

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES

- - - - -x
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 In the Matter of Arbitration :
 Between: :
 :
 RAILROAD DEVELOPMENT CORPORATION, :
 :
 Claimant, :
 : Case ARB/07/23
 and :
 :
 THE REPUBLIC OF GUATEMALA, :
 :
 Respondent. :
 :
 - - - - -x Volume 3

HEARING ON MERITS

Sunday, December 11, 2011

1818 H Street, N.W.
MC Building
Conference Room 4-800
Washington, D.C.

The hearing in the above-entitled matter came
on, pursuant to notice, at 2 :07 p .m. before:

- DR. ANDRÉS RIGO SUREDA, President
- PROF. JAMES CRAWFORD, SC, Arbitrator
- HON. STUART E. EIZENSTAT, Arbitrator

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Secretary to the Tribunal

MR. ALEX BERENGAUT,
Assistant to the Tribunal

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

02:07:57 2 PRESIDENT RIGO: Good afternoon. Good
3 afternoon, Mr. Jiménez. You have the Witness
4 Statement there. Could you please read it.

02:08:12 5 One moment, please, somebody asked for the
6 floor.

02:08:15 7 MR. ORTA: Just a preliminary issue I wanted
8 to discuss before we start with the witness. It
9 relates to an issue that was brought up on Friday
10 regarding a model by Mr. Pratt. You might recall
11 there was some discussion on the record about a model
12 that Mr. Pratt--

02:08:31 13 PRESIDENT RIGO: Yes, I recall that.

02:08:32 14 MR. ORTA: --had apparently submitted, and I
15 was told on the record by Mr. Foster that that was
16 submitted and already was part of evidence on the
17 record. We've had some, I think, subsequent
18 discussions since then and been informed by Claimant
19 that that model is not part of the record, the model
20 itself, and so at this late juncture, we would object
21 to the introduction of any new evidence, in particular
22 in relation to that model itself.

02:09:06 1 PRESIDENT RIGO: Yes, Mr. Foster.

02:09:09 2 MR. FOSTER: What we submitted,
3 inadvertently, was the PDF rather than the electronic
4 version that could be--you could change the inputs in.
5 It's the same--it's the same thing. It's just the
6 electronic version of the PDF. The only difference
7 being that if you have the electronic version, you can
8 also change the inputs and affect the outcome. I
9 really find it difficult, except for purposes of
10 obfuscation, I can't imagine why the Respondent
11 wouldn't want the Tribunal to have the same ability
12 that Dr. Pratt is going to have when he testifies to
13 make the changes. I can't even comprehend that there
14 should be an objection about this.

02:10:03 15 MR. ORTA: Yes.

02:10:05 16 PRESIDENT RIGO: Yes, please.

02:10:06 17 MR. ORTA: If I may, because my understand is
18 a little bit different than what Mr. Foster just
19 mentioned and I'd like to respond to his point.
20 First, I believe we were told yesterday by counsel for
21 the Respondent that the PDF itself is not part of the
22 record. If it is part of the record, then we just ask

1 to be told where, because I think we were told
2 something different yesterday. And number two, if
3 they want to submit a dynamic model, which is
4 something very different than a piece of paper, then
5 we would, at a minimum, if the Tribunal is inclined to
6 accept it in evidence at this late juncture, over our
7 objection, at a minimum, we would have to an
8 opportunity to see it and have our expert have an
9 opportunity to see it just that so we have an even
10 playing field as to that issue.

02:10:55 11 PRESIDENT RIGO: Mr. Foster.

02:10:57 12 MR. FOSTER: The PDF is Pratt Exhibit 12,
13 which I believe they've had since March. And we'll be
14 happy to supply the electronic version as soon
15 as--we've sent an e-mail to doctor Pratt
16 saying--because we thought we had the electronic
17 version. But we've sent an e-mail saying please send
18 us the electronic version and we'll give it to them
19 just as soon as we receive it.

02:11:26 20 MR. ORTA: As I say, we object to its
21 introduction at this late juncture, but if the
22 Tribunal is inclined to admit it, we would like to see

1 it and have our expert have an opportunity to see it.

2 That's our position.

02:11:41 3 PRESIDENT RIGO: Yes, definitely, we will
4 consider it. You may consider it and then decide.

02:11:48 5 MR. ORTA: Thank you.

02:11:50 6 PRESIDENT RIGO: So if we may move to the
7 witness, Mr. Jiménez, please, could you please read
8 the statement you have before you.

02:12:00 9 THE WITNESS: I solemnly declare upon my
10 honor and conscience to speak the truth, the whole
11 truth and nothing but the truth.

02:12:07 12 PRESIDENT RIGO: Thank you very much.

02:12:08 13 MAXIMO JIMENEZ, CLAIMANT'S WITNESS, CALLED

02:12:08 14 DIRECT EXAMINATION

02:12:11 15 BY MR. STERN:

02:12:13 16 Q. Good afternoon, Mr. Jiménez. Do you have in
17 front of you copies of the statements, the two
18 statements you have submitted in this arbitration on
19 behalf of Reinter, R-e-i-n-t-e-r, dated April 1, 2009,
20 and March 9, 2011, respectively?

02:12:29 21 A. Yes, I do.

02:12:31 22 Q. And do you ratify these two statements and

1 affirm their truthfulness before the Tribunal?

02:12:37 2 A. Yes, I do.

02:12:38 3 Q. Mr. Jiménez, what is your position at
4 Reinter?

02:12:41 5 A. I'm the President and legal representative of
6 Reinter.

02:12:44 7 Q. What types of businesses does Reinter engage
8 in?

02:12:49 9 A. We're a maintenance and repair company for
10 overseas containers, and we also do ocean intermodal
11 transportation services.

02:12:57 12 Q. And what are intermodal transportation
13 services?

02:13:02 14 A. By truck.

02:13:05 15 Q. And prior to the declaration of lesividad,
16 did Reinter provide intermodal cargo transportation
17 services to Ferrovías?

02:13:15 18 A. Yes, we did. We were actually moving
19 containers from--by truck from Ferrovías' terminal to
20 Ferrovías' customers' warehouse and vice versa.

02:13:30 21 Q. And after the declaration of lesividad issued
22 in late August 2006, did Reinter continue to offer and

1 provide these services to Ferrovías?

02:13:39 2 A. No, we did not.

02:13:40 3 Q. And why not?

02:13:42 4 A. It was a decision made by the board that it
5 was not economically safe for a company to continue
6 doing business with Ferrovías, especially after the
7 public announcement made by the President and a group
8 of the Government. I don't think any sole company in
9 Guatemala would ever have decided to do business with
10 a company whose concession has been put on hold or
11 terminated by the Government.

02:14:18 12 Q. Now, in addition to providing
13 cargo--intermodal cargo transportation services to
14 Ferrovías, does Reinter have any other business
15 relationships with Ferrovías?

02:14:27 16 A. Yes, we did, sir. We do, I'm sorry. We rent
17 a piece of property adjacent to Ferrovías terminal,
18 and we use this yard as parking area for containers
19 and trucks and shops.

02:14:44 20 Q. And did the Lesivo Declaration have any
21 effect on your plans for this area that you lease from
22 Ferrovías?

02:14:52 1 A. Absolutely. A hundred percent.

02:14:53 2 Q. Could you describe it.

02:14:55 3 A. Well, the first thing is we--because of the
4 lesividad, we were never able to get a contract
5 signed, even though we have all the drafts, the
6 Contract could not be signed. That put our company,
7 again, in a situation where no investment was approved
8 to this area because of the position of Ferrovías in
9 Guatemala.

02:15:19 10 Q. Thank you, Mr. Jiménez. You can now answer
11 questions from counsel for Guatemala.

02:15:26 12 MS. SEQUEIRA: I would like you to be closer
13 to the microphone.

02:15:29 14 THE WITNESS: Sure.

02:15:29 15 PRESIDENT RIGO: Mr. Debevoise.

02:15:29 16 CROSS-EXAMINATION

02:15:42 17 BY MR. DEBEVOISE:

02:15:43 18 Q. Good afternoon, Mr. Jiménez. My name is
19 Whitney Debevoise. I'm acting for Respondent in this
20 case, Guatemala, and I'll be asking you some questions
21 about your statements and your testimony today.

02:15:54 22 A. Perfect.

02:15:55 1 Q. I think you talked about the different types
2 of business that you had with Ferrovias, so why don't
3 we talk a little bit about that, piece by piece.

02:16:12 4 A. Sure.

02:16:13 5 Q. Let's focus first on the lease that you have
6 for the real estate. I think you said in your Second
7 Statement that that lease is still in effect; is that
8 correct?

02:16:27 9 A. Can I look here?

02:16:29 10 Q. Please.

02:16:29 11 A. And what part am I looking at to this?

02:16:35 12 PRESIDENT RIGO: Simply to speed up things,
13 could you please, always, as a general matter--I mean,
14 point to the witness where the statement is?

02:16:45 15 MR. DEBEVOISE: All right. I'd be happy to
16 do so.

02:16:51 17 BY MR. DEBEVOISE:

02:16:52 18 Q. If you could take a look at Paragraph 3, I'm
19 looking in the middle of the paragraph. "Up to now
20 only the lease relationship has survived".

02:17:01 21 A. This one is Spanish. We still have the same
22 numbers, so I'm in Number 3, right in the middle.

02:17:10 1 Q. I think it says (in Spanish).

02:17:22 2 A. I'm reading it. Okay. I got that.

02:17:24 3 So to answer--what was your question again?
4 If could you refresh the question.

02:17:27 5 Q. I just asked you to confirm what you said in
6 your statement.

02:17:29 7 A. That is correct.

02:17:30 8 Q. And that's still true today? You still have
9 a lease?

02:17:32 10 A. Sure. Sure. I think I answered that to the
11 other Party.

02:17:44 12 Q. And let's talk a little bit about the
13 original terms of the original lease.

02:17:49 14 MR. DEBEVOISE: Could we put up R-306,
15 please.

02:18:04 16 THE WITNESS: I can just read it here, right?

02:18:06 17 BY MR. DEBEVOISE:

02:18:06 18 Q. Yes.

02:18:07 19 So you were copied on this e-mail addressed
20 to Jorge Senn at Ferrovías, are you not?

02:18:14 21 A. Yes, I am.

02:18:15 22 Q. And does this message outline the financial

1 terms of lease of property by Reinter from Ferrovías?

02:18:20 2 A. Some, some. There is obviously more into
3 this.

02:18:23 4 Q. All right. Well, referring to Paragraph 1,
5 could you tell us about the rent arrangements?

02:18:35 6 A. I've got a couple questions. Since a lease
7 was never signed, and there are a lot of e-mails that
8 went through this, and a lot of meetings. So I'm not
9 really sure--I mean, this one only specifies about 2.5
10 manzanas, which is I think what we have right now, and
11 the lease was going stay for 4,000 for the first three
12 years and then it was going to increase.

02:19:07 13 Q. All right. And you said the lease is still
14 in effect today?

02:19:10 15 A. Yes.

02:19:11 16 Q. How much are you paying per month now?

02:19:15 17 A. A little bit over 4,000.

02:19:16 18 Q. All right. And what is the history of your
19 rent been? It started in 2004. Did you pay the
20 4,000, which is indicated in the--

02:19:25 21 A. Yes, yes, yes.

02:19:26 22 Q. And subsequently in 2005?

02:19:29 1 A. I'm not sure if it was 2005. I do remember
2 that we talked about an increase and the reason of the
3 increase was basically the only--it was not 5,000,
4 first of all, basically because we could not get
5 anything signed. So we--whatever we agreed upon was
6 automatically terminated. And I think the increase
7 was based on inflation only.

02:19:59 8 Q. I see. Thank you.

02:20:01 9 And you never finally signed a lease because
10 it's difficult to reach agreement with Ferrovías on
11 agreements?

02:20:11 12 A. No, no, no. Actually, we were ready to sign
13 an agreement, and then the lesividad announcement came
14 in.

02:20:19 15 Q. I see. So you were ready to sign this in
16 2004, that's the date of the e-mail, and you hadn't
17 succeeded in signing a lease by 2006 when the
18 lesividad came along.

02:20:30 19 A. I'm not sure. I have to go back and read my
20 e-mails. I mean, it's 2004. I mean, I'm sure we were
21 close to getting the Agreement done.

02:20:41 22 Q. If you look at the e-mail, could you tell me

1 the date at the top of the e-mail?

02:20:45 2 A. January 13, 2004.

02:20:47 3 Q. Thank you.

02:20:48 4 Now, I think you said in Paragraph 3 of your
5 Second Statement that rendering of transportation
6 services was for a, quote, "considerable amount of the
7 freight moved by rail."

02:21:03 8 A. Let me read that one. Okay, yes.

02:21:35 9 Q. Yes.

02:21:37 10 All right. So how much was that? How many
11 containers per month, for example, was this
12 considerable amount?

02:21:51 13 A. I wouldn't be able to give you an amount. I
14 mean, I can probably give you a percentage of--

02:21:55 15 Q. Can you give an order--

02:21:58 16 THE COURT: I'm sorry to interrupt both of
17 you. You are being interpreted simultaneously, so
18 it's very important that each one finishes the
19 sentence, there is a pause, and then the other person
20 starts, whomever it is.

02:22:11 21 THE WITNESS: Perfect.

02:22:12 22 MR. DEBEVOISE: Okay.

02:22:12 1 PRESIDENT RIGO: Again, as a general matter,
2 it is important to remind everybody.

02:22:18 3 THE WITNESS: Sure.

02:22:21 4 I cannot give you a number based on the top
5 of my mind, because it's been too many years, but
6 roughly, I could say that we were moving about 80, 90
7 percent of Ferrovias' cargo back in that time.

02:22:39 8 BY MR. DEBEVOISE:

02:22:39 9 Q. 80 or 90 percent of Ferrovias' container
10 cargo?

02:22:43 11 A. Container cargo only.

02:22:46 12 Q. Yes. Okay.

02:22:46 13 A. And--sorry, and I'm going to say this in
14 Spanish because I don't know how to translate.

02:22:57 15 Q. Please, go ahead, we have translators here.

02:23:00 16 A. (In Spanish.) And also steel bars, steel
17 products.

02:23:05 18 Q. Steel products?

02:23:06 19 A. Steel products.

02:23:06 20 Q. And with respect to the container traffic
21 that you were moving, could you take a look, again, at
22 R-10--excuse me, 109, the document we had before. I'm

1 sorry. It's 306. And I can direct you to the second
2 paragraph under item Number 1, to the second sentence
3 where it says, "However, if Reinter has been able to
4 increase the volume from the beginning of the lease to
5 the end of Year 6 by an average of at least 60
6 containers per month, then the lease amount will stay
7 at the same rate of 5,000 per month."

02:23:57 8 ARBITRATOR EIZENSTAT: Excuse me, could we
9 get the appropriate paragraph up? Thank you.

