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IN THE INTERNATIONAL CENTRE  
FOR THE SETTLEMENT OF INVESTMENT DISPUTES  
AND IN THE MATTER OF AN ARBITRATION

BETWEEN

-----X	:	
EUROGAS INC.,	:	
BELMONT RESOURCES INC.	:	
Claimants,	:	ICSID Case No.
	:	ARB/14/14
V.	:	
	:	Pages 1 - 177
SLOVAK REPUBLIC,	:	
Respondent.	:	
-----X		

First Session and Hearing  
on Provisional Measures

Paris, France

Tuesday, 17 March 2014

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APPEARANCES:

The Tribunal:

- Professor Pierre Mayer (President)
- Professor Brigitte Stern (Arbitrator)
- Professor Emmanuel Gaillard (Arbitrator)

For the Claimants:

- Dr. Hamid G. Gharavi
  - Dr. Mercédeh Azeredo da Silveira
  - Mr. Emmanuel Foy
  - Mr. Vincenzo Antonio Speciale
- DERAINS & GHARAVI

For the Respondent:

- Mr. Stephen P. Anway
  - Mr. David W. Alexander
  - Mr. Rostislav Pekar
  - Mr. Alexis Martinez
- SQUIRE PATTON BOGGS

Party Representatives:

For the Claimants:

- Mr. Wolfgang Rauball (EuroGas Inc., Chairman & CEO)
- Mr. Vojtech Agyagos (Belmont Resources Inc., President and Director)

For the Respondent:

- Ms. Andrea Holiková
- Mr. Radovan Hronský
- Mr. Julián Kupka

ALSO PRESENT:

Acting Secretary of the Tribunal:

- Ms. Geraldine Fischer

Hearing held at the ICC Hearing Centre,  
112 avenue Kléber, 75016 Paris, France, on the 17th  
day of March 2015, at 3:01 p.m.

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## 1 P R O C E E D I N G S

2 THE PRESIDENT: Welcome to this first  
3 session in ICSID case ARB 14/14 EuroGas Inc. and  
4 Belmont Resources Inc. versus the Slovak Republic.  
5 The Tribunal, you have Prof. Emmanuel Gaillard on 15:01  
6 my right; Prof. Brigitte Stern on my left; myself,  
7 Pierre Mayer. The secretary of the Arbitral  
8 Tribunal is Lindsay Gastrell, but she could not  
9 come today, and so we have Ms. Geraldine Rebecca  
10 Fischer, who is sitting here behind us. You know 15:02  
11 there is an assistant to the Tribunal you have  
12 accepted in principle, Ms. Marie Nioche; she  
13 couldn't be present today. And the court reporter  
14 is Ms. Yvonne Vanvi.

15 Now that we have introduced ourselves, 15:02  
16 maybe, Maître Gharavi, can you introduce your team?

17 DR. GHARAVI: Yes, thank you very much.  
18 Good afternoon. On my left members of our firm,  
19 starting with Ms. da Silveira, and Emmanuel Foy.  
20 Behind me are in turn Mr. Speciale, and next to 15:02  
21 Emmanuel Foy, we have the President of the majority  
22 shareholder of Belmont, Mr. Agyagos, and next to  
23 him, the CEO of EuroGas, Mr. Rauball. Thank you.

24 THE PRESIDENT: Thank you. The  
25 Respondent's side. Mr. Anway. 15:03

1 MR. ANWAY: Thank you, Mr. Chairman. To  
2 my left, we have David Alexander from Squire Patton  
3 Boggs. To his right, Alexis Martinez from Squire  
4 Patton Boggs. Then we have Andrea Holiková from  
5 the Slovak Ministry of Finance. To her right, we 15:03  
6 have Eva Cibulkova from our Bratislava office at  
7 Squire Patton Boggs. To her right, we have  
8 Rostislav Pekar from Squire Patton Boggs. To his  
9 right, we have Radovan Hronský from the Slovak  
10 Ministry of Finance, and to his right we have 15:03  
11 Julián Kupka from the Slovak Ministry of Finance.

12 THE PRESIDENT: Thank you. So we are  
13 here for two things: The first session which will  
14 be a discussion of various points in the draft  
15 Procedural Order Number 1, and hearing oral 15:04  
16 arguments, oral arguments on the requests for  
17 provisional measures on both sides.

18 You, the parties, agreed on a schedule,  
19 One hour and 30 minutes for the first session.  
20 Then there will be a break of 10 minutes, and then 15:04  
21 we will hear both parties for the rest of the time,  
22 which should lead us to 7:30, which is normally the  
23 end of the hearing.

24 For the first session, I suggest that we  
25 start with a few points which have to be completed. 15:04

1 The Tribunal has to agree, for instance, on some  
2 suggestion by the parties, and then we examine the  
3 points on which the parties disagree.

4 So, everyone has a copy of the draft,  
5 last version? I have seen -- maybe I have 15:05  
6 forgotten one or two. The first point to finalize  
7 is Article 8.5. I had not noticed that the fees  
8 for the assistant, as mentioned here, was only  
9 US\$125, and I have often seen that the fee is more  
10 comfortable at 250. We would ask the parties if 15:06  
11 they would agree that instead of \$125 per hour, it  
12 be 250.

13 DR. GHARAVI: This is fine for the  
14 Claimant.

15 MR. ANWAY: This is agreeable for the 15:06  
16 Respondent as well.

17 THE PRESIDENT: Thank you. Then we have  
18 point 11. 11.1. Both parties would accept Paris,  
19 France shall be the place of the proceedings. The  
20 Tribunal agrees, so that will be in the official 15:06  
21 order.

22 Third point. 14.1.2.1. It's the method  
23 of filing of parties' pleadings. 14.1.1.1, or  
24 rather 1.1.2, is for the Tribunal's secretary.  
25 14.1.2 is for the other party and the members of 15:07

1 the Tribunal, and 14.1.2.1 gives us the choice  
2 between A4 or A5. Either can be provided as the  
3 members of the Tribunal and the assistant to the  
4 Tribunal prefer.

5 I do not know if you have a preference, 15:08  
6 Brigitte. That is individual, right?

7 PROF. STERN: I am complicated, so I  
8 prefer the submission in A4, the witness statement  
9 and expert report in A5, and documents now and  
10 legal authority, I only request on CD, not in 15:08  
11 paper, because I think it is getting too aggressive  
12 for the forest.

13 THE PRESIDENT: That is already provided,  
14 the last point, but not including legal  
15 authorities. 15:08

16 PROF. STERN: No, but I would also say  
17 exhibits. I print my exhibits when I need them.

18 THE PRESIDENT: Okay.

19 PROF. GAILLARD: I prefer A4, as far as I  
20 am concerned, but I have the same concern about the 15:08  
21 forest, and I can print my own exhibits, if any, to  
22 consult them electronically. So that goes for the  
23 memorials, for the witness statements, reports, but  
24 the attachments can be only electronic, as far as I  
25 am concerned. 15:09

1 THE PRESIDENT: Okay. And as for me, I  
2 have concerns for forests, but, as you know, I will  
3 come back to that point very soon. I will not have  
4 the same material resources that I have now, so I  
5 prefer to have everything, except legal  
6 authorities, in A4. 15:09

7 PROF. STERN: Let's say, to simplify, I  
8 take all, I mean, the size of document and legal  
9 authority, I take everything in A4. So we have the  
10 three the same. It is easier, it is easier. No  
11 problem. 15:09

12 THE PRESIDENT: Last point. 14.2 the  
13 addresses of the Tribunal members are as follows.

14 I suppose you have no problem with yours?

15 PROF. GAILLARD: No, mine is okay. 15:10

16 THE PRESIDENT: Brigitte, also we know.  
17 But mine -- it gives me the opportunity, but maybe  
18 you already know, to say that I am leaving Dechert  
19 on the 1st of April. So I think we can immediately  
20 put here the new address, which will be 20 rue des  
21 Pyramids, 75001. As to the telephone number,  
22 unfortunately, I don't have one yet. I don't even  
23 have a desk -- it will be in 6 weeks -- but I will  
24 manage. So I will complete that. I will let you  
25 know. I already have an e-mail address, but it is 15:11



1 not to be mentioned here, so I will not mention it.

2 That is, I think, all for the points  
3 which do not in fact raise any difficulty. Now we  
4 have, I think 4, or they can be grouped in 4 points  
5 of disagreements. And I suggest we take them in 15:11  
6 the order of the numbers, of the procedural order.

7 I had an idea as to -- so the first  
8 point, I think, is item 15 in the draft procedural  
9 order, and that goes, I think, but I'll check, with  
10 21.3. Yes, 21.3 proposes the date for the hearing 15:12  
11 on jurisdiction in July 2016, but, of course, that  
12 depends on the more important or general question  
13 of the, I would say, bifurcation, in fact. So I  
14 think Respondent should address us first on this  
15 issue, then Claimants. 15:12

16 MR. ANWAY: Thank you, Mr. Chairman. The  
17 Slovak Republic, as you know, has applied to the  
18 Tribunal for an order bifurcating the proceedings  
19 into a jurisdictional phase and a merits phase.  
20 The reason we have done so, as we explain in our 15:13  
21 papers, is because we do have very serious  
22 jurisdictional objections which are unrelated to  
23 the merits of the case and which, if successful,  
24 would dispose of the entire case. And so we think  
25 the principle of economy applies here and, indeed, 15:13

1 would mandate bifurcation, and we would note this  
2 is consistent with Rule 41 of the ICSID Arbitration  
3 Rules, which contemplates deciding jurisdiction as  
4 a preliminary question.

5 Now, as you will hear in our presentation 15:13  
6 later today, Mr. Alexander will describe to you the  
7 jurisdictional objections we have already  
8 identified, and there are 4 distinct categories of  
9 them thus far. And you will hear that the  
10 jurisdictional objections are so serious, so 15:13  
11 obviously problematic to this claim, that we submit  
12 today you do not even have *prima facie* jurisdiction  
13 to decide the Claimants' application for  
14 provisional measures.

15 We would respectfully request that you 15:14  
16 reserve judgment on the bifurcation issue until you  
17 have heard Mr. Alexander's presentation. You will  
18 have a good feel for what those jurisdictional  
19 objections are after that presentation if you don't  
20 already from our papers. And, of course, 15:14  
21 bifurcation, when there are serious jurisdictional  
22 objections, has been our experience in investment  
23 treaty arbitration and ICSID arbitrations  
24 specifically.

25 Moreover, we would note, as we do in our 15:14

1 papers, that there is an incredibly high risk in  
2 this arbitration that -- and we will discuss this  
3 in some detail -- given the Claimants' history of  
4 being adjudicated to have engaged in fraud, to have  
5 conspired to conceal assets and the fact that they 15:14  
6 cannot afford to bring this claim on their own,  
7 which is why there is a third-party funder, given  
8 those facts, the Slovak Republic is at an  
9 incredibly high risk of not recovering its costs in  
10 these proceedings. 15:15

11 Now, it is for that reason, of course,  
12 that we have asked the Tribunal to issue an award  
13 for security on costs, but if that request is  
14 denied today, if you decide against the Slovak  
15 Republic on that application, then the need for 15:15  
16 bifurcation is even greater. The Slovak Republic  
17 should not have to spend significant time and money  
18 to defend itself against the merits of the claim  
19 when the Tribunal's jurisdiction is so obviously  
20 lacking. Bifurcation would, of course, reduce the 15:15  
21 amount of costs and time that the Slovak Republic  
22 has to incur defending against this claim and, of  
23 course, if there is no security for costs, if our  
24 request is rejected, then the need for keeping the  
25 costs low, the need for bifurcation is even 15:15

1 greater.

2 Now, finally, let me make a reference to  
3 the newly submitted medical records that Claimants  
4 put in front of you, albeit without seeking leave  
5 to do so. Now, at the outset we state for the 15:15  
6 record we do not believe that health issues should  
7 impact the bifurcation issue. The individuals for  
8 whom we have received medical records are not the  
9 Claimants in these proceedings. The Claimants are  
10 corporate entities. And we have not been told that 15:16  
11 the testimony of these two individuals would be  
12 crucial to the merits of the claim.

13 And, finally, even if the health of these  
14 individuals was relevant to bifurcation, which we  
15 do not accept, and even if these individuals were 15:16  
16 the Claimants in the arbitration, which they are  
17 not, the records submitted by the Claimants days  
18 ago do not show that these health concerns should  
19 dramatically change the way these proceedings  
20 should be conducted, and they certainly do not 15:16  
21 serve as a justification for driving up the costs  
22 that the Slovak Republic must incur to defend  
23 against it.

24 Now, I want to be clear that we are very  
25 sensitive to the health issues of everyone in this 15:16

1 room. But we don't believe that the Claimants  
2 should be able to make untested assertions about  
3 health of certain individuals and automatically  
4 impact the way the proceeding is conducted. There  
5 is no statement in those records from a doctor that 15:17  
6 these health risks are such that these individuals  
7 may not be able to attend these hearing or to  
8 participate in these hearings. They are  
9 descriptions of medical ailments without any  
10 conclusion about what they mean for this 15:17  
11 arbitration or the ability of these individuals to  
12 participate in it.

13 For example, we would note that  
14 Claimants, in their cover e-mail to the Tribunal of  
15 9 March, stated that Mr. Rauball had been receiving 15:17  
16 -- quote-unquote -- "cancer treatment." We are, of  
17 course, very sensitive to that. We are not doctors  
18 and not in a position to agree or disagree, but the  
19 medical records that were submitted do not support  
20 that assertion. We invite you to look at those 15:17  
21 medical records. In fact, the medical records show  
22 that Mr. Rauball has a condition known as  
23 keratosis, which is a very common skin condition.  
24 I am told by my colleagues that many people over  
25 the age of 60 have this condition, one of whom, I 15:17

1 have been authorized to say, sits immediately to my  
2 right. And we understand that keratosis is not  
3 itself cancerous. We acknowledge it could become  
4 cancerous, but that it itself is not, and we  
5 understand that Mr. Rauball has been consulting -- 15:18  
6 quote -- "The Center for Aesthetic Medicine."

7 So we acknowledge that it may become a  
8 cancerous condition, but we have nothing in front  
9 of us, and the Tribunal has nothing in front of it,  
10 to suggest that it has. 15:18

11 Again, we are not in a position to assess  
12 the medical conditions of these individuals, but  
13 that is precisely the point. There is no doctor  
14 stating that health conditions of either of these  
15 individuals will impact their ability to attend or 15:18  
16 participate in the hearings.

17 In any event, as I mentioned, we believe  
18 this issue is irrelevant to bifurcation. Our  
19 jurisdictional objections are serious, they are  
20 unrelated to the merits, and they are dispositive 15:18  
21 of the merits of the claim. Mr. Alexander will  
22 explain what those jurisdictional objections are  
23 later today, and we are confident you will  
24 understand the need for bifurcation after hearing  
25 that presentation. 15:19

1           I would like to make one final note on  
2 this issue. We have noted the Claimants' purported  
3 concern that bifurcation would delay the  
4 proceedings unduly. We believe that the vast  
5 majority of evidence and arguments about our 15:19  
6 bifurcational objections are already in the record.  
7 So while we may have a few additional exhibits or  
8 authorities to put into the record in the  
9 jurisdictional phase, we are quite comfortable with  
10 the current state of the record. Candidly, we are 15:19  
11 not sure how much more Claimants intend to put into  
12 the record on jurisdiction. As you know, we raise  
13 these jurisdictional objections clearly and  
14 extensively in our papers. We have received very  
15 little response from them by Claimants. Some of 15:19  
16 our arguments have not been responded to at all.  
17 So we simply do not know what additional evidence  
18 and argument the Claimants intend to put into the  
19 record. Nevertheless, if the Tribunal is persuaded  
20 by concerns relating to timing, we note the 15:19  
21 Tribunal has considerable discretion to fashion an  
22 appropriate expedited schedule on jurisdiction if  
23 it chooses to do so.

24           If, for example, it concludes that our  
25 schedule is too protracted, we are happy to have 15:20

1 jurisdiction done on a more expedited basis. We  
2 believe that the record is already nearly fully  
3 developed on these issues, so we would be happy to  
4 work with the Tribunal and opposing counsel on a  
5 more expedited schedule than the one we proposed, 15:20  
6 if the Tribunal believes that is appropriate.  
7 Thank you.

8 THE PRESIDENT: Thank you. Just a  
9 question first on your proposed procedural  
10 timetable. It starts with memorial on the merits 15:20  
11 by Claimants. Can you expand a little?

12 MR. ANWAY: Yes. The thinking behind  
13 that proposal -- and it is something that we have  
14 encountered in many other ICSID cases -- is that to  
15 properly assert the jurisdictional objections, it 15:20  
16 is helpful to know exactly what the claim is before  
17 those jurisdictional objections are asserted. And  
18 that is the case with respect to some of our  
19 jurisdictional objections in particular. But, as I  
20 mentioned, if the Tribunal believes that this 15:21  
21 bifurcated proceeding can be done on a more  
22 expedited basis, we would consider filing our  
23 jurisdictional objections first.

24 THE PRESIDENT: Thank you. So we  
25 understand that you prefer that we decide on this 15:21



1 issue of bifurcation after having heard Mr.  
2 Alexander on the merits of the jurisdictional  
3 objections?

4 MR. ANWAY: That is right.

5 THE PRESIDENT: I think we are ready to 15:21  
6 do that, but that raises the issue to keep the  
7 symmetry.

8 Maître Gharavi, can your response be  
9 focused on the same points that have already been  
10 addressed, and then you keep for later your 15:21  
11 arguments on the merits of the jurisdictional  
12 objections, or you want to present them already  
13 before they make their own arguments?

14 DR. GHARAVI: What would you prefer?

15 THE PRESIDENT: I would prefer that you 15:22  
16 keep to the same issues that have been addressed  
17 by -- if --

18 DR. GHARAVI: They talked on every issue,  
19 but they didn't develop it, but I will be brief. I  
20 think that is what you want. 15:22

21 THE PRESIDENT: No, no, no, not at all.  
22 It was just to have the questions of principle  
23 first on each side successively, and then questions  
24 of the merits, or non-merits, of these  
25 jurisdictional objections. 15:22

1 DR. GHARAVI: Okay.

2 THE PRESIDENT: Successively.

3 DR. GHARAVI: That is fine. That is  
4 fine, President Mayer.

5 Just an initial reaction to what my 15:22  
6 learned colleague has said. Respondent claims that  
7 its objections are very serious, they are manifest,  
8 even to warrant a *prima facie* dismissal of our  
9 provisional measures, and bifurcation is warranted  
10 including to -- because the objections have no 15:23  
11 relations to the merits, and also they would save  
12 costs, okay.

13 Assuming that were the case, they would  
14 not -- there is a provision for that, there is a  
15 41.5 -- Article 41.5 motion for manifest lack of 15:23  
16 jurisdiction or the merits. This has not been  
17 done. Instead, an army of lawyer motions are  
18 presented with a calendar that would stretch for  
19 2 years.

20 So the application is at odds with the 15:23  
21 motions and the timing of Respondent itself. That  
22 is my first comment. The second comment is that  
23 this is a straightforward dispute and I will not  
24 get into it now, but when we discuss the  
25 provisional measures. 15:24

1           Our Statement of Claim is ready, it  
2           contains all the material witnesses, it contains  
3           two expert testimony, quantum, everything is ready,  
4           and we will assist the Tribunal and Respondent  
5           better if both parties conclude on the merits, 15:24  
6           including to assess the jurisdictional objections.

7           It is a material point that we are ready  
8           to go and we think we can hear the whole case,  
9           including on jurisdiction, and close this  
10          arbitration within one year. The second issue is 15:24  
11          an issue of the jurisdictional objection. Without  
12          going into detail, I will address this during the  
13          provisional measures. But it is wrong that  
14          bifurcation is warranted, because even if we take  
15          the best case scenario of Respondent, EuroGas would 15:24  
16          have to leave these proceedings -- the best case  
17          scenario.

18          What happens to Belmont? Belmont is,  
19          since 2001, the official majority shareholder of  
20          Rozmin, has 57 percent. Certainly there was at 15:25  
21          some point a contemplated sale of its shares to  
22          EuroGas, with Belmont keeping some beneficial  
23          ownership, but that contemplated sale did not go  
24          through; it just did not go through.

25          So you have a legal shareholder that has 15:25

1 always been majority shareholder, Belmont, the  
2 contemplated sale has not gone through and if we  
3 were to push Respondent's best case scenario that  
4 EuroGas in 2001 was dissolved and could not enter  
5 into the transaction, then that contemplated 15:25  
6 transaction of a sale of a share that did not  
7 materialize could not even have occurred.

8 So I think Respondent cannot have it both  
9 ways, and the reality is that Belmont is the  
10 majority shareholder. The only jurisdictional 15:26  
11 objection raised against Belmont, the majority  
12 shareholder, is that the dispute should have been  
13 brought under the previous treaty, and that now it  
14 is too late basically. And that defense we will  
15 examine, it doesn't work, because we have a letter 15:26  
16 of Respondent itself during the cooling-off period  
17 that says, "Your dispute is not ripe yet." So here  
18 again they cannot have it both ways. Moreover, the  
19 argument is linked to the merits.

20 So to cut a long story short, the best 15:26  
21 case scenario of Respondent would not warrant  
22 bifurcation, because Belmont will always stay in  
23 the proceedings, and even if the objection is  
24 entertained regarding Belmont, it is manifestly  
25 linked to the merits. 15:27

1           The final point is the health concerns of  
2 my clients. It is in the interest of everyone that  
3 they be heard, including Respondent, on the  
4 jurisdiction and merits as soon as possible. Why?  
5 Because they are 70 -- still young, right -- but in 15:27  
6 a bad health. Now you can debate what extent they  
7 are in bad health, but nobody can deny that all of  
8 them -- the two of them are CEOs and the President  
9 of the companies, they were -- they participated in  
10 the performance, including in the F-organization, 15:27  
11 the contemplated sale, that is Respondent's own  
12 case, and they both have had heart attacks. I mean  
13 this is clear. Mr. Agyagos had recent heart  
14 attacks; he has a pacemaker. They are not in good  
15 health. You call them. They are either in 15:27  
16 hospital or they cannot travel. They had strokes.  
17 One had another surgery. They are in bad health,  
18 and we are ready to proceed on the merits on  
19 jurisdiction, and it is in the interest of  
20 everyone, including Respondent, that the claim 15:28  
21 proceeds simultaneously on jurisdiction and merits.  
22 So for all these reasons we submit that bifurcation  
23 is not warranted.

24           THE PRESIDENT: Thank you. Yes.

25           MR. ANWAY: Thank you, Mr. Chairman. It 15:28

1 is not the case that our best case scenario is only  
2 EuroGas leaves the proceeding. As you will see,  
3 there are two jurisdictional objections with  
4 respect to each Claimant.

5 THE PRESIDENT: We have seen? 15:28

6 MR. ANWAY: Yes, you have seen it, and,  
7 with respect to Belmont, there is a jurisdictional  
8 objection that the 57 percent interest that it  
9 claims to hold was in fact transferred to EuroGas.  
10 That is one jurisdictional objection. And if that 15:28  
11 is true, then both Claimants, under our  
12 jurisdictional objections, would be dismissed, the  
13 entire case would be disposed of.

14 There is a second jurisdictional  
15 objection with regard to Belmont only. 15:29

16 THE PRESIDENT: It seems to me that the  
17 first one was not mature, in your last memorial.

18 MR. ANWAY: Mr. Alexander will describe  
19 that in context later today. The second argument  
20 does pertain to the -- what I would call the 3-year 15:29  
21 reach-back period under the Canadian BIT, which  
22 only took effect in March of 2009.

23 As you know, the license at issue in this  
24 case was revoked in 2005. Again, if that  
25 jurisdictional objection is upheld, then Belmont is 15:29

1 also removed from the case, together with EuroGas,  
2 in connection with our other jurisdictional  
3 objection. So it is not the case that under the  
4 best case scenario Belmont stays and EuroGas is  
5 dismissed. Under the jurisdictional objections we 15:29  
6 have raised, the entire case would be disposed of.

7 Let me also make a remark with respect to  
8 Mr. Gharavi's point that the statement of claim is  
9 ready to go. In our contemplated schedule here, we  
10 do contemplate the Claimants filing their Statement 15:29  
11 of Claim first and the case being bifurcated from  
12 that point going forward. That in fact was the  
13 exact procedure we have used in a number of other  
14 cases and it has been very efficient. It allows  
15 the Respondent to see exactly the claim to which it 15:30  
16 is raising the jurisdictional objections, and  
17 thereafter the case is bifurcated into a  
18 jurisdiction and merits phase.

