect by the Claimants anymore, and it didn't require us to make a formal order about it.

Now, on the checklist that we prepared, that seems to be in that regards outstanding applications. But if I've left something out, we invite both Parties to make plain what we have omitted to do and must still do. We ask the Claimants first.

MR. BISHOP: I don't think that there is anything additional that I can think of at this moment, Mr. Chairman. I think you've covered the items that we have noted.

PRESIDENT VEEDER: And on the Respondent's side?

MR. BLOOM: Nothing from the Respondent.

PRESIDENT VEEDER: Well, we will try to decide the preliminary issues as formulated, but as we warned you in our Procedural Order Number 10, if it's not possible to do so, we

don't undertake to do the impossible, but obviously we will do our best to do as indicated.

On Interim Measures, obviously we will await a response from the Respondent as indicated, and I think two weeks would be an acceptable period to the Tribunal.

MR. BLOOM: Thank you.

PRESIDENT VEEDER: But we are very concerned about the Respondent's potential position in this case. Please understand we've not decided any of the merits of this case, but on one view of the case it exposes Respondent potentially to quite serious difficulties.

(Tribunal conferring.)

ARBITRATOR LOWE: We were wondering how to formulate the question, so I have been asked to put it forward so the President can disown it.

(Laughter.)

ARBITRATOR LOWE: The thing to me is simply this, and I think all of us, both parties and the Tribunal, have a common interest in ensuring that the proceedings are fair in all respects and effective, and obviously we're facing real difficulties with the possible developments of actions in other jurisdictions.

And given the common interest that we have, I think the Tribunal would appreciate it if either Parties, both parties, had any thoughts as to steps which might be taken

which would do something to assist the preservation of the fairness and the efficacy of the exercise of this Tribunal's jurisdiction.

MR. BLOOM: I can certainly speak to that and really reiterate what Mr. Gonzalez said earlier. That is a subject that we have discussed, and had discussed at length, and one after yesterday's invitation from the President, we renewed that discussion last night and expect to have some further extensive and serious discussions, and we will certainly advise the Tribunal within the timeframe that we agreed to.

PRESIDENT VEEDER: Well, thank you for that observation. We welcome it wholeheartedly, and we look forward to the response when it comes in due course. And if you need a little bit longer than two weeks, please let us know because we attach very considerable importance to somehow maintaining a status quo which doesn't infringe the substantive or procedural rights of either side. But we are in unchartered waters, I don't think any of us have quite seen the situation before, and we're all, at least the Tribunal, struggling for guidance as to how to maintain this balance.

Well, I think that just brings us to the end, with the usual thanks, but the usual sincere thanks to our shorthand writers and to our interpreters who've survived for three days, but maybe that was a day too often. Thank you all very, very much, and thank you also to both teams because we understand

just how much work is involved in producing the work product that you have provided to us not only over the last three days, but over the last several months.

So, unless there is anything more, we will close the proceedings. But in the usual way, we just want to make sure that we have not done something wrong that we can correct at this stage, so if you think we've done something that we need to correct, we ask you to speak up now, and we ask the Claimants first.

MR. BISHOP: No. We have nothing to bring up in that regard, Mr. Chairman. In fact, on behalf of the Claimants, we very much appreciate the way that the proceeding has been handled by the Tribunal, and we certainly appreciate your attention and professionalism in all regards. Thank you.

PRESIDENT VEEDER: And the Respondent?

MR. BLOOM: That may be one of the few occasions where the Claimants and Respondent are in total agreement. We are most appreciative not only of the Members of the Tribunal, but Mr. Doe and the reporters and the interpreters. Thank you all very much.

PRESIDENT VEEDER: Let me finish by asking you to pass on our best wishes for Professor Douglas's very speedy recovery. We're sorry not to see him, but we will see him again, we hope, very soon.

Thank you all very much. We close this hearing.

(Whereupon, at 4:18 p.m., the hearing was concluded.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, 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.

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DAVID A. KASDAN