02:24:08 10 THE WITNESS: This lease--or this draft has
11 nothing to do with the container movement. This is
12 basically based on the container yard leasing. It has
13 nothing to do with the container movement. There
14 should be another contract that was done for the
15 container movement, for the trucking. Remember, our
16 company does maintenance and repair for containers,
17 but we also do intermodal cargo transportation by
18 truck. So what I'm looking at is the lease agreement.
19 That has nothing do with whatever cargo we moved for
20 Ferrovias or not.

02:24:47 21 BY MR. DEBEVOISE:

02:24:47 22 Q. Right.

02:24:48 1 But there might be some relationship between
2 the two, because a certain amount of containers are
3 going to be stored in your yard.

02:24:56 4 A. No, no. This has nothing to do, again, with
5 the cargo movement. This was based on an economic
6 presentation that we did to Ferrovías in which we told
7 them we will take the yard--we agree with the
8 increase, but first we want to make sure that our
9 company continues to grow.

02:25:20 10 So--and it was tied up basically to investing
11 in the yard, to be able to invest in the property we
12 were leasing, but obviously since we didn't continue
13 investing, there was no growth achieved on that
14 project.

02:25:44 15 Q. Well, let's try and break down your
16 businesses. One is Ferrovías brings a container to
17 Guatemala City and gives it to you to deliver to a
18 customer; correct?

02:25:52 19 A. That's correct.

02:25:53 20 Q. And that's where you said you were doing 80
21 or 90 percent of the traffic.

02:25:58 22 A. Their traffic.

02:25:59 1 Q. Their traffic, right.

02:26:00 2 A. Their traffic.

02:26:01 3 Q. But you can't tell me roughly how many
4 containers a month that was?

02:26:05 5 A. No, no, I cannot. I mean, I have to--I
6 mean--

02:26:10 7 Q. How many trucks did you have?

02:26:11 8 A. I don't know. Probably, I would say, about
9 50 to 60 moves a week.

02:26:24 10 Q. Okay. All right. Very good.

02:26:27 11 And then another question was land that you
12 leased for the purpose of storing containers for
13 customers of yours or customers of Ferrovías?

02:26:43 14 A. Mine.

02:26:43 15 Q. For your customers. And so this 60
16 containers per month, is that the type of business
17 that's referred to here that you're going to be
18 storing 60?

02:26:52 19 A. No, no. Well, it's--Ferrovías had their own
20 property.

02:26:58 21 Q. Right.

02:26:59 22 A. Everything that I moved for Ferrovías through

1 the trucking service will go back to Ferrovías
2 property.

02:27:03 3 Q. Right.

02:27:04 4 A. There was no sense for them to store anything
5 in my yard.

02:27:07 6 Q. Right. But clearly there is some kind of
7 incentive for you here to do more business, because
8 they're going to give you a lower rent if there are 60
9 containers a month.

02:27:19 10 A. Again--I'm sorry.

02:27:21 11 Again, it goes back to economics. I mean, it
12 was--obviously, there is an incentive for us to have
13 more cargo in the yard; not only the rent, but to
14 bring--to be able to--in Spanish again. I'm sorry.

02:27:47 15 Q. That's okay.

02:27:51 16 A. (In Spanish.) Our incentive wasn't just to
17 reduce the amount of the fee of the Canons, but to
18 provide a value added to our company by bringing in
19 more clients.

02:28:07 20 Q. Okay. So they were going to reward you if
21 you got more customers for yourself?

02:28:12 22 A. In a way, because that would have immediately

1 work towards their benefit because we would be
2 investing in the property.

02:28:22 3 Q. All right. Now, did you see an increase in
4 the volume of containers from 2004 to 2005, 2006 that
5 you were delivering on behalf of Ferrovías?

02:28:51 6 A. Absolutely.

02:28:52 7 Q. And how would you classify that increase?
8 Was it marginal?

02:29:13 9 A. If I recall, we started with 25 trucks
10 assigned directly for that particular service, because
11 there was not enough cargo at that time. Within a
12 year, we were able to increase our pool of trucks to
13 almost twice, almost 50 trucks, and it was a good
14 business for us, too. I mean, a lot of cargo was
15 starting to move through that area.

02:29:39 16 Q. And then it reached a point where it
17 plateaued, no?

02:29:46 18 A. It diminished a lot, yes.

02:29:48 19 Q. And I think you said in your Second
20 Statement--and let me point you to it--that your
21 activity ceased as a result of the Declaration of
22 Lesividad.

02:30:25 1 A. What part of the paragraph?

02:30:26 2 Q. I believe that is in Paragraph Number 3 in
3 your Second Statement.

02:31:17 4 A. Okay.

02:31:18 5 Q. Is that right?

02:31:18 6 A. Yes, that's correct.

02:31:19 7 Q. Okay. And did you actually just stop? You
8 didn't deliver another single container after the
9 lesividad, or did you continue to deliver containers
10 until Ferrovías stopped providing service?

02:31:37 11 A. Most likely we first made a phone call to, at
12 that time Jorge, letting them know that we have
13 decided not to continue doing business, because we
14 didn't feel it was safe, economically safe, for our
15 company to continue doing business. I know in several
16 times we were asked by them to continue, and we
17 probably did one or two more moves, or a week, and
18 everything was completely taken out.

02:32:09 19 Q. I see.

02:32:12 20 And when you made that phone call, did you
21 ask what the lesivo was all about?

02:32:24 22 A. I doubt it, because based on past history,

1 lesividad--it's taking us--it's a death sentence for
2 any company in Guatemala. I mean, I don't know in any
3 other countries, but in Guatemala, based on past
4 history, you hear "lesividad"--in my industry I've
5 seen it in several cases in port operations and mine
6 operations. I mean, transportation, so there was no
7 sense--I probably didn't ask, I mean--

02:33:02 8 Q. I see.

02:33:03 9 So lesividad is kind of a common thing in
10 Guatemala?

02:33:13 11 A. I'm not sure if I want to answer that one
12 with yes or no. But it was definitely something
13 that--it is something that is not seen as a well-being
14 for that--for any company that is calling for that.

02:33:35 15 Q. But people are sort of familiar with the
16 concept.

02:33:39 17 A. I would say so. I mean, I don't know about
18 the rest of the people. I mean, you asked me. I'm
19 familiar with it.

02:33:44 20 Q. Okay.

02:33:46 21 A. I mean, I think any businessperson in
22 Guatemala will be familiarized with that.

02:33:53 1 Q. So, you didn't ask Ferrovías what the real
2 extent of this measure was in terms of how it affected
3 their business.

02:34:13 4 A. I might have. I mean, our decisions were
5 more influenced by what we saw in the newspapers and
6 the public announcements made by the President, not
7 whatever answer I would get from the manager of
8 Ferrovías.

02:34:40 9 Q. Okay. So in your statement, you, I think,
10 expressed an opinion, I think you said it was, about
11 lesividad. So let's see if we can direct you to that.

02:35:20 12 In the fourth paragraph, in the second
13 sentence--fourth paragraph of your Second--

02:35:28 14 A. We're still in the Second --

02:35:30 15 Q. Second Declaration.

02:35:31 16 A. -- Declaration.

02:35:34 17 Q. Fourth paragraph. I think it begins--

02:35:40 18 A. "I would like to state."

02:35:45 19 Q. Where it says, "seen embargo, et cetera."

02:36:09 20 A. Yes, that's pretty much what I just said a
21 couple minutes ago. I mean, it ratifies that.

02:36:15 22 Q. Okay. But you're not a lawyer, you're a

1 businessman; right?

02:36:19 2 A. Yes.

02:36:19 3 Q. Okay. Did you consult a lawyer before you
4 talked to Ferrovias about the meaning of this lesivo?

02:36:29 5 A. Sure. I mean, we would have--we have a
6 lawyer that takes care of all our legal issues in the
7 company, and I'm sure we sat down and we talked about
8 it. I mean, did I do it formally? Did I write a
9 letter to him and got something? No, no. I'm sure I
10 did talk and just crossover with my lawyer.

02:36:54 11 Q. All right. In your conversation with
12 Ferrovias, did they tell you that the usufructo that
13 they had remained in effect, notwithstanding the
14 lesivo, that they still had their Rolling Stock?

02:37:13 15 A. Can I get a translation on that one?

02:37:15 16 Q. Yes, sure. I think the interpreter is there.
17 Shall I repeat the question for you?

02:37:41 18 A. Yes, please.

02:37:42 19 Q. Okay. In your conversation with Ferrovias,
20 did they tell you that the usufruct that they had
21 remained in effect, notwithstanding the lesivo, that
22 they still had their Rolling Stock?

02:38:02 1 A. I don't hear anything. Okay. I think I
2 understand now. What you're asking me is if they ever
3 told me not to worry about the land.

02:38:16 4 Q. Well, I was asking about the Rolling Stock,
5 but we can also talk about the land.

02:38:20 6 A. The Rolling Stock. What is that?

02:38:22 7 Q. The cars, the railway cars, so that they
8 could continue in service and they could continue to
9 bring containers to you.

02:38:30 10 A. They probably did. That was one of
11 the--when--in several conversations, they told me to
12 continue providing service, and so they probably did
13 tell me that at one time.

02:38:50 14 Q. And when they told you that they still had
15 these legal rights to continue using the Rolling Stock
16 and that they still had their legal rights to lease
17 the property to you, did you verify that with your
18 lawyer?

02:39:09 19 A. No. I'm sorry. I'm not sure they ever told
20 me that. I didn't confirm. I said, I'm sure it was
21 something that was on the--on a conversation, but I
22 don't recall exactly them telling me that. So, I

1 mean--

02:39:25 2 Q. So they might not have told you that?

02:39:27 3 A. They might not, yeah. I don't remember.

02:39:30 4 Q. I see. Okay.

02:39:35 5 So, from your perspective, they were just
6 trying to appeal to you to continue to do business
7 with them, but they didn't really have many arguments
8 to support that.

02:39:55 9 A. To my perspective, they wanted to make this
10 work, you know. They had a goodwill in this, and,
11 yes, I could probably say it and confirm that. They
12 wanted me to continue to the end, I guess, you know.

02:40:24 13 Q. So they didn't really try to convince you in
14 a hard way. If they did try and convince you, it was
15 kind of perfunctory.

02:40:33 16 A. No, no. Not at all.

02:40:38 17 Q. Okay.

02:40:39 18 ARBITRATOR EIZENSTAT: The answer and the
19 question are somewhat ambiguous. When you said, "Not
20 at all," do you mean it was not a perfunctory response
21 or they didn't make any effort?

22

02:40:51 1 BY MR. DEBEVOISE:

02:40:51 2 Q. I was trying to ask you whether they made a
3 real effort to convince you or whether it was just
4 what you might call--

02:41:00 5 A. Okay. I understood that they were kind of
6 forcing me to make a decision. Yes, they did try to
7 convince me, but in a good way.

02:41:16 8 Q. Okay. Now, I believe that in Paragraph 5 of
9 your Second Statement, you said that you learned about
10 this through multiple news reports. Do you see that
11 in Paragraph 5?

02:41:58 12 A. Yes.

02:41:59 13 Q. Okay. And those news reports were the basis
14 on which you said you decided not to continue to do
15 business with Ferrovias; is that correct?

02:42:18 16 A. That's correct.

02:42:18 17 Q. Okay.

02:42:19 18 MR. DEBEVOISE: So, let's put up Document
19 C-35(f), please.

02:42:45 20 BY MR. DEBEVOISE:

02:42:45 21 Q. Okay. So I direct your--well, first, let's
22 see if we can identify the document. This is a letter

1 from you to Jorge Senn at Ferrovías dated October 10,
2 2006; is that correct?

02:43:00 3 A. Yes, sir.

02:43:00 4 Q. Thank you.

02:43:01 5 And in the first paragraph of this letter,
6 you--

02:43:16 7 A. Could you please show it in Spanish?

02:43:22 8 Q. I think you can look in the binder at the
9 Spanish and the Tribunal can perhaps look at the
10 English.

02:43:28 11 PRESIDENT RIGO: Mr. Jiménez, please use your
12 headphones because some words have a very specific
13 meaning, and I wouldn't like for you to misunderstand
14 it. This is what happened, yes. And that would be
15 easier for you to follow it. Of course, you can
16 answer in English. And that way is just going to be
17 more efficient, too.

02:44:09 18 Q. Okay. So if you read the first sentence of
19 that letter, you're writing in the past tense,
20 correct? (In Spanish.) You're saying that the
21 commercial relationship has now been--

02:44:29 22 A. I'm sorry. (In Spanish.) I mean, both gets

1 me more confused. I'm sorry. Okay.

02:44:45 2 So your question is?

02:44:47 3 Q. I just noted that that sentence is in the
4 past tense; correct?

02:44:58 5 A. Yes, that is correct.

02:45:03 6 Q. Now, you said that after you heard the press
7 reports that you formed some opinions about what was
8 going to happen to Ferrovías. And was one of those
9 opinions that the Government's actions were going to
10 place greater pressure on Ferrovías by making its
11 customers and its suppliers wary of doing business
12 with it, that the customers would worry about
13 continuing to do business with Ferrovías?

02:45:40 14 A. Can you rephrase your question, please?

02:45:42 15 Q. Yes.

02:45:43 16 After you heard the reports, the newspaper
17 reports, about the Government's actions, did you have
18 the impression that those actions of the Government
19 were going to place more pressure on people like you
20 who were doing business with Ferrovías?

02:46:03 21 A. Yes.

02:46:03 22 Q. Okay. And did you have the impression after

1 hearing the press reports that the Government was
2 going to take back the goods and assets that were
3 covered by the concession, take it away from
4 Ferrovías?

02:46:27 5 A. Yes, I did.

02:46:28 6 Q. And did you have the sense that maybe they
7 were going to give it to someone else?

02:46:35 8 A. No.

02:46:36 9 Q. Okay. And after you heard the reports, did
10 you have the sense that the Government had initiated
11 something that would ultimately result in the
12 expropriation of the concession?

02:46:56 13 MR. STERN: I'll object. He's asking about a
14 legal term, which he may not have an understanding of.

02:47:04 15 MR. DEBEVOISE: I am referring to a nonlegal
16 term here. I think the word "expropriation" is common
17 parlance, and it was certainly used in the press, and
18 we're talking about how he learned about this through
19 the press.

02:47:21 20 MR. STERN: The witness may have a different
21 understanding of the term as opposed to the legal
22 meaning of the term, which could make his testimony

1 misleading.

02:47:40 2 PRESIDENT RIGO: Please answer the question.

02:47:41 3 THE WITNESS: Could you repeat your
4 questions?

02:47:42 5 BY MR. DEBEVOISE:

02:47:43 6 Q. Yes. I asked you whether after hearing the
7 press reports you had the impression that the
8 Government had begun something that would ultimately
9 result in the expropriation of Ferrovias' concession?

02:47:59 10 A. Yes.

02:48:01 11 Q. Okay. Thank you.

02:48:06 12 Now, you said that hearing these press
13 reports, you were convinced that the Government was
14 going to do certain things and that--is that correct?

02:48:21 15 A. Yes.