19 But it is not acceptable to the Slovak  
20 Republic to have to engage in a full merits based 15:30  
21 analysis with witnesses, expert reports, briefing,  
22 and so forth, for a quantum analysis with expert  
23 witness statements, and so forth, when the  
24 jurisdictional objections here are so serious and  
25 the jurisdiction of this tribunal is so obviously 15:30

1       lacking. And again that is something we will  
2       discuss later today.

3               DR. GHARAVI: Yes. On the position of  
4       Belmont, we have not seen that case put forward to  
5       us, that Belmont doesn't have an interest. And the       15:30  
6       reality is -- I think this at least is a common  
7       point that since 2001 up to today, Belmont has  
8       always remained the beneficial -- the legal  
9       shareholder. Respondent has an allegation that we  
10      transferred the shareholding. There was a               15:31  
11      contemplated transfer. It did not materialize.  
12      The condition precedent did not materialize, and  
13      that is no longer effective.

14              What happened to the argument that  
15      EuroGas did not have a capacity to sell in 2001?       15:31  
16      If we were to follow that, that contemplated sale  
17      could not have occurred. So if we were going to  
18      debate, we have to debate the whole thing, because  
19      otherwise we are just going to talk unilaterally  
20      without any response.                                       15:31

21              The second thing, of course, I appreciate  
22      that Respondent -- it is better for it to have the  
23      Statement of Claim filed and for it to examine, to  
24      have the best of the roles and then to bifurcate.  
25      But that is not correct. As regards the rightness       15:31



1 argument, it has not been again rebutted.

2 There is a letter on the record from  
3 Belmont in 2002 saying that the dispute is not ripe  
4 yet. So the Respondent is estopped now to say that  
5 it is too late. Moreover, there are Supreme Court 15:32  
6 decisions that have been handed out after 2013, of  
7 non-compliance, which constitutes a further  
8 violation of international law.

9 In any event, again it's really related  
10 to the merits, and that is, I am afraid, something 15:32  
11 that cannot be in good faith entertained. But I  
12 think we are going to address that in detail,  
13 aren't we, during the provisional measures.

14 MR. ANWAY: Mr. Chairman, if I could just  
15 make one follow-up remark. There was a factual 15:32  
16 misstatement that I think is very important, and  
17 this was stated in the Claimants' papers before the  
18 statement, was that Belmont, under our theory,  
19 would not have legal capacity to sell the  
20 57 percent to EuroGas at the time we suggest, the 15:32  
21 theory I assume being that EuroGas had already been  
22 dissolved under our theory, and therefore did not  
23 have legal capacity to take the 57 percent.

24 Just so the record is clear, the  
25 agreement in which EuroGas agrees to purchase the 15:32

1 57 percent interest from Belmont was on March 27,  
2 2001. EuroGas was not dissolved under Utah law  
3 until 11 July 2001. So in fact it happened after  
4 that agreement was signed. So this argument that  
5 there was no legal capacity to purchase the 15:33  
6 57 percent simply does not work. I just wanted to  
7 clarify that.

8 DR. GHARAVI: My apologies, but in the  
9 contemplated sale there were contemplated  
10 conditions precedent that applied throughout the 15:33  
11 years, correct? And a company dissolved, according  
12 to you, cannot carry out those transactions. So  
13 again let us just look at everything with  
14 precision.

15 THE PRESIDENT: Probably we will hear 15:33  
16 more on these aspects.

17 PROF. STERN: Just a factual point. In  
18 Exhibit R-75, in the Form 10-K, it is said that  
19 this agreement was on 17 April 2001. I think you  
20 said March. But that's really -- 15:33

21 MR. ANWAY: The result would still be the  
22 same, but we will double-check the month, yes.

23 PROF. STERN: It is in Exhibit R-75,  
24 which is the form presented to the SEC.

25 MR. ANWAY: Yes. And I will also state, 15:34

1 just for the Tribunal, that several of the  
2 documents that were at issue several days ago, that  
3 we tried to put into the record which were  
4 responsive to new arguments that were just raised  
5 in the Claimants' Rejoinder, to which we did not 15:34  
6 have an opportunity to respond, are pertinent to  
7 this issue.

8 THE PRESIDENT: All right. So we move to  
9 the next point of disagreement, which is item 19.2:

10 "Claimants request the insertion of the 15:34  
11 following provision, to which Respondent objects.  
12 A Party may request the production of a witness  
13 within the control of the other Party and who has  
14 not produced any witness statement."

15 So, Respondent? 15:35

16 MR. ANWAY: Thank you.

17 THE PRESIDENT: Briefly, I suppose.

18 MR. ANWAY: Briefly. We simply don't  
19 believe the provision is necessary. The ICSID  
20 Arbitration Rule 34(2)(a) already provides the 15:35  
21 Tribunal may, if it deems necessary, at any stage  
22 of the proceeding, call upon the parties to produce  
23 documents, witnesses and experts.

24 We are happy to have that rule restated  
25 in the procedural order, if the Claimants were 15:35

1 simply trying to reflect that rule, as we  
2 understand they are. Is that agreeable?

3 DR. GHARAVI: That was not understanding  
4 of your position. Our position was that you didn't  
5 want the application of that. We do not want to 15:35  
6 reinstate what is obvious. We were just concerned  
7 not to waive that provision, that's it. So I think  
8 we are in agreement that the provision applies, the  
9 19.2.

10 MR. ANWAY: I will tell you the reason 15:35  
11 that we had objected to the Claimants' language was  
12 simply the use of the word "control." The use of  
13 the word "control" in a sovereign context can be  
14 somewhat complicated. If, for example, the Slovak  
15 police can go and detain someone and force them to 15:36  
16 testify, they were within the control of the Slovak  
17 Republic. It is a word that is not used in the  
18 ICSID Arbitration Rules, it is not used in the IBA  
19 Rules. So we would simply restate what is in the  
20 ICSID Arbitration Rules, and we think that is why 15:36  
21 ICSID Arbitration Rules did not use that term.

22 DR. GHARAVI: We are happy with the ICSID  
23 Rules.

24 THE PRESIDENT: Okay.

25 Third point, item 21.6 and 25. 21.6, 15:36

1 which is not the general provision. "Hearings  
2 shall be closed" was the initial drafting. And  
3 then the proposed drafting by the Respondent is:  
4 It is open to the public in conformity with  
5 paragraphs 25.2 and 25.3. So in fact we go to 25. 15:37

6 I am wondering who should address this  
7 issue first. I think we know your position -- you  
8 will have the opportunity, of course, but maybe  
9 Respondent can express himself.

10 PROF. STERN: Claimant. 15:37

11 THE PRESIDENT: Sorry. Yes.

12 DR. GHARAVI: Claimant. We do not want  
13 to repeat our position, but what we can offer is  
14 try to facilitate a reasonable solution, and that  
15 could be that -- I don't know what Respondent 15:38  
16 intends by a hearing in public. We have no  
17 objection if others who are not parties attend, as  
18 long as this is not disruptive and there is no  
19 video posted online.

20 So EuroGas would be happy to agree on the 15:38  
21 physical presence of third parties, maybe in  
22 another room, so that it is not disruptive, with a  
23 video link to this room, or a limited number of  
24 people admitted from the public in the room,  
25 without this being disruptive. But no videos 15:38

1 posted online of the arbitration.

2 And as regards documents, we have no  
3 objection that all documents be made public, as  
4 long as they don't relate to EuroGas, and  
5 everything that is related to EuroGas would have to 15:39  
6 be just redacted. That is the only effort that we  
7 can do to find a compromise, otherwise our position  
8 is stated. It is up to the Tribunal to decide.

9 PROF. STERN: You say every document  
10 related to EuroGas. I mean it's most of the 15:39  
11 documents, I mean at least half of the documents of  
12 the case normally. No?

13 DR. GHARAVI: Yes. It is difficult to  
14 implement, I agree with you, yes.

15 THE PRESIDENT: What is your reaction? 15:39

16 MR. ANWAY: Our position on this  
17 proceeding being public flows from Annex B to the  
18 Canadian-Slovak Bilateral Investment Treaty. It is  
19 an agreement between two countries that, with  
20 respect to everyone in this room, we cannot 15:39  
21 override. These two countries have agreed to that  
22 provision. Now, the question is whether the United  
23 States Bilateral Investment Treaty, or one of the  
24 questions is whether that conflicts with that  
25 provision. 15:40

1 THE PRESIDENT: Maybe after the proposal  
2 has not been accepted -- we know or everybody knows  
3 the ground for the wording that you propose for  
4 Article 25. It is Annex B to the agreement between  
5 Canada and the Slovak Republic, and there have been 15:40  
6 arguments exchanged. I suggest that Dr. Gharavi --

7 PROF. GAILLARD: Is it clear that you  
8 have not accepted the proposal?

9 MR. ANWAY: This was the first time we  
10 had heard that proposal. The prior proposal we 15:40  
11 understood from the Claimants was that they  
12 rejected any aspect of the hearing being open. I  
13 think the details of what would be public and what  
14 not is something the parties should probably  
15 discuss outside the presence of the Tribunal and 15:40  
16 see whether we can reach agreement. This is the  
17 first time I have heard that.

18 THE PRESIDENT: But if we hear you and  
19 decide, there is no object for any compromise. So  
20 do you think it would take long for you to -- us 15:41  
21 leaving the room?

22 MR. ANWAY: I think I personally would  
23 have to talk to our client first about what our  
24 client is comfortable with and, candidly, I don't  
25 know how long that would take. But we could, of 15:41

1 course, do whatever the Tribunal wishes.

2 THE PRESIDENT: Okay. So let's hear the  
3 arguments and then -- we will not decide  
4 immediately anyway, so you may have an agreement  
5 before we decide. So --

15:41

6 DR. GHARAVI: I don't know if you want us  
7 to repeat everything we said. I think there is  
8 nothing that we can -- Prof. Gaillard doesn't  
9 want --

10 PROF. GAILLARD: You can assume that  
11 we've read the papers, that's on both sides.

15:41

12 DR. GHARAVI: All we can say is that we  
13 are willing to make this work as long as it's not  
14 disruptive and does not create problems with  
15 EuroGas, with Belmont, with Respondent.

15:42

16 I am not suggesting that Respondent would  
17 do that, would use these documents to harass or to  
18 hurt my clients' interests. That's the only  
19 concerns we have. Otherwise, we are open to any  
20 flexible solution.

15:42

21 THE PRESIDENT: Supposing you don't come  
22 to an agreement, then you have your arguments and  
23 there are the counter-arguments. We have read  
24 them, so --

25 DR. GHARAVI: Okay. Yes, yes, and I

15:42



1 think to bounce back on what Prof. Stern has said  
2 regarding the documents, maybe procedurally, to put  
3 in place what Respondent wants to use publicly a  
4 document, then it would have to say in what form,  
5 what document, and then maybe we have no objection, 15:42  
6 and if we have, then we submit it on a case-by-case  
7 to you. I am just thinking out loud to find a  
8 reasonable solution.

9 THE PRESIDENT: So I think you don't wish  
10 to add anything, and then I don't think it's 15:43  
11 necessary on the other side either. We have read  
12 your arguments. We won't decide immediately, so if  
13 you come to an agreement, tell us before we decide.

14 And the last point is item 26:

15 "Respondent requests the insertion of the following 15:43  
16 provision, to which Claimants object.  
17 Applicability of Confidentiality Rules to  
18 Third-party funders.

19 26.1. Any third-party funder shall not  
20 be granted access to any confidential information 15:43  
21 by a Party or their counsel."

22 Dr. Gharavi?

23 DR. GHARAVI: Here again, what is  
24 constant with Respondent is that it's inconsistent.  
25 He wants to have it both ways. He makes a motion 15:44

1 for this arbitration to becoming public, everybody  
2 sees everything; at the hearing everyone sees the  
3 documents. But the third-party funders, they  
4 cannot see anything. So that's the first point.

5 The second point is that there is no 15:44  
6 support. There is no support for Claimants not  
7 being able to share in a confidential manner the  
8 information that is on file with its witnesses,  
9 with its bankers, with any person that supports its  
10 claims, including third-party funders. So for 15:44  
11 these reasons we object, yes.

12 PROF. STERN: But I wonder then, I mean,  
13 supposing we would agree that you can share  
14 confidential information, wouldn't there then be a  
15 need to say who is the funder, and for the funder 15:45  
16 to make a confidential -- I mean, to sign a  
17 confidential agreement?

18 DR. GHARAVI: Why would that be  
19 necessary? It is necessary in one of the cases,  
20 for example, which I am sure you are aware, where 15:45  
21 there are state secrets involved, and the special  
22 undertakings of the third-party funder needs to be  
23 isolated. But why a special exception or  
24 requirement for a third-party funder, whereas he is  
25 another member of a large team of bankers or 15:45

1 witnesses, or assistants, or interns, assisting  
2 Claimants in putting their case forward?

3 THE PRESIDENT: So you would object to  
4 disclosing the identity of the third-party funder?

5 DR. GHARAVI: Yes, yes, I see -- I do not 15:45  
6 see any support for that.

7 MR. ANWAY: Mr. Chairman, I think  
8 Claimant may have misunderstood our position. The  
9 suggestion was that we are being inconsistent, that  
10 we want the hearing to be public to everyone except 15:46  
11 the third-party funder. That is not the position  
12 we have taken. The position we have taken is the  
13 public information is available to everyone,  
14 including the third-party funder.

15 But annex B of the Canadian BIT refers 15:46  
16 specifically to ensure the protection of  
17 confidential information. So the public doesn't  
18 get the confidential information just like the  
19 third-party funder does. In other words,  
20 confidential information is not available to third 15:46  
21 parties, one of which is a third-party funder.

22 Canada, the United States and Slovakia  
23 did not agree for any kind of special treatment  
24 with respect to third parties, including in respect  
25 of confidentiality, and only their express 15:46

1 agreement on that issue, I think, could change the  
2 confidentiality regime that is found in Annex B to  
3 the Canadian BIT. So the position is not  
4 inconsistent.

5 DR. GHARAVI: Annex B, Prof. Mayer, Annex 15:46  
6 B of the BIT paragraph 5, provides -- the  
7 Canadian-Slovak BIT says: "A party may disclose to  
8 other persons in connection with the arbitral  
9 proceedings such unredacted documents as it  
10 considers necessary for the preparation of its 15:47  
11 case, but it shall ensure that those persons  
12 protect the confidential information in such  
13 documents."

14 I mean this is undertaking to ensure  
15 confidentiality. There is no requirement of 15:47  
16 disclosure or undertaking by that third party.

17 MR. ANWAY: And Article B.1.5 from which  
18 Mr. Gharavi just quoted says: "Necessary for the  
19 preparation of its case."

20 The question would be: Why would 15:47  
21 disclosure to a third-party funder of confidential  
22 information be necessary for the preparation of the  
23 case? We have been provided no reason whatsoever  
24 that that is true.

25 DR. GHARAVI: A banker -- doesn't the 15:48

1 banker wish to see whether your claims is viable  
2 claims? Third-party funders assist in helping  
3 investors who got expropriated to seek justice, and  
4 they want to see the documents, the arguments that  
5 are exchanged. So, of course, they assist in the 15:48  
6 preparation of the claim in that regard.

7 PROF. STERN: So how would you suggest to  
8 enforce Article 2: The Tribunal shall establish  
9 procedure for the protection of confidential  
10 information? How should we do that? 15:48

11 DR. GHARAVI: We undertake to share with  
12 everyone that assists us in the preparation of our  
13 case, documents unredacted, in a way that protects  
14 confidentiality. I mean, it concerns also interns,  
15 you know, secretaries, all those that are remotely 15:48  
16 related to this case.

17 Why a special provision for third-party  
18 funders? There is no support for a special  
19 provision.

20 THE PRESIDENT: Just, I think, Dr. 15:49  
21 Gharavi, that you mentioned -- I don't remember  
22 exactly where I have read that, that 25.7, 8 and 9  
23 were not in the proposal by Respondent for the  
24 Procedural Order Number 1, were not in conformity  
25 with the -- with Annex B to the agreement between 15:49

1 the two States.

2 DR. GHARAVI: Yes.

3 THE PRESIDENT: Do you maintain that? I  
4 tell you why I ask. It's because there is a  
5 capital P in the Annex B for the corresponding 15:50  
6 provisions. So it seems to apply only to the  
7 States which, I think -- it seems to me, but we are  
8 ready to hear otherwise.

9 DR. GHARAVI: Do you need an answer now?

10 THE PRESIDENT: No, no, you can think 15:50  
11 about it.

12 DR. GHARAVI: We will take a look at it,  
13 yes.

14 THE PRESIDENT: All right. Are there  
15 other points on which parties would disagree 15:50  
16 concerning Procedural Order Number 1? Yes, another  
17 one?

18 DR. GHARAVI: No, no, we are fine.

19 THE PRESIDENT: Okay. Then I think it's  
20 time for the 10 minutes break. 15:50

21 (Recess taken - 3:50 p.m.)

22 (Proceedings resumed - 4:09 p.m.)

23 MR. ANWAY: Mr. Chairman, I had the  
24 ability to consult with my colleagues over the  
25 break and have two matters to report, if I could. 16:09

1 THE PRESIDENT: Yes.

2 MR. ANWAY: The first is with respect to  
3 Prof. Stern's question about the date of the  
4 agreement between EuroGas and Belmont... [Sound cut  
5 out]. The date we used, which was March 27th, is 16:09  
6 the date that is on the face of the agreement  
7 itself, which we have annexed as R-15. You are  
8 correct that the 10-K lists a different date, which  
9 is April 17th. We don't know the reason why. We  
10 put that document in the record because we found it 16:10  
11 on the Internet. The Claimants have not provided  
12 you the signed copy of that contract. So we cannot  
13 explain that discrepancy. We will note that the  
14 face of the document states that it's effective  
15 March 27th. And so it may be that the contract was 16:10  
16 signed on April 17th and it became effective  
17 retroactive to March 27th. But we don't know.  
18 That is simply speculation on our part. So that  
19 was one matter.

20 The second matter is, as I raised with 16:10  
21 our client, the new position we heard today with  
22 respect to whether the proceedings should be closed  
23 or not. Again, this was something we had not heard  
24 before. And our client's position -- and it's one  
25 with which we, as counsel, agree -- is that it is 16:10

1 not feasible to somehow make this proceeding open  
2 with respect to Belmont, but closed with respect to  
3 EuroGas. These matters -- I am sorry.

4 PROF. GAILLARD: That is what we  
5 understood the offer to be. 16:11

6 MR. ANWAY: Okay. Maybe we  
7 misunderstood.

8 PROF. GAILLARD: I hate to interrupt, but  
9 as far as we are concerned, that's not the way we  
10 understood. Maybe you want to clarify the offer 16:11  
11 first. I don't know.

12 DR. GHARAVI: We have no objection to the  
13 whole hearing being opened as regards EuroGas and  
14 Belmont, because it's impossible to redact the  
15 hearing. 16:11

16 MR. ANWAY: Exactly. With respect to  
17 documents in the case?

18 DR. GHARAVI: Documents. We want the  
19 documents that are related to EuroGas *per se* to be  
20 kept confidential, in case there is a doubt as to 16:11  
21 whether it relates to both or leave would be sought  
22 from the Tribunal. Maybe we will have an  
23 objection, maybe we won't.

24 MR. ANWAY: This is what our client is  
25 very concerned about, because, as you know, many 16:11



1 documents relate to both parties. As you know, the  
2 decision to bring this case in a consolidated  
3 proceeding was the Claimants' and the Claimants'  
4 alone. If they wanted to keep EuroGas in a  
5 confidential proceeding, they could have brought 16:12  
6 the claim separately. I feel like we need to  
7 respond to one other argument, if I may.

8 THE PRESIDENT: Maybe just before that.  
9 Maybe what you mean is that you didn't want  
10 documents that concern the issue of the status of 16:12  
11 EuroGas, let's say, 1 and 2, or -- I don't remember  
12 the other language you used. But for the merits,  
13 when both parties -- supposing there is  
14 jurisdiction on both, okay, then in each memorial  
15 you will have EuroGas and Belmont. With, that you 16:12  
16 would not have a problem?

17 DR. GHARAVI: This we will not have a  
18 problem. We don't want documents, exhibits or even  
19 parts of the brief relating exclusively essentially  
20 to EuroGas, and what we have in mind is precisely 16:13  
21 the status. But we cannot give -- say, that's the  
22 only exception we have. But that's precisely what  
23 we have in mind.

24 MR. ANWAY: This strikes us as completely  
25 unworkable. I mean, as you will see in the 16:13

1 presentation today, the process of going through  
2 the documents and redacting the pieces that relate  
3 to EuroGas and not to Belmont would be an extremely  
4 tedious task, one that would cost very significant  
5 money. 16:13

6 DR. GHARAVI: Why? For example, EuroGas,  
7 the standing of EuroGas, why would it cost a lot to  
8 isolate those documents?

9 MR. ANWAY: You will see in the  
10 presentation today just how intertwined these two 16:13  
11 companies are and just how intertwined the  
12 relationship they have is in the case we have  
13 before us. And maybe we should defer this issue  
14 too until after we have the presentation on the  
15 provisional measures, but this is, in our view, 16:14  
16 something that is simply not workable.

17 There was one other argument that the  
18 Claimant made which we have not had a chance to  
19 respond to, and we appreciate the Tribunal has had  
20 an opportunity to read what has been submitted to 16:14  
21 you. We have not had a chance in writing to  
22 respond to this, so if I could, Mr. Chairman, just  
23 respond to it briefly.

24 It's this argument that the most favored  
25 nations provision or the most favored provision in 16:14

1 the Canadian BIT somehow allows EuroGas to seize  
2 upon the ICSID Arbitration Rules which contain a  
3 provision about whether the hearing should be open  
4 or not, and I do want to respond to that, because  
5 we have not had the chance to respond to it in 16:14  
6 writing yet.

7 This argument is effectively the  
8 Claimants' argument under Article 13 of the  
9 Canadian BIT, the Claimants' claim that the  
10 provision in the ICSID Arbitration Rules are more 16:14  
11 favorable on confidentiality. That is obviously  
12 not correct. The treaty between Canada and  
13 Slovakia supersedes anything in the arbitration  
14 rules and the corresponding section in the ICSID  
15 Convention. 16:15

16 Indeed, Article 44 of the Convention  
17 states -- and I quote: "Any arbitration proceeding  
18 shall be conducted in accordance with the  
19 provisions of this section except as the parties  
20 agree otherwise, in accordance with the arbitration 16:15  
21 rules and effect on the date on which the parties  
22 consented to arbitration."

23 And here the parties to the treaty,  
24 Canada and Slovakia, have agreed otherwise that the  
25 hearings are open. In any event, the Arbitration 16:15

1 Rules, as opposed to the Convention, is not an  
2 "international agreement to which both Contracting  
3 Parties are bound," because -- that's the language  
4 from Article XIII of the Treaty, because they are  
5 the procedural rules adopted by the administrative 16:15  
6 counsel of the Centre, not an international  
7 agreement to which Canada and Slovakia are party,  
8 and Article 13 therefore does not apply.

9 We would also note that there is no  
10 conflicting provision in the U.S. BIT. The U.S. 16:15  
11 BIT is simply silent on confidentiality. The  
12 Tribunal, of course, is tasked with giving meaning  
13 to both treaties, and the only way to do that,  
14 given that there is no conflict between the U.S.  
15 BIT and the Canadian BIT on confidentiality, is to 16:16  
16 apply the confidentiality provision and the  
17 Canadian provision in the Canadian treaty.

18 And, as we noted, if EuroGas wanted to  
19 keep this arbitration confidential, it could have  
20 simply filed its own arbitration under the 16:16  
21 U.S.-Slovak BIT. It chose not to do so, with  
22 knowledge of what the Canadian BIT says, and it is  
23 bound by the consequences that flow from that.

24 THE PRESIDENT: I don't know if you want  
25 to -- 16:16

1 DR. GHARAVI: No. I think there may be a  
2 confusion. If you read our writings, we are saying  
3 Belmont can rely also on provisions that ensure  
4 confidentiality, that it deals more favorable in  
5 other provisions, not EuroGas. 16:16

6 MR. ANWAY: If I said EuroGas in that  
7 context, I misspoke. I was referring to Belmont.

8 DR. GHARAVI: Okay, I understand.

9 MR. ANWAY: And the point of the  
10 submission I just made is that most favored clause 16:17  
11 does not apply in this context, because it is not  
12 an international agreement that would supersede the  
13 treaty in that instance. And it's not even clear  
14 by the way why confidentiality versus  
15 non-confidentiality would be more advantageous, or 16:17  
16 a more favorable provision in the ICSID Arbitration  
17 Rules, as to one that doesn't have a  
18 confidentiality rule.