02:48:22 16 Q. And you said in Paragraph 5 of your
17 statement--

02:48:30 18 A. Second Statement?

02:48:31 19 Q. Second Statement again--that these were news
20 flashes where former President Berger and other
21 representatives of the Government had made comments on
22 the issue. Do you see that?

02:48:55 1 A. Yes.

02:49:12 2 Q. Okay. Can you tell me what Government
3 officials other than President Berger you remember
4 seeing in these news flashes?

02:49:24 5 A. No, I don't remember their names. I mean, I
6 know there were various, but I don't have the names in
7 front of me.

02:49:31 8 Q. Okay. Well--

02:49:32 9 A. I'm not too familiar with the names. I mean,
10 I'm not Guatemalan. I'm Nicaraguan.

02:49:37 11 Q. So you don't pay too much attention to who is
12 in the Government?

02:49:41 13 A. To the names, no? At the moment, yes, but
14 eight years later, no, I don't remember.

02:49:49 15 Q. But you remember President Berger, but no one
16 else sticks out in your mind; right?

02:50:01 17 A. I know Berger for sure.

02:50:03 18 Q. Pardon?

02:50:03 19 A. I know President Berger for sure, because of
20 being the feared President at that time, but I don't
21 remember the names of any of the other, but I know
22 there were various.

02:50:15 1 Q. How did you know they were Government people?

02:50:18 2 A. Because of their titles.

02:50:20 3 Q. What were their titles?

02:50:21 4 A. Ministers, chiefs.

02:50:30 5 (Interruption.)

02:50:33 6 BY MR. DEBEVOISE:

02:50:34 7 Q. I'm afraid they didn't hear your answer.

02:50:36 8 A. Because of their titles.

02:50:37 9 Q. And I think I asked you what titles?

02:50:45 10 A. Ministers, Vice-Ministers, chiefs.

02:50:48 11 Q. So how many of these press announcements did
12 you see?

02:50:54 13 A. I said "various." I don't recall exactly how
14 many.

02:51:01 15 Q. So you're a little fuzzy on this.

02:51:04 16 A. No, I'm sure there were various, but I don't
17 remember the numbers.

02:51:08 18 Q. Or the names?

02:51:09 19 A. Or the names of the Government officials. I
20 don't remember their names. That was not my--

02:51:14 21 Q. Or the positions they had?

02:51:17 22 A. I don't remember the positions either.

02:51:19 1 Q. I mean, do you know what a (Spanish)?

02:51:27 2 A. Yes, of course, an Attorney General. Of
3 course.

02:51:30 4 Q. You don't remember. I see. Okay.

02:51:38 5 So, let's take a look now at R-190.

02:52:15 6 A. This; right?

02:52:16 7 Q. Yes, sir. Could you tell us what this
8 document is?

02:52:58 9 A. What is your question again?

02:52:59 10 Q. I just asked you what this document is.
11 Would it be fair to say that this is a press release?

02:53:09 12 A. Well, first of all, it's in English, so I
13 don't think it would have been a press release in
14 Guatemala.

02:53:18 15 Q. And can you read the very first line, the
16 date line? Do you see where it says--

02:53:24 17 A. Guatemala City, August 28--28 of August,
18 2006.

02:53:30 19 Q. Correct. And what does it say right after
20 that?

02:53:34 21 A. On Friday, 25 August, the Government of
22 Guatemala took the extraordinary step of unilaterally

1 declare an essential element of the country in 1998
2 railroad privatization. The lease of the Rolling
3 Stocks, lesivo, or against the interests of the State.

02:53:58 4 Q. Okay. So that was, according to this
5 sentence on 25 August, a Friday; correct?

02:54:07 6 A. Okay.

02:54:07 7 Q. And the document is dated 28 August 2006. So
8 that would be the following Monday; correct?

02:54:21 9 A. Okay. Yes.

02:54:21 10 Q. Okay.

02:54:24 11 MR. DEBEVOISE: Why don't we put up document
12 Number R-105?

02:54:36 13 BY MR. DEBEVOISE:

02:54:37 14 Q. Is this a Spanish version of the same
15 document, so far as you can tell?

02:54:43 16 A. Let me read it first.

02:54:58 17 At least the first paragraph, yes.

02:55:00 18 Q. Okay. Do you see the end of it? That looks
19 pretty much the same, too, no?

02:55:12 20 A. The end of the first paragraph?

02:55:14 21 Q. No, the end of the document. The people to
22 contact.

02:55:35 1 A. No, it's not the same. I see

2 Mr. Henry--okay. Yeah.

02:55:48 3 Q. They both say, "Please contact Henry Posner,
4 III, Chairman," and then some telephone numbers and an
5 e-mail, "or in Guatemala City, please contact William
6 J. Duggan, President, or Jorge Senn, General Manager,"
7 and then some telephone numbers and an e-mail;
8 correct?

02:56:10 9 A. Correct.

02:56:10 10 Q. Okay. Now, looking at the Spanish version on
11 your screen, could you look at the third paragraph,
12 please? Is that highlighted for the witness, please,
13 where it starts "A corto plazo."

02:56:48 14 A. Okay.

02:56:48 15 Q. Okay.

02:56:53 16 So would you just read that out loud for the
17 record?

02:56:58 18 MR. STERN: I'm going to object to having the
19 witness reading out statements from the document on
20 the record. It's not necessary. He hasn't even
21 established a foundation that this witness ever even
22 saw this document.

02:57:10 1 MR. DEBEVOISE: Mr. President, I think you
2 will recall that I asked the witness earlier if after
3 hearing the press reports he had formed certain
4 impressions, and one impression was whether the
5 Government's actions had placed greater pressure on
6 Ferrovías by making its customers and suppliers wary
7 of doing business with it. And he said yes, that he
8 had formed that impression after hearing the press
9 reports. I'm asking him to now look in the press
10 release that the company issued where, miraculously,
11 we find the same language.

02:57:54 12 PRESIDENT RIGO: Please read it. It is
13 connected to what you said before.

02:57:59 14 THE WITNESS: Well, I'll go ahead and read it
15 and then I can clarify my statement. "In the short
16 term under the terms of the Usufruct Contract, the
17 Government cannot force the company out of the
18 business. However, it's actions have placed greater
19 pressure on Ferrovías by making its customers and
20 suppliers wary of continuing to do business with it."

02:58:31 21 BY MR. DEBEVOISE:

02:58:31 22 Q. Thank you very much. Now let's take a look

1 farther along in the next paragraph under item Number
2 2.

02:58:44 3 MR. DEBEVOISE: If counsel doesn't want the
4 witness to read item 2, I can read it.

02:58:50 5 BY MR. DEBEVOISE:

02:58:51 6 Q. Does the announcement say that "The
7 Government's objective is to take back certain
8 concession assets contained in the usufruct on behalf
9 of selected private sector companies"? Or does it say
10 "to take back certain goods and assets covered by the
11 concession on behalf of certain private sector
12 companies"?

02:59:37 13 A. What is your question?

02:59:38 14 Q. I'm asking whether the press release says
15 that?

02:59:40 16 A. Yes.

02:59:43 17 Q. Okay. And let's look at one final passage in
18 the press release. In the column on the right-hand
19 side in the full paragraph near the end, do you see
20 where it says "(in Spanish)? By initiating something
21 that in the long term would lead to the conclusion of
22 the concession?

03:00:15 1 A. To be a more precise opinion of an article, I
2 mean, I should be entitled to read the whole article
3 to see how do I comprehend the article. I mean,
4 you're asking me a specific questions about a
5 sentences. And I mean, in--it doesn't make any sense.
6 I mean--

03:00:38 7 Q. With all respect, Mr. Jiménez, I haven't
8 asked you for your opinion about the press release
9 itself. I have asked you whether those words are in
10 the press release, and I think you've confirmed that.
11 So, let's move on to the next question I have.

03:00:57 12 You said in Paragraph 5 of your Second
13 Statement, in the very last sentence of that statement
14 that "Under no circumstances could news flashes of
15 this type have been promoted or publicized by
16 Ferrovías, as they informed about the Government's
17 position." Correct?

03:01:48 18 A. No. What I read in here is that (in Spanish)
19 news spots or news flashes, I understand that were
20 done on television.

03:01:56 21 Q. Mr. Jiménez, referring you to the sentence,
22 it says in the Spanish version of your Second

1 Statement, "Under no circumstances could news flashes
2 of this type have been promoted or publicized by
3 Ferrovías as they informed about the Government's
4 position."

03:02:15 5 That is in your statement. Thank you.

03:02:41 6 MR. DEBEVOISE: Why don't we put up the
7 video, please, the press conference? They're going to
8 show you a little video, now, Mr. Jiménez.

03:02:57 9 (Video played.)

03:04:15 10 MR. DEBEVOISE: Could we go back to just the
11 first frame of that video?

03:04:19 12 BY MR. DEBEVOISE:

03:04:19 13 Q. Would you please pay close attention to the
14 date. What is the date you see there?

03:04:23 15 A. September 7.

03:04:24 16 Q. Thank you. And did you recognize any of the
17 people in that video?

03:04:31 18 A. Yes.

03:04:31 19 Q. Whom did you see that you recognized?

03:04:34 20 A. Juan Pablo, Jorge, Mr. Posner.

03:04:36 21 Q. Thank you.

03:04:37 22 And did you see the backdrop in that video?

03:04:41 1 A. No.

03:04:41 2 Q. Maybe we can advance it a frame. What do you
3 see in the background behind Mr. Carrasco?

03:04:53 4 A. Ferrovías' logo.

03:04:54 5 Q. Ferrovías' logo. Okay. Thank you very much.

03:04:56 6 Let's go back and talk a little bit more
7 about the commercial situation. You said that after
8 the lesivo, you think you did one or two containers a
9 week; is that right?

03:05:06 10 A. No. I said after the lesividad, we worked
11 for one or two weeks only.

03:05:12 12 Q. One or two weeks.

03:05:14 13 A. And then we pulled out.

03:05:16 14 Q. Okay. And then you wrote that letter that we
15 referred to earlier; is that correct?

03:05:21 16 A. I believe I did, yes.

03:05:23 17 Q. Yes.

03:05:24 18 MR. DEBEVOISE: And can we just put that back
19 up for a minute, C-35(f).

03:05:41 20 BY MR. DEBEVOISE:

03:05:41 21 Q. So the date of that letter, please, again.

03:05:47 22 A. October 10.

03:05:49 1 Q. October 10. So, was that before or after the
2 press release that we saw earlier?

03:06:00 3 A. Before.

03:06:01 4 Q. Your letter was before?

03:06:02 5 A. No, no, after.

03:06:03 6 Q. Yes. And the press conference we just saw
7 was before; correct?

03:06:10 8 A. Yes.

03:06:11 9 Q. Okay. But after you wrote this letter, you
10 just--you didn't move any more containers, period, not
11 one more? I mean--

03:06:22 12 A. None.

03:06:22 13 Q. None.

03:06:23 14 A. None that I can remember.

03:06:24 15 Q. Okay. But if I told you that the railroad
16 continued operating until September of 2007, meaning
17 for one more year after this, you're saying you didn't
18 do any containers at all?

03:06:37 19 A. I don't think I did.

03:06:38 20 Q. Okay. And you recall the company was trying
21 to tell you that the lesivo didn't affect their
22 ability to operate.

03:06:56 1 A. Yes.

03:06:56 2 Q. And did you understand that that was because
3 there was a Court proceeding that was necessary before
4 the Government could actually finally take back the
5 railway cars?

03:07:16 6 A. I don't really know the legal terms of
7 lesividad.

03:07:20 8 Q. I see.

03:07:22 9 A. Again, you have to be a Guatemalan to
10 understand.

03:07:25 11 Q. Right.

03:07:26 12 A. And so for anybody who was a businessperson
13 that was doing business with Ferrovías, I think it was
14 a no-no to continue doing business.

03:07:40 15 Q. But did they tell you that they still had to
16 go to Court and it was probably going to be two or
17 three years before all that Court stuff happened?

03:07:48 18 A. They probably did, sure.

03:07:49 19 Q. Okay. So if a Court were to decide that the
20 lesividad that had been declared was improper and
21 that, in fact, their contract was just fine, would you
22 do business with them again?

03:08:07 1 A. You need to rephrase that one, that question.

03:08:10 2 Q. Okay. Sure.

03:08:13 3 In the lesividad, after it's declared by the
4 President, then the Fiscal or the Procurador initiates
5 a proceeding in Court in Guatemala, and if at the end
6 of that proceeding the Court decides that the
7 President's decision was wrong, Ferrovías would have
8 full control of its concession, its Rolling Stock,
9 would you do business with them again?

03:08:48 10 A. Yes.

03:08:49 11 MR. STERN: I'm going to object to the form
12 of the question. He's stating legal conclusions, and
13 there's implicit statements about facts that are not
14 in the record or in evidence.

03:09:00 15 MR. DEBEVOISE: Let me just ask it much more
16 simply, because he seems to have a simple
17 businessman's understanding of this.

03:09:07 18 BY MR. DEBEVOISE:

03:09:07 19 Q. If you understood there was no more legal
20 problem with their access to their railway cars, would
21 you do business with them again?

03:09:14 22 A. If the situations would be the right ones and

1 we could see a financial benefit to our company, yes.

03:09:32 2 Q. Okay. And would you say that with the volume
3 of traffic that you had, there was a sufficient
4 financial benefit?

03:09:38 5 A. At the point when we started, yes.

03:09:40 6 Q. Okay. All right.

03:09:50 7 MR. DEBEVOISE: I have no further questions
8 of Mr. Jiménez at this point.

03:09:54 9 PRESIDENT RIGO: Thank you. Mr. Stern.

03:10:00 10 MR. STERN: Thank you, Mr. Jiménez--I mean,
11 Mr. President.

03:10:02 12 REDIRECT EXAMINATION

03:10:06 13 BY MR. STERN:

03:10:06 14 Q. Mr. Jiménez, what is your understanding of
15 the condition of the railroad as of today, because
16 counsel for Guatemala asked you questions about
17 whether you would be able to do--would you do business
18 with Ferrovías if their legal situation was cleared
19 up, essentially. What's your understanding of the
20 railroad condition today?

03:10:26 21 A. They don't have any conditions. They're not
22 there. I mean...

03:10:30 1 Q. What do you mean by that?

03:10:31 2 A. I mean, I don't think they have any business
3 at this point. I mean, at least in any trucking
4 business that will have--any business related to my
5 business.

03:10:46 6 Q. Well, do you have an understanding as to
7 whether, if the lesividad situation was cleared up,
8 you know, tomorrow, whether Ferrovías could just get
9 up and start running the railroad again?

03:11:00 10 MR. DEBEVOISE: I'm going to object to that,
11 Mr. President. That is a highly speculative question.
12 He's not walked the tracks. He doesn't know what's
13 going on.

03:11:11 14 PRESIDENT RIGO: I think that, Mr. Debevoise,
15 is the counterpart to your question, so please answer.

03:11:15 16 THE WITNESS: Can you rephrase the question,
17 please?

03:11:19 18 BY MR. STERN:

03:11:20 19 Q. If the lesividad situation with Ferrovías was
20 cleared up, let's say tomorrow, do you have an
21 understanding as to whether Ferrovías could resume
22 railway operations in the near future?

03:11:40 1 A. I don't think they can restart.

03:11:42 2 Q. And why do you say that?

03:11:49 3 A. It took them, from my understanding, a great
4 deal of effort to get to where they were prior to
5 lesividad, and now they're just way too far behind to
6 start all over again. I mean, I think their
7 credibility has dropped with a lot of customers.

03:12:15 8 Q. Let me--do you recall being asked questions
9 or being asked to read portions of this RDC press
10 release?

03:12:23 11 A. Yes.

03:12:24 12 Q. Through your questions with Guatemala's
13 counsel?

03:12:27 14 A. Yes.

03:12:27 15 Q. Let me have you read from a portion of your
16 Second Statement, Paragraph 5, the first sentence.
17 Could you read that into the record, please?
18 Beginning with "I further declare."

03:12:46 19 A. I further declare that I first--that it was
20 not through Ferrovías that I found out for the first
21 time about the Declaration of Lesividad and the
22 conflicts between Ferrovías and the Government of

1 Guatemala.

03:13:06 2 Q. So when your company made the decision not to
3 continue to do business with Ferrovías, it wasn't
4 based on anything that was stated in this press
5 release; isn't that right?

03:13:14 6 A. That is correct.

03:13:15 7 MR. STERN: Thank you. No further questions.

03:13:16 8 QUESTIONS FROM THE TRIBUNAL

03:13:24 9 MR. EIZENSTAT: Mr. Jiménez, you mentioned
10 that your company was ready to sign a contract in 2004
11 but didn't. Of course, the lesividad was two years
12 later. Could you enlighten the Tribunal as to which
13 contract you were talking about, you were ready to
14 sign and why, two years before lesividad, you did not
15 sign it?

03:13:48 16 THE WITNESS: I was talking about the rental
17 of the property adjacent to Ferrovías' warehouse and
18 terminal. And it took several years for us to
19 finalize the rough draft of the contract, of the
20 contents of how the increase was going to be done and
21 based on what--when it--and that's why it took so long
22 for us to get it finalized. There are, like, 50

1 e-mails related to that contract, back and forth
2 between Bill Duggan, Jorge Senn and myself.

03:14:36 3 MR. EIZENSTAT: And was there a separate
4 contract, then, for your company to actually transport
5 the containers from the rail to the ultimate customer
6 that was separate from this lease of property
7 contract?

03:14:53 8 THE WITNESS: Yes, sir. There were two
9 different contracts.

03:14:56 10 MR. EIZENSTAT: Would it have made a
11 difference for you or your company in terms of whether
12 to continue to do business if you knew that Ferrovías
13 continued to control the Rolling Stock even after
14 lesividad, and, indeed, did you know that they did?
15 Did they try to inform you that they did?

03:15:21 16 THE WITNESS: Could you rephrase the
17 question? I'm sorry.

03:15:24 18 MR. EIZENSTAT: Yes. We were talking about
19 the circumstances under which you and your company
20 made a decision not to continue to do business with
21 Ferrovías.

03:15:32 22 THE WITNESS: Okay.

03:15:32 1 MR. EIZENSTAT: So what I'm asking is, just
2 to back up, you testified that you were informed by
3 the company that they wanted you to continue to do
4 business but you decided not to; correct.

03:15:46 5 THE WITNESS: Correct.

03:15:46 6 MR. EIZENSTAT: Okay. So now I'm trying to
7 get into a little more granularity about the reason
8 for that decision. If you had been told and--well,
9 were you told by Ferrovías that, notwithstanding the
10 Declaration of Lesivo, they continued to control the
11 Rolling Stock, and did you understand that they
12 continued to control the Rolling Stock?

03:16:16 13 THE WITNESS: If I understand your question
14 right--I have to go to Spanish. The last paragraph of
15 your question is the one that I don't quite
16 understand. I'm sorry. I'll see if I can get it.

03:16:34 17 MR. EIZENSTAT: Maybe it's my English rather
18 than the Spanish translation.

03:16:38 19 THE WITNESS: No.

03:16:46 20 MR. EIZENSTAT: Is the translator waiting for
21 me to repeat? I stated it so perfectly, I'm not sure
22 I can repeat it.

03:16:56 1 Were you informed by Ferrovías that,
2 notwithstanding the Lesivo Declaration, that they
3 continued to control the Rolling Stock, the railroad
4 cars? Is that something you were informed about by
5 Ferrovías?

03:17:23 6 THE WITNESS: Yes, it is.

03:17:24 7 MR. EIZENSTAT: And so you're saying that,
8 notwithstanding the fact that you were informed about
9 that, you still felt that they would be unable to
10 perform under the usufruct, even though you understood
11 that they still controlled the Rolling Stock? Is that
12 what you're telling the Tribunal?

03:17:54 13 THE WITNESS: That's correct.

03:17:56 14 MR. EIZENSTAT: And then, again, in your own
15 terms, inform the Tribunal as to why you can--your
16 company came to that conclusion, if they continued to
17 control the Rolling Stock.

03:18:20 18 THE WITNESS: Basically because it was a
19 matter of time for what--our understanding is it was
20 just a matter of time for Ferrovías to stop
21 controlling. And we just didn't want--we didn't want
22 to put our company in an economic situation where

1 we're not able to collect our outstanding bills with
2 Ferrovías.

03:18:49 3 MR. EIZENSTAT: In part, as I understood your
4 answer, you referred to previous Lesividad
5 Declarations and processes that preceded this, not
6 having anything to do with this dispute. Can you
7 enlighten us as to when those might have been
8 and--because they seem to have had an impact on your
9 company's decision.

03:19:23 10 THE WITNESS: Sure. First of all, remember
11 that I don't make that decision myself. I'm part of
12 the Board of Directors. For several years, I have not
13 personally experienced any of them, but the majority
14 of the group had, of the board, had seen problems on
15 which lesividad has been declared to port operators,
16 port operators and other entities or businesses in
17 Guatemala. And the end result always has been the
18 cancellation of their concession. So it was basically
19 a unilateral decision in our meeting to stop just
20 based on that.

03:20:24 21 MR. EIZENSTAT: All right. The last here is
22 a question. There's been a lot of questioning on both

1 sides about the timing of the press release and the
2 President's statements and your reliance on press
3 reports as opposed to the press release. Are you
4 telling the Tribunal that your conclusions with
5 respect to the lesividad were based upon reports of
6 the Ministers and the President or the press release
7 and the video of Ferrovías, or were they all combined
8 in your mind?

03:21:19 9 THE WITNESS: Just to clarify, I didn't see
10 the Ferrovías press release. I don't think I was in
11 Guatemala in that time. So, as I said in the
12 beginning of the questions, it was based on the public
13 announcement made by the President and Government
14 officials.

03:21:48 15 MR. EIZENSTAT: Thank you.

03:21:53 16 PRESIDENT RIGO: Mr. Stern, do you have any
17 questions on the question of my colleague?

03:22:00 18 MR. STERN: I have no further questions.
19 Thank you.

03:22:03 20 PRESIDENT RIGO: Thank you. Mr. Debevoise.

03:22:08 21 MR. DEBEVOISE: Thank you, Mr. President.

03:22:08 22 FURTHER CROSS-EXAMINATION

03:22:12 1 BY MR. DEBEVOISE:

03:22:13 2 Q. I think that Mr. Eizenstat asked you a
3 question about the contracts, and you responded that
4 there was a contract for your real estate lease which
5 was discussed in multiple e-mails but never finalized;
6 is that correct?

03:22:27 7 A. That's correct.

03:22:27 8 Q. Okay. And what did you understand was the
9 scope of the Declaration of Lesivo? Did it apply to
10 just the railway cars or did it also apply to real
11 estate?

03:22:50 12 A. Both.

03:22:52 13 Q. Okay. And I believe you said in response to
14 a question from Mr. Eizenstat that, in your experience
15 and the experience of your fellow board members, that
16 following the Declaration of Lesivo, it was just a
17 matter of time before the Government would take
18 everything away from Ferrovías. Do you remember that?

03:23:25 19 A. Yes, I do.

03:23:25 20 Q. Okay. And we are now five years after that
21 fact. Has the Government finally formally taken this
22 property from Ferrovías?

03:23:44 1 A. No.

03:23:44 2 Q. Okay. And you had a question from Professor
3 Eizenstat about the sequencing of the--

03:23:53 4 MR. EIZENSTAT: Don't elevate my position.

03:23:55 5 MR. DEBEVOISE: Excuse me. Secretary.

03:23:59 6 BY MR. DEBEVOISE:

03:24:00 7 Q. --concerning the sequencing of the press
8 conference and the press releases. Do you remember
9 that question?

03:24:14 10 A. No. I don't--can you rephrase your question,
11 because--

03:24:18 12 Q. Yes. Secretary Eizenstat asked you a
13 question about the sequencing of the press release and
14 the news clips that you saw, et cetera. If I recall
15 correctly, you said you didn't see the press
16 conference, but that you saw press reports about the
17 lesivo; correct?

03:24:49 18 A. No. What I answered was that I didn't see
19 Ferrovías' press release.

03:24:54 20 Q. Right. Okay.

03:24:56 21 A. That's what I answered.

03:24:57 22 Q. Right. Okay.

03:24:58 1 And do you recall that the date of the press
2 release was prior to the date of the little video we
3 showed you?

03:25:16 4 A. Did I recall the date of this? Is that what
5 you're asking me?

03:25:22 6 Q. Yes. Was prior to the date of the little
7 video.

03:25:27 8 A. Yes, yes, I recall.

03:25:28 9 Q. Okay. All right.

03:25:33 10 MR. DEBEVOISE: I have no further questions.
11 Thank you.

03:25:35 12 PRESIDENT RIGO: Thank you. Thank you very
13 much, Mr. Jiménez. You may step down.

03:25:43 14 THE WITNESS: Thank you, and I apologize for
15 my English.

03:25:47 16 PRESIDENT RIGO: Don't worry about it. You
17 speak English very well.

03:25:50 18 THE WITNESS: Thank you.

03:26:14 19 PRESIDENT RIGO: We will have a five-minute
20 break. Please be back at 3:32 or 3:33 and then we can
21 continue.

03:26:29 22 (Brief recess.)

03:36:15 1 PRESIDENT RIGO: We are going to continue our
2 session.

03:36:19 3 Good afternoon, Mr. Fuentes. Would you
4 please read the Witness Statement that you have before
5 you.

03:36:32 6 THE WITNESS: Good afternoon. I solemnly
7 declare upon my honor and conscience that I shall
8 speak the truth, the whole truth, and nothing but the
9 truth.

03:36:43 10 PRESIDENT RIGO: Thank you very much.

03:36:45 11 Mr. Foster? Who's going? Mr. Foster?
12 Mr. Foster.

03:36:51 13 MR. FOSTER: Thank you, Mr. President.

03:36:52 14 Welcome back, Mr. Fuentes.

03:36:54 15 THE WITNESS: Thank you very much.

03:36:55 16 DIRECT EXAMINATION

03:36:57 17 BY MR. FOSTER:

03:36:57 18 Q. Do you have in front of you the copies of
19 your Statements that you've submitted in this
20 arbitration which are dated January 25, 2010, and
21 March 11, 2011?

03:37:14 22 A. That is correct.

03:37:14 1 Q. Do you ratify that--these Statements and
2 affirm their truthfulness before the Tribunal?

03:37:22 3 A. Yes, I do, both of them.

03:37:27 4 Q. Thank you.

03:37:27 5 Were you involved in the negotiations that
6 took place between Ferrovías and the Government of
7 Guatemala from late August 2006 through October 2006,
8 after the Government published the Lesivo Declaration?

03:37:48 9 A. Yes, that is correct. Basically, I was a
10 negotiator trying to find a solution that was
11 satisfactory to both Parties.

03:37:59 12 Q. How many of these negotiations between
13 Ferrovías and the Government took place after the
14 Lesivo Resolution?

03:38:16 15 A. As far as I can remember, not more than four,
16 probably.

03:38:20 17 Q. During these meetings, did the Government
18 ever make a standalone offer to withdraw the
19 Declaration of Lesividad in exchange for Ferrovías
20 agreeing to resolve the alleged legal defects in the
21 Usufruct Equipment Contracts?

03:38:45 22 A. No.

03:38:49 1 MR. FOSTER: Mr. President, that's all the
2 questions I have.

03:38:50 3 And, Mr. Fuentes, if you will answer Mr.
4 Orta's questions.

03:39:03 5 PRESIDENT RIGO: Thank you, Mr. Foster.

03:39:05 6 Mr. Orta?

03:39:21 7 MR. ORTA: Thank you, Mr. Chairman. I have
8 one technical issue before we get started, which is I
9 think at the moment we're not able to control the
10 screen for purposes of putting exhibits up. So before
11 you start counting our time, I would ask that we could
12 try to resolve that.

03:40:18 13 Thank you, Mr. Chairman.

03:40:19 14 CROSS-EXAMINATION

03:40:22 15 BY MR. ORTA:

03:40:22 16 Q. Good afternoon, Mr. Fuentes.

03:40:25 17 A. Good afternoon, Mr. Orta.

03:40:27 18 Q. I'd like to ask you a series of questions
19 about your two Declarations.

03:40:37 20 If I could, I'd like to start with trying to
21 place in context your participation in the events back
22 in 2006 and, perhaps, earlier.

03:40:48 1 At that time, you were a member of the
2 Government; correct?

03:40:52 3 A. Yes, that is correct.

03:40:55 4 Q. You were the National Head Officer of Social
5 Development Projects and Acting Commissioner and
6 Executive Director for the Mega-Projects Commission;
7 is that correct?

03:41:09 8 A. That is correct.

03:41:10 9 Q. And this is a Commission appointed by
10 President Berger?

03:41:20 11 A. Yes, that is correct.

03:41:21 12 Q. Who did you respond to directly? Who was
13 your immediate supervisor?

03:41:29 14 A. The Presidential Commissioner for
15 Mega-Projects appointed by the President of the
16 Republic, at the time his name was Luis Flores
17 Asturias.

03:41:39 18 Q. And he used to be Vice-President of
19 Guatemala, correct, in a prior administration?

03:41:48 20 A. Yes. He was Vice-President under Álvaro
21 Arzú.

03:41:56 22 Q. And was your office in the Presidential

1 Palace?

03:42:00 2 A. No.

03:42:01 3 Q. Where was your office?

03:42:05 4 A. We were physically located in an office of
5 the Social Investment Fund, FIS.

03:42:17 6 Mr. Flores, apart from being the Presidential
7 Commissioner, was the Executive Director of FIS.

03:42:24 8 Q. I'm going to jump a little bit ahead in the
9 schedule in terms of timing of events and then come
10 back. I just want to make sure I understand the
11 context.