19 THE PRESIDENT: I have read already what  
20 you said now. 16:17

21 Okay, coming back to this public  
22 character or not, it seems to me that the only  
23 proposal that you could make would be to accept  
24 publicity, except for the issue of jurisdiction  
25 concerning EuroGas. That's where you can cut, it 16:17

1 seems to me.

2 DR. GHARAVI: Yes.

3 THE PRESIDENT: For you, if that was the  
4 proposal, the other side would have to say if they  
5 accepted it or not, otherwise, I cannot see how you 16:18  
6 could cut in between. Okay.

7 PROF. STERN: I don't see the  
8 practicality. That means that each time you refer  
9 to a question of jurisdiction concerning EuroGas,  
10 all the people, the public has to go out? 16:18

11 DR. GHARAVI: I think we have to --

12 PROF. STERN: If we speak about  
13 documents.

14 DR. GHARAVI: It is okay at the hearing.  
15 If we speak about documents, I am willing to 16:18  
16 concede that, but I just don't want copies to  
17 circulate regarding that particular issue and what  
18 is funny about all this is that we don't know why  
19 Respondent wants all this. It hasn't told us. If  
20 you tell us why you want it, maybe we can 16:18  
21 accommodate you. But why do you want all this? To  
22 do what?

23 PROF. STERN: Why don't you want it?

24 DR. GHARAVI: We don't want it because,  
25 thereafter, it is to create every sort of problem 16:19

1       imaginable. So we don't want to give this away.  
2       But we have nothing to hide. That's why we say the  
3       hearing, everybody can come.

4               MR. ANWAY: Mr. Gharavi, I will answer  
5       that. There is, as members of the Tribunal and as       16:19  
6       opposing counsel know, an increased effort to  
7       transparency in investment treaty arbitration.  
8       There was an entire UNCITRAL provision which my  
9       colleagues from the Slovak Ministry of Finance  
10      attended year after year to increase transparency       16:19  
11     in investment treaty arbitration, in large part  
12     because the government has to answer to its  
13     citizens, the taxpayers, who are funding this type  
14     of arbitration. And those citizens frequently make  
15     public record requests. They have a strong request       16:19  
16     in knowing how their tax money is being paid, they  
17     have a strong interest in knowing the types of  
18     allegations that are made against the State and how  
19     the State will respond to that.

20              And it's precisely for that reason that       16:20  
21     new trend towards increased transparency in  
22     investment treaty arbitration, that Canada and  
23     Slovakia have put this provision in the treaty  
24     which, as you know, is a very recently executed  
25     treaty. Two nations have agreed to this. I don't       16:20

1 think it is our burden to explain why they agreed  
2 to it, although I think there are very good  
3 reasons.

4 THE PRESIDENT: All right. I think now  
5 we enter into the second part of this meeting, 16:20  
6 which is the hearing on provisional measures.  
7 Before we do that and in connection with it, just a  
8 few words on what happened yesterday. It took some  
9 time for the Tribunal to decide whether to accept  
10 or not the new documents, because I was first in a 16:20  
11 train to a conference in London, then in a  
12 conference in London, then in a train back from  
13 London. We deliberated, in fact, the three of us,  
14 by e-mail, and after that there was still some  
15 delay, because of a technical problem. So you were 16:21  
16 informed rather late, and we're sorry about that,  
17 but it's the best we could do.

18 So our decision was, of course, not to  
19 delay again the hearing, to postpone it, not to  
20 accept the documents. But once the hearing is 16:21  
21 over, then these documents will be part of the  
22 record, and Claimants will have the opportunity to  
23 comment on these documents.

24 At the same time as you submit the  
25 documents, you want to comment more than you did in 16:22



1 your letter.

2 MR. ANWAY: Yes. We, of course, respect  
3 the Tribunal's decision. We will not be talking  
4 about those documents today. We have taken them  
5 out of our presentation. But we have put them in 16:22  
6 with the cover letter we did, thinking we would be  
7 able to explain them to you today. Since we will  
8 not be doing so, it may make sense for us to  
9 expound upon why we believe they are relevant to  
10 the issues before the Tribunal and, therefore, give 16:22  
11 you an opportunity to respond with that context.

12 THE PRESIDENT: And we will discuss maybe  
13 later when that will be done, on one side, and then  
14 the other side.

15 So, first, Claimants' oral arguments on 16:22  
16 provisional measures, 45 minutes. We understand  
17 you are going to mention both your requests for  
18 provisional measures and the other party's.

19 DR. GHARAVI: I think it's simpler to do  
20 that. If you have any preference, just -- 16:23

21 THE PRESIDENT: No, no, no. We agree.

22 DR. GHARAVI: For convenience.

23 THE PRESIDENT: Yes. So, please, Dr.  
24 Gharavi.

25 DR. GHARAVI: Prof. Mayer, Prof. Stern 16:23

1 Prof. Gaillard, I propose, if you allow me, to  
2 cover 4 points in these oral arguments.

3 The first point is to remind why we are  
4 in arbitration. 2, to remind why we are in  
5 provisional measures; 3, why Respondent's  
6 objections are odd and do not warrant bifurcation,  
7 do not stand at all; and 4, very briefly, the  
8 question of application for security for costs.

16:23

9 And you have in front of you our bundle which is  
10 composed exclusively, of course, of documents on  
11 the record.

16:23

12 Point 1 out of 4: The reason why we are  
13 in this arbitration. The reason, members of the  
14 Tribunal, is simple. We were expropriated and  
15 expropriated big time of the mining rights we held  
16 through Rozmin in the Gemerská Poloma deposit once  
17 we had confirmed the talc reserves. We submit that  
18 this is a slam dunk, a very straightforward case on  
19 the merits, and I propose very briefly to walk you  
20 through some of the documents.

16:24

16:24

21 If you turn to tab 1 of the bundle, which  
22 is Exhibit C-28, you have the minutes of an  
23 inspection conducted by the head of the District  
24 Mining Office in Slovakia. It dates from  
25 December 8, 2004, and it is on tab 1. What you

16:24

1 have on the first page is a reminder that there is  
2 a valid mining activity permit until the 13th of  
3 November 2006.

4 Then you turn to the second page and you  
5 see that from top to down, there are descriptions 16:25  
6 of the works that are being performed on the  
7 ground, work of different nature.

8 And at the end, the conclusion: "During  
9 today's inspection no facts were discovered  
10 indicating breach of legal regulations in force." 16:25

11 Then if you turn to tab 2, what do we  
12 have? We have the same person, the head of the  
13 mining district office, Mr. Baffi, that writes  
14 approximately 1 month later, that is January 2005.  
15 To say what? That our clients' rights, Rozmin's 16:26  
16 rights, are going to be assigned to another  
17 company. And this, without any advance notice, in  
18 flagrant inconsistency with the previous letter,  
19 with the 2006 valid permit, and the conclusion  
20 reached, that the works and everything, the 16:26  
21 activity, was in compliance with the law.

22 Worst, if you turn to tab 3, we later  
23 find out that, in fact, in December of that year  
24 2004, the mining rights of our client were put to  
25 tender, without any advance notice to us so what do 16:26

1 we have here? We have a textbook taking by way of  
2 gross violations of procedural and substantive  
3 safeguards under international law.

4 The taking also violated Slovak law. If  
5 you turn to tab 4 and 6, you have Supreme Court 16:27  
6 decisions, highest courts of Slovakia, that  
7 confirmed that the taking, revocation of our mining  
8 rights violated Slovak law. And tabs 7 and 8 each  
9 time, notwithstanding the decisions of the Supreme  
10 Court, notwithstanding the inspection report, the 16:27  
11 valid permit, the Mining District Office each time  
12 assigned the rights to another company. This  
13 inconsistency and executive disregard of the  
14 Supreme Court's decision constituted further  
15 violations of international law by the Slovak 16:28  
16 Republic. The cherry on the case is how much  
17 compensation did we get for the taking. Zero.

18 So you have it all. You have procedural  
19 violations, you have substantive public violations,  
20 you have violations of international law, you have 16:28  
21 violations of local law, and no compensation. So a  
22 slam dunk, very straightforward case, based on the  
23 merit documents on the record, and no defense  
24 possible on the merits. That's why we are here in  
25 the arbitration and that's why Respondent, which 16:28

1 does not have any defense, has to create artistic  
2 defenses, because at the end of the day, it must  
3 otherwise pay a large amount of money for this  
4 gross taking. That takes us to provisional  
5 measures; why we are here, point 2. 16:28

6 The reason why we apply for provisional  
7 measures is that we were taken for a ride, and a  
8 very long and a nasty one. The Respondent took  
9 advantage of the cooling-off period on which it  
10 insisted, on which it prolonged, to create 16:29  
11 gradually artificial defenses and to prepare  
12 ultimately timing and the procedure to storm our  
13 offices, to take away all of our documents,  
14 including privileged documents, that it confesses  
15 to have read. 16:29

16 Let me walk you through the timetable,  
17 and it will also serve as a therapy, because we  
18 lived through that period and we found what  
19 happened totally unacceptable.

20 Tab 9. EuroGas, on October 31st, 2011, 16:29  
21 sent a notice of dispute under the US-Slovak  
22 Republic BIT.

23 Tab 10, you have the Deputy Prime  
24 Minister and Minister of Finance of the Slovak  
25 Republic, their response. The response is 16:30

1 interesting, because it relates also to the  
2 question of jurisdiction, bifurcation, and so on.  
3 What does the Deputy Prime Minister and Minister of  
4 Finance say? They said, "No, hold on. Hold on.  
5 Hold on. Your claim is premature." The same claim 16:30  
6 that they are now objecting to on the ground that  
7 it should have been brought later, they are saying  
8 it's premature. As long as there is an  
9 administrative procedure pending, we cannot take a  
10 position on these claims. They used the word 16:30  
11 "premature" and Respondent, we submit, is estopped  
12 from thereon to argue that the claims were brought  
13 too late.

14 In other words, the Prime Minister, the  
15 Deputy Prime Minister, the Minister of Finance's 16:31  
16 position was that the dispute was not ripe. So we  
17 waited. What happened later? Seven months later,  
18 the same Deputy Prime Minister and Minister of  
19 Finance had a new idea. Tab 11. He wrote back to  
20 inform EuroGas for the first time, once the 16:31  
21 investment was made, once the dispute was pending  
22 before its own courts, once the consent to  
23 jurisdiction was given, "No, no, no, you cannot  
24 bring this claim, we deny you the benefit."

25 There was an optional denial of benefits 16:31

1 clause that they never triggered, and they decided  
2 to trigger it once they secured the investment,  
3 once the investor had proved the reserves, once the  
4 investor notified that there was a dispute, and  
5 once it gave its consent to the arbitration under  
6 that instrument. 16:31

7 So this is the type of people you are  
8 dealing with, and I ask you to consider this when  
9 construing all of their objections.

10 Tab 12. Then Belmont came into the 16:32  
11 picture, December 23rd, 2014. Belmont notified  
12 Slovakia of the dispute under the BIT between the  
13 two countries.

14 Tab 13. Slovakia responded. What did  
15 Slovakia say? It didn't say, "Oh, it's too late,  
16 you can't bring the claim." It said, "oh, this 16:32  
17 triggers a new cooling-off period. Wait. We may  
18 settle this dispute."

19 Then we exchanged the extensive  
20 correspondence. They asked us to substantiate our 16:32  
21 claim. They said, "This is not serious. You are  
22 asking all this money. Bring us a quantification."

23 We hired a quantification expert, we  
24 submitted a quantification. They asked us to wait.  
25 They asked us to meet. We met. They asked us to 16:32

1 wait further. They may submit a settlement offer,  
2 they may not. They are considering, they will  
3 consider, they are considering, they will consider,  
4 they will consider, they will consider, and  
5 ultimately they did not respond, and came the date 16:33  
6 which we indicated would be the ultimate date,  
7 June 25, 2014, by which we would respond. They  
8 knew this date. And we filed.

9 And what happened is quite extraordinary  
10 if you look at tab 15, and especially we can skip 16:33  
11 -- go to tab 16, please.

12 This is retaliatory measures of the most  
13 errant kind that would make the most, how do you  
14 say, non-compliant State shy. Look at this tab 16.  
15 Tab 16. I turn to tab 16. There was an order to 16:33  
16 search and to seize documents. And look on the  
17 last page, how it is construed.

18 They flagged the 2014 June 25 date. Let  
19 us read it:

20 "It follows from the response of the 16:34  
21 Ministry of Finance of June 19th, 2014 that three  
22 notices of dispute were delivered to the Slovak  
23 Republic, pursuant to international treaties on the  
24 support and protection of investments, in relation  
25 to the activity of the company Rozmin in Gemerská 16:34



1 Poloma. The last notice, December 23, 2013, was  
2 given by the American company EuroGas Inc. and the  
3 Canadian company Belmont Resources Inc. Until now,  
4 none of the notices have been followed by the  
5 formal initiation of an arbitration procedure 16:34  
6 pursuant to international treaty. However, the  
7 companies EuroGas and Belmont are currently  
8 threatening to submit, on June 25, 2014, the  
9 dispute before ICSID, pursuant to the notice of  
10 dispute of December 23rd, which will initiate the 16:35  
11 arbitration procedure. In his press appearances,  
12 Mr. Rauball also mentioned an increase of the  
13 claimed amount of 3.2 billion."

14 Mr. Rauball, you have to stop talking to  
15 the Press. 16:35

16 "According to the TASR report of  
17 April 13th, 2014, the Claimants claim compensation  
18 for the damage to their investment resulting from  
19 an allegedly illegal procedure" -- which we walked  
20 you through -- "allegedly legal procedure by the 16:35  
21 Slovak Republic" -- which, by the way, was  
22 confirmed 3 times by their own Supreme Court. It  
23 is still allegedly -- "in revoking the mining  
24 license over the Gemerská Poloma Mining area, which  
25 had been assigned to the company. The Ministry of 16:35

1 Finance of the Slovak Republic has serious doubts  
2 about the good nature of the Claimants regarding  
3 these notices of dispute as speculative and  
4 fabricated."

5 "Speculative and fabricated." I walked 16:35  
6 you through the documents. Their own Supreme  
7 Courts have ruled that it is illegal, and they  
8 write "speculative and fabricated. "This is  
9 demonstrated by the number of notices of  
10 dispute" -- this is a demonstration -- "delivered 16:36  
11 and the time that has passed since the alleged  
12 damage to the investment."

13 And based on this, pure retaliation  
14 measures, they seized our -- they stormed our  
15 offices, they seized all of the documents. They 16:36  
16 read it, and they say they intend to use it.

17 What does that show? That shows that  
18 it's a purely -- I mean, it's rare that you have a  
19 textbook, a clear evidence of amateur style, I  
20 would say -- no offence -- retaliation measures 16:36  
21 where it's documented on the record by the person  
22 issuing the order that it is in retaliation, with  
23 indication of the arbitration, the date of the  
24 arbitration. Timing and content leaves no doubt  
25 that it's a retaliation, a retaliation measure. 16:36

1                   And what they did is they tainted  
2                   irrevocably, I would say, irrevocably these  
3                   arbitration procedures. Why? Because they have  
4                   read all of our documents, including privileged  
5                   documents. Violation of the equality of arms. We                   16:37  
6                   don't have their documents, they have all of ours.  
7                   They have our privileged documents. They have  
8                   tainted irrevocably this procedure.

9                   And, by the way, counsel was not on the  
10                  record at the time, but was giving *ad hoc* advice;                   16:37  
11                  it appeared later when it appeared on the record.  
12                  We filed provisional measures. The criminal  
13                  proceedings were suspended, and a copy of our  
14                  documents restituted, but declaration was made that  
15                  they were read and they were going to be used.                   16:37

16                  Now, we -- that's why we are here. Let's  
17                  not forget. All of the other crazy motions we will  
18                  deal with are side issues. This is why we are  
19                  here. And what we are asking you is to make sure  
20                  that they do not read, they give it back, and                   16:38  
21                  obviously they do not only use the documents,  
22                  because they have given them back, but also do not  
23                  use the information that they have read in their  
24                  strategy, with the understanding that this can only  
25                  mitigate our damages, because they have already                   16:38

1 read everything.

2 And I am afraid -- again, this is for  
3 equality of arms and the right to privileged and  
4 confidential information and the integrity of the  
5 process. I am afraid that in this situation, you 16:38  
6 have to be extremely firm when the order is made,  
7 and also help us to monitor the situation, to make  
8 sure that the objections they raise today or  
9 tomorrow were not as a result of illegal use or  
10 access to documents, because the problem would not 16:39  
11 be solved just by your order. You have to closely  
12 monitor it.

13 I ask you to be firm because of these  
14 proceedings and because of the underlying policy,  
15 because if you are not firm and if you do not 16:39  
16 condemn this firmly, order restitution and warn  
17 Respondent, and do not monitor, then each State  
18 will do a cost-and-benefit analysis. They will  
19 say, "Okay, I have no defense on the merits. I am  
20 going to storm this guy. I am going to intimidate 16:39  
21 him. I am going to try to find whatever I can."  
22 And then the Tribunal is constituted and I'm going  
23 to say, 'I'll suspend the proceedings, I'll even  
24 give you a copy back. I will read everything, and  
25 I will get an adverse order." It's always better 16:39

1 to get an adverse order than have no defence and go  
2 to the hearing. We filed a defence.

3 So you are in a sensitive position, and I  
4 beg you to exercise, to be firm by your order  
5 throughout the proceedings. 16:40

6 3: Respondent's objections.

7 Respondent's objections have to be viewed in light  
8 of the first point I mentioned: Why we are here in  
9 this arbitration and why we are in these  
10 provisional measures. They have nothing on the 16:40  
11 merits. They have stormed our offices and they  
12 have access to privileged information.

13 I would like to start on Respondent's  
14 objections, to say they are very odd. What is  
15 this? Is this an Article 41(1) rule motion, a 16:40  
16 jurisdictional objection *per se*? No, it's not. Is  
17 it a 4.1.5(?) motion, a jurisdictional objection,  
18 expedited procedures, so that you hear and decide  
19 during this first session? No, it's not.

20 It's an objection to say that Respondent 16:40  
21 lacks manifest standing to a point that would  
22 prevent it from claiming and requesting provisional  
23 measures. I mean, it is extremely odd and, to the  
24 best of my knowledge, has never been granted. And  
25 it's certainly not the case at hand. And again 16:41

1 it's very inconsistent with the calendar that  
2 Respondent has produced, proposed to your process,  
3 and an award made in 2017.

4 So what is Respondent's objection? *Prima*  
5 *facie*, we do not have standing, not even to request 16:41  
6 provisional measures.

7 Let us look at these objections.

8 Belmont. Belmont -- this is not  
9 contested -- has acquired 57(sic) interest in  
10 Rozmin as of February 2002. And the second point 16:41  
11 is not contested: has remained ever since, as of  
12 today, the legal shareholder of the company.

13 So these are two facts -- three, I might  
14 say: You are a majority shareholder, 57 percent,  
15 who is a party to this proceeding. Second, that 16:42  
16 has acquired his shares since February 2000 and  
17 constantly through this date.

18 We submit that it has, moreover, full  
19 beneficial ownership, not only legal, but full  
20 beneficial ownership. Why? Why? Because the 16:42  
21 transaction that was entered into in 2001 --  
22 March 2001, I believe is the correct date,  
23 March 27, 2001 -- contemplated the sale of the  
24 shares of Belmont to EuroGas, with EuroGas keeping  
25 some minority beneficial ownership, subject to 16:43

1 condition precedents, mainly payment of certain  
2 amounts being made by EuroGas throughout the  
3 upcoming years. These payments were never made.

4 This is why the shares were never  
5 transferred. And that agreement, therefore, is  
6 today void. Claimant has now not only legal  
7 beneficial ownership and beneficial ownership, but  
8 the agreement has never even been implemented.

16:43

9 Again, Respondent has to remain consistent; the  
10 same thing with dispute is right, it's not right.

16:43

11 Here if we follow even Respondent, and EuroGas was  
12 dissolved in 2001, then that means that it could  
13 have never implemented the completion, the  
14 fulfillment of the conditions precedent in its  
15 contemplated share transaction with Belmont.

16:44

16 So again we submit that if you take  
17 Respondent's best case scenario, including full  
18 victory on EuroGas, then Belmont will remain as the  
19 majority shareholder in these proceedings. That's  
20 why bifurcation will only cause delays and costs to  
21 both parties.

16:44

22 Now, regarding the other argument raised  
23 by Belmont, we have discussed it, it's the fact  
24 that the dispute is not ripe. You have the  
25 Exhibit 10. You have what is called an estoppel.

16:44

1                   Respondent itself is saying, "Wait on.  
2 Wait, no, the dispute is not too late, but it is  
3 premature."

4                   So again it cannot have it both ways. It  
5 cannot say, "Wait, don't initiate the arbitration                   16:45  
6 in this procedure, it's premature," and then once  
7 we initiate it, say, "No, it's too late, you should  
8 have --" It just defies common sense.

9                   And in fact if you look at tab 17,  
10 Respondent continues to contradict itself on this                   16:45  
11 point, because it says that we do not have an  
12 expropriation claim, because we didn't insist  
13 further on implementing the Supreme Court's  
14 decision in 2013, and later, because the Supreme  
15 Court decision revoked, said the revocation of our                   16:45  
16 rights were illegal. But the mining office didn't  
17 comply with it and assigned our rights to another  
18 party. They are saying you should have insisted in  
19 2013, and '14, and so on. So again that shows that  
20 their own position is not consistent.                   16:46

21                   Moreover, our alternative position, we  
22 remind you, is that the Supreme Court's decision of  
23 January 31st, 2013, that was not complied with,  
24 constitutes the further breach of international law  
25 by other organs, and that is a separate cause of                   16:46



1 action. So again that jurisdictional objection  
2 does not work and, in any event, is related to the  
3 merits; it's because when the dispute arose, which  
4 requires a consideration of the merits.

5 Now, with respect to EuroGas, what do we 16:46  
6 have with respect to EuroGas? We have an  
7 objection. EuroGas, which is the minority  
8 shareholder. What do we have? We have a denial of  
9 benefits clause. But this I think -- you are  
10 familiar with the principle of good faith. It's an 16:47  
11 optional denial of benefits clause, it's raised not  
12 at the outset of the investment, not during the  
13 investment, but once the investment is made, a  
14 dispute pending before the local courts, and once  
15 consent is given in a second response to a notice 16:47  
16 of dispute letter. So I think we do not need to  
17 spend much time on it. It just only reinforces the  
18 lack of good faith of Respondent.

19 The other allegation made by Respondent  
20 against EuroGas is fraud, pattern of fraud, but 16:47  
21 these are unproven. They relate to proceedings  
22 that bear no relationship to this dispute and most  
23 of those cases have amicably settled.

24 So what we are left with is the  
25 allegation against EuroGas minority shareholder 16:48

1 that it is different, it has no standing, because  
2 it is different than the 1985 EuroGas company that  
3 was dissolved in 2001 and then went to bankruptcy.

4 In this regard, let's assume for one  
5 moment that Respondent has an interest, has a 16:48  
6 standing to raise, in the BIT arbitration, this  
7 question of Utah law, and you, as members of the  
8 Tribunal, would have jurisdiction to rule on this  
9 question, on this complex question of Utah law.

10 Then I am afraid that the jurisdictional 16:48  
11 objection would not stand, let alone on a -- by way  
12 of an objection brought to object to our *prima*  
13 *facie* standing to request provisional measures,  
14 which again is a completely odd motion, which has  
15 caused so many submissions and part of the time 16:49  
16 allocated to this first session.

17 Now, the company incorporated in 1995 was  
18 dissolved in 2001, and according to Respondent,  
19 from that moment it could not have brought actions,  
20 it could not have traded, it could have not done 16:49  
21 anything, let alone the F-type reorganization. And  
22 I think then they say it was moreover then  
23 bankrupt, and then that F reorganization type was  
24 not valid under Utah law. That's the argument made  
25 by Respondent. And then a suggestion that there 16:50

1 may have been some fraud, because the asset  
2 belonged to the bankruptcy in between the lines, to  
3 read that. I would like to address these  
4 arguments.