03:42:32 12 You mentioned that on the 23rd of August of
13 2006, you were named by President Berger to be a--the
14 acting--or head mediator on behalf of the Government
15 in order to try and resolve the disputes between the
16 Government, FEGUA, on the one hand, and Ferrovías on
17 the other; is that correct?

03:43:00 18 A. That is correct.

03:43:00 19 Q. Was that a conversation you had directly with
20 President Berger?

03:43:09 21 A. About this appointment?

03:43:12 22 Q. And do you know why he picked you to be the

1 mediator or the chief mediator for the Government?

03:43:21 2 A. I suppose it was because that, perhaps, in
3 some ways it was related to the issue of railways, and
4 he knew of my knowledge of the subject.

03:43:32 5 Q. You had knowledge about the railway in
6 Guatemala at that point in time?

03:43:40 7 A. I knew some details. I am not an expert. I
8 cannot say that I was an expert. I am not an expert,
9 but I had knowledge on that project--of that project.

03:43:49 10 Q. Can you tell the Tribunal, to the best of
11 your recollection, exactly what the President said to
12 you when he asked you to be the chief mediator,
13 negotiator, on behalf of the Government?

03:44:02 14 A. I cannot remember his words exactly, but it
15 was something to this effect. Well, after a meeting
16 had been held between both Parties, the President told
17 me, "Well, I'm going to appoint you as the person to
18 negotiate this matter, and you are going to be in
19 charge of this issue."

03:44:24 20 Q. And what--well, did you say anything back to
21 the President at that point?

03:44:30 22 A. Yes, of course. I accepted. "Yes,

1 Mr. President, I will be pleased to do my best."

03:44:38 2 Q. Do you understand that the President was
3 asking you at that point in time--we're talking about
4 the 23rd of August 2006--to try to do your best, as
5 chief negotiator for the Government, to reach a
6 resolution of the disputes between the Government, on
7 the one hand, and Ferrovías on the other, in relation
8 to the railway?

03:45:01 9 A. Yes, that is correct.

03:45:02 10 Q. And was one of the objectives to reach a
11 resolution of all of the items that were in dispute
12 between the Parties at that point?

03:45:15 13 A. I don't know what were all the issues there,
14 but I was trying to be the negotiator, the
15 facilitator, between Ferrovías and the other
16 Government actors that, of course, had to have deep
17 knowledge of all the aspects of the concessions.

03:45:37 18 Q. And you understand your mission that the
19 President was giving you to try to resolve all of
20 those problems, whether or not you understood at that
21 point what each problem was?

03:45:50 22 A. Yes, to try and look for a solution that

1 would be satisfactory to both Parties in order to find
2 a solution.

03:45:59 3 Q. (Translation overlapped) What was the
4 problem?

03:46:05 5 A. The problem. I wouldn't be able to pinpoint
6 which, but the problems related to railways.

03:46:14 7 Q. What did you understand the problem to be
8 that you were being tasked with trying to find a
9 solution for?

03:46:31 10 A. Well, I don't think there was a will from
11 both Parties to define which the problem was--rather,
12 what the problem was. The idea was to try for--and
13 the railway continue to being operational and not to
14 take subsequent decisions that we know because of
15 evidence what happened later.

03:46:52 16 Q. And did you understand that it was your
17 objective to try to reach a resolution in order to
18 avoid the publication of the Executive Resolution of
19 lesivo?

03:47:05 20 A. At the time I had never learned about this
21 lesivo. I had no idea that that could take place.
22 What I was trying to do is to facilitate an agreement

1 between both Parties.

03:47:21 2 To repeat, this issue of lesivo, I had no
3 knowledge of, and I didn't know the details of each
4 one of the Contracts that make up the onerous
5 usufruct.

03:47:34 6 Q. And just to make sure that you understand my
7 question, I'm not asking if you know or at that point
8 were aware of all of the technical or legal issues
9 associated with the Lesivo Declaration. Rather, I'm
10 asking whether, at that time when the President asked
11 you to be the chief negotiator on behalf of the
12 Government, were you aware that the President had
13 signed a Lesivo Declaration at that point?

03:48:06 14 A. This was the meeting of the 23rd, the 23rd of
15 August. I had not an absolute certainty that it had
16 been signed. I knew that it was coming. And if I
17 remember correctly, this happened the very next day.

03:48:31 18 Q. Did the President say anything else to you?

03:48:34 19 A. No.

03:48:36 20 Q. Other than that conversation that you had
21 with President Berger on the 23rd of August that
22 you've just described for us, did you have any other

1 conversations with President Berger regarding the
2 disputes between Ferrovías and FEGUA?

03:49:01 3 A. Before or after?

03:49:02 4 Q. Let's go first with prior to that date.

03:49:10 5 A. Before the date, yes, when I was involved in
6 one of the meetings, I had had the possibility of
7 discussing this issue without going into the details
8 of what was going on exactly. I was--let the
9 President know that it was a very interesting project
10 and we should pay all the attention in the world to it
11 so that we can go ahead--we could go ahead and develop
12 the railway in the different stages because we felt
13 this would greatly behoove the country.

03:49:45 14 So, these were my comments in some meetings.

03:49:50 15 The meetings were not specifically geared at
16 this issue, but the President was present at those
17 meetings. So, the President knew that I was related
18 to the issue of railways and that I had a knowledge
19 about some aspect. So, if you're asking me about
20 that, the answer is yes.

03:50:06 21 Q. Did you ever have other conversations about
22 the importance of the railway for the country--did you

1 have any other discussions prior to that 23rd of
2 August?

03:50:17 3 A. (In Spanish)

03:50:23 4 Q. Sure. Other than the conversation that you
5 just described for us that--or conversations that you
6 described for us that you had with the President prior
7 to the 23rd of August, 2006, in relation to the
8 importance of the railway project for the country, did
9 you have any other discussions with President Berger
10 prior to the 23rd of August in relation to the railway
11 projects and/or any disputes between the Government,
12 FEGUA, on the one hand and Ferrovías on the other?

03:50:59 13 A. Perhaps I didn't make myself clear.

03:51:05 14 At some point in time--and I don't remember
15 the dates--and this was not a formal meeting, this was
16 not an official meeting to deal with this issue.

03:51:16 17 Well, the President knew that I was somewhat
18 involved in trying to provide support to the
19 development of the railway project. This project was
20 never a mega-project that was assigned to us. So,
21 officially, was it not, but because of its strategic
22 importance for the country, I was, let's say, exposed

1 to information, mainly from Ferrovías and, in very few
2 occasions, from the executing unit of this project,
3 which is the Ministry of Infrastructure and Housing
4 and the Department of Railways--well, we don't really
5 have a Department of Railways, but it is FEGUA.

03:52:05 6 Q. And the conversations that you had with the
7 President, they were limited to the issues that you
8 just discussed, the conversations before the 23rd of
9 August?

03:52:21 10 A. Yes. Basically they were about the fact that
11 this issue was very important for the country and
12 apparently the Parties cannot reach an agreement. So,
13 without going into further detail.

03:52:33 14 Q. And after the 23rd of August, did you have
15 any conversations with President Berger in relation to
16 the disputes between Ferrovías and FEGUA?

03:52:48 17 A. Yes. Let me look at the date just to make
18 sure.

03:53:19 19 Yes. I tried to contact the President on the
20 24th when the events were imminent, but,
21 unfortunately, the President wasn't able to talk to
22 me. So I was referred to the Secretary--to the

1 General Secretary.

03:53:41 2 Q. We'll talk about the conversations you had
3 with the Secretary-General of the President on the
4 24th of August in a little bit, but any other
5 conversations with President Berger in relation to
6 these issues?

03:53:55 7 A. On the 24th or the 23rd?

03:53:57 8 Q. At any other time.

03:53:58 9 A. No.

03:53:59 10 Q. Including after the 24th of August 2006?

03:54:05 11 A. Probably some telephone call just for me to
12 know what else I could do to try and solve this
13 problem that had already ensued probably--

03:54:19 14 Q. (Overlapping translation.) Do you recall
15 that conversation at all, that conversation you say
16 may have happened?

03:54:32 17 A. No, I don't. Basically, as of the
18 Declaration of the Lesivo, well, there was no need for
19 a ratification of the Appointment or the
20 responsibilities. Of my own accord, I tried to bring
21 the Parties together to see whether a resolution could
22 have been reached.

03:54:55 1 Q. In relation to the meters?

03:54:58 2 A. For parties to agree amongst themselves.

03:55:00 3 Q. And publication of the Lesivo Declaration--

03:55:06 4 A. Pardon me. Pardon me.

03:55:12 5 What was the question again?

03:55:14 6 Q. In the meetings that did occur after the

7 publication of the Lesivo Declaration--and I'm

8 referencing in particular the meetings that began on

9 the 28th of August 2006, the first business day after

10 the Lesivo Declaration was published, did the

11 President--was the President aware that you were

12 holding those meetings?

03:55:38 13 A. Probably, yes, because the Government

14 officials with whom I met were officials of his

15 administration, specifically from the Minister of

16 Communications, but there was no major contact on my

17 part with the President. The message had been given

18 all right. It was, "Look, let's see if you can do

19 something."

03:56:07 20 Q. When you say "the instructions had already

21 been given," you understood that you should continue

22 to try to find a way to seek a resolution of the

1 disputes between Ferrovías and FEGUA on behalf the
2 Government even after the Lesivo Declaration had been
3 published?

03:56:30 4 A. Yes, of course. If the contrary had been the
5 case, you rest assured that the President would have
6 told me, "Do nothing else." So I understood that I
7 should have to make an effort and this would be
8 positive for the country.

03:57:02 9 Q. Other than President Berger, were there any
10 other high-level Government officials that you had
11 discussions with about the problems between Ferrovías
12 and FEGUA?

03:57:19 13 A. Are you talking about a specific meeting or
14 at any point in time?

03:57:23 15 Q. Fair point.

03:57:26 16 We know that you had several conversations
17 with some folks that attended some of these meetings
18 which we're going to talk about in a second.

03:57:37 19 But for example, did you have access to
20 the--I mean, were you speaking with the private
21 secretary of the President at any point about these
22 issues?

03:57:45 1 A. The private secretary or the General
2 Secretary?

03:57:50 3 Q. Private secretary.

03:57:52 4 A. In connection with this issue?

03:57:53 5 Q. Yes.

03:57:56 6 A. I don't remember holding a meeting with the
7 private secretary in connection with this issue.

03:58:01 8 Q. And other conversation you described in your
9 Declaration that you had with the Secretary-General,
10 Mr. Arroyave, did you have any other discussions with
11 him about these issues?

03:58:16 12 A. Again, my question is before or after or at
13 any point in time?

03:58:19 14 Q. Other than the one that you had on the 24th
15 of August, did you have any other discussions with
16 Mr. Arroyave about these issues?

03:58:32 17 A. Not with Mr. Arroyave, I didn't hold any
18 conversations with him--any other conversations with
19 him.

03:58:39 20 Q. Did you ever have any conversations
21 with--well, let me strike that and try a different
22 question.

03:58:47 1 Have you ever met Mr. Ramón Campollo?

03:58:54 2 A. Me personally?

03:58:55 3 Q. Yes, sir.

03:58:56 4 A. In connection with this issue?

03:58:57 5 Q. Have you ever met him at all?

03:58:59 6 A. I know Mr. Ramón Campollo, yes, of course, I
7 do.

03:59:05 8 Q. You met him?

03:59:09 9 A. But not when I was in the Government. I know
10 him from way back in time.

03:59:12 11 Q. Have you ever spoken to him about issues in
12 relation to the railway?

03:59:18 13 A. No, never.

03:59:20 14 Q. Do you know a gentleman by the name of Héctor
15 Pinto--or did you know a gentleman by the name of
16 Héctor Pinto?

03:59:28 17 A. Yes. Yes, I did meet him.

03:59:31 18 Q. Did you ever speak to him about any issues in
19 relation to the railway?

03:59:37 20 A. Yes. Yes. He came to me at some point in
21 time--I don't remember the date exactly--but I
22 remember it was during Mr. Berger's administration,

1 when he--Mr. Berger was present and when I was holding
2 my first post--not the negotiation post, but the post
3 that had to do with social projects, and he asked me
4 to meet with him.

04:00:03 5 He came to my office to find information
6 about the Mega-Projects, what these mega-projects
7 were, and if railways were included in the
8 mega-projects. And I answered the same thing that I
9 answered to you: This is not one of the four issues
10 that the President assigned to us, but because of the
11 nature of this issue and because of the dimension of
12 it, it can be considered a mega-project, and then the
13 conversation went on to finding out what the line
14 would be of our Government related to this issue.

04:00:47 15 We said, "Well, there are plans. There's a
16 concession given to RDC and Ferrovías Guatemala and
17 this is a current situation."

04:01:00 18 And he insisted, "What else? How can we
19 expedite things?"

04:01:06 20 And my answer to him was, "Why? Why are you
21 interested? What is your interest based on?"

04:01:12 22 I knew perfectly well how the sugar industry

1 works and where it operates in Guatemala, so it was
2 very logical and very natural for him to try and
3 obtain information related to this issue. But my
4 answers were always related to the fact that there was
5 a Concession. There was a company. And, well, the
6 policies of the government are to be set forth by the
7 Ministry of Communications, and the Minister of
8 Communications has to support, steadfastly,
9 everything that the Government of Guatemala is ready
10 to support for those Contracts to be enforced and for
11 the development--for the railway to be developed as we
12 have wished at all times.

04:02:01 13 Q. Do you recall when that conversation took
14 place?

04:02:05 15 A. No, I don't. I need to think about it very
16 carefully, but I can only tell you that it must have
17 been by the end of the first year of the
18 administration, that would be 2004, 2004, end of--late
19 2004, early 2005. But I am not certain, and,
20 unfortunately, he's no longer here to be able to ask
21 him.

04:02:40 22 Q. And other than that one conversation with

1 Mr. Pinto about the railway, did you have any other
2 conversations with him about that topic?

04:02:50 3 A. By phone, twice or three times. He was
4 conducting some sort of follow-up to see how the issue
5 was developing and trying to see whether someone--I
6 imagine that his interest was to be sure and certain
7 whether someone within the administration of President
8 Berger was managing that issue in particular.

04:03:20 9 And my answer was always the same. "It is
10 not one of the Mega-Projects that has been assigned to
11 our responsibility. My suggestion is to resort to the
12 relevant place, and that would be the Minister of
13 Communications, Infrastructure and Housing."

04:03:35 14 Q. Other than those few telephone conversations
15 that you just described and the one in-person meeting
16 that you described, did you have any other
17 conversations with Mr. Pinto about that topic?

04:03:53 18 A. We could have exchanged e-mails. I do not
19 remember e-mail messages. I do not remember, but
20 there might have been a couple of them, but I don't
21 remember.

04:04:03 22 "Do you have any idea about how it is

1 developing? Do you have any information," things of
2 that sort.

04:04:08 3 Q. Is that what you recall?

04:04:09 4 A. Yes. In connection with Mr. Pinto, yes.

04:04:22 5 Q. Okay. Let's talk about before the 24th of
6 August 2006. You mention in your First Declaration,
7 and in particular Paragraph 6 of your First
8 Declaration--

04:04:47 9 MR. ORTA: If we could put that up, Kelby.

04:04:52 10 BY MR. ORTA:

04:04:53 11 Q. In the second sentence you say that
12 "Throughout the years 2004 and 2006, I had several
13 meetings with representatives of FVG with regard to
14 the development and investment opportunities in
15 connection with the project."

04:05:11 16 Then you say, "all of which were suspended in
17 August 2006 as a result of the Lesivo Declaration by
18 the Government of Guatemala."

04:05:19 19 Is that an accurate statement?

04:05:25 20 A. The one from Paragraph 6?

04:05:27 21 Q. Yes, sir, the one I just read.

04:05:41 22 A. Yes, it is correct. I met with them several

1 times prior to what happened.

04:05:49 2 Q. What was the purpose of those meetings that
3 you had with Ferrovías between 2004 and 2006?

04:05:59 4 A. I imagine that, similarly to what happened
5 with Mr. Pinto, Mr. Senn, who was General
6 Vice--Assistant Manager, was very interested in the
7 subject matter that our office was conducting; that
8 is, the Mega-Project Office, and you--I'm sure you're
9 going to understand it.

04:06:19 10 Let me give you some context. When we refer
11 to "mega projects" in our country, it is something
12 gigantic, something that is striking, but they were
13 not--they weren't that many. There were four
14 significant projects. But the President had decided
15 to commission them to very specific personalities,
16 such as my boss, Gonzales Asturias. Some people
17 approached our office, such as Mr. Senn and Mr. Pinto,
18 and--with many other projects that have nothing do
19 with the original four projects to try and find
20 support for the project.

04:07:13 21 I would say that that explanation should
22 clarify quite well why we had a relationship with

1 Ferrovías.

04:07:19 2 Q. And were the--were the subject of the
3 conversations you had with Ferroviás all or primarily
4 all conducted through Mr. Senn?

04:07:37 5 A. Primarily.

04:07:39 6 Q. Did you have discussions with Mr. Posner ever
7 before this legal case started?

04:07:52 8 A. I had the honor to meet Mr. Posner once, and
9 I knew through Mr. Senn of possible future plans to be
10 developed. And, once again, many people, including
11 foreigners, approach our office to find out about the
12 railway and what the situation was. These were people
13 who, at some point in time, had expressed their
14 potential interest as investors or shareholders. They
15 just wanted to explore the situation.

04:08:34 16 My role back then was basically to meet them.
17 I know you. I know some of the details. I know the
18 strategic vision of the railway project and, in
19 particular, I think it is fantastic. And I would say
20 it is very easy to establish contact among the Parties
21 so they can explore other possibilities, but nothing
22 beyond that.

04:09:04 1 Q. Have you ever met Juan Esteban Berger, the
2 son of the former President Berger?

04:09:12 3 A. Yes, of course, I know him.

04:09:15 4 Q. Have you ever had any discussions with Juan
5 Esteban Berger in relation to the disputes between
6 Ferrovías and FEGUA?

04:09:27 7 A. No.

04:09:28 8 Q. No?

04:09:29 9 A. No. That's correct. I said no.

04:09:35 10 Q. Did you ever tell Jorge Senn that
11 Mr. Campollo, through the efforts of Juan Esteban
12 Berger, was concocting some claims about illegalities
13 related to the Usufruct Agreements that Ferrovías had?

04:10:05 14 A. I think that that is very sensitive
15 statement, and my answer is absolutely not.

04:10:14 16 Q. Did you ever tell anyone else at FVG--did you
17 ever make that statement to anyone else at FVG--at
18 Ferrovías, excuse me?

04:10:32 19 A. That Juan Esteban and Mr. Campollo were
20 preparing Plan B? Is that your question?

04:10:38 21 Q. That Mr. Berger, on behalf of Mr. Campollo,
22 was speaking with the Government to create some

1 illegalities or concoct some illegalities associated
2 with the Usufruct Contracts that Ferrovías had?

04:11:00 3 A. Let me clarify two issues and then I respond
4 to your question. If I fail to do so, please ask me
5 again.

04:11:06 6 First of all, the railroad issue in Guatemala
7 is something public. Any official or any
8 businessperson may refer to this. This is not
9 forbidden. And if there have been some strategic
10 interests by some groups, for example, from--by the
11 sugar sector, this is not a secret.

04:11:32 12 And if you knew the context in Guatemala, the
13 sugar industry is very aggressive in the positive
14 sense of the word. It is ahead of the game. They
15 always wanted to be present and, clearly, there are
16 some parallel situations when we think of means of
17 transportation; that is, of low cost and low social
18 impact.

04:12:00 19 So if that was the case, that is not a State
20 Secret, and I can guarantee to you that you do not
21 need me to do that.

04:12:08 22 And the question was whether I told someone

1 beyond Ferrovías about that? No, I didn't. That is
2 irrelevant to me.

04:12:16 3 "Look, there is someone who is interested in
4 the railroad issue," yes, of course, the sugar sector
5 people. But to mention the name of Mr. Berger, whom I
6 know and--that was not the case. And I did not have a
7 meeting on that with any of the members from
8 Ferrovías.

04:12:47 9 MR. FOSTER: Mr. President, I object to the
10 entire line of questioning about this alleged
11 conversation. That is not in his Statement. It goes
12 beyond his Statement and beyond anything he testified
13 to on direct.

04:13:03 14 PRESIDENT RIGO: Mr. Orta?

04:13:05 15 MR. ORTA: Could we--I'd rather not give you
16 the answer in front of the witness. May I have a
17 sidebar?

04:13:12 18 PRESIDENT RIGO: Yeah, sure.

04:13:13 19 MR. ORTA: Can we go off the record for a
20 second?

04:13:32 21 (Discussion held off the record.)

04:15:02 22 PRESIDENT RIGO: So, the objection of

1 Mr. Foster he was is denied. But, at the same time,
2 as a general matter in situations, as has been
3 explained by counsel, we will allow questioning that
4 may refer to other witnesses' Statements.

04:20:04 5 MR. ORTA: Thank you, Mr. Chairman.

04:20:06 6 BY MR. ORTA:

04:20:07 7 Q. Mr. Fuentes, I'd like to now take you back to
8 that meeting of 23rd of August of 2006.

04:20:20 9 You mentioned that before the President gave
10 you the mandate to be the chief negotiator for the
11 Government, he--or you had attended a meeting wherein
12 persons from Ferrovías and the Government had been
13 in--had participated; is that correct?

04:20:45 14 A. Yes. The answer is correct.

04:20:47 15 Q. And do you recall who from Ferrovías was at
16 that meeting?

04:20:55 17 A. At least I remember Mr. Jorge Senn.

04:20:58 18 Q. Do you recall whether Mr. Campollo's name was
19 mentioned during that meeting?

04:21:04 20 A. No, he was not mentioned.

04:21:07 21 Q. And what was the--what was the purpose of
22 that meeting, to your recollection?

04:21:13 1 A. Once again, it was to discuss, at the highest
2 possible level, the interest. But mostly the concern
3 of the company represented by Mr. Senn, Ferrovías, in
4 connection with the slow performance and the lack of
5 cooperation and information by the Government on the
6 railway issue.

04:21:46 7 Q. Is that why Government--what they're stating
8 to the Government?

04:21:54 9 A. More than Mr. Senn, I'd say that I said that.
10 That was my interpretation. Those were my words
11 about--and my understanding of what Mr. Senn had
12 shared with me.

04:22:04 13 Q. And what do you recall to be the President's
14 reaction? What did he say during that meeting, to the
15 best of your recollection?

04:22:15 16 A. The President was always characterized for
17 being a very optimistic person and a supportive person
18 to the Project, and I could understand his words as
19 well as his reaction to be positive saying, "We are
20 going to go ahead with the Project."

04:22:42 21 Q. To your recollection, did the President make
22 any demands on Ferrovías and Mr. Senn during that

1 meeting on the 23rd of August?

04:22:55 2 A. I don't know whether the word "demand" in
3 English and in Spanish is the same, but I would say
4 that the President had made them see that his
5 understanding in this issue, that was not very deep,
6 was that the plans for the various phases had not been
7 developed and, as I understand now, they are in the
8 Concession Program and that they had not been
9 developed as expected and that was his concern and
10 interest.

04:23:33 11 Q. And do you have any recollection of the
12 President saying anything else to Mr. Senn during that
13 meeting?

04:23:41 14 A. I don't remember, but I think I mentioned the
15 most important part.

04:23:48 16 Q. Later on that day, the 23rd of August, do you
17 recall attending a meeting with other members the
18 Government to prepare for a meeting with Ferrovías the
19 next day?

04:24:09 20 A. No. The issue of me, of--that I met with
21 representatives from the Government to prepare that
22 meeting?

04:24:16 1 Q. Do you recall that meeting?

04:24:18 2 A. No, I don't remember having met just with one
3 Party. My meetings were always with both Parties.

04:24:28 4 Q. Do you recall meeting with, for example,
5 anyone from the Ministry of Communications later on
6 the 23rd of August?

04:24:45 7 A. As I said, just with members of the work team
8 from the Communications Ministry, no, I do not
9 remember.

04:24:52 10 Q. You remember a meeting on the 24th of August
11 that you mention in your Declarations at which there
12 were members of the Government and also Ferrovías
13 attended; correct?

04:25:02 14 A. That is correct.

04:25:03 15 Q. Did you do anything to prepare for that
16 meeting?

04:25:09 17 A. No, I didn't. Just tried to fulfill my duty
18 as a mediator.

04:25:15 19 Q. Now, during that meeting, you--and you
20 discuss it in your Declarations--during that meeting,
21 the Government presented a draft of a Settlement
22 Agreement to Ferrovías; correct?

04:25:44 1 A. I wouldn't call it a Settlement Agreement. I
2 would say that it was set of demands that the
3 Government in this case based on--or through the
4 Ministry of Communications was stating to Ferrovías so
5 as to not to continue with the process.

04:26:07 6 Q. Were you the person, the chief person on
7 behalf of the Government on that meeting, given the
8 mandate you had from the President?

04:26:17 9 A. In my humble mind, I could have thought so,
10 but that was not the case. Once again, I was trying
11 to be a negotiator between two Parties that had
12 something less than an Agreement. I would say that
13 they had a Disagreement.

04:26:40 14 Q. Did you have any input in the Draft
15 Settlement Document that was given to Ferrovías on the
16 24th of August?

04:26:52 17 A. Absolutely not.

04:26:54 18 MR. ORTA: If you could put up C-44 for me,
19 please.

04:26:57 20 BY MR. ORTA:

04:27:05 21 Q. And while we're getting the document up, in
22 case you would like to see is it in Spanish, the

1 document is also in your binder behind Tab C-44 in
2 Spanish.

04:27:21 3 A. Thank you.

04:27:22 4 Q. If we could go to--first of all, just so that
5 you understand what I'm showing you, this was a
6 document that was submitted in this case by Claimant,
7 and they have said this is the written document that
8 they were handed on the 24th of August 2006.

04:27:45 9 And if we could go to Clause Number 3,
10 please, in this clause--first of all, it is titled
11 "The Settlement," the Spanish version says "de la
12 Transaccion" and in Clause A of this Third Article of
13 the Draft Agreement, the Parties are proposing
14 that--or the Government, I guess, was proposing that
15 Ferrovías desist from its arbitration cases that had
16 been filed; correct?

04:28:48 17 A. I don't know. This is a document that didn't
18 have my participation.

04:28:52 19 Q. Well, you characterized the document earlier
20 as a series of demands, I think you said. You said
21 exigencies or demands.

04:29:04 22 A. This document?

04:29:05 1 Q. Yes, sir, this document that was presented to
2 Ferrovías by the Government on the 24th of
3 August 2006. You were just characterizing it a second
4 ago.

04:29:18 5 A. Yes, I understood now.

04:29:20 6 This is a document that was already prepared
7 by someone. I did not participate in its drafting,
8 and it was just shown at some point during the
9 meeting, and it was mentioned. I was not the one--the
10 one who read it or was not aware of it. I could read
11 it, but I couldn't tell you what it is about because,
12 once again, I am not an expert, and it was not part of
13 my duty, and I was never in charge of that either.
14 So, I was just trying to have--one Party was
15 presenting a document to the other Party, that was
16 Ferrovías, and I was trying to see whether their
17 relationship was adverse or it was positive or whether
18 an agreement could be reached, but I cannot share an
19 opinion about this.

04:30:10 20 Q. And, so as not to waste time, I wouldn't take
21 you through all the points in the document. The
22 Tribunal can see it for itself.

04:30:17 1 I do want to take you, though, to a few of
2 the clauses just to point something out.

04:30:21 3 If you go to Clause 4, please.

04:30:27 4 MR. ORTA: And just highlight all the
5 language that you can there, there you go, that's in
6 Clause 4.

04:30:32 7 BY MR. ORTA:

04:30:34 8 Q. Sir, if you prefer, you can look at the
9 Spanish version, but you can see that, in this
10 document, it talks about issues to be negotiated
11 between the Parties; correct?

04:30:48 12 A. Points or issues to be negotiated in
13 connection with the terms of the Onerous Usufruct
14 Contract involving...

04:30:54 15 Q. I think you're reading a little too fast for
16 the record.

04:30:57 17 But my question is just: It talks about
18 issues to be negotiated between the Parties in
19 relation to Railway Contract, correct, right-of-way
20 Contract?

04:31:13 21 A. I can't say for sure, because I'm not
22 familiar with it. I didn't read this document at that

1 meeting. It was just presented. It was read by the
2 representatives of Ferrovías, and after that, the
3 document--the meeting, rather, had to be canceled
4 because no agreement was reached.

04:31:31 5 Q. Do you recall whether, when this document was
6 handed over by the--first of all, did you hand this
7 document over or did someone else do it during the
8 meeting to Ferrovías?

04:31:45 9 A. This document?

04:31:45 10 Q. Yes, sir.

04:31:48 11 A. No, this document never came through my
12 hands. Somebody else must have presented it and
13 delivered it to Ferrovías, and that occurred as you
14 indicate.

04:31:58 15 Q. And when it was given to Ferrovías, do you
16 recall if they made any counterproposals?

04:32:05 17 Did they engage in efforts to negotiate some
18 of the terms of this Agreement during this meeting?

04:32:18 19 A. No. No effort was made to negotiate. And
20 Engineer Senn, Mr. Senn, said that he did not have the
21 authority or the power to be able to make a decision
22 at that time. And that--definitively, that was the

1 end of the meeting.

04:32:37 2 Q. And going into the meeting, was it your hope
3 that the Parties were going to be able to reach
4 agreement on the terms of this document or some other
5 so as to be able to avoid the publication of the
6 Lesivo Declaration?

04:32:54 7 A. I couldn't say that I had the hope that they
8 would get into some negotiation about this document
9 because, once again, I'm not familiar with this
10 document. I don't understand this document, nor was
11 it my obligation, based on my position at that time,
12 to know of any detail of this document.