5 First, the fact that a company is 16:50  
6 dissolved under Utah law, we submit, doesn't  
7 prevent it to, under Utah law, to continue its  
8 corporate existence, to wind up, including  
9 liquidation of business and affairs.

10 Actually what happened is that in 1985, 16:50  
11 there were bankruptcy proceedings relating to this  
12 company. During these bankruptcy proceedings, I  
13 would like to address the fact that at the time the  
14 assets of Rozmin were litigious, the shareholders  
15 of EuroGas had no interest whatsoever in this 16:51  
16 asset. Why? Because you know creditors, they want  
17 cash; they don't want a claim pending before local  
18 courts that would be subject to legal fees,  
19 uncertainty, arbitration, and so on.

20 And moreover, if you look at tab 18, and 16:51  
21 19, especially 19, 18 and 19, you have the  
22 Securities Exchange Commission disclosures. I just  
23 want to rebut any allegations of bad faith on our  
24 part, to say that these assets, including the fact  
25 that they were litigious, were disclosed in a 16:51

1 public filing. So anybody who is remotely  
2 intelligent and wants to hide an asset does not  
3 make this disclosure in a Securities Exchange  
4 Commission filing.

5           Moreover, that asset was expressly 16:52  
6 disclosed and discussed within the context of the  
7 bankruptcy proceedings, but did not interest  
8 anyone. You have it at tab 20. A trustee of a  
9 creditor company filed an application before the  
10 bankruptcy court, and, attached to it, the 16:52  
11 Securities Exchange Commission disclosure of that  
12 asset.

13           And tab 21 is a proof that the trustee of  
14 the bankruptcy acknowledged receipt of that motion  
15 and its enclosures. 16:52

16           Now, coming to the second point, F-type  
17 reorganization. Is that possible or not? If you  
18 look at tab 23, you have Respondent's position, if  
19 I am not misconstruing, that says an F-type  
20 reorganization under Utah law is not possible once 16:53  
21 the company is dissolved, let alone once it is  
22 bankrupt.

23           I mean, I appreciate Respondent's  
24 position, but I am afraid Respondent is wrong. The  
25 F-type reorganization was entered into, pursuant to 16:53

1 legal advice and drafting by a Utah lawyer.  
2 Second, if you look at tab 22, you would see two  
3 instances of a Utah judge approving, recognizing  
4 the validity of an F-type reorganization between  
5 two companies, including with two that have been 16:54  
6 dissolved. These are different cases where this  
7 was recognized by a Utah judge. So that, I am  
8 afraid -- maybe Ohio or Cleveland will also in one  
9 day accept F-type reorganization. But in any  
10 event, Respondent, assuming it had standing and 16:54  
11 knew the jurisdiction, you cannot be more Catholic  
12 than the Pope, especially in a motion -- *prima*  
13 *facie* odd motion to dismiss our provisional  
14 measures, based on Respondent's failure to like, or  
15 difference in opinion as regards a F-type 16:55  
16 reorganization.

17 And there is no evidence submitted by  
18 Respondent today that this type of reorganization  
19 was invalidated by any courts, let alone a Utah  
20 court. So as a matter of Utah law, we are, 16:55  
21 EuroGas, a mere continuation of the company  
22 incorporated in 1985; we have the same structure,  
23 the same shareholders, the same liabilities and the  
24 same assets of the company.

25 To sum it up, the assets have been 16:55

1 disclosed, including in the bankruptcy. So there  
2 is no fraud. No bad faith. The type-F  
3 reorganization has been entered into upon advice by  
4 a Utah lawyer and has been recognized, as we have  
5 proven in two instances, by a Utah judge. And 16:56  
6 three, the companies have the same management, the  
7 same corporate structure, the same shareholder  
8 base, the same assets and the same liabilities.  
9 This has been accepted by the other majority  
10 shareholder; it has been accepted by Rozmin, it has 16:56  
11 been accepted by the parent company, the Australian  
12 company of Rozmin. It just displeases Respondent  
13 who has, at the very best, assuming it has  
14 standing, a form as opposed to substance argument  
15 to serve you. 16:56

16 And finally, and in any event, assuming  
17 Respondent were to prevail in a subsequent motion  
18 during the course of the proceedings, the majority  
19 shareholder will accompany you all the way. So it  
20 does not warrant bifurcation and its position will 16:57  
21 actually be reinforced by these very same arguments  
22 of Respondent.

23 So I do not need to repeat why we are  
24 those against bifurcation and we propose that we  
25 exchange calendars on this issue. I think this can 16:57

1 be a -- the dispute is straightforward. There are  
2 not that many documents on the merits. On  
3 jurisdiction, Respondent says it has pleaded its  
4 case, it doesn't have much more to offer, and we  
5 can conclude this arbitration with a 3-or 4-day 16:57  
6 hearing at the end of this year. Our Statement of  
7 Claim can be submitted within 10 to 15 days, even  
8 earlier, if you want, and a 3-4-day hearing on all  
9 issues will, we submit, be sufficient.

10 Now on the last issue, security for 16:58  
11 costs. Security for costs, we all know that it is  
12 in extreme exceptional circumstances that it is  
13 warranted. I thought I had one of these extreme  
14 cases with *Saba Fakes v. Turkey*, but Prof. Gaillard  
15 thought otherwise. It was a crazy case. It was a 16:58  
16 claimant who was fronting for the Uzan family,  
17 claiming \$19 million. He had no asset, no track  
18 record of being an investor. And I think even in  
19 that case it was denied. I think there is only  
20 one case where it has been granted and that case, 16:58  
21 it was because it's isolated, it's highly  
22 criticized. It's RCM, yes, and it was a bit  
23 illogical case that has no bearing on this one,  
24 because it was a serial killer, and it was a serial  
25 repeat claimant bringing claims that were all 16:59

1 dismissed, and that left Respondent without the  
2 possibility of recovering costs.

3 Now, are exceptional circumstances  
4 gathered? The motion -- we submit of course not.  
5 Respondent -- It reminds me of a wine expression, 16:59  
6 a pertinent expression that says, "We drank all the  
7 alcohol, but they are the ones that are drunk." We  
8 have been expropriated. They have not even given  
9 us, assuming the expropriation was correct, a  
10 single dime of compensation after we have de-risked 16:59  
11 the bloc, which you will see is worth hundreds of  
12 millions of dollars.

13 They have harassed us for the provisional  
14 measures. They have harassed us, obtained all of  
15 our documents, caused us to file these, and now 17:00  
16 they want security for costs. I mean, that is  
17 quite extraordinary, and they have nothing to  
18 support their position except third-party funding.  
19 And I think third-party funding is misunderstood by  
20 most. 17:00

21 Third-party funding acts just like a  
22 bank, and in fact it improves the situation of the  
23 Claimants, because otherwise the Claimants would  
24 have had access to the additional resources or  
25 would have lent money, and in case of defeat, would 17:00



1 have had to reimburse that. Whereas this is not  
2 the case for third-party funding. So I think a  
3 reality check is necessary to understand how a  
4 third party functions, and in any event, it does  
5 not alone justify a measure for security for costs. 17:00

6 That closes our submission and we thank  
7 you for your attention.

8 THE PRESIDENT: Thank you very much. I  
9 think a break of 10 minutes is to be taken now.

10 PROF. STERN: Maybe just one question. 17:01

11 In the famous Joint Unanimous Consent Resolution of  
12 2008, so this resolution is between a Utah  
13 corporation dissolved in 2001 and the Utah  
14 corporation formed in 2005, and it is said made  
15 retroactively effective to November 15, 2005. So 17:01  
16 this is provided for in Utah law? Because this is  
17 very seldom.

18 DR. GHARAVI: I believe that it is. In  
19 any event, it has no -- we appreciate the question.  
20 We believe it is. It is there, assuming that is 17:02  
21 not possible, what relevance does it have, this has  
22 to be assessed. But in any event, the ----

23 PROF. STERN: Is there any rule on which  
24 you base your belief?

25 DR. GHARAVI: Again, this has been 17:02

1 drafted upon advice by a Utah lawyer. We take that  
2 advice as being conformed with the law, unless  
3 we've proven otherwise, either by a judge or by  
4 some other persuasive means of evidence.

5 THE PRESIDENT: So we take -- do you 17:02  
6 have a question?

7 PROF. GAILLARD: No.

8 THE PRESIDENT: Ten minutes break, until  
9 5:11, by my watch.

10 (Recess taken - 5:03 p.m.) 17:03

11 (Proceedings resumed - 5:14 p.m.)

12 MR. ANWAY: Thank you, Mr. Chairman and  
13 distinguished members of the Tribunal. You will  
14 come to hear about how we would talk about the  
15 timing of the parties' comments on the 3 documents 17:15  
16 we attempted to enter into the record two days ago.  
17 We would ask that the transcript from this hearing  
18 be made available prior to us offering our initial  
19 comments. We'd like the Tribunal to compare many  
20 of the remarks that Dr. Gharavi said during this 17:15  
21 hearing with what you see in those documents. And  
22 in our correspondence commenting on those 3  
23 documents, we will compare again many of the  
24 statements made with those submissions.

25 Now, there are of course two applications 17:15

1 for provisional measures at issue. One is the  
2 Claimants' request in connection with the Slovak  
3 criminal investigation... (short interruption by  
4 the reporter.)

5 The first application is, of course, the 17:17  
6 Claimants' application with respect to the Slovak  
7 criminal investigation. I want to be clear from  
8 the outset, because Dr. Gharavi did not mention  
9 this in his remarks, that the criminal  
10 investigation was not started by the Slovak 17:17  
11 Republic *sua sponte*. It was not started on its own  
12 accord. The criminal investigation was started by  
13 a private individual who used to work with Mr.  
14 Rauball in EuroGas. That private individual claims  
15 to have knowledge that this arbitration is brought 17:17  
16 on a fraud and he filed of his own accord -- the  
17 government was not involved in this; he filed a  
18 criminal complaint with the Slovak criminal  
19 authorities.

20 Now, it probably is not surprising to 17:17  
21 anyone in this room, but the Slovak criminal  
22 authorities are not familiar with investment treaty  
23 arbitration. They simply received a criminal  
24 complaint from a private individual, claiming to  
25 have knowledge that an action had been brought 17:18

1 against the State based on a fraud. And the Slovak  
2 criminal authorities did what they do in the normal  
3 course. They investigated.

4 Now, we heard some statements this  
5 morning, some of which again we will compare to the 17:18  
6 3 documents we attempted to put in the record a few  
7 days ago, others of which I simply have no idea  
8 what the record support for it is, and I would ask  
9 the Claimants to identify today the source of these  
10 statements. The first is that the Slovak 17:18  
11 authorities -- quote-unquote -- "stormed our  
12 offices." That's at, I believe, page 77 of the  
13 record, lines 15 to 16, it was said twice.

14 In fact, the seizure of documents was not  
15 at EuroGas's offices at all. It was to a private 17:18  
16 individual that used to serve as an accountant for  
17 the company. The person is no longer even an  
18 employee, the records were sitting in the basement  
19 of a private residence. It was further stated that  
20 we say -- quote-unquote -- "we intend to use it." 17:19  
21 That's page 51, lines 21 to 22.

22 I'd like the record citation where we  
23 said we were going to use it to the contrary and,  
24 as I'll explain later, we have represented to the  
25 Tribunal we have not read the documents and indeed, 17:19

1       except under limited circumstances in which they  
2       might put this investigation at issue, we will not  
3       read them, and I will come to that at the end of my  
4       presentation.

5               Now, as I mentioned, the Slovak criminal       17:19  
6       authorities, upon reading this criminal complaint,  
7       were not familiar with investment treaty  
8       arbitration, and proceeded to investigate in the  
9       normal course. Since then, and out of deference to  
10       this tribunal, the criminal proceedings have been       17:19  
11       suspended, the documents have been returned. Mr.  
12       Gharavi said copies were returned. That's not  
13       true. Again, another factual misstatement. The  
14       originals were returned. And the criminal  
15       proceeding will not proceed while this arbitration       17:20  
16       is ongoing and, as I will describe, members of the  
17       Tribunal, this effectively renders the Claimants'  
18       application moot.

19               Now, the second request for provisional  
20       measures is, of course, from the Slovak Republic,       17:20  
21       for an order requiring Claimants to post security  
22       for the Slovak Republic's costs in this proceeding.  
23       Over the next 45 minutes, you will hear how there  
24       has never been a case that has cried out for an  
25       order for security for costs as much as this one.       17:20

1           As we will describe, a United States  
2 court has found that EuroGas and Mr. Rauball have  
3 provided false testimony under oath about matters  
4 that, contrary to what Claimants say, are similar  
5 to and related to the matters in this arbitration, 17:20  
6 that they have conspired to conceal assets -- that  
7 is a finding from a U.S. court -- and that they  
8 have reneged on payment obligations, even when the  
9 court has been the one that ordered them to pay.  
10 And in fact, the Claimants misrepresentations have 17:21  
11 continued in front of this tribunal.

12           On this slide you see the name of the  
13 Claimant: EuroGas Inc. As Mr. Alexander will  
14 describe, the Claimants represented that the  
15 Claimant in this arbitration, EuroGas Inc., was a 17:21  
16 Utah corporation incorporated in 1985. We are  
17 going to show you the slide later where Claimants  
18 state that this is a company -- the Claimant in  
19 this arbitration that was incorporated in 1985, and  
20 it acquired the investment in the late 1990s. 17:21

21           Upon receiving the Claimants' papers with  
22 that representation, we did our own research of  
23 Utah corporate records and we found out that was  
24 not true. That was not true. In fact, what we  
25 found was there are, or were, two EuroGas 17:22

1 companies, and the two EuroGas companies are  
2 completely distinct from each other.

3 The first was in fact the 1985 company.  
4 That's the one you see on the left, and the second  
5 is the EuroGas company that was incorporated in 17:22  
6 2005. We refer to these as EuroGas I and EuroGas  
7 II. We had to give them those names because  
8 Claimant never told us any of this. We had to  
9 figure this out on our own.

10 What is so important about it is the 17:22  
11 investment here in Rozmin was held by EuroGas I  
12 and, as we will show, only EuroGas I, and it  
13 acquired that alleged investment in the late 1990s.  
14 And, as you already know, that corporation was  
15 dissolved in 2001, it ceased to have legal 17:23  
16 existence in 2003, that's the two-year period in  
17 which it could have sought reinstatement, but did  
18 not. And even though the corporation did not have  
19 a legal existence in terms of being able to  
20 transact business, purchase things, sell things, 17:23  
21 and so forth, its assets, if they had not been  
22 otherwise liquidated, can still be put in -- the  
23 entity can still be put into bankruptcy.

24 So not only was there the company being  
25 dissolved in 2001, it's ceasing to exist in 2003, 17:23

1 it was then put into bankruptcy and it lost control  
2 over all of its assets. And Mr. Alexander will go  
3 into detail with respect to both the company being  
4 dissolved, ceasing to legally exist, and  
5 bankruptcy.

17:23

6 This is a serious misrepresentation that  
7 was made to the Tribunal and to the Slovak  
8 Republic, perhaps not surprising, given the  
9 misrepresentations that the U.S. court found  
10 EuroGas and Mr. Rauball made, and it has very  
11 serious consequences.

17:24

12 Moreover, the Claimants effectively have  
13 no substantial business activities ongoing. You  
14 did not hear Claimants dispute that today. And  
15 it's undisputed that they have no money to fund  
16 this litigation, which is, of course, why there is  
17 a third-party funder.

17:24

18 As you listen to Mr. Alexander today, I  
19 would invite you to ask yourselves, members of the  
20 Tribunal, if the Slovak Republic receives an order  
21 for costs, is there any reasonable chance based on  
22 Claimants' history of being adjudicated to have  
23 engaged in fraud, concealed assets, non-payment of  
24 obligations and their complete lack of funds, is  
25 there any reasonable chance that the Slovak

17:24

17:24



1 Republic will actually recover its costs as ordered  
2 by the Tribunal? We submit the only answer to that  
3 question is no.

4 Now, let me turn to the organization of  
5 our presentation today. After this introduction, 17:25  
6 Mr. Alexander will describe that the Tribunal does  
7 not have *prima facie* jurisdiction to even grant  
8 Claimants' application. In view of that, I will  
9 then describe how the Tribunal and why the Tribunal  
10 should order Claimants to post security for costs, 17:25  
11 and, finally, I will conclude with a more detailed  
12 analysis of what is left of Claimants' application  
13 for provisional measures, which I said is  
14 effectively moot now.

15 So we turn first to the topic of *prima* 17:25  
16 *facie* jurisdiction, and as the Tribunal is aware  
17 and as this slide shows, *prima facie* jurisdiction  
18 is a requirement for granting Claimants' requested  
19 interim measures. Claimants have not disputed  
20 that. But, as Mr. Alexander will describe and as I 17:25  
21 foreshadowed this morning, the jurisdictional  
22 objections in this case are so serious, so  
23 obviously problematic, that you should not even  
24 feel the basic comfort that you have the  
25 jurisdiction to order what the Claimants ask. 17:26

1                   What are those jurisdictional objections?

2                   Well, based on what we've been able to find thus  
3                   far, there are four categories of them, and I say  
4                   categories because they could be individualized  
5                   further. But two categories for them, two for each  
6                   Claimant. 17:26

7                   Dr. Gharavi said today that it is --  
8                   quote-unquote -- "not contested that Belmont is the  
9                   57 percent shareholder, and that in our best case  
10                  scenario on jurisdiction, EuroGas would be 17:26  
11                  dismissed and Belmont would remain." I stress  
12                  again, that is fundamentally not true. As you can  
13                  see, there are two jurisdictional objections with  
14                  respect to EuroGas II, which is a claimant in this  
15                  proceeding, and, two, with respect to Belmont. Any 17:26  
16                  of these categories of jurisdictional objections  
17                  would dismiss the entire case, if taken together;  
18                  one from EuroGas II or one from Belmont. It would  
19                  entirely dispose of the case.

20                  The first is, as I have already 17:27  
21                  described, EuroGas II is not the entity that owned  
22                  the alleged investment and it has no standing to  
23                  bring this claim. The second is that the Slovak  
24                  Republic denied the benefit of the U.S. BIT to  
25                  EuroGas II, because it does not and has never 17:27

1 conducted substantial business activities in the US  
2 and it is undisputed that it is controlled by  
3 nationals of a third party.

4 I want to pause here. We heard today  
5 that it was bad faith to deny the benefits of the 17:27  
6 treaty. I want to be clear about two things. As  
7 the members of the Tribunal know, there are often  
8 various issues with denial of benefits. One is  
9 whether it applies retroactively versus  
10 prospectively; another is whether it applies to the 17:27  
11 arbitration right itself, That is, whether you can  
12 benefits not only of substantive rights, but also  
13 of procedural rights. The ECT is fairly clear that  
14 it can only be the denial of substantive rights,  
15 because it refers to different chapters. But under 17:28  
16 United States bilateral investment treaties, and  
17 there have been a variety of cases on these issues,  
18 including *Pac Rim*, including *Ulysseas v. Ecuador*.  
19 In those cases, they were dealing with the exact  
20 same provision that is at issue in this United 17:28  
21 States bilateral investment treaty, and it is  
22 drafted broadly enough to apply to both substantive  
23 rights and procedural rights.

24 When the Slovak Republic denied the  
25 benefits to the treaty, it applied the benefits 17:28

1 including the right to arbitration itself. And we  
2 move now to the question of whether it's  
3 retroactive or not retroactive, even if you  
4 analyzed it and concluded it was only prospectively  
5 denied. Because the denial happened before the 17:28  
6 arbitration was filed, it would still operate to  
7 deny the benefits, even under a prospective theory  
8 which we do not necessarily adopt. That's the  
9 denial of benefits.

10 With respect to Belmont, the Claimants 17:28  
11 have publicly represented, as early as 2002 and as  
12 late as 2009, that Belmont transferred its  
13 57 percent interest to EuroGas I, and therefore,  
14 Belmont is not an investor under the Canadian BIT  
15 and has no standing to bring the claim. Dr. 17:29  
16 Gharavi stated that it is not contested Belmont is  
17 still the owner of the 57 percent shareholding.  
18 That, too, is simply false.

19 And, fourth, in any event, the Canadian  
20 BIT only applies to disputes that arose after 14 17:29  
21 March 2009 -- this is the 3-year reach-back  
22 provision in the Canadian BIT -- and therefore the  
23 Tribunal does not have jurisdiction *ratione*  
24 *temporis* over Belmont's claims, because it's  
25 bringing the claims under the Canadian BIT. 17:29

1                   With that background, Mr. Chairman, I ask  
2 your leave to pass the floor to Mr. Alexander, who  
3 will address the four *prima facie* categories of  
4 jurisdiction.

5                   MR. ALEXANDER: Members of the Tribunal, 17:29  
6 Dr. Gharavi, the proceedings before the Tribunal  
7 today have their genesis more than 10 years ago at  
8 a time when the first EuroGas entity, which we have  
9 called EuroGas I, was in severe financial crisis, a  
10 crisis which soon led to its bankruptcy and its 17:30  
11 related inability to develop and exploit the mining  
12 concession at issue in this proceeding. But before  
13 its own bankruptcy occurred, EuroGas and its  
14 principals, as Mr. Anway explained, including Mr.  
15 Rauball, were parties to several lawsuits in a 17:30  
16 Texas bankruptcy proceeding. That bankruptcy dealt  
17 with a debtor by the name of McKenzie, with whom  
18 EuroGas and Mr. Rauball had been affiliated.

19                   Because these proceedings and the  
20 judgments entered there ultimately led to the 17:30  
21 bankruptcy of EuroGas I, it is important background  
22 to an understanding of what has transpired with  
23 respect to EuroGas and its principals and, most  
24 importantly, its ongoing efforts to conceal assets  
25 beyond the reach of creditors. 17:31

1           In the McKenzie bankruptcy, a bankruptcy  
2 charged with responsibility to maintain assets and  
3 protect those assets for the benefit of creditors  
4 filed a number of lawsuits against EuroGas and its  
5 principals, including Mr. Rauball. That led to a           17:31  
6 judgment of joint and several liability of  
7 \$115 million against Mr. Rauball, his brother, and  
8 then EuroGas itself.

9           Now, what is significant there,  
10 particularly for these proceedings, were the           17:31  
11 movement of assets beyond the creditors' reach, and  
12 the manipulation of bankruptcy activities is front  
13 and center in this proceeding. What is important  
14 about those findings in particular is that there  
15 was a judgment on very specific activities.           17:32

16           The court found, as a matter of fact and  
17 law, that there was a conspiracy and that the  
18 co-conspirators were judged to have conspired to  
19 hide assets from creditors and the bankruptcy  
20 estate. They were judged to have given false           17:32  
21 testimony in sworn affidavits and before the United  
22 States District Court itself.

23           That document is in your bundle, at tab  
24 5, it's a stunning document. Those findings are,  
25 of course, both serious and worthy of caution. We           17:32

1 respectfully submit that the Tribunal should view  
2 the representations of EuroGas and Mr. Rauball with  
3 particular caution, especially those  
4 representations which relate to the movement of  
5 assets beyond the reach of creditors. 17:33

6 Equally important, because EuroGas and  
7 Mr. Rauball were found to have acted with willful,  
8 careless and reckless indifference to the rights of  
9 creditors and the bankruptcy estate, punitive  
10 damages were also awarded by the United States 17:33  
11 Bankruptcy Court. These are very serious judicial  
12 findings, and I do not say this lightly, but  
13 regrettably this pattern of asset manipulation to  
14 achieve concealment and false representation has  
15 continued, as we will show, both in the subsequent 17:33  
16 bankruptcy of EuroGas itself and more recently  
17 before this Tribunal.

18 That began with EuroGas's initial  
19 representation in its Request for Arbitration, that  
20 it was -- quote -- "legally constituted under the 17:34  
21 laws of the United States on October 7th, 1985."

22 We submit that false representation was  
23 made because Claimant now asserts that the  
24 Tribunal's jurisdiction as to EuroGas actually  
25 rests upon it. In fact, the corporation identified 17:34

1 by EuroGas as the 1985 company, EuroGas I, was  
2 dissolved as a matter of law on July 11, 2011, and  
3 we discovered these facts not from the Claimant or  
4 any disclosures made to the court, but through a  
5 detailed review of corporate records in Utah and in 17:34  
6 a detailed review of bankruptcy files.