04:33:11 13 This document surely must contain aspects
14 related to the clauses of the Contracts between them,
15 which is not my work. It never was.

04:33:19 16 What I wanted was to try to say, "Is there
17 some way that both the Government and you can reach
18 agreement? Yes or no?" And the answer at that time
19 is what I already said. "No. No. We can't. We
20 don't have the power."

04:33:38 21 And judging--based on what I'm looking at,
22 it's a document that you can't just read it and make a

1 decision on it in five minutes.

04:33:45 2 Q. Do you recall, before Mr. Senn communicated
3 to the Government officials there and yourself that he
4 didn't have authority to negotiate this Agreement--do
5 you recall if he stepped out of the room to make a
6 call to Mr. Posner or Mr. Duggan or anyone else?

04:34:06 7 A. No, I don't remember those details.

04:34:10 8 Q. Let me take you now, sir, to the meeting
9 notes from the meetings that took place after the
10 publication of the Lesivo Declaration.

04:34:23 11 And in particular, I want to take you now to
12 R---Exhibit R-36. Again, we're putting the English
13 version of the document up on the system. I would ask
14 that you look at the Spanish version so that you're
15 clear on what the document says.

04:35:03 16 And the first question is: Did you prepare
17 these notes, these meeting notes?

04:35:12 18 A. No. I don't think it was me who prepared
19 them.

04:35:19 20 Q. Okay. On the first page of Exhibit R-36,
21 there's an introductory paragraph that basically
22 says -- I'm paraphrasing--but that a discussion table

1 was set up on Monday, August 28, 2006, following the
2 President's Declaration of Lesivo on August 25, 2006.

04:35:45 3 Do you remember that that was, in essence,
4 the purpose of the meeting? To try to continue to sit
5 down after the President's publishing of the Lesivo
6 Declaration to see if the Parties could reach a
7 negotiated solution to their problems?

04:36:01 8 A. Yes.

04:36:01 9 Q. First of all, you were at this meeting;
10 correct? You called the meeting actually? You were
11 the one who called it?

04:36:10 12 A. That is correct.

04:36:11 13 Q. And you informed the Parties that--you said
14 you were there by appointment of the President to try
15 to coordinate a settlement between the Parties?

04:36:23 16 A. They already knew that ahead of time because
17 this was after the Declaration of Lesividad. So,
18 there was no need for me to say so. I think that both
19 Parties gave me the benefit of the doubt of saying
20 "Let's try. Let's see if we can still do something."

04:36:41 21 Q. I want to point your attention to Point No. 3
22 under the heading of Monday, August 28.

04:36:47 1 First question is: This meeting was, in
2 fact, held on Monday, August 28, to your recollection,
3 the first meeting?

04:37:04 4 A. I would think so.

04:37:09 5 Q. Under Point No. 3, it says, "It is public
6 information that, on the same day, all the newspapers
7 in the country published Ferrovías' paid advertisement
8 space."

04:37:22 9 Do you see that?

04:37:30 10 A. Yes, yes. I can read that. I read the third
11 point. But what I cannot say for sure is whether, on
12 August 28, whether that was the day that Ferrovías'
13 paid ad came out. I don't know, but that's very easy
14 to check because it's in the media, where there will
15 be evidence as to what day the paid ad by Ferrovías
16 was published.

04:37:57 17 Q. Do you recall whether or not, if what is
18 reported here was accurate, that on that day, all of
19 the newspapers published Ferrovías' paid
20 advertisement, do you recall generally that there were
21 discussions at that first meeting about the fact that
22 Ferrovías was speaking to the public, to the media,

1 about the Lesivo Declaration?

04:38:21 2 A. I cannot say that. What I can tell you with
3 absolute certainty is that all of the media in
4 Guatemala were aware that there was a problem between
5 the Parties, and there were publications practically
6 every day in the media of what one or the other of the
7 actors had to say. That is to say, Opinions by the
8 Government as well as the Opinions by Ferrovías, but I
9 wouldn't be able to affirm exactly what you're saying.

04:38:55 10 Q. If we could look at the last point with
11 respect to the Monday, August 28 meeting notes, it
12 says "The participants in the table communicated"--I'm
13 going to take liberties here and fix the
14 translation--"to the manager of Ferrovías that it was
15 not appropriate for the Company to resort to media
16 outlets to express their Opinions on the process while
17 a discussion table was being held."

04:39:26 18 Do you recall generally that there were
19 requests to Mr. Senn to refrain from making
20 communications to the press on behalf Ferrovías
21 because the Parties were still sitting down trying to
22 negotiate a resolution?

04:39:49 1 A. Yes, yes, that's right. And it seemed fair
2 to me, in addition.

04:39:54 3 Q. In respect to the substantive issues that
4 were discussed during the meeting, there are a number
5 of them listed under Point No. 5, and I want to draw
6 your attention to the fourth bullet point, the one
7 just above the one we were reading.

04:40:18 8 A. Uh-huh.

04:40:19 9 Q. And that one says that one of the points to
10 be discussed or that was discussed during that meeting
11 was "evaluating the execution of a new contract for
12 usufruct of railroad equipment considering the Lesivo
13 Declaration of the previous Contract."

04:40:40 14 Do you recall that that was one of the issues
15 discussed during the meeting, as reported in these
16 minutes?

04:40:49 17 A. I'd like to say yes, but I'm not certain of
18 just what the points were. They talked about three
19 Contracts, but I don't remember any of them in
20 particular--by which I don't mean to say this didn't
21 happen; it's simply not something that I'm on top of
22 that would allow me to say with absolute certainty,

1 yes, that was one of the issues discussed.

04:41:12 2 Q. Going to the next meeting, which was held on
3 Wednesday--Wednesday, August 30--same document--

04:41:19 4 MR. ORTA: If you could just go down a little
5 bit, Kelby.

04:41:23 6 BY MR. ORTA:

04:41:23 7 Q. This was an internal meeting at which it says
8 you were in attendance and that occurred on Wednesday,
9 August 30, and at which the Attorney General of
10 Guatemala attended, as well as yourself and others in
11 the Government; correct?

04:41:44 12 A. Yes, that is correct.

04:41:45 13 Q. And in relation to Point No. 3, do you recall
14 that the Attorney General stated during that meeting
15 that he would hold off filing any legal actions
16 relating to the Lesivo Declaration in order to give
17 the parties time to hold the negotiation meetings that
18 you were attending--or that you were chairing?

04:42:13 19 A. Yes, that's correct.

04:42:14 20 Q. If you look at the last point on Wednesday,
21 August 30, you state there that--or it states there,
22 excuse me, that you said during that meeting that you

1 were aware of the fact that Ferrovias had scheduled a
2 press conference for the following day--that would be
3 Thursday, August 31--and that the American Embassy,
4 AMCHAM and other Constitutions had been invited to
5 attended press conference.

04:42:38 6 Do you recall making that observation during
7 that meeting?

04:42:46 8 A. Yes.

04:42:54 9 Q. Going to the next Friday, September 8, set of
10 meeting notes, this meeting was held in your office,
11 according to the minutes. Do you recall that?

04:43:11 12 A. Yes, I do remember.

04:43:12 13 Q. And there were a number of issues discussed,
14 but I just want to call your attention to Topic No. 6,
15 which is actually on the next page.

04:43:23 16 At least according to the minutes, one of the
17 topics that was discussed was the possibility of a new
18 Contract for the railroad equipment, and it says here
19 that FEGUA suggested that "A new Contract should be
20 drafted to correct the deficiencies which motivated
21 the Lesivo Declaration and that no reference was made
22 to the deficiencies as a strategy of the Government."

04:43:49 1 Do you see that?

04:43:54 2 A. Point 6, yes, I see it here.

04:43:56 3 Q. Do you recall it at the meeting this issue
4 came up, just as in the prior meeting?

04:44:03 5 A. Just as in the prior meeting, I can't assure
6 you; but at this meeting, probably, yes, they were
7 touching on more specific issues.

04:44:11 8 Q. When he said there was no reference made to
9 the deficiencies as a strategy of the Government, do
10 you have any idea what that is a reference to, since
11 you were the chief negotiator there for the
12 Government?

04:44:27 13 A. No. I didn't have technical knowledge of the
14 details. I just know that as between the two of them,
15 there were differences as to whether or not to take up
16 certain points of the Contracts, but I don't know what
17 each of them refers to when they mention it. And I
18 didn't do this.

04:44:53 19 Q. Okay. I'm going to now reference R-37.

04:45:04 20 PRESIDENT RIGO: Before you pass to R-37,
21 would you mind to say what the date of this document?

04:45:09 22 MR. ORTA: The date of the document that I--

04:45:11 1 PRESIDENT RIGO: The one that is on the
2 screen.

04:45:13 3 MR. ORTA: Yes. This is R-36, and this is a
4 series of meeting minutes from these meetings that
5 took place after the Lesivo Declaration.

04:45:26 6 I don't know the date that the document was
7 created, but it reflects on--or records meeting notes
8 from these various meetings that took place.

04:45:46 9 I know I only have about two and a half
10 minutes, I just want to make sure the time isn't
11 running against me for these questions.

04:45:53 12 PRESIDENT RIGO: We said at one point that
13 the questions of the Tribunal will not be counted on
14 your time--as part of your time, and you are correct,
15 have you about 2 and a half minutes.

04:46:03 16 MR. ORTA: Thank you, Mr. Chairman.

04:46:05 17 ARBITRATOR EIZENSTAT: Obviously not against
18 your time, but there was another meeting note at the
19 bottom, I think, September 13.

04:46:11 20 Do you intend to go through that? It would
21 be useful to the Tribunal, since you're giving us all
22 the meetings, to just--is that the last meeting

1 that--for which there are notes? Because just for our
2 own edification, it would be useful to at least give
3 us a second to look at that without counting against
4 your time.

04:46:32 5 MR. ORTA: Sure, I'm happy to take him
6 through it and then do the \$-37, which I think is
7 also--

04:46:35 8 SECRETARY EIZENSTAT: If you don't mind. And
9 that won't--since you are responding to my question,
10 it won't count against your time.

04:46:43 11 MR. ORTA: Yes, sir. So we still have R-36
12 up on the screen.

04:46:47 13 BY MR. ORTA:

04:46:48 14 Q. If we could go to, Mr. Fuentes, the meeting
15 dated--or at least the notes that took place on the
16 13th of September, 2006.

04:47:00 17 Now, first of all, you were in attendance at
18 the meeting; correct?

04:47:06 19 A. Excuse me, we were on the October 4?

04:47:08 20 Q. No, sir. I'm now back at R-36, the document
21 that we were just looking at and, in particular,
22 focusing you on the meeting notes from the meeting

1 that took place on the 13th of the September, 2006.

04:47:27 2 A. Okay. I've got it here.

04:47:29 3 Q. And in the--first of all, in this meeting,
4 you were in attendance; correct?

04:47:35 5 A. Yes, that's correct.

04:47:36 6 Q. And it states under Point No. 3 that there
7 are a series of issues that were discussed between the
8 Parties, and it says it was basically the same
9 substantive issues that had been discussed in the
10 prior meetings; correct?

04:47:54 11 A. Basically, yes, the ones that are set forth
12 in this note.

04:47:56 13 Q. And do you recall if those topics were
14 discussed in that meeting, including the issue of a
15 new Contract for the usufruct of the railroad
16 equipment?

04:48:09 17 A. In terms of the issues having been gotten
18 into, no, they were just raised.

04:48:14 19 Q. Are you saying, no, there was no discussion,
20 or you just don't remember whether they were
21 discussed? Or are you saying something different?

04:48:22 22 A. I remember that they were not developed one

1 by one in detail at the session. I remember they were
2 set down to be taken up, but they were not technical
3 sessions but, rather, negotiating sessions.

04:48:37 4 Q. And in relation, for example, to the issue of
5 the Trust Agreement, do you recall that Mr. Senn made
6 a counterproposal to a proposal that FEGUA had made in
7 which he suggested that a fixed annual amount be
8 contributed by FEGUA rather than a percentage of
9 FEGUA's income?

04:49:03 10 A. I don't remember the details. I'm sorry, but
11 it's not--it's a highly technical issue in which we
12 were negotiating the interest of both.

04:49:13 13 Q. Do you recall the Secretary-General speaking
14 in these meetings the Parties were discussing
15 reprogramming the rehabilitation phases of the
16 railroad?

04:49:26 17 A. Yes, at some point in time there was
18 discussion of those issues.

04:49:29 19 Q. And I've reviewed the meeting notes very
20 carefully, and I would invite you to do the same, but
21 you did say in your Second Witness Statement that
22 during these meetings, the Government asked--I don't

1 want to misrepresent what you said.

04:50:00 2 MR. FOSTER: Please just refer him to the
3 paragraph you're referring to.

04:50:04 4 MR. ORTA: I'm trying to find it, Allen.

04:50:12 5 BY MR. ORTA:

04:50:12 6 Q. Okay. Paragraph 9 of your Second Witness
7 Declaration, Mr. Fuentes, you say that during these
8 meetings, that "The Government officials tried to have
9 Ferrovías sign a Settlement Agreement whereby the
10 company would surrender a considerable part of its
11 rights as a usufructuary of real property, just like
12 they did the day before the publication of the
13 Declaration of Lesividad."

04:50:46 14 I will represent to you I have carefully
15 looked through these meeting notes, and at least in
16 the meeting notes, there is no representation that
17 such a demand was ever made during these meetings.

04:51:04 18 Do you have a recollection, notwithstanding
19 that the meeting notes don't refer to it, that such a
20 demand was made?

04:51:18 21 A. But--I don't know if it was in this meeting
22 of 13th September, but what I do remember is that the

1 Government had a position saying, "sign, sign, sign,
2 and the problem will be all over," and that's what I
3 tried to express in my previous point in response to
4 your previous question, that Mr. Senn didn't feel that
5 he was empowered or had the authority to be able to do
6 that at that time.

04:51:45 7 Q. When you say "sign it, sign it, sign it,"
8 what is it you're referring to?

04:51:49 9 Are you talking about the document I showed
10 you before, the C-44 draft settlement? Or was there
11 some other document?

04:52:00 12 A. As I say, these are not documents that I had
13 before me. These are documents that the Parties would
14 exchange, so I cannot respond in the affirmative
15 because I don't have personal knowledge of it.

04:52:11 16 Q. And the source of the confusion is, when you
17 look at the meeting notes, nowhere do they say that a
18 Settlement Draft was put before Mr. Senn's--

04:52:19 19 MR. FOSTER: I object.

04:52:23 20 MR. ORTA: Let me just finish my--

04:52:25 21 MR. FOSTER: No, I don't want you to finish
22 until I get my objection out.

04:52:27 1 Mr. Orta is trying to testify. If he wants
2 to ask the witness, "Can you find these words in the
3 meeting notes," that's a perfectly proper question.
4 But what he's saying is what he reads in the meeting
5 notes, and that's not a proper question.

04:52:43 6 PRESIDENT RIGO: Could you rephrase the
7 question?