7 It's undisputed that their status as a  
8 Utah corporation expired on July 11, 2001. It's  
9 also undisputed that the company did not seek  
10 reinstatement within the two-year statutory period, 17:35  
11 at which point under settled Utah law it became  
12 devoid of legal existence as a matter of Utah law.  
13 Without legal existence, its directors and officers  
14 simply had no power to act on its behalf and,  
15 therefore, the so-called transfer document, the 17:35  
16 special resolution between the old company and the  
17 new company that was entered into some five years  
18 after these directors and officers, were without  
19 legal authority to act on behalf of the company.  
20 As a result, it is a legal nullity. It's 17:35  
21 undisputed that EuroGas never filed for  
22 reinstatement.

23 I want to pause here to note that we are  
24 dealing with two separate and independent legal  
25 regimes. There is the sovereign law of Utah which 17:36



1 deals with the status of corporations and the legal  
2 effect of dissolution, and in the event of  
3 dissolution proceedings, Utah law determines when  
4 an entity ceases to exist, and of particular  
5 importance here, the question of when the authority 17:36  
6 of the directors and officers ceases to exist.

7 The second legal regime is U.S.  
8 bankruptcy law. It's applicable in all 50 of the  
9 United States. Bankruptcy law determines the  
10 process through which assets of the bankrupt are 17:36  
11 marshaled, administered and liquidated, and central  
12 to the operation of bankruptcy law is something  
13 known as the so-called automatic stay, which  
14 basically provides that the property of the  
15 bankrupt estate cannot be obtained or controlled by 17:36  
16 any persons other than the trustee. Bear that  
17 notion in mind when you think about what happened  
18 on that five-year later secret agreement,  
19 transferring supposed interests from the old  
20 EuroGas company to the new EuroGas company. 17:37

21 On the undisputed documents of record,  
22 both of these legal regimes and the rules that I am  
23 going to explain further are sufficient standing  
24 alone to defeat standing and jurisdiction. Each  
25 one is sufficient standing alone. The bottom line 17:37

1 is that the Claimant does not own the investment  
2 under either legal regime. It simply does not.

3 I want to turn back first to Utah law.  
4 The Utah Division of Securities has jurisdiction  
5 over corporations, and that division has 17:37  
6 unsurprisingly held that merger is not consistent  
7 with liquidation or winding up and is not  
8 authorized by statute. And the answer to Prof.  
9 Stern's question: Is there a provision in law that  
10 allows retroactivity? The answer is: Absolutely 17:38  
11 not.

12 And, equally important, a dissolved  
13 corporation has no officers or directors to act on  
14 its behalf.

15 Now, EuroGas carefully avoided any 17:38  
16 mention of these facts or of the purported transfer  
17 of assets in its Request for Arbitration and simply  
18 led the Tribunal to believe that EuroGas II, the  
19 Claimant, conveniently named the same as EuroGas I,  
20 was the same entity and had somehow held the 17:38  
21 interest. We submit that EuroGas's failure to  
22 describe this fairly, particularly given the  
23 serious issues raised, was not inadvertent. Utah  
24 law provides that having failed to seek  
25 reinstatement, EuroGas was dissolved and it has 17:39

1 never been reinstated.

2 I am going to come back to the two  
3 authorities cited by Dr. Gharavi in a short period  
4 of time, but one thing to bear in mind at the  
5 outset is there has been no suggestion that EuroGas 17:39  
6 went through such a process. There is no court  
7 order in this record respecting the so-called  
8 Schedule F proceeding that he described for other  
9 authorities. There is no suggestion in this record  
10 that that ever happened here. 17:39

11 So *Holland v. Callister*, an important  
12 case. The case holds lacking a legal existence,  
13 the corporation could not assert a cause of action.  
14 That was the asset at issue in that case.

15 Obviously, consistent with that case, 17:39  
16 EuroGas could not transfer such an action or other  
17 assets, precisely because it had no directors or  
18 officers who could act on its behalf five years  
19 after it was dissolved.

20 Of course, the sham document, C-57, that 17:40  
21 purports to transfer the interest, necessary for  
22 the Tribunal's jurisdiction, purports to be  
23 executed by the directors of the former  
24 corporation. But Utah law is clear. Because that  
25 corporation no longer had existed and had not for 17:40

1 six years, it had no directors or other persons who  
2 could act on its behalf. And particularly  
3 important for these proceedings, because the  
4 corporation was dissolved without reinstatement, it  
5 was without legal standing, and that's the holding 17:40  
6 of the court in *BioTrust v. Division of*  
7 *Corporation.*

8 Similarly, in *Hillcrest*, the court  
9 recognized that if the winding up process -- and  
10 this is key here, this is the death knell of this 17:40  
11 Schedule F discussion we are having. *Hillcrest*  
12 says that if the winding up process of a dissolved  
13 corporation will extend beyond the two-year period  
14 -- here it was five years -- for the final  
15 dissolution, the corporation must apply for 17:41  
16 reinstatement to continue to act as a legal entity.  
17 That didn't happen here.

18 In short, an assignment executed by a  
19 dissolved corporation without directors and  
20 officers is a nullity. The holding in *Hillcrest* 17:41  
21 quite clearly invalidates the purported assignment  
22 upon which this tribunal's jurisdiction is claimed  
23 to exist.

24 I think it's worthy to note that this is  
25 not a rule of law unique to Utah. Indeed, the 17:41

1 United States Supreme Court held almost a hundred  
2 years ago now that the dissolution of a corporation  
3 puts an end to its existence, the result of which  
4 may be likened to the death of a natural person.

5 As a result, under Utah law, EuroGas I ceased to 17:41  
6 legally exist on 11 July 2003, two years after  
7 dissolution without reinstatement, and officers and  
8 directors had no capacity to act thereafter. The  
9 assignment by EuroGas of supposed assets to EuroGas  
10 II more than five years later was a legal nullity, 17:42  
11 but it was part of the effort that began in the  
12 events described in the judgment that led to a  
13 \$115 million award, to keep the assets of EuroGas  
14 and its affiliates beyond the reach of creditors.

15 On the undisputed documents of record and 17:42  
16 as a matter of the law of Utah concerning  
17 dissolution, the Claimant, EuroGas II, has no *prima*  
18 *facie* basis to claim an investment in the Slovak  
19 talc interest.

20 Now, there is a separate and independent 17:42  
21 reason that the Claimant in this proceeding has no  
22 standing -- EuroGas. That analysis requires us to  
23 turn to the involuntary bankruptcy proceedings of  
24 EuroGas I. Before we do, we note that the judgment  
25 for \$113 million in EuroGas's involuntary 17:43

1 bankruptcy preceded Rozmin's loss of the mining  
2 concession in Slovakia. Those events of bankruptcy  
3 and that enormous judgment happened before Rozmin  
4 ever lost the mining concession in Slovakia.

5 Now, the first step of significance in 17:43  
6 the bankruptcy proceeding was the so-called order  
7 of relief issued by the bankruptcy court in Utah,  
8 after a trial on the question of whether the  
9 involuntary bankruptcy was appropriate. After the  
10 dissolution of EuroGas under Utah law, there were 17:43  
11 several years, several years passed, and then this  
12 involuntary proceeding in bankruptcy was brought.

13 You'll recall that the original McKenzie  
14 bankruptcy proceedings had been pending in the  
15 United States Bankruptcy Court in Texas. When the 17:44  
16 \$113 million judgment and several other judgments  
17 against EuroGas and Mr. Rauball were not satisfied,  
18 the Texas bankruptcy trustee brought a separate  
19 bankruptcy proceeding which thrust EuroGas  
20 involuntarily into bankruptcy. 17:44

21 Now, this is a point totally missed in  
22 the papers responsive to what we have filed. There  
23 is no response to what I am about to describe to  
24 the Tribunal. EuroGas lost the ability to deal  
25 with its assets under U.S. bankruptcy law. It no 17:44

1 longer had the capacity. Indeed, U.S. bankruptcy  
2 law imposes an automatic stay against any activity  
3 with respect to the bankrupt's assets. So a  
4 retroactive recitation into the period of the  
5 bankruptcy is nonsensical, as a matter of U.S.  
6 bankrupt law.

17:45

7 EuroGas and the corporate shell had no  
8 assets after its bankruptcy. As the court in  
9 *Permacel* held, the Chapter 7 debtor does not emerge  
10 from bankruptcy. Instead, its assets are  
11 liquidated, and at the end of the bankruptcy  
12 proceedings the company is defunct. Similar  
13 holding in *U.S. Dismantlement*. In becoming a  
14 defunct corporation, the corporation cannot own or  
15 pursue a cause of action, because a cause of action  
16 is an asset, and this is very important: which  
17 must be listed on the schedule of assets. Standard  
18 procedure in a bankruptcy. The court puts on an  
19 order requiring asset schedules to be provided and  
20 a statement of financial affairs. In so holding,  
21 the court there specifically noted that the intent  
22 of the U.S. Congress in denying this charge to a  
23 corporation was to prevent trafficking in corporate  
24 shells. This is a classic case of that conduct.

17:45

17:45

17:45

25 Now, EuroGas's Rejoinder criticizes these

17:46

1 authorities, because they are unpublished, and  
2 actually suggests, purportedly in reliance upon an  
3 Eighth Circuit Court of Appeals rule, that this  
4 fact alone renders them without precedential value.  
5 I confess to having been a member of the U.S. bar 17:46  
6 for over 37 years and I have never heard this  
7 argument. It can't be reconciled with the current  
8 rule of the Federal Rules of Procedure 32.1, which  
9 says: "A court may not prohibit or restrict the  
10 citation of federal judicial opinions, orders, 17:46  
11 judgments, or other written dispositions that have  
12 been: Designated as 'unpublished'."

13 Indeed, even a current subsidiary rule of  
14 the Eighth Circuit would permit use of an  
15 unpublished opinion if the opinion has persuasive 17:46  
16 value, and obviously it's for the Tribunal to  
17 decide that question.

18 The more important question is the  
19 Claimants' inability to cite a single authority for  
20 the proposition that is essential to sustain its 17:47  
21 jurisdiction here, the Tribunal's jurisdiction,  
22 that an assignment of an asset executed by a Utah  
23 director after its legal existence had ceased can  
24 be effective. There is no authority in their  
25 submissions that addresses that in any respect, 17:47



1 especially after a bankruptcy in which the asset  
2 was not scheduled.

3 The primary thrust of Claimants'  
4 Rejoinder is to turn frankly U.S. bankruptcy law on  
5 its head. The Rejoinder actually claims in what 17:47  
6 may be one of the more brazen suggestions this  
7 Tribunal will hear in this proceeding, that the  
8 trustee was aware of the EuroGas ownership of the  
9 talc interest through the ownership of Rozmin, but  
10 knowingly declined to administer this property and 17:48  
11 abandoned it in the bankruptcy.

12 While they represent to the Tribunal  
13 today and in their submission that assets were  
14 released back to the non-existent legal entity,  
15 they told the world in their SEC filing before 17:48  
16 EuroGas was delisted for failure to comply with  
17 securities law, that all of its assets had been  
18 sold. And I quote from EuroGas's securities  
19 filings: "EuroGas Inc.'s remaining assets were  
20 sold at public auction." 17:48

21 I want to ask a simple question. Does  
22 EuroGas ever plausibly answer the question of how  
23 it could tell the world, and the investing public  
24 in particular, that EuroGas's assets had been sold  
25 in an involuntary bankruptcy, and then magically 17:49

1 and secretly it has only a few months later  
2 purported to transfer assets by which a new EuroGas  
3 II conveniently steps into the shoes of EuroGas I?  
4 What EuroGas's documentary trail does reveal,  
5 however, is a scheme reminiscent of the concealment 17:49  
6 which led to the \$113 million judgment against it  
7 in a Texas bankruptcy proceedings. As before, its  
8 scheme involved deceit of the bankruptcy trustee  
9 and the court.

10 Now, let me explain how that occurred. 17:49  
11 First of all, EuroGas cannot dispute that it was  
12 ordered, actually ordered, by the bankruptcy court  
13 to schedule all of its assets.

14 "Tell us what you've got so that we can  
15 administer the assets." This is a standard 17:49  
16 procedure in U.S. bankruptcy law. The purpose, of  
17 course, is to enable the trustee to understand the  
18 value of the assets and to permit the trustee to  
19 administer them. It's undisputed that the United  
20 States Bankruptcy Court issued a court order 17:50  
21 requiring EuroGas and its principals to schedule  
22 its assets and turn over its books and records to  
23 the trustee. Incredibly, it's also undisputed that  
24 EuroGas and its principals did not comply with the  
25 court's order, and they did not file a statement of 17:50

1 liabilities or a statement of financial affairs as  
2 required by the court's orders.

3 So we are responding now to arguments  
4 first raised in the Claimants' Rejoinder. We  
5 sought the Tribunal's leave in recent days to put 17:50  
6 into the record as R-81 the testimony of EuroGas's  
7 chief financial officer in open court in the  
8 EuroGas proceedings.

9 Respecting the Tribunal's directive, we  
10 are not going to comment on them at this time, but 17:51  
11 we do reserve, of course, our right to do so, and  
12 the Tribunal's order has made that possible.

13 Suffice it to say that the property in question was  
14 never scheduled, despite a court order to do so,  
15 and the evidence on record will show that once 17:51  
16 again EuroGas continued, continued its historic  
17 pattern of trying to prevent the proper  
18 administration by the bankruptcy trustee under  
19 applicable United States law, the very conduct that  
20 led to a judgment of conspiracy in the prior 17:51  
21 bankruptcy.

22 In the face of documentary evidence  
23 showing that EuroGas did not disclose the EuroGas  
24 interest in Rozmin on court ordered asset schedules  
25 and without any evidence whatsoever that an 17:51

1 abandonment proceeding was noticed or occurred --  
2 this is a specialized bankruptcy mechanism -- in  
3 its Rejoinder they simply suggest that the trustee  
4 knowingly decided not to administer the asset and  
5 abandoned it, abandoned the interest, which 17:52  
6 conveniently remained with the 1985 company.

7 As they wrote in their submission in sum  
8 upon termination of the Chapter 7 proceedings, the  
9 1985 company emerged with its interest in the talc  
10 deposits. 17:52

11 Stop and think about that for a minute.  
12 How convenient. Tell the world in an SEC filing  
13 that you had sold all of your assets, refuse to  
14 tell the truth to the bankruptcy court by refusing  
15 to schedule your assets, and file a statement of 17:52  
16 financial affairs as required by court order, and  
17 emerge with the asset upon which the claimant now  
18 asserts that the Tribunal has jurisdiction. It's  
19 really remarkable. The problem with it is that the  
20 law of the United States Bankruptcy Code absolutely 17:53  
21 forbids it.

22 EuroGas's Rejoinder suggests that the  
23 abandonment by the trustee of the interests in the  
24 talc deposit can be inferred. They attach the 10-K  
25 to a bankruptcy motion. Not a schedule of assets, 17:53

1 not a listing of the financial affairs. A 10-K was  
2 attached. And that's enough from which they ask  
3 the Tribunal to conclude, that you should infer  
4 that the trustee abandoned this asset. But the  
5 Bankruptcy Code doesn't treat these matters 17:53  
6 cavalierly. It provides that the scheduled  
7 property may be abandoned by court order upon  
8 compliance with basic procedural protections,  
9 notice in a hearing. Tell us what you want to  
10 abandon and why. 17:53

11 But it's undisputed here that the  
12 interests in question were never scheduled,  
13 precisely because EuroGas and its principals defied  
14 the court's order requiring asset schedules to be  
15 filed. 17:54

16 This record doesn't have any notice or  
17 hearing to abandon property upon which this  
18 Tribunal's jurisdiction now supposedly rests, let  
19 alone a procedure abandoning property that was not  
20 even scheduled. None of that happened here. 17:54

21 The case law under this statute is  
22 consistent. Unless property of a bankruptcy estate  
23 is administered by the bankruptcy trustee or  
24 abandoned in one of the ways outlined in the  
25 provision that we described, it remains property of 17:54

1 the bankruptcy estate, even after the bankruptcy is  
2 closed.

3 Now, what is the procedure if new assets  
4 are discovered later following the close of a  
5 bankruptcy case? The proper procedure is to apply 17:54  
6 to the bankruptcy court, notice in a hearing to  
7 reopen the case pursuant to the bankruptcy rule for  
8 the administration of assets. That didn't happen  
9 here.

10 Assets were not disclosed as required by 17:55  
11 court order. A secret document was used to  
12 effectuate a sham transaction for a dissolved Utah  
13 corporation, whose directors were patently without  
14 legal capacity to act. Respectfully, when we peel  
15 away the layers of this onion, this proceeding is a 17:55  
16 brazen attempt using a secret document, the  
17 purported transfer to EuroGas II executed by  
18 purported directors who had been without authority  
19 to act for many years.

20 Now, Mr. Gharavi has said this 17:55  
21 extraordinary transaction was taken on the advice  
22 of counsel, and I trust he will, of course, release  
23 to us, since he has put it in issue, that advice.  
24 We look forward to reading that with interest.

25 I want to turn now to the second 17:55

1 question. Mr. Anway has already spent some time on  
2 this, so I am going to move quickly through this.  
3 But the Slovak Republic denied the benefits of the  
4 U.S. BIT to EuroGas II, because it does not and has  
5 never conducted substantial business activities in 17:56  
6 the U.S., and it is controlled by nationals of a  
7 third party. The latter point, of course, is not  
8 in dispute. The question is, was there any  
9 substantial business and did the Slovak Republic  
10 have the right to exercise the denial of benefits? 17:56  
11 In the circumstances where there is a denial of  
12 benefits prospectively with respect to the  
13 procedural right of arbitration, of course that  
14 proceeding would typically take place after an  
15 investigation, and such an investigation occurred 17:56  
16 here.

17 Next slide, please.

18 And, of course, this is a statement of  
19 the treaty itself calling into question: Is there  
20 substantial business activity? 17:57

21 Now, here the absence of substantial  
22 business activities has not been seriously  
23 contested by the Claimant. We have listed here the  
24 summary of all of the records, citations which show  
25 that absence, most significantly the sale of all 17:57

1 their assets in 2006, the consistent failure to  
2 produce any revenue from the business, let alone in  
3 the United States, the elimination of all of its  
4 offices in the United States other than a so-called  
5 virtual office, failure to file audited financial 17:57  
6 statements which ultimately led to its delisting by  
7 the SEC; all these events consistent with a  
8 complete absence of substantial business in the  
9 United States.

10 I won't take time to -- because I know we 17:57  
11 are getting close to our limit here, but all of  
12 these are summaries of those particular items, with  
13 appropriate citations to the record.

14 I want to turn now to the question of  
15 Belmont itself. Mr. Gharavi remarkably asserted, 17:58  
16 no less than four times in his opening remarks,  
17 that it was not contested that Belmont was a  
18 shareholder in Rozmin since -- even after the share  
19 purchase agreement to EuroGas. That it was not  
20 contested, he said. Directing the Tribunal's 17:58  
21 attention to our initial submission in our  
22 application for provisional measures, at paragraph  
23 67, we noted: "Furthermore, Belmont was not a  
24 shareholder in Rozmin in 2005 because it had sold  
25 its 57% shareholding to EuroGas I in 2001." 17:59



1           And then again in our next submission, we  
2 noted: "Equally problematic for jurisdictional  
3 purposes, Claimants have not provided evidence that  
4 Belmont is a shareholder in Rozmin. On the  
5 contrary, Claimants confirm that Belmont sold its 17:59  
6 50% shareholding to EuroGas I in 2001. Claimants'  
7 assertion that the agreement is ineffective because  
8 its conditions were not met has oddly remained  
9 nothing more than an assertion."

10           Respectfully, Mr. Gharavi's 17:59  
11 representation to the Tribunal that we have not  
12 contested this issue is nonsense. We have  
13 contested it from the start and we continue to do  
14 so today vigorously.

15           The fact is that both Belmont and EuroGas 17:59  
16 representatives have said publicly, beginning in  
17 2002, and as recently as 2009, that the interest of  
18 Belmont in Rozmin, the 57 percent, was sold in its  
19 entirety in 2001 to EuroGas. And, therefore, the  
20 jurisdiction of the Tribunal is dependent upon the 18:00  
21 status of EuroGas as a defunct and dissolved  
22 corporation, without active directors to transfer  
23 the asset to EuroGas II. It all comes over to  
24 EuroGas.

25           The Tribunal will recall that we offered 18:00

1 evidence a few days ago. I will again respect the  
2 Tribunal's ruling with respect to that, but we urge  
3 the Tribunal to pay particular attention to the  
4 sworn testimony that will be reflected in those  
5 exhibits on this very question. 18:01

6 Finally, as Mr. Anway has explained, the  
7 Canadian BIT only applies to disputes that arose  
8 after 14 March 2009. It's clear on this record  
9 that this dispute had become concrete well before  
10 that date. 18:01

11 In closing, I want to respond to a couple  
12 of points that Mr. Gharavi made. His entire  
13 submission on these issues of Utah dissolution law  
14 and bankruptcy law was his citation to two  
15 so-called authorities from Utah lower courts. 18:01

16 THE PRESIDENT: Sorry to interrupt. What  
17 is the number of that slide, so that I can find it?

18 MR. ANWAY: This is slide 50, but it  
19 doesn't pertain to what is being discussed now.

20 MR. ALEXANDER: No. So I am really 18:02  
21 addressing in response a point that Mr. Gharavi  
22 made. I think the Tribunal should take note of the  
23 following. The so-called legal authorities are  
24 non-adversarial proceedings, meaning there was no  
25 litigation process involved. They were *ex parte* 18:02

1 submissions seeking reinstatement.

2 As I noted before, there is no evidence  
3 in this record that that ever happened with respect  
4 to EuroGas. So even if such a process would be  
5 recognized under Utah law, there is no suggestion 18:02  
6 that it in fact happened here and can be used as a  
7 basis to sustain the secret transfer from EuroGas I  
8 to EuroGas II.

9 Secondly, there is no suggestion in  
10 either of those cases, those non-adversarial cases, 18:02  
11 that there was any bankruptcy involved. That  
12 obviously has a profound impact on the question of  
13 whether or not those are permissible. I am  
14 referring to tabs 24 and 25 in Mr. Gharavi's  
15 bundle. And because there was no indication that 18:03  
16 bankruptcy was involved in either of those  
17 proceedings and because there is no indication in  
18 this record that such an order was ever signed as  
19 to EuroGas I and 2, I am not exactly clear what the  
20 suggestion is that is being made. Perhaps it could 18:03  
21 have been done, but it wasn't. EuroGas I remains a  
22 dissolved corporation without directors and  
23 officers at the time of the key event, which  
24 occurred five years after that dissolution  
25 occurred. 18:03

1                   And finally I would call the Tribunal's  
2 attention in particular to the *BioTrust* decision in  
3 our authorities. We've submitted it. One of the  
4 rulings he relies upon in a non-adversarial  
5 proceeding is quite clearly an effort to overrule a 18:04  
6 Court of Appeal's decision which itself had  
7 sustained the very propositions of law we have laid  
8 out for you.

9                   Another point worthy of note that was not  
10 mentioned by Mr. Gharavi is the *BioTrust* 18:04  
11 non-adversarial proceeding which he relies on as  
12 legal authority from a lower court. That case was  
13 actually dismissed for failure of prosecution, so  
14 the order never became final. An interesting  
15 proceeding. But I think it's significant that 18:04  
16 those are the only authorities, the only  
17 authorities, in Mr. Gharavi's submission this  
18 afternoon, to respond to what has been clearly  
19 established law in Utah and under the Bankruptcy  
20 Code. 18:05

21                   Thank you for your patience and  
22 attention.

23                   THE PRESIDENT: Thank you. It's been  
24 more than 45 minutes till now. So how you see the  
25 rest of your presentation. We are not going to cut 18:05

1 you just because it's 45 minutes, but --

2 MR. ANWAY: I think we probably have  
3 another 5 to 10 minutes. Is that something that  
4 would be objectionable to the Claimant?

5 DR. GHARAVI: Yes. Because we tried to 18:05  
6 stick to the calendar. We accept there is some  
7 flexibility, but if we knew, we would have brought  
8 a lecture on Utah law as well. I mean, 30 minutes  
9 on a *prima facie* motion on Utah law, of course we  
10 have an objection. We have to stick to the 18:05  
11 timetable, or at least reasonable, with one or  
12 two --

13 MR. ANWAY: Let me propose -- go ahead  
14 please.

15 THE PRESIDENT: Go on first. 18:05

16 MR. ANWAY: Let me propose, would we be  
17 able to use whatever time we took from now to the  
18 end of the presentation out of our rebuttal time?

19 THE PRESIDENT: I mean --

20 PROF. STERN: Could you do it in 18:06  
21 three minutes?

22 MR. ANWAY: Yes.

23 THE PRESIDENT: The Chairman grants you  
24 five.

25 MR. ANWAY: Thank you, Mr. Chairman. I 18:06

1 am going to speak very briefly then on the  
2 Tribunal's requested order for Claimants to pose  
3 costs for securities, and you will recall this  
4 morning that I had asked you to reserve judgment on  
5 bifurcation until you heard Mr. Alexander's 18:06  
6 description of the jurisdictional objections. I  
7 trust you now see why. And of course to just  
8 reflect for a moment on what you've just heard, we  
9 decided to put this timeline up to try to bring  
10 together two worlds. One is what was going on in 18:06  
11 the United States, this is the top timeline you  
12 will see here, and these dates are undisputed.

13 THE PRESIDENT: This is?

14 MR. ANWAY: This is slide 52. And on the  
15 bottom line you will see what was happening in the 18:07  
16 Slovak Republic. Now, the reason that we wanted to  
17 provide you with this timeline is because we think  
18 a comparison, a side-by-side comparison of what was  
19 going on in these two countries is extremely  
20 telling. You have heard the Claimants tell you in 18:07  
21 their papers, and again today, that the reason why  
22 they lost the license to the talc mine was because  
23 the Slovak Republic had taken it away and that was  
24 the reason they had to go into bankruptcy, that was  
25 the cause and effect. But in fact it's precisely 18:07

1 the opposite.

2 The bankruptcy began in 2004. In fact,  
3 it says commencement of the bankruptcy proceedings.  
4 This in fact is the order for relief from the  
5 court. The petition was filed back in May. The 18:08  
6 testimony we offered to you from the chief  
7 financial officer two days ago was in August. But  
8 the point here is that this was when the order for  
9 relief was granted by the court. But you will  
10 notice that the license was taken away after that. 18:08  
11 It is not the case that taking away the license put  
12 the Claimants in such financial trouble that they  
13 got put into bankruptcy. They were in bankruptcy  
14 before the license was taken away, and if there is  
15 any cause and effect here, you can quite clearly 18:08  
16 see during the entire 3-year period, this is the  
17 3-year statute that provided that the Slovak  
18 Republic shall revoke a license or transfer to  
19 another third party if there were 3 years of  
20 inactivity, 3 years of non-excavation to be more 18:08  
21 precise, the failure to initiate excavation within  
22 a 3-year period, then the Slovak Republic shall  
23 revoke the license or transfer it to a third party.

24 The 3-year period where there was no  
25 commencement of excavation is this red shaded area 18:09

1 here at the bottom. Is it any surprise that that  
2 period coincides with the period where EuroGas has  
3 no assets? It did not commence mining excavation  
4 because it had no assets during this time period.  
5 This is the time period when it was dissolved, when 18:09  
6 it ultimately lost its legal existence and then  
7 when it was put into bankruptcy, And it was only  
8 after all of those events happened that the license  
9 was taken away, after that 3-year period.

10 Claimants told you repeatedly today we 18:09  
11 had no response for the merits. To the contrary,  
12 the law provided that if there was not excavation  
13 commenced within that 3-year period the license  
14 shall be taken away and that is precisely what  
15 happened. Now, it is true that there were a number 18:09  
16 of appeals through the Slovak administrative and  
17 judicial system and Dr. Gharavi took you through  
18 some of those decisions today. But contrary to  
19 what the Claimants say, and this is crucially  
20 important, none of those appellate decisions ever 18:10  
21 ordered the return of a license to Rozmin to  
22 proceed under that license. Those appellate courts  
23 and administrative bodies found that there were  
24 procedural problems with the process by which the  
25 license was transferred to a new party. But the 18:10



1 court's findings were limited to that, to the  
2 procedural problems, it concluded there were  
3 procedural irregularities. That is why those  
4 higher judicial bodies remanded to the lower  
5 bodies.

18:10

6 These higher decisions effectively told  
7 the lower state bodies, "You are free to do it  
8 again, to assign the rights to a new party, but you  
9 must do so with the correct procedure." And it is  
10 true that several times they found the correct  
11 procedure was not followed.

18:11

12 But I want to be crystal clear about  
13 this, because Claimant continually misrepresents  
14 this. None of those decisions, not one of them,  
15 ever ordered that Rozmin was entitled to proceed  
16 under the license. And when you hear Claimants  
17 represent to you otherwise, it is simply untrue.

18:11

18 If this case ever reaches the merits  
19 phase, we will walk you through each one of those  
20 decisions and show you that and if, as we suspect,  
21 the Slovak Republic prevails in this action and has  
22 a costs award in its favor, who will pay the costs  
23 award? The company with the history of fraud as  
24 found by a U.S. court of concealing assets and that  
25 has no money? The third-party funder who will

18:11

18:11

1 claim that it is not a party to this proceeding and  
2 it is not bound by a costs award. And indeed it is  
3 for that reason that the RSM tribunal recently  
4 imposed security for costs against the claimant  
5 funded by a third party. And I will not take you 18:11  
6 through this in the interest of time.

7 I will respond to the Request for  
8 Provisional Measures from Claimants in one minute.  
9 We state that the application has effectively  
10 become moot. To show you that, we have put up on 18:12  
11 this slide, paragraph 68 of the Claimants'  
12 Application for Provisional Measures of June 8,  
13 2014, and we walk through each one:

14 "Order the Slovak Republic to maintain  
15 the *status quo*." 18:12

16 The Slovak Republic has already agreed to  
17 do that.

18 "Order the Slovak Republic to return all  
19 of the original documents seized."

20 The Slovak Republic has already done 18:12  
21 that.

22 "Order the Slovak Republic to undertake  
23 in writing that the documents and properties seized  
24 constitute the full set."

25 The Slovak Republic has already done 18:12

1 that.

2 "Order the Slovak Republic to refrain  
3 from using in these arbitration proceedings any  
4 material or documents seized."

5 We have already represented to you in 18:12  
6 writing we have not looked at the documents, that  
7 the organization from which we take our  
8 instruction, the Slovak Ministry of Finance, has  
9 not read those documents, and we commit to you,  
10 members of the Tribunal, we will not read those 18:13  
11 documents, much less try to put them in the  
12 arbitration, unless the Claimants make the seizure  
13 for the criminal investigation part of this  
14 proceeding, by alleging it is a violation of the  
15 BIT. We would obviously have to look at it in 18:13  
16 those instances. But we also commit to you,  
17 consistent with what the Tribunal in *Churchill*  
18 *Mining* did, that if we were about to put any  
19 documents seized into the record, we will seek your  
20 leave to do so first and, as mentioned, if the 18:13  
21 Claimants do not make it an issue in this  
22 arbitration, we will not even read those documents.

23 Claimants also ask the Slovak Republic to  
24 suspend the criminal investigation until the  
25 arbitration proceedings have concluded. The Slovak 18:13

1 Republic has already done that. And, finally,  
2 Claimants ask for an order that the Slovak Republic  
3 refrain from taking any measure of intimidation.

4           There is no evidence that the Slovak  
5 Republic has ever intimidated anyone and, as the 18:14  
6 tribunal in *Occidental v. Ecuador* found,  
7 provisional measures are not meant to protect  
8 against potential or hypothetical harm, rather they  
9 are meant to protect the requesting party from  
10 imminent harm. And that is clearly not the case 18:14  
11 here.

12           With that, Mr. Chairman, I close the  
13 Slovak Republic's opening submission.

14           THE PRESIDENT: Thank you, Mr. Anway.  
15 We, I think, will take a 10 minutes break. We will 18:14  
16 ask questions afterwards.

17           PROF. STERN: Just a very specific  
18 question.

19           THE PRESIDENT: Okay.

20           PROF. STERN: On the denial of benefits, 18:14  
21 I am not going to enter into the discussion whether  
22 it's retroactive or prospective, but I would like  
23 to test something you said. You said, even if we  
24 consider it's only prospective, it would apply, but  
25 the letter of 31 October 2011 says that EuroGas 18:15

1 consents to submit this investment dispute with the  
2 Slovak Republic to international arbitration. So  
3 do you really think that if it were prospective, it  
4 would still be able to annul this?

5 MR. ANWAY: We do. We believe the 18:15  
6 acceptance of the standing offer to arbitrate found  
7 in the BIT, it takes place when the Request for  
8 Arbitration is filed. That's when there is an  
9 exercise of the right. The right is not exercised  
10 in the letter to which you referred. The right is 18:15  
11 exercised when the arbitration is actually  
12 commenced, and the arbitration goes forward. That  
13 did not occur until after the denial of benefits  
14 letter was sent.

15 PROF. STERN: Okay. Thank you for your 18:15  
16 answer.

17 THE PRESIDENT: Thank you. So at 6:25 we  
18 will resume.

19 (Recess taken - 6:16 p.m.)

20 (Proceedings resumed - 6:35 p.m.) 18:35

21 THE PRESIDENT: We apologize, we are a  
22 little late. We are ready to listen to Dr.  
23 Gharavi.

24 DR. GHARAVI: President Mayor, thank you  
25 very much. I will, in this rebuttal, follow the 18:36

1 same order I used during my initial presentation,  
2 if you allow me, starting with why we started this  
3 arbitration, the merits.

4 I listened to this one-minute or  
5 two-minute rebuttal of our merits analysis, with 18:36  
6 the timeline used. I'm afraid that it will not  
7 come as a surprise that we're not impressed. It's  
8 normal because it is not possible to defend this  
9 case on merits. My learned colleague has said the  
10 argument we were opposed to at the time, that we 18:37  
11 should have built earlier within a 3-year  
12 requirement period, but then what do you do to the  
13 fact that we had a license up to end of 2006 and  
14 that our rights were revoked almost two years  
15 before. What do you do to the Head of the Mining 18:37  
16 District that comes and says that our works are in  
17 progress and that everything is in compliance with  
18 the law? What do you do with the abrupt nature of  
19 the taking without prior notice? What do you do  
20 with the absence of compensation? 18:37

21 Then the Supreme Court decisions, I am  
22 afraid, learned colleague, that you have to look at  
23 it with more detail, because if you look at tab 5,  
24 you will see -- Is it tab 5 of the 2008?

25 Our opening bundle -- is it tab 5, 2008 18:37

1 decision? Tab 4 then, 2008 decision, the Supreme  
2 Court of the Slovak Republic said that the --

3 PROF. STERN: Of 2007.

4 DR. GHARAVI: Yes, yes, and concluded  
5 that as a result, the taking of our rights was not 18:38  
6 in compliance with the law. Then further on tab 5,  
7 the 2011 Supreme Court decision went a step  
8 further, even said that the argument opposed to us  
9 on the merits regarding to the fact that we didn't  
10 start construction within the 3 years' period was 18:38  
11 not correct as a matter of Slovak law, and set out  
12 the extent of the investment we made.

13 So I think procedurally, substantively,  
14 under international law, local law, Respondent will  
15 lose. I mean, that is a fact. I mean, there is no 18:39  
16 room for any other conclusion.

17 And we will move on to the second point  
18 with the provisional measures. I mean, the  
19 provisional measures -- what we heard is that I  
20 misrepresented what happened. Maybe. If we play 18:39  
21 on words, I did. Did I steal your deliberation  
22 notes from your office, or from your hearing  
23 center, or from Professor Stern's computer? They  
24 took it. They took it from our accountant. It was  
25 our documents. It was stored there. 18:39

1                   Now, who prompted it? Of course, even  
2 the Slovak Republic, under these circumstances, has  
3 to give it a legal spin. But the document says  
4 what it says. It is in retaliation of the  
5 June 2014 filing, and without any basis other than 18:39  
6 we bring a large claim under a treaty. The  
7 document says what it says, and the result of the  
8 conclusion is that it was a retaliatory  
9 unacceptable measure.

10                   Now, Respondent is doing what precisely I 18:40  
11 said. We do it, cost-benefit analysis, we go  
12 there, we give originals, I apologize, we keep  
13 copies. That's the same thing. Some of us read  
14 it, others don't, and we move on. That's not how  
15 it works. First, even if they change their mind, 18:40  
16 they want to play the game, you have to say what  
17 happened is unacceptable; that it violates the  
18 integrity of the process, the equality of arms and  
19 our rights to preservation of confidential  
20 privileged information. 18:40

21                   Then now for the first time -- because we  
22 have been asking them to not use these documents  
23 and not read it, they provisionally said we would  
24 not do it until the provisional measures are ruled  
25 upon. 18:41



1                   So this is new. We are happy to add  
2 that, but you have to say that what they did is  
3 wrong. They have to ask the restitution of the  
4 copies even, otherwise it's too easy, and we don't  
5 want anyone near the counsel or the organs with 18:41  
6 whom counsel is in touch, that all organs of the  
7 state not to read it, nor use, let alone  
8 communicate the information which were in these  
9 documents. And also for the future we ask and  
10 maintain our request that the Tribunal assists us 18:41  
11 in monitoring that no information or documents  
12 prevailed, taken from this seizure is used in this  
13 arbitration.

14                   And, by the way, we still don't know,  
15 but I say this in passing, how they brought up this 18:41  
16 objection on EuroGas. They had all the time in the  
17 world to look at it during the cooling-off period.  
18 Of course, they looked at the EuroGas statute in  
19 Utah, and so on, but what prompted that, we do not  
20 know. 18:42

21                   I move on now to the third point, which  
22 is the objections. The objections, nothing said in  
23 rebuttal on how odd this objection is. Not a 41.1,  
24 not a 41.5, but one to stop us to request  
25 provisional measures. It's odd. It's odd, and I 18:42

1 might confess that they have a done a great job.  
2 And I feel a little bit embarrassed and offended,  
3 because it worked, because most of this first  
4 session we heard was devoted to Utah law, based on  
5 an objection not for you to hear our provisional 18:42  
6 measures.

7 So to some extent it worked. And  
8 congratulations. But it's odd, there is no  
9 precedent for such a motion. And then when we look  
10 at it, it is unfounded, be it at this stage or at a 18:43  
11 later stage. Because what we hear is that it's  
12 complicated, it's not as easy as they portrayed it.  
13 We heard a lecture on Utah law, reference to a  
14 variety of sources and the two fields of attack,  
15 namely, fraud, and this relation, and then the 18:43  
16 non-validity of the F-type reorganization was not  
17 seriously challenged. In fact, on the question of  
18 disclosure of assets, we talk about fraud,  
19 dissimulation, the fact that we said that we sold  
20 all assets. But look at the SEC filings. We said 18:43  
21 that there is this asset, that it is a litigious  
22 asset. We said it, and we said it also during the  
23 motions in the bankruptcy proceedings. There is a  
24 trustee of creditor companies that did it, that  
25 looked at this motion. There is a trustee of the 18:44

1 bankruptcy that looked at it. Nobody gave the  
2 slightest concern about this asset and everything  
3 went well, and the only person who is concerned  
4 today who does not really have an interest to act,  
5 -- and I haven't seen any justification of interest 18:44  
6 to challenge that what happened during the  
7 bankruptcy proceedings -- is Respondent. And it's  
8 relying on its form-over-substance argument in  
9 support of Utah law for the standing of one of the  
10 Claimants before an international tribunal, and 18:44  
11 that is, "Well, you did basically file it and the  
12 whole world knew about it, you did file that motion  
13 also in the bankruptcy, but in that schedule it may  
14 not have been there." I mean that's a  
15 form-over-substance argument. 18:45

16 And now on the F-type reorganization, it  
17 is interesting. Now they refer to our judgments,  
18 the two judgments where they agreed on F-type  
19 reorganization as authorities. That's good. They  
20 say, okay, it's lower courts' authorities. But 18:45  
21 they did it. They contradict this to Utah law  
22 judges, contradict Respondent's position that a  
23 dissolved company cannot enter into an F-type  
24 reorganization. And again, everybody is happy with  
25 what happened. The creditors are not contesting 18:45

1 that. The only person based on that  
2 form-over-substance argument that we didn't need to  
3 -- we didn't have this one ratified by the court,  
4 is asking you to dismiss our request for  
5 provisional measures. 18:46

6 Now, regarding EuroGas, all the argument  
7 is denial of benefits, and I must say that that is  
8 quite an audacious argument to say that, "okay, to  
9 be estopped, to raise this argument at this stage,  
10 the investor would need to file first a Request for 18:46  
11 Arbitration basically." So there is no cooling-off  
12 period, there is no notice, because if we serve  
13 notice, then you can revoke it and it's valid. I  
14 mean, just pure bad faith and nonsense.

15 Now, regarding Belmont, that's the most 18:46  
16 interesting thing for us, because that will  
17 determine whether or not bifurcation is warranted.  
18 On the dispute being ripe, I have not heard much.  
19 And how can you hear anything about the dispute is  
20 not ripe? Because you have this document where 18:46  
21 they said it's not premature, you have all these  
22 quotes of Supreme Court decisions. Respondent's  
23 own filing is that we lost a chance to claim  
24 expropriation because we didn't contest and follow  
25 up on the Supreme Court decision. So on the 18:47

1 rightness issue, it has to -- in any event, it  
2 relates to the merits, in any event. So that's  
3 gone.

4           What remains is that Belmont, is it a  
5 shareholder or not? This is a fact. I mean, we 18:47  
6 are playing on words. When we say Respondent  
7 doesn't contest that Belmont is the shareholder,  
8 we're talking about the legal shareholding. This  
9 Respondent cannot contest. If Respondent contests  
10 it, then I refer you to Exhibit C-74, which is a 18:47  
11 business register of the Slovak Republic that  
12 recognizes that Belmont is the majority  
13 shareholder, and has always been the majority  
14 shareholder since 2001 of Rozmin. So that's it.

15           You have to understand the following. I 18:47  
16 mean -- so legal shareholding, it's not contested  
17 for us. If it's contested, then it's not worth  
18 anything, because their own document shows -- and  
19 this is a fact.

20           Then the second thing is that yes, we are 18:48  
21 telling this Tribunal, yes, there was a  
22 contemplated sale of Belmont's shares to EuroGas.  
23 For a number of years, Belmont was optimist that  
24 this transaction, the conditions precedent will  
25 fully materialize. They did openly say that such 18:48

1 contemplated sale transaction occurred, yet the  
2 conditions precedent never materialized, never  
3 materialized. That is a fact.

4 Then I have heard nothing in rebuttal to  
5 the fact that now assuming Respondent knocks out 18:49  
6 EuroGas, then assuming that contemplated  
7 transaction materialized through payments made by  
8 EuroGas through the years of 2001 onwards, as it  
9 was contemplated, then that has to be re-done,  
10 because according to Respondent, they could have 18:49  
11 not carried out these transactions. And we have  
12 not heard anything about that.

13 Finally, it's an interesting debate.  
14 They are the legal shareholders. What is wrong  
15 with having a legal shareholder claim, if they are 18:49  
16 not abusing jurisdiction, if there is not a  
17 fraudulent transfer of shares for purposes of  
18 jurisdiction?

19 They are the legal shareholders. My  
20 learned colleague talked about a sham for purposes 18:49  
21 of jurisdiction of EuroGas in 2005. You have to  
22 give us a break. In 2005, first, it doesn't affect  
23 Belmont, plus don't forget, in 2005, we are not  
24 contemplating an arbitration to do this, and also  
25 the parent company of Rozmin, the subsidiary of 18:50

1 EuroGas, can bring a claim under the  
2 Austrian-Slovak treaty. So that teases of a sham  
3 for purposes of jurisdiction does not work, and  
4 there is nothing wrong as our alternative,  
5 alternative, alternative claim, assuming that 18:50  
6 transaction with EuroGas was implemented and was  
7 valid, that legal shareholder could bring a claim  
8 in the absence of a fraudulent scheme or a forum  
9 shopping or treaty shopping.

10 So I'm afraid that it will be a 18:50  
11 catastrophe, President Mayer, if this Tribunal were  
12 to bifurcate these proceedings, because at the end  
13 of the day, based on Respondent's best case  
14 scenario, the majority -- not the minority -- the  
15 majority, the legal and beneficial owner of this 18:51  
16 claim will be in this arbitration. I mean you will  
17 bifurcate, you will lose two years, you will render  
18 a decision, and then we will go on for another  
19 two years with Belmont, in the best case scenario  
20 of Respondent. 18:51

21 Now, security. Again, I fail to  
22 understand the exceptional circumstances.  
23 Respondent relies on a timeline regarding EuroGas,  
24 assuming the revocation came after the bankruptcy.  
25 You are a sophisticated tribunal. You know that if 18:51

1 the assets were not taken, you know that if the  
2 assets were not taken, and given that if the  
3 reserves were proven, that this was an asset which  
4 could have been sold for a large amount or which  
5 could have led to financing being raised. 18:52

6 And now let's move on and go what happens  
7 to Belmont? We forgot, Respondent forgets Belmont.  
8 Belmont is here. Belmont is here. It is a company  
9 in difficulty. We submit that had these assets not  
10 been taken, they would not have been in such a 18:52  
11 difficulty, and at the end of the day they are here  
12 and they will prevail on the merits. They have no  
13 jurisdictional issues and any costs allocation,  
14 assuming for the sake of argument that EuroGas  
15 would be dismissed, would be taken into 18:52  
16 consideration when allocating costs at the end of  
17 the day in relation to the final award and Belmont.

18 That closes our rebuttal.

19 THE PRESIDENT: Thank you. We are  
20 supposed to have a 10-minute break. 18:52

21 MR. ANWAY: I can save us that break.  
22 Unless the Tribunal has any questions, we don't  
23 believe that anything Dr. Gharavi just said  
24 requires a response.

25 THE PRESIDENT: I was not saying the 18:53



1 break, but also the rebuttal.

2 So the issue of bifurcation or not  
3 bifurcation is for us to solve, and we prefer to  
4 solve it today. So we are going to recess. Before  
5 we do, we would like to know, from each party, how 18:53  
6 long it would take to file a certain memorial. I  
7 think, Dr. Gharavi, that you said that your  
8 memorial was almost ready, you could file it  
9 within?

10 DR. GHARAVI: If you give us 15 days, 18:54  
11 that would be greatly appreciated. If you give us  
12 15 days just to do the finetuning, we would  
13 appreciate it. If you want it sooner, it can be  
14 available sooner.

15 THE PRESIDENT: Question to Respondent: 18:54  
16 How long, if we were to bifurcate?

17 MR. ANWAY: If you were to bifurcate, we  
18 would be prepared to file our objections to  
19 jurisdiction likely within four weeks of receiving  
20 the Statement of Claim. 18:54

21 THE PRESIDENT: Four weeks. Then  
22 four weeks.

23 MR. ANWAY: Then we'd be happy to file  
24 our reply on jurisdiction. So it would be reply on  
25 jurisdiction and I don't think we need more than 18:55

1 four weeks for that either.

2 THE PRESIDENT: Okay. You wanted to ask  
3 something else?

4 PROF. GAILLARD: No. I was just curious  
5 to see if the parties, what they had in mind. We 18:55  
6 started to have some elements in either -- we have  
7 not decided anything, but you know in either way,  
8 just not the first step, but more generally what  
9 wouldn't fall, just so that we have the picture to  
10 choose between scenarios which are a little more 18:55  
11 concrete than it will be first or it will be a  
12 waste of two years or -- you know, something more  
13 concrete, that's all.

14 MR. ANWAY: As I say, we are able to  
15 speak with some particularity if the proceeding is 18:55  
16 bifurcated and, as I say, for either of our  
17 submissions we will not need more than four weeks,  
18 so it can be expedited indeed. The proposal we  
19 would suggest, as I mentioned at the beginning, is  
20 they file their Statement of Claim first, we do the 18:56  
21 bifurcation after that. We can do it in an  
22 expedited way to avoid delay as much as possible.  
23 We have not considered the scenario in a  
24 non-bifurcated situation because it would require  
25 extensive consultation with a damages expert, with 18:56

1 other types of experts that may be relevant on the  
2 merits, and so on and so forth. That's something  
3 that I think we would have to consult within our  
4 team, and perhaps even with our quantum experts,  
5 about how long that might take. 18:56

6 But this is precisely the point. All of  
7 those costs and all of that time will be avoided if  
8 there is bifurcation, and if we don't prevail on  
9 jurisdiction with respect to both Claimants, it  
10 will certainly narrow the issues going forward. So 18:56  
11 with respect to bifurcation, we can answer that  
12 with some particularity. Without bifurcation, it  
13 becomes much, much fuzzier.

14 DR. GHARAVI: Yes, but that's not fair,  
15 because then, my learned colleague is an 18:56  
16 experienced counsel and also Slovakia is an  
17 experienced respondent. So I think we all know how  
18 much time you need. It's going to be either 2  
19 months, 3 months, 4 months, or a little bit within  
20 that timeline. We have to play the game. I mean 18:57  
21 Respondent wants us to shoot first, to submit the  
22 Statement of Claim, to have all of our pleadings in  
23 full and then bifurcate. So again the --

24 THE PRESIDENT: Supposing, so that we  
25 have a complete picture for our discussion, 18:57

1 because we have not made any decision yet,  
2 supposing we were inclined to bifurcate --

3 DR. GHARAVI: Yes.

4 THE PRESIDENT: -- would you like it to  
5 happen after you have filed your memorial on the 18:57  
6 merits, on jurisdiction and on the merits?

7 DR. GHARAVI: Before.

8 THE PRESIDENT: Before?

9 DR. GHARAVI: Before, yes. Before,  
10 because then we will have time to do even a better 18:57  
11 job. But let's go into that hypothesis, because it

12 will be dramatic if you ultimately decide that with  
13 Belmont, or EuroGas stay, because then these  
14 proceedings will go for 3, 4 years, until you  
15 render an award and we think that's unacceptable 18:58

16 and to dismiss -- I don't need to repeat, to  
17 dismiss this case fully on jurisdiction, to spare  
18 it out on the merits, we would need to dismiss  
19 Belmont on the ripeness issue and on the fact we  
20 rule that it's not the owner. You have to dismiss 18:58  
21 it. No, so it's not only -- it's the legal owner,  
22 but that is not sufficient, because it's not the  
23 beneficial owner.

24 I'm afraid that we are going to spend  
25 four years together. And I suppose, if I may, if 18:58

1 we go fast, if we go and do the -- if we file the  
2 Statement of Claim and the memorial within 15 days,  
3 then Respondent, who already has said, has already  
4 put forward its jurisdictional objection, may need  
5 finetuning in a few weeks. It takes even 3 or 18:59  
6 4 months to submit its counter-memorial, assuming  
7 we need a second round. We may not even need a  
8 second round. In any event, everything will be  
9 closed by the end of this year or early next year.

10 THE PRESIDENT: What about -- if you want 18:59  
11 to --

12 MR. ANWAY: Yes. In a bifurcated  
13 scenario, if Dr. Gharavi would prefer that we file  
14 our jurisdictional objections first, we would be  
15 willing to do so. We would prefer to have their 18:59  
16 claim first so we know the exact claim to which we  
17 are raising our jurisdictional objections. But if  
18 he prefers that we file our jurisdictional  
19 objections first, we are prepared to do so and  
20 again we are prepared to do so within the next four 19:00  
21 or five weeks.

22 I have a proposed schedule that I might  
23 offer to the Tribunal along the lines of what we  
24 were just describing, if that would be helpful.

25 If the Claimant were to file the 19:00

1 Statement of Claim, the Statement of Claim could be  
2 filed on March 31st. I think that's roughly the  
3 amount of time you asked for. If the Claimant  
4 wishes for more time, we are perfectly happy to do  
5 that. 19:00

6 The only reason we're trying to speed up  
7 the bifurcation is for the Claimant to address  
8 their concern about delay. We don't have any  
9 desire to speed up the bifurcation process. We are  
10 trying to do that as an accommodation to the 19:00  
11 Claimant.

12 March 31st for the Statement of Claim.

13 April 28 for our memorial on  
14 jurisdiction.

15 26 May for the response on jurisdiction. 19:00

16 23 June for the reply on jurisdiction.

17 And 21 July for the rejoinder on  
18 jurisdiction.

19 That puts us in the middle of summer.

20 It's hardly significant delay, and you have seen 19:00  
21 the gravity of the jurisdictional objections at  
22 issue.

23 Now, we can propose a similar schedule  
24 where we file our jurisdictional objections first  
25 if Claimants would prefer to do that as well. We 19:01

1 are open to the Tribunal and in your hands on that  
2 issue. We are trying to be accommodating on this  
3 issue, but the one thing that is extremely  
4 important to Slovakia is that these jurisdictional  
5 objections be bifurcated, because of the costs 19:01  
6 involved, because particularly if our request for  
7 security on costs is denied, that will drive up the  
8 costs significantly to be litigating merit issues,  
9 to be litigating quantum issues, and to have no  
10 type of security guaranteeing that if there is an 19:01  
11 order for costs in favour of the Slovak Republic at  
12 the end of the proceeding, that they are actually  
13 able to collect that amount.

14 PROF. GAILLARD: Just to try to  
15 understand what you are saying. If we were minded 19:01  
16 to bifurcate and if we were minded to tell you "you  
17 start," would you just --

18 MR. ANWAY: We are happy to do.

19 PROF. GAILLARD: So what you say, if I  
20 summarize this, is that for each period you need 19:01  
21 one month. I mean, you can do the whole thing in a  
22 month from now, and then whatever time is discussed  
23 with the other side, then you would need a month to  
24 answer.

25 MR. ANWAY: That's correct. 19:02

1           PROF. GAILLARD: So that's what I  
2 understood. So it's correct. Then you would  
3 suggest, so you start the answer --

4           MR. ANWAY: We file a reply, they file  
5 their rejoinder. 19:02

6           PROF. GAILLARD: They file a rejoinder.  
7 So now we have the same question, I guess, for this  
8 scenario again, and I guess it would be true also  
9 for the other scenarios. We would have to have the  
10 Claimants' vision of if they file, whenever you 19:02  
11 have -- you, Respondent, have filed your full case  
12 on jurisdiction, which we understand will have a  
13 significant element of Utah law and U.S. Bankruptcy  
14 Law, and so on, which would be presumably new for  
15 the Claimants. How much time the Claimants would 19:02  
16 require in that scenario?

17           MR. ANWAY: Let me just offer --

18           PROF. GAILLARD: You said one month, one  
19 month, but you started to think about it, and they  
20 have not. 19:03

21           MR. ANWAY: That's true. Of course, we  
22 will give them the time they need to file their  
23 memorial. That is only the time that we think --

24           PROF. GAILLARD: No, that's fair enough.

25           MR. ANWAY: There is one caveat I should 19:03



1 make here, which is we are not envisioning any type  
2 of document production, at least we haven't  
3 discussed that in this hearing today relating to  
4 jurisdiction. We would ask the Claimants to  
5 produce the transactional documents relating to the 19:03  
6 sale, or the alleged sale, of the 57 percent  
7 interest between Belmont and EuroGas back in 2001.

8 As we talked about earlier today, the  
9 document that is in the record is a document we  
10 found and put in the record. The signed original 19:03  
11 document has not been put in the record by the  
12 Claimants or any other related transactional  
13 documents and that the production of those  
14 documents would be necessary to move forward. Save  
15 for that, we don't think that a document production 19:03  
16 phase would be necessary. And, of course, we  
17 believe that kind of document would be necessary to  
18 sustain jurisdiction on which they have the burden  
19 in any event.

20 DR. GHARAVI: Yes. And how do you 19:04  
21 contemplate -- may I ask you, how do you  
22 contemplate, in the event the Tribunal decides for  
23 jurisdiction, to deal with the Belmont ripeness?  
24 Don't you think we have to go and discuss the  
25 merits? Do you think we have to analyze the law, 19:04

1 the timing of the expropriation, the Supreme Court  
2 decisions? How can that be dealt with, without  
3 going into the merits and within close -- quick  
4 exchanges.

5 MR. ANWAY: This is precisely the reason 19:04  
6 we would prefer to have you file the Statement of  
7 Claim, so we know the specific claim to which we  
8 are raising the jurisdictional objections. But if  
9 you decide that you would rather have us file the  
10 jurisdictional objections first, we believe there 19:04  
11 is sufficient detail in your pleadings thus far in  
12 the case to enable us to make the jurisdictional  
13 objection.

14 PROF. GAILLARD: So then I have the same  
15 question now. 19:04

16 DR. GHARAVI: Subject to seeing what we  
17 haven't seen -- I don't know if it's going to come  
18 with two legal opinions, no legal opinions, how  
19 many court decisions -- we would say 6 weeks to 8  
20 weeks. We are happy to proceed as soon as 19:05  
21 possible. When I say my clients are sick and they  
22 have strokes, and they will not be able to testify,  
23 maybe, if this is prolonged, it's true. The guy  
24 has a pacemaker. He is not going to be here maybe  
25 in 2 or 3 years to testify, even on your 19:05

1 jurisdictional issues, and we are going to have a  
2 fight on the merits regarding Belmont. You want  
3 our Statement of Claim for that. You know that  
4 it's linked to the merits. And if we do a  
5 timetable on the merits, you will see we will 19:05  
6 finish, by next year, everything.

7 THE PRESIDENT: What is it linked to the  
8 merits, can you elaborate a little?

9 DR. GHARAVI: Belmont, when we say --  
10 Respondent says the dispute should have been 19:05  
11 brought earlier than 3 years before the entry into  
12 force of the new Canadian Treaty. That's the  
13 ripeness argument regarding Belmont. So we have to  
14 look at the issue of estoppel. Okay. This we can  
15 look at without going to the merits. But then if 19:06  
16 that is not enough to dismiss the objection, then  
17 we have to look at when the dispute arose.

18 Correct? They themselves are claiming that it  
19 arose -- we failed to implement the Supreme Court  
20 decisions and that it started an expropriation 19:06  
21 case. But then at the same time, they say, "we  
22 should have brought it over earlier, because it was  
23 ripe then."

24 So we are going to go into the merits of  
25 analyzing the Supreme Court decisions, all of them, 19:06

1 to show that that is in any event a separate cause  
2 of action, assuming that they prevail on their  
3 motion that some of the disputes arise earlier and  
4 there was no estoppel. That's why they want our  
5 Statement of Claim. So we are going to have a -- 19:07  
6 first, we think Belmont will stay. There is no  
7 question about it, and in any event, the objections  
8 are related to the merits.

9 MR. ANWAY: May I respond to that? The  
10 facts that bear on whether Belmont's claim 19:07  
11 predated, was a dispute that predated the 3-year  
12 reach-back period are based on effectively  
13 undisputed facts that there was a decision from a  
14 court on this day, whatever that means. There  
15 doesn't have to be a resolution of what that means, 19:07  
16 what that court decision means. There doesn't have  
17 to be a resolution of merit issues to determine the  
18 jurisdictional issue.

19 When the particular events happened, that  
20 a court decision was handed down on a particular 19:07  
21 day and that the lower court transferred the mining  
22 license to a third party again, this time  
23 procedurally proper or not, those are facts. Those  
24 facts don't need to be resolved in terms of what  
25 they mean under public international law to 19:08

1 determine when they occurred.

2 The point is that nothing needs to be  
3 resolved that's in dispute concerning the merits to  
4 address that jurisdictional objection, and of  
5 course that's only one of three jurisdictional 19:08  
6 objections we have identified. The other three  
7 have nothing to do with the merits of this dispute.  
8 So we don't think any issues have to be decided on  
9 the merits to address these jurisdictional  
10 objections. 19:08

11 DR. GHARAVI: Regarding Belmont, there  
12 are two issues. One is this, which is absolutely  
13 link to the merits and the other is legal  
14 beneficial ownership, and it's a hundred percent  
15 sure they are legal owner, and we claim that we are 19:08  
16 also beneficial. So we will state --

17 MR. ANWAY: But that's not an issue that  
18 pertains to the merits of the case.

19 DR. GHARAVI: No, but I would say there  
20 are two issues. 19:08

21 PROF. GAILLARD: Do you accept on the  
22 Respondent's side that at least the legal ownership  
23 would be clear, or what is the position with  
24 respect to the legal ownership?

25 MR. ANWAY: As it related to the merits? 19:09



1 and/or EuroGas I did not care to register the  
2 ownership by EuroGas I in the Slovak Commercial  
3 Registry, but it had absolutely no impact  
4 whatsoever on the validity of the underlying  
5 transaction, the transfer of ownership title to 19:10  
6 EuroGas I.

7 THE PRESIDENT: Thank you. You have the  
8 possibility of answering --

9 DR. GHARAVI: It's their own document  
10 that proves that we are the legal owner of the 19:11  
11 57 percent shares. So that is a fact.

12 Now, according to Slovak law, if legal  
13 ownership registered within their own company does  
14 not in practice amount to true legal ownership, I  
15 mean, that's something that they would have to 19:11  
16 plead in due course. That has not been pleaded.  
17 This is a reality: 57 percent legal ownership.  
18 That's the legal reality that is registered in your  
19 own courts. So I'm afraid that bifurcating based  
20 on the theory of this gentleman just defies logic. 19:11  
21 We are the legal owners.

22 MR. PEKAR: Mr. Chairman, I would  
23 normally propose that we address this point in our  
24 submissions after this session, because then we can  
25 provide proper analysis under Slovak law and I 19:12

1 understand the difficulty for the Tribunal, because  
2 we haven't, neither party has adduced the relevant  
3 Slovak law authorities to resolve this point.

4 As a qualified Czech lawyer -- and this  
5 regulation dates back from the times of 19:12  
6 Czechoslovakia actually, this is frankly something  
7 which is taught in the first year of commercial  
8 law, that the registration in the business register  
9 is not constitutive. It's only something which is  
10 there registered, if either the entity that 19:12  
11 acquired the ownership or the company itself cared  
12 to register it. That's all. It has no legal  
13 effect other than create some rebuttable  
14 presumption of ownership for good faith purposes  
15 with respect to third parties, to be exactly 19:13  
16 concrete. But the underlying ownership issue  
17 cannot be resolved just by looking at who is the  
18 registered owner.

19 THE PRESIDENT: Okay. I think that's  
20 probably the end of this discussion. So we are 19:13  
21 going to come back as early as we can.

22 (Recess taken - 7:13 p.m.)

23 (Proceedings resumed - 7:55 p.m.)

24 THE PRESIDENT: We have not made many  
25 decisions. We have decided on the third-party 19:56



1 funder. We think that the Claimants should  
2 disclose the identity of the third-party funder,  
3 and that third-party funder will have the normal  
4 obligations of confidentiality.

5 On the other issues, we will decide 19:56  
6 later. The problem of bifurcation or no  
7 bifurcation is very complex and we would like to  
8 take a little more time to think about it, and  
9 decide probably within or after a week from now.  
10 But since we are here together, we would like to 19:57  
11 envisage the two scenarios with bifurcation and  
12 without bifurcation. That is to some extent linked  
13 with the issue of the three new documents. We  
14 think that maybe you need a week or less to file  
15 your explanations, your arguments. 19:57

16 MR. ANWAY: We could be -- plenty of  
17 time, we are happy to do that within that time  
18 period.

19 THE PRESIDENT: Okay. So that would lead  
20 us to the 24th of March. And we thought 10 days to 19:58  
21 react?

22 DR. GHARAVI: Yes, that's fine.

23 THE PRESIDENT: Okay. The 3rd of April.

24 DR. GHARAVI: Yes.

25 THE PRESIDENT: So let's look at the 19:58

1 scenario with bifurcation. Respondent shoots first  
2 on jurisdiction.

3 MR. ANWAY: This is to be clearly  
4 envisioning a scenario where the Claimant has not  
5 filed any Statement of Claim. 19:58

6 THE PRESIDENT: That's right. And you  
7 requested 4 weeks which -- well, if it started now,  
8 that would make things more easy for some issues of  
9 the month of August. But since we are not at all  
10 sure that there will be bifurcation, we understand 19:59  
11 that maybe you wouldn't like to start working  
12 before knowing. What do you say?

13 MR. ANWAY: I think that's right.

14 THE PRESIDENT: So the 4 weeks would  
15 start on -- yes, the date for your memorial on 19:59  
16 jurisdiction will be on the 24th of April.

17 MR. ANWAY: Mr. Chairman, if I can make  
18 one note. We had noted that we did not envision a  
19 document production phase in a bifurcated scenario,  
20 but that was under the assumption that Claimant 19:59  
21 disclosed the Belmont to EuroGas transactional  
22 documents regarding the sale of the 57 percent  
23 interest and any modifications to it thereafter.  
24 So we obviously need to have that disclosure in  
25 sufficient time if we are talking about a 4-week 20:00

1 period, to be able to properly analyze it and  
2 address it in our submission.

3 THE PRESIDENT: Would you object to that?

4 DR. GHARAVI: If there is bifurcation, we  
5 have no objection to disclosing these or any other 20:00  
6 documents that may -- we may ourselves wish to even  
7 produce more for you to address in advance. So we  
8 would have no objection in the event of  
9 bifurcation.

10 THE PRESIDENT: And why not in the other 20:00  
11 scenario? I mean --

12 DR. GHARAVI: That would first --

13 THE PRESIDENT: That is necessary, that  
14 is needed for our decision on provisional measures.  
15 That's part of the decision on provisional 20:00  
16 measures, since you put the jurisdictional  
17 arguments within your argument on provisional  
18 measures.

19 DR. GHARAVI: We would need to comment  
20 back and forth again on this point. I thought you 20:01  
21 would need that for the jurisdictional objections,  
22 the first round.

23 MR. ANWAY: Our position on this issue is  
24 that it is the Claimants' burden, if they are to  
25 advance a request for provisional measures, to 20:01

1 satisfy the Tribunal that it has *prima facie*  
2 jurisdiction. We have contended today that they  
3 have not satisfied that burden. That may be for a  
4 variety of reasons, but one of them is it has not  
5 put in the documentary evidence to establish the 20:01  
6 proposition that they are asserting, which was that  
7 the 57 percent interest was not transferred. This  
8 document that was put into the record, as I noted,  
9 was the document of sale transaction in 2001  
10 regarding the -- 20:01

11 THE PRESIDENT: We have not read these --  
12 I am talking about the documents that you filed.

13 MR. ANWAY: Okay. The document that I  
14 was stating we needed production of, and I  
15 understood you agreed, to produce was the 2001 20:02  
16 agreement between Belmont and EuroGas regarding the  
17 sale of the 57 percent interest and any documents  
18 that modified that arrangement thereafter, which  
19 are different than those 3 that we attempted to put  
20 in the record 2 days ago. That's I think why I was 20:02  
21 confused.

22 THE PRESIDENT: I at least was confused,  
23 and I thought that concerned EuroGas, and not  
24 Belmont. In fact it's --

25 MR. ANWAY: It's both. 20:02

1 THE PRESIDENT: It's both?

2 MR. ANWAY: It's both. The 3 documents  
3 we attempted to put in the record we understand  
4 will be after this hearing admitted into the  
5 record, and we will comment upon those within the 20:02  
6 next week. But with respect to the separate  
7 agreement between EuroGas and Belmont in 2001  
8 regarding the sale of Belmont's 57 percent  
9 interest --

10 THE PRESIDENT: That's for jurisdiction. 20:02

11 MR. ANWAY: That's for jurisdiction.  
12 That's what we need produced, to be able to file  
13 our jurisdictional objections and any modifications  
14 to that arrangement.

15 THE PRESIDENT: So in that scenario of 20:03  
16 bifurcation, and you accept to produce these  
17 documents?

18 DR. GHARAVI: Yes.

19 THE PRESIDENT: And that should be done  
20 as soon as possible. 20:03

21 DR. GHARAVI: Once you decide hopefully  
22 not on bifurcation, then we will produce as soon as  
23 possible. We have -- we believe to have  
24 everything. We certainly have the 2001 agreement,  
25 and we should have the rest. If not, we will be in 20:03

1 a position to get them all promptly to you, yes.

2 THE PRESIDENT: Supposing we decide  
3 bifurcation immediately, you will produce?

4 DR. GHARAVI: Yes, yes, yes, yes, that is  
5 fine. 20:03

6 THE PRESIDENT: Okay. Now, 24th of  
7 April. How long would you need?

8 DR. GHARAVI: On the representation that  
9 Respondent has put its case forward, it has nothing  
10 much more to say. We would need 6, 7, 8 weeks, 20:04  
11 unless Respondent comes with legal opinions, many,  
12 many --

13 THE PRESIDENT: Sorry.

14 DR. GHARAVI: That's in the event of  
15 bifurcation, yes. If Respondent does not wish to 20:04  
16 bring in legal opinions --

17 PROF. GAILLARD: Maybe you should ask  
18 squarely what -- do you intend to have legal  
19 opinions or is that in the costs or not... (off  
20 mic.) 20:04

21 I'm sorry, I was asking the Respondent  
22 whether they have in mind to have the -- because we  
23 heard the short version today, I guess. But do you  
24 have in mind to give legal opinions to support  
25 these statements, because that is another game that 20:05

1 if it's just legal or legal argument on these  
2 points of law, it's different.

3 MR. ANWAY: Would you permit me to  
4 consult with my colleagues on that question? Thank  
5 you, sir. (Short pause.)

20:05

6 We cannot foreclose the possibility that  
7 we may put into evidence a legal opinion on, for  
8 example, Utah law or Slovak law, concerning the  
9 issue you asked about earlier, Prof. Gaillard.

10 PROF. GAILLARD: That is what I  
11 suspected, at least, that you would consider that.

20:05

12 MR. ANWAY: We cannot foreclose that  
13 possibility --

14 PROF. GAILLARD: -- saying, given what  
15 your case is, I would suspect that's a possibility,  
16 and that is in fairness for the Claimant. They  
17 should know that when we discuss the calendar.

20:05

18 MR. ANWAY: That's a fair point.

19 DR. GHARAVI: If there are legal opinions  
20 on Slovak law especially, and Utah law, then it  
21 does no longer depend on me; it depends on the  
22 identification of the Slovak law. We could address  
23 that. Utah lawyers we have, or they can be  
24 available or not. We are looking into 2 and a half  
25 months, so it's not 6 or 7 weeks, if there are

20:06

20:06

1 legal opinions on both issues. So we'd say 2 and a  
2 half months to be on the safe side, and I have a  
3 further caveat that I want to introduce in regard  
4 to timing. It's that while you were away, there  
5 were preliminary discussions between my clients on 20:06  
6 this issue, but the turn this is taking, especially  
7 if there is a bifurcation, there may be -- I would  
8 say in the event of bifurcation, there is likely to  
9 be the need for separate counsel to represent the  
10 two Claimants, because their interests may at some 20:06  
11 point diverge. They have a common front on the  
12 merits, but some representations I have been taking  
13 in relation to EuroGas, Belmont -- so I am not --  
14 this is the instruction that I was given in between  
15 the breaks, it's that that contemplated scenario 20:07  
16 may concretize.

17 So you may have a new counsel that  
18 appears before you or you may have me, same  
19 counsel, but representing either EuroGas or  
20 Belmont. 20:07

21 THE PRESIDENT: But that happens whether  
22 there is bifurcation or not, because the  
23 jurisdictional issue is necessary there.

24 DR. GHARAVI: Yes, it would, but it would  
25 happen -- it would not have an impact on the time 20:07



1 frame, because the Statement of Claim at least will  
2 be issued. There is a common front on the merits  
3 on this issue. So they will have time to  
4 contemplate that and address that, without any  
5 impact on the timetable in 4 or 5 months, let's 20:08  
6 say, because a decision will be taken in the coming  
7 weeks.

8 PROF. STERN: In the Statement of Claim,  
9 you assert also that we have jurisdiction, so you  
10 have also jurisdictional arguments, I guess. 20:08

11 DR. GHARAVI: Yes. No, no, we don't have  
12 much on the jurisdiction. We have the *prima facie*  
13 jurisdiction. We don't go into details in  
14 addressing everything they say. It focuses on  
15 quantum, on merits and some aspects of 20:08  
16 jurisdiction.

17 But, to answer you, if there are no legal  
18 opinions, we need 6 weeks. I say we'd be happy to  
19 live with that. If there are legal opinions, then  
20 the ball is not in counsel's court or nor in my 20:08  
21 clients'. It depends on counsel. On the safe  
22 side, we would accept 2 and a half months. If  
23 another counsel comes in, it's a different story.

24 MR. ANWAY: Mr. Chairman, if the  
25 suggestion is that as soon as an expert report may 20:09

1 be submitted with any submission, all of a sudden  
2 we can't talk about schedule, then there'd be no  
3 point talking about a non-bifurcated schedule,  
4 because there will clearly be expert reports and,  
5 indeed, likely several of them. We would have to  
6 address quantum issues. There are all sorts of  
7 other issues.

20:09

8 THE PRESIDENT: In any case, there will  
9 be -- there may not be trifurcation, but there will  
10 certainly be bifurcation between liability and  
11 quantum. So what we are contemplating now is  
12 either bifurcation, already bifurcation on the  
13 issue of jurisdiction or no bifurcation on that,  
14 leading to liability.

20:09

15 Well, 2 months?

20:09

16 DR. GHARAVI: Yes, yes, 2 months is good.  
17 It will be more than enough, but if we see 3 or 4  
18 legal opinions, for example, we will make a motion  
19 and justify the motion for a reasonable delay.

20 THE PRESIDENT: So 24th of April brings  
21 us to 24th of June. Then one month brings us to  
22 the 24th of July. And then there is August. So  
23 normally it would be one month, which would bring  
24 us to the 24th of August, but we accept that's  
25 August, working in the whole month of August may be

20:10

20:11

1 too hard.

2 DR. GHARAVI: Yes, we would say 15th of  
3 September, would that be reasonable?

4 THE PRESIDENT: We have contemplated --  
5 yes, 15th of September. What is it? It's a 20:11  
6 Tuesday, yes? I think it's okay. 15th of  
7 September.

8 Then for the hearing, we probably do not  
9 need more than two days.

10 MR. ANWAY: I think that's right. 20:11

11 DR. GHARAVI: The scenario, two days. We  
12 have discussed and checked our availability and we  
13 would have two days available to be chosen between  
14 three days, which would be the 16th, 17th and 18th  
15 of November. Which do you prefer? 16, 17 or 17, 20:12  
16 18?

17 MR. ANWAY: Will you bear with me while  
18 our team checks the calendars?

19 THE PRESIDENT: Yes.

20 DR. GHARAVI: I am afraid we have an 20:12  
21 ICSID hearing on those dates. We have hearings the  
22 whole month of November.

23 THE PRESIDENT: In that case --

24 MR. ANWAY: You say you have hearings on  
25 each one of those days? 20:12

1 DR. GHARAVI: Yes.

2 MR. ANWAY: I am afraid I do as well.

3 THE PRESIDENT: Okay.

4 MR. ANWAY: It's different. It's an  
5 UNCITRAL arbitration. 20:13

6 THE PRESIDENT: We are busy in December.  
7 So that brings us to January, the beginning of  
8 January.

9 MR. ANWAY: Early January?

10 THE PRESIDENT: Early January? 20:13

11 That would be possible, the first week.

12 MR. ANWAY: I think that would be  
13 possible, the first week.

14 THE PRESIDENT: Okay, 4 and 5, 5 and 6,  
15 do you have a preference? 6 and 7? 20:14

16 MR. ANWAY: 6 and 7 would be best for us.

17 THE PRESIDENT: Okay?

18 DR. GHARAVI: Okay.

19 MR. ANWAY: Mr. Chairman, if we do adopt  
20 that schedule, there is probably not a need to rush 20:14  
21 to do the submissions so quickly, since --

22 THE PRESIDENT: We would adjust.

23 MR. ANWAY: Yes, I think we could fill it  
24 in a little bit to make it more comfortable, since  
25 there's no point in rushing. 20:14

1 THE PRESIDENT: Maybe you can agree.

2 MR. ANWAY: We can talk about it.

3 THE PRESIDENT: We would agree.

4 DR. GHARAVI: Yes. This is subject also  
5 to the availability of any experts that you may 20:14  
6 call.

7 MR. ANWAY: Yes.

8 THE PRESIDENT: But that's in case there  
9 is bifurcation. In case there is no bifurcation  
10 and we go on jurisdiction plus liability. 20:14

11 MR. ANWAY: But not quantum.

12 THE PRESIDENT: But not quantum.

13 So Claimants said you would need?

14 DR. GHARAVI: 15 days.

15 THE PRESIDENT: 15 days. No issue with 20:15  
16 starting, because it's already there, it's just  
17 refining.

18 DR. GHARAVI: Actually we have a quantum  
19 report as well. You don't want it though. We paid  
20 for it... (several speakers at the same time). 20:15

21 THE PRESIDENT: So 31st of March?

22 DR. GHARAVI: Fine, yes.

23 THE PRESIDENT: Then Respondents?

24 MR. ANWAY: Mr. Chairman, would you  
25 permit me to consult with our client and other 20:15

1 colleagues? This is not something we have  
2 envisioned before and talked about before. So if I  
3 could have a minute.

4 THE PRESIDENT: Thank you.

5 (Short pause.)

20:16

6 MR. ANWAY: Mr. Chairman, the consensus  
7 is that we would need not less than three months to  
8 prepare a kind of memorial on liability and  
9 jurisdiction.

10 THE PRESIDENT: Which would bring us to  
11 30th June. Then there will be a request or  
12 requests for document productions probably, or that  
13 cannot be excluded?

20:17

14 DR. GHARAVI: They have all of ours. I'm  
15 joking!

20:17

16 MR. ANWAY: We can recheck them.

17 THE PRESIDENT: Do you think --

18 DR. GHARAVI: I propose we do that  
19 simultaneously with our briefs; with the Statement  
20 of Claim, we ask for the documents we want. And  
21 with the counter-memorial, they respond, instead of  
22 blocking a particular time for this. We do not  
23 contemplate asking for many documents.

20:18

24 THE PRESIDENT: There's always an  
25 advantage to have that phase after the first

20:18

1 exchange of memorials, because we know what is  
2 relevant or we have a better idea, at least.

3 MR. ANWAY: I think we will be  
4 comfortable with some document production after the  
5 initial exchange of pleadings. 20:18

6 THE PRESIDENT: And we -- let's say one  
7 month for the whole thing, which brings us to the  
8 end of July. Then we have Claimants.

9 DR. GHARAVI: We can start working in  
10 July already. In August we will take a break, and 20:19  
11 then we come back in September, I would say. 15th  
12 of October, would that be acceptable? Or end of  
13 September, would that work?

14 THE PRESIDENT: Yes.

15 DR. GHARAVI: But please note that there 20:19  
16 is document production in between and there is the  
17 month of August.

18 THE PRESIDENT: Yes, yes, yes.

19 DR. GHARAVI: So we are making an effort.

20 THE PRESIDENT: We are grateful. 20:20  
21 Everybody is grateful. 30th of September.

22 And then Respondent -- anyway, we have  
23 the same problem of hearing, which will be January.  
24 So let's have that in mind.

25 (Short pause.) 20:21

1           MR. ANWAY: Okay. As we indicated, we  
2 have hearings, as I understand you do as well, in  
3 November, in fact we have 3 of them, so it will be  
4 quite difficult for us to do this before the end of  
5 the year. We would propose the end of January to 20:22  
6 file our Rejoinder. We might be able to push it to  
7 mid-January, if that makes a difference, but it  
8 would be extraordinarily difficult for us in that  
9 2-month period if we are looking at October and  
10 November, given all of the hearings we have, to 20:22  
11 file the Rejoinder at that time.

12           (Arbitrators conferred.)

13           DR. GHARAVI: May I suggest something?

14           THE PRESIDENT: Yes.

15           DR. GHARAVI: We can make an effort to 20:23  
16 submit our reply on 15th of September, if it helps  
17 you to submit mid-December, so that we can even  
18 review it during Christmas and have the whole  
19 hearing in January.

20           THE PRESIDENT: I think it's a fair 20:24  
21 proposal.

22           MR. ANWAY: We are in the Tribunal's  
23 hands. As I say, we are in the Tribunal's hands.  
24 I hesitate to agree to that, because I think it  
25 would interfere with much of the preparation we 20:24



1 need to be doing for the hearings that we have  
2 upcoming, but if that is the Tribunal's wish, then  
3 of course we'll respect it.

4 THE PRESIDENT: I think from 15th of  
5 September until mid-December, that's 3 months: 20:24  
6 October, November, December. That's, I think --  
7 even, of course, you have other hearings, we  
8 understand that, but that must not be a reason to  
9 prolong excessively any arbitration. So I think  
10 it's a fair proposal. 15 September, which is a 20:25  
11 Thursday, and 15 November(sic), which is a  
12 Thursday(sic).

13 And we can have -- in the first week of  
14 January for the hearing, there we need, we suppose  
15 -- someone said earlier 4 days, is that -- 20:25

16 DR. GHARAVI: We suggested 3 to 4 days.  
17 Yes, I think 4 days would be plenty, especially if  
18 you don't have quantum.

19 THE PRESIDENT: We will have 4 days in  
20 the first week of January. 20:26

21 MR. ANWAY: Just one point of  
22 clarification, then I'll respond to that. The  
23 point of clarification is, I believe, Mr. Chairman,  
24 you referred to our Rejoinder being due on 15  
25 November? 20:26

1 THE PRESIDENT: December.

2 MR. ANWAY: December. I just wanted to  
3 clarify that for the record.

4 Second, we view the difference between a  
5 jurisdictional hearing and a jurisdiction and 20:26  
6 merits hearing to be significantly different, and  
7 we think, with witness preparation, both witnesses  
8 and experts, holidays, of course, with Christmas  
9 and the New Year --

10 THE PRESIDENT: Yes, so forget about the 20:26  
11 first week of January.

12 MR. ANWAY: Yes, I think that would be a  
13 bit challenging. I think we would be looking at  
14 something at the earliest end of January, and more  
15 likely -- 20:26

16 PROF. GAILLARD: I cannot --

17 MR. ANWAY: We would be comfortable, of  
18 course, having it in February if that makes sense.  
19 That does not strike us as unreasonably long,  
20 given -- 20:27

21 THE PRESIDENT: It would not be  
22 unreasonable, but unfortunately the Tribunal in  
23 February has no possibility at all. The only  
24 possibility we have is the third week of January,  
25 the week of the 18th -- 18th. 20:27

1 DR. GHARAVI: I have a hearing on the  
2 18th unfortunately, and I would like to just bounce  
3 back on what my learned colleague just said.

4 I really appreciate the difficulty, but  
5 the difficulty is on us, because they would have 20:27  
6 had our Reply memorial. So we have the Rejoinder  
7 to struggle with and prepare. So they have all  
8 this time to prepare for a hearing in January. And  
9 we are willing to accept that burden of reviewing  
10 the Rejoinder within three weeks and preparing for 20:28  
11 the hearing.

12 THE PRESIDENT: You mean you insist on  
13 the first week of January?

14 DR. GHARAVI: Yes, especially if it's  
15 going to send us back -- 20:28

16 THE PRESIDENT: No, I thought you were  
17 not available on the --

18 DR. GHARAVI: Yes, I have a hearing from  
19 the 18th to the 21st.

20 PROF. GAILLARD: What about the second 20:28  
21 week of January?

22 DR. GHARAVI: Second week, I am  
23 available, yes, the 11th, week of the 11th.

24 (Short pause.)

25 MR. ANWAY: Unfortunately, counsel is not 20:29

1 available that second week of January.

2 THE PRESIDENT: The problem is that that  
3 brings us very far.

4 (Short pause.)

5 THE PRESIDENT: Well, what I am thinking 20:30  
6 is it's one consideration for the choice of  
7 bifurcation or no bifurcation, because if we have  
8 to land in May --

9 DR. GHARAVI: My point is, what was the  
10 problem with January, early January? It's to add 20:30  
11 two dates to the date of the jurisdictional  
12 hearing, because the burden again is on Claimants.

13 PROF. STERN: Even for us to read ...  
14 (off mic.) I mean, we will have the last writing  
15 on 15th of December. 20:31

16 DR. GHARAVI: Yes, but that would be only  
17 the Rejoinder, right?

18 PROF. STERN: But I read everything  
19 together.

20 DR. GHARAVI: You read all. We will do 20:31  
21 it short for you.

22 PROF. STERN: Well, that is a change of  
23 habit!

24 DR. GHARAVI: It depends on the opposing  
25 counsel. They are not the same opposing counsel. 20:31

1 THE PRESIDENT: I think we are going to  
2 discuss among ourselves.

3 MR. ANWAY: Just to be clear, we are not  
4 available the first full week of January. We were  
5 available for those two days on jurisdiction, I 20:31  
6 think you heard me consulting with my colleagues,  
7 but for a 3 or 4, or 5 or 6-day hearing, we are not  
8 available during that time period.

9 THE PRESIDENT: What about the third  
10 week? What was said? Who wasn't available? The 20:32  
11 third week of January.

12 DR. GHARAVI: The third week of --

13 MR. ANWAY: We were not available.  
14 Counsel is not available. You are not available?

15 THE PRESIDENT: Second week? 20:32

16 DR. GHARAVI: We are both not available.

17 THE PRESIDENT: In which week of January  
18 are you not available?

19 PROF. GAILLARD: The third week, are you  
20 sure you cannot accommodate? 20:32

21 DR. GHARAVI: I am an arbitrator, so  
22 unless I resign, I have to --

23 THE PRESIDENT: It's forbidden.

24 DR. GHARAVI: It's forbidden, yes. But  
25 how many days have you in mind for the hearing? 20:32

1 Four days?

2 THE PRESIDENT: At least, in fact,  
3 because jurisdictional in itself is rather complex.

4 DR. GHARAVI: If we block the 6th and  
5 7th, the 8th would make it on a Friday. 20:32

6 THE PRESIDENT: Which month?

7 DR. GHARAVI: In January. We block the  
8 6th and the 7th, correct? The Friday, you are not  
9 available on the Friday?

10 MR. ANWAY: I think it was the 6th and 20:33  
11 7th if it was a jurisdictional hearing, but longer  
12 than two days we do not have the availability.

13 DR. GHARAVI: On the 8th?

14 THE PRESIDENT: Who is not available in  
15 the second week? 20:33

16 MR. ANWAY: I am not. We are not  
17 available on the second week. As I understand it,  
18 Dr. Gharavi and his team are not available on the  
19 third week.

20 DR. GHARAVI: Correct. Not the entire 20:33  
21 third week, yes.

22 THE PRESIDENT: Fourth week?

23 PROF. STERN: I am not available.

24 THE PRESIDENT: Then February is very  
25 bad. And March, and then April. 20:33

1                   PROF. STERN: March is bad also, 7th to  
2 11th?

3                   PROF. GAILLARD: I can't.

4                   PROF. STERN: 30 May. 2, 3 June?

5                   (Arbitrators conferred.)

20:34

6                   PROF. STERN: 30 May to 3rd June?

7                   THE PRESIDENT: I think we are going  
8 to -- I think we are going to discuss a little  
9 before coming back.

10                  DR. GHARAVI: One option would be -- I am  
11 sorry, I apologize if I got it wrong, but we are  
12 meeting the 6th and 7th of January, we're doing the  
13 jurisdictional objection. If we can do it on a  
14 Friday, add Friday, and then a Saturday, then we're  
15 done, at least in Paris.

20:34

20:35

16                  MR. ANWAY: As I understand it, we are  
17 not available beyond those two days that we had  
18 specified for a jurisdictional only hearing.

19                  THE PRESIDENT: Before we withdraw, let's  
20 see where that leads us. Forget about April  
21 already. Then in May, except part of the second  
22 week?

20:35

23                  (Arbitrators conferred.)

24                  THE PRESIDENT: 30th of May till 3rd of  
25 June.

20:36

1 MR. ANWAY: That would work for  
2 Respondent.

3 DR. GHARAVI: 30th of May, I have a  
4 hearing. I don't have the previous ones, but I  
5 have a hearing. You know, I am willing, because 20:36  
6 the case is important, to try to remove my hearing  
7 on the third week, because it has a material impact  
8 on my clients. So to step down, so we can block  
9 the third week.

10 PROF. GAILLARD: Of January? 20:36

11 DR. GHARAVI: Of January, yes.

12 PROF. GAILLARD: We are back to January.

13 DR. GHARAVI: Yes, because I hear Prof.  
14 Mayer say that this may also have an impact on the  
15 jurisdictional objection. I don't think it should 20:37  
16 have an impact, but I just cannot take the risk for  
17 my clients because of the situation that I  
18 described.

19 That's fine for the third week. If we  
20 could have it -- if we can limit it to 4 days, I 20:37  
21 would appreciate it, starting on -- it doesn't  
22 matter actually, because the hearing was for more  
23 than 3 days. So that's fine, Third week.

24 THE PRESIDENT: Third week starting on  
25 the 18th, the whole week. Okay? 20:37



1 MR. ANWAY: We are able to do that.

2 PROF. GAILLARD: Okay. It is your  
3 position, Respondent, that you need the full week?  
4 That would be your desire, or you think you prefer  
5 4 days? Is that something you can say? 20:37

6 MR. ANWAY: It's difficult to know  
7 without knowing how many witnesses and experts  
8 there will be.

9 PROF. GAILLARD: That is what I  
10 suspected. 20:37

11 THE PRESIDENT: It's prudent to reserve  
12 the whole week and then we can shorten it.

13 MR. ANWAY: I think that's right.

14 DR. GHARAVI: There is no possibility of,  
15 in case of non-bifurcation, to splitting that 20:38  
16 between 6th and 7th, and starting the opening on  
17 the 6th or 7th, and doing -- limiting the week of  
18 the 18th to the witnesses?

19 THE PRESIDENT: Sorry, I was distracted.

20 DR. GHARAVI: I am suggesting whether it 20:38  
21 would be possible, in the event there is no  
22 bifurcation, to use the 6th and 7th for opening  
23 statements.

24 MR. ANWAY: Mr. Chairman, as I stated  
25 earlier, when you are talking about a hearing 20:38

1 that's no longer just jurisdictional, but now  
2 involves all of the merits, it is a dramatically  
3 different hearing, it is dramatically different  
4 preparation and leading up to the hearing. There  
5 are travel schedules. Not everyone on this side of 20:38  
6 the room at least lives here. All of that needs to  
7 be accounted for. I don't think that first week of  
8 January works, if it's more than jurisdictional.

9 THE PRESIDENT: 18th. All right. Now,  
10 your request for -- I don't know if it's one or 20:39  
11 several documents.

12 MR. ANWAY: We don't either.

13 THE PRESIDENT: Okay. Can you describe  
14 that now very clearly?

15 MR. ANWAY: Yes. We understand that 20:39  
16 there is a contract between Belmont and EuroGas I  
17 from 2001. The version of that contract we found  
18 on the Internet shows a date on the front of the  
19 agreement that says -- and my colleagues will  
20 correct me if I am wrong, I believe it's the 27th 20:39  
21 of March 2001. That agreement is referenced in a  
22 10-K filing that shows that the agreement was  
23 signed or took effect on a different date, which I  
24 believe was 17 April 2001. This was the question  
25 that Prof. Stern asked at the beginning of the 20:40

1 presentations today.

2 The Claimants had never put that document  
3 into the record. The version we have, which is  
4 found again on the Internet, and I believe on the  
5 SEC website, is unsigned. We don't know if it's 20:40  
6 the final version. It's certainly not the original  
7 and it's certainly not a signed version.

8 So before we file our jurisdictional  
9 objections, whether in a bifurcated or a  
10 non-bifurcated situation, we would like production 20:40  
11 of that document and any related documents to that  
12 transaction, as well as any modifications to that  
13 transaction that may have occurred later. And the  
14 reason is because if that contract effectuated a  
15 transfer of the 57 percent interest from Belmont to 20:40  
16 EuroGas I, that was before EuroGas I was dissolved,  
17 and it would mean that Belmont does not have any  
18 investment for purposes of this case. So it's a  
19 crucially important document that for whatever  
20 reason the Claimants have not put into the record 20:41  
21 thus far. We need that document and any related  
22 documents, collateral agreements or otherwise,  
23 before we are able to file our jurisdictional  
24 objections.

25 THE PRESIDENT: Is that description clear 20:41

1 enough?

2 DR. GHARAVI: It is clear. We have not  
3 put it forward by the way, because it was not the  
4 time and place, and that argument was not as  
5 clearly put. We have nothing to hide. The problem 20:41  
6 I have with my client is he posts everything on the  
7 Internet, that's why you find so many information.  
8 So we will be happy to produce that.

9 THE PRESIDENT: Okay. Contrary to what  
10 we have said earlier, we would need it rapidly. 20:41

11 DR. GHARAVI: We agreed. We said --

12 THE PRESIDENT: I know, but -- no, no, I  
13 mentioned a date.

14 DR. GHARAVI: Okay. If I understand the  
15 directions correctly, you mentioned if the decision 20:42  
16 to bifurcate is taken, we would have to produce it  
17 immediately.

18 THE PRESIDENT: Yes, that's what I said.  
19 But a change of mind, after discussion between the  
20 arbitrators. 20:42

21 DR. GHARAVI: Okay.

22 THE PRESIDENT: We in fact need it now.  
23 Now means, of course, as soon as practicable, which  
24 is --

25 DR. GHARAVI: Okay. 20:42

1 THE PRESIDENT: Within 2 or 3 days.

2 DR. GHARAVI: Okay. I have no -- if we  
3 produce the agreement itself tomorrow and then have  
4 time to make sure that we collect everything and we  
5 put it exhaustively by the time you take your  
6 decision on bifurcation, is that acceptable?

20:42

7 THE PRESIDENT: Before.

8 DR. GHARAVI: Before that, okay.

9 THE PRESIDENT: The beginning, the very  
10 beginning of next week.

20:43

11 DR. GHARAVI: Monday.

12 THE PRESIDENT: Monday -- in fact Monday,  
13 on Monday.

14 DR. GHARAVI: We think we have  
15 everything, then we hope to be able to satisfy your  
16 request. As you see, I haven't consulted with my  
17 client. We think we have everything and we believe  
18 to be in a position to provide it by then. But  
19 then I am afraid we are going into a completely  
20 different thing, because submitting it as is  
21 without comments from each side -- Respondent would  
22 want a comment, Claimant would want a comment.  
23 It's something completely new that you have  
24 decided, which has implications.

20:43

20:43

25 THE PRESIDENT: We are not going to

20:44

1 decide the issue of jurisdiction on the basis of  
2 that document, but we would like to have it before  
3 deciding on bifurcation.

4 DR. GHARAVI: I understand, but you are  
5 going to take a decision based on a document 20:44  
6 without any comments, and for us, it's a material  
7 decision you are going to take.

8 I am just pointing -- I mean, the  
9 Respondent would want to comment. I'm just telling  
10 you that it may raise issues, but we are happy to 20:44  
11 follow your, of course, directions.

12 THE PRESIDENT: We can, I think, when we  
13 see it, see whether it's useable or not, without  
14 any comments from anybody. So we request to have  
15 these documents as soon as possible for some of 20:45  
16 them, and at least not -- at the latest on Monday,  
17 next Monday.

18 DR. GHARAVI: Okay, fine.

19 THE PRESIDENT: Well, is there anything  
20 else? It's more than 7:30. 20:45

21 DR. GHARAVI: Yes. We wanted just to  
22 express, without making an incident, just a  
23 decision to bifurcate liability and quantum. I  
24 mean you have taken it. We haven't discussed it at  
25 all, so we don't know the rationale, you don't have 20:45

1 our comments. But that's fine, I just wanted to  
2 express that to you. We will live with it. That's  
3 fine.

4 THE PRESIDENT: I mean, it's not a  
5 definitive decision. It's what we call -- when we 20:46  
6 make a comparison, we take that hypothesis.

7 DR. GHARAVI: Okay. Fine.

8 THE PRESIDENT: Because we have to see  
9 what is on the one side and what is on the other  
10 side. 20:46

11 DR. GHARAVI: No, no, that's fine.

12 THE PRESIDENT: It's not impossible that  
13 we change our mind. It depends on the scenario.

14 MR. ANWAY: We have no further comment.  
15 We would just like to thank the Tribunal for its 20:46  
16 attention today. Thank you.

17 DR. GHARAVI: Thank you for your  
18 availability.

19 THE PRESIDENT: Thank you very much. You  
20 will have our decisions, there are 2 or 3 still to 20:46  
21 make, soon.

22 DR. GHARAVI: Just a reminder that the  
23 15 days by which we submit our memorial is from the  
24 date of your decision or -- because it has an  
25 impact with -- we are working on quantum, we are 20:47

1 finalizing quantum now. So we continue working.  
2 The 15 days, how do you see it? Do we put it  
3 10 days from your decision? Would that be fair?  
4 We have dates, we have specific dates. We'll leave  
5 it. We'll leave the dates. 20:47

6 THE PRESIDENT: Okay.

7 And, of course, we thank the court  
8 reporter who has had quite a lot to do for quite a  
9 long time. And thank you, both sides. Thank you.

10 (Whereupon, the hearing ended at 20:47  
11 8:47 p.m.)

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CERTIFICATE OF REPORTER

I, YVONNE VANVI, the Court Reporter before whom the above hearing was taken, do hereby certify that the said hearing was taken by me to the best of my skill and ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Done and signed this 18th day of March 2015, in the city of Paris, France.

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YVONNE VANVI