04:52:45 8 MR. ORTA: Certainly, Mr. Chairman.

04:52:46 9 BY MR. ORTA:

04:52:47 10 Q. Can you tell me where in the meeting notes it
11 says that a draft agreement was given to Ferrovías and
12 that the Government made a demand that Ferrovías sign
13 it?

04:53:03 14 A. In which meeting? For which date?

04:53:08 15 Q. Well I'm asking you--

04:53:09 16 A. For which date?

04:53:09 17 Q. -- I've looked at meeting notes, and I don't
18 see it anywhere, so I'm asking you to show me where or
19 when that happened, or tell me when that happened.

04:53:22 20 A. In my Second Statement, let's see if I'm
21 understanding because I'm a bit confused, Mr. Orta.
22 In the Second Statement at Paragraph 3--I'm sorry

1 Paragraph 5, we make allusion to the 24 August
2 meeting. Is that the one you're referring to?

04:53:42 3 Q. No, no. I'm talking about Paragraph 9?

04:53:45 4 A. The subsequent ones.

04:53:47 5 Q. Right.

04:53:48 6 A. Paragraph 9. Just a moment, please.

04:54:04 7 It speaks of several meetings after the
8 Declaration of Lesividad; is that right?

04:54:11 9 Q. Yes.

04:54:11 10 A. And so your point is 9. This is what I
11 heard, what I say at 9. I heard that that was the
12 intent of the Government, to sign, as I put in my
13 statement, to sign a settlement agreement in which it
14 would surround considerable part of its acquired
15 rights as usufructuary of real property, just like
16 they did the day before the publication of the
17 Declaration of Lesividad.

04:54:57 18 MS. SEQUEIRA: If you are reading, could you
19 please read a little more slowly for the interpreter?

04:55:02 20 THE WITNESS: I'm sorry. Yes.

04:55:04 21 I'm going to read just the relevant
22 paragraph.

04:55:07 1 BY MR. ORTA:

04:55:07 2 Q. I'm not asking you to read it. What I'm
3 asking you for is the meeting notes, if you can point
4 to us where in the meeting notes the Government--it's
5 reflected that the Government made a demand, as you
6 say here in Paragraph 9, that Ferrovias sign a
7 settlement agreement whereby the company would
8 surrender a considerable part of its rights as a
9 usufructuary of real property. And in particular,
10 you're referring to the meetings that took place after
11 the Declaration of Lesividad, and these are the
12 meeting notes from that meeting.

04:55:49 13 A. I don't have that document. I didn't have
14 it. That was a document that was presented by the
15 Government counterpart to them directly to ask if they
16 agreed with that and one could end or resolve the
17 dispute between the Government and Ferrovias, to which
18 Ferrovias responded after reading it, but I didn't
19 have it before me. I did not read nor am I familiar
20 with the contents of it more than what was mentioned
21 in general terms.

04:56:18 22 Q. Did Ferrovias make a counterproposal or did

1 they just say they didn't have authority to sign
2 anything?

04:56:28 3 A. At that meeting, no, Ferrovias was just
4 trying to ask what were the problems--what were the
5 reasons why they had not been able to go forward. The
6 two positions were always, you haven't performed on
7 all counts, and Ferrovias would say, "It's not that I
8 haven't performed on everything. I have performed on
9 some points. The points that I've not performed on,
10 well, it's because the Government of Guatemala--and
11 not necessarily just the administration and President
12 Berger, but the prior administrations as well--that is
13 to say the Government of Guatemala, has not complied
14 with all of its--what it is committed to."

04:57:14 15 That's where the conversations bogged down.

04:57:18 16 PRESIDENT RIGO: If I may, I think
17 Mr. Eizenstat is satisfied in terms of his question,
18 so you have 2-1/2 minutes to complete the examination.

04:57:28 19 MR. ORTA: Thank you, sir. Thank you,
20 Mr. Chairman.

04:57:30 21 BY MR. ORTA:

04:57:31 22 Q. I'd like to now turn your attention to R-37.

1 And, again, there's a Spanish version of the document
2 in front of you as well. It's behind the blue tab.
3 And this is a set of meeting notes referring to a
4 meeting that took place on the 4th of October, 2006.
5 Do you recall--first of all, it says the meeting took
6 place in your office?

04:58:07 7 A. Yes, I do remember, that's correct.

04:58:09 8 Q. Do you recall that the purpose of the
9 meeting--at least as reflected in the meeting
10 notes--was to hear the opinion of Ferrovías regarding
11 proposals that had been made by FEGUA?

04:58:24 12 A. At least in general terms, yes.

04:58:26 13 Q. And do you recall--I think as you state in
14 your Second Declaration--that one of the things that
15 Mr. Senn said during this meeting is that--and I'm
16 going to take you to the heading that says Contract
17 Number 143, Usufruct of Railroad Equipment declared
18 lesivo to state interest by President of the Republic.
19 Do you see that?

04:58:56 20 A. Yes, I am reading it.

04:58:57 21 Q. Do you recall that Mr. Senn said that during
22 that meeting that he didn't think it was advisable to

1 draft a new contract for the usufruct railroad
2 equipment without having in-depth knowledge of the
3 legal causes for the Lesivo Declaration? Do you
4 remember him saying that?

04:59:18 5 A. Yes.

04:59:19 6 Q. Do you also recall that he said that he found
7 that "the amendment of the contract would be of
8 secondary priority in view of the plans to change the
9 railroad system to wide gauge."

04:59:37 10 A. Yes, not just--well, I can't say precisely in
11 that meeting, but I do remember the argument and that
12 is one of the arguments that sounds very familiar to
13 me, based on the conversations I had throughout the
14 process with Mr. Senn.

04:59:56 15 Q. Did the President ever instruct you to demand
16 \$50 million from Ferrovías in exchange for withdrawing
17 the Lesivo Declaration?

05:00:11 18 A. The President of the Republic?

05:00:13 19 Q. Yes.

05:00:14 20 A. Me? Can you repeat the question, please?

05:00:18 21 Q. President Berger, did he ever instruct you to
22 demand \$50 million from Ferrovías in order to withdraw

1 the Lesivo Declaration?

05:00:30 2 A. Never.

05:00:36 3 PRESIDENT RIGO: Mr. Orta, I think we are out
4 of time.

05:00:41 5 MR. ORTA: And as with yesterday, it is very
6 fortuitous, because I'm done. Thank you, sir.

05:00:46 7 PRESIDENT RIGO: This is perfect. Good
8 timing. So, Mr. Foster.

05:00:51 9 MR. FOSTER: Thank you, Mr. President.

05:00:52 10 REDIRECT EXAMINATION

05:00:57 11 BY MR. FOSTER:

05:00:58 12 Q. Mr. Fuentes, you've been looking at all these
13 meeting notes for meetings that were held after the
14 Declaration of Lesivo. Did you have anything to do
15 with the preparation of these notes?

05:01:09 16 A. I don't think so. I never signed my name
17 with a title, so this shows clearly that I did not
18 prepare these documents. I don't know if I'm making
19 myself clear.

05:01:25 20 Q. Yes, you are, very clear.

05:01:29 21 Did you receive a copy of these meeting notes
22 at the time the meetings were occurring?

05:01:38 1 A. No.

05:01:39 2 Q. Do you know whether or not these meeting
3 notes were ever given to Ferrovías at the time the
4 meetings were occurring?

05:01:51 5 A. I have no personal knowledge of that.

05:01:53 6 Q. At all of these meetings, did the Government
7 ever make an offer simply to renegotiate the terms of
8 the contract in order to eliminate the legal
9 technicalities and problems that had caused lesivo?

05:02:12 10 A. No.

05:02:14 11 Q. Did the--was the Government's offer always
12 coupled with demands for rescheduling of the
13 rehabilitation phases and resolution of the
14 contributions of FEGUA to the Trust Fund?

05:02:36 15 A. Those are the points on which I can clearly
16 remember things. The interest of the Government was
17 fundamentally to find out what happens, why isn't the
18 line operational, why isn't the railway working, and
19 the issue of the money.

05:02:57 20 Q. Now, let's go back to your meeting on
21 August 23rd with the President, when he asked you to
22 serve as the mediator to try to resolve the

1 differences between the Government and Ferrovías.

05:03:13 2 At that meeting, did he tell you that he was
3 going to issue the Lesivo Resolution if Ferrovías did
4 not agree to a Government proposal the next day?

05:03:27 5 A. No.

05:03:28 6 Q. Did he tell you that the proposal was going
7 to be a take-it-or-leave-it proposal?

05:03:37 8 A. Who, the President?

05:03:40 9 Q. Yes.

05:03:40 10 A. To me? No.

05:03:42 11 Q. When--you were present at the meeting on
12 August 24th, when this written document was given to
13 Ferrovías by the Government; correct?

05:03:57 14 A. Yes. An employee of the Ministry of
15 Communications.

05:04:03 16 Q. And had you ever seen that document before
17 you went to that meeting?

05:04:08 18 A. Absolutely not.

05:04:12 19 Q. Did the Government ever indicate during that
20 meeting that it was willing to renegotiate the
21 Contract, the Equipment Contract, to eliminate the
22 technical deficiencies which had caused lesivo without

1 also insisting on other conditions?

05:04:37 2 A. I don't remember exactly, but I would believe
3 that that was the thing that we're most interested in.

05:04:47 4 Q. Was the other conditions, as opposed to the
5 technical difficulties?

05:04:54 6 A. The other conditions, yes.

05:05:01 7 Q. At that meeting, did the Government ever tell
8 Ferrovías that Ferrovías had any opportunity--had any
9 alternative other than simply accepting the proposal
10 in its entirety?

05:05:17 11 A. No.

05:05:40 12 MR. FOSTER: Thank you, Mr. Fuentes. That's
13 all the questions I have.

05:05:49 14 PRESIDENT RIGO: Thank you, Mr. Foster.
15 Professor Crawford has some questions.

05:06:02 16 QUESTIONS FROM THE TRIBUNAL

05:06:10 17 ARBITRATOR CRAWFORD: Mr. Fuentes, I want to
18 take you to Paragraph 12 of your First Statement,
19 which describes the meeting you had with the acting
20 Secretary-General of the Presidency, on I think it was
21 the 24th of August of 2006.

05:06:47 22 At that point in time, what did you

1 understand were the Government's reasons regarding the
2 Contracts as invalidated by lesividad?

05:07:06 3 THE WITNESS: Clearly, what I understood is
4 that there was some kind of strategy to harm or impair
5 one of the three contracts that will bring down with
6 it the other two contracts, and, therefore, Ferrovias
7 would not have been able to meet the obligations under
8 the concession as previously agreed. I didn't agree
9 with the fact that we needed to declare lesivo. I
10 felt that negotiations could have ensued between the
11 Parties and continued between the Parties to try and
12 meet the Agreements and the obligation thereunder.

05:08:02 13 I don't know if I'm answering your question.

05:08:08 14 ARBITRATOR CRAWFORD: Not quite. Though what
15 you say is interesting, it wasn't the point I was
16 getting at.

05:08:17 17 What did you understand that the Government
18 said? I'm not interested so much in their strategy as
19 in the basis on which they're acting from a legal
20 point of view. What were the deficiencies in the
21 Equipment Contract within the Governments' view that
22 justified the Declaration of Lesividad?

05:08:41 1 THE WITNESS: Mr. Crawford, as I indicated
2 during my statement, I am not a lawyer, and I am not a
3 technical person in railway matters. My role was
4 never to understand the content of the three
5 contracts. If you ask me today what is the content of
6 those three contracts, I would be pressed to give you
7 an answer. What I understood under the meeting was
8 quite clear. There was a Declaration of Lesivo. It
9 was imminent, it was imminent and they were not ready
10 to back down.

05:09:19 11 ARBITRATOR CRAWFORD: You say that--in this
12 paragraph that you disagreed with the view that the
13 contracts were tainted by lesividad; is that right?

05:09:35 14 THE WITNESS: I don't really understand your
15 question. Could you please repeat it?

05:09:40 16 ARBITRATOR CRAWFORD: You told the
17 Secretary-General that you considered the arguments
18 expressed by him to justify the Lesividad Declaration
19 were contrary to the interests of the country. Could
20 you explain that a little more?

05:09:59 21 THE WITNESS: I'd be glad to. In easier
22 term--terms, we could say, we can leave behind a

1 deadline that had been established to declare lesivo
2 as expressed to me by Secretary Arroyave in order to
3 overcome this and reach a solution that could give
4 rise to the development of the railway project.

05:10:47 5 ARBITRATOR CRAWFORD: You say in the second
6 part of this paragraph that the Government had the
7 strategy in effect to strike down the whole of the
8 three contracts by attacking one of them. But that
9 didn't happen, did it? If that was their strategy, it
10 didn't work; is that right?

05:11:16 11 THE WITNESS: I wouldn't say that. I think
12 that the Declaration of Lesivo is enough to prevent
13 the company from continuing operating. I always
14 understood that the three contracts were an
15 indivisible being; one could not be separated from the
16 other. If I grant the usufruct of property and there
17 are three parties to that--three parts to that,
18 rather, and then I take away one of those parts, then
19 things cannot go forward. I'm not an expert in these
20 agreements, as I said before, but I understood at the
21 time that if one fell, if one fell, the other would
22 also fall, rather, and the railroad project could no

1 longer be operational.

05:12:21 2 ARBITRATOR CRAWFORD: Thank you.

05:12:28 3 THE WITNESS: My pleasure.

05:12:29 4 PRESIDENT RIGO: Secretary Eizenstat has a
5 few questions.

05:12:34 6 SECRETARY EIZENSTAT: Mr. Fuentes, if I may
7 take you back to your First Statement, in Paragraph 7
8 you mention on May 11--this is several months before
9 the Lesivo Declaration--that you called Mr. Senn to
10 report information that you had recently heard from a
11 reputable source that the Government was planning on
12 issuing a Declaration of Lesividad and that the
13 signatures of the Ministers were in the process of
14 being collected. So permit me to ask you a few
15 questions about that.

05:13:18 16 First, if I may, for simplicity purposes,
17 list them all, and first, do you remember from whom
18 you heard that? Second, did you know the nature of
19 the deficiencies or basis and which contracts they
20 would pertain to? And third--and you say in
21 Paragraph 8 you didn't specify whether they started,
22 but what was his reaction? What was Mr. Senn's

1 reaction to your disclosure to him?

05:14:19 2 THE WITNESS: I missed the third question,
3 who said it, which the deficiencies were.

05:14:24 4 SECRETARY EIZENSTAT: What were Mr. Senn's
5 reactions to your comment?

05:14:32 6 THE WITNESS: So just three questions that
7 you're posing to me, three questions.

05:14:40 8 SECRETARY EIZENSTAT: On this particular
9 paragraph.

05:14:42 10 THE WITNESS: I'm going to answer the first,
11 how did find out. I was informed by a high-ranking
12 Government official. I'm not going to disclose my
13 source, and I already--this is not relevant, and I
14 said before, and it is fully trustworthy. This,
15 indeed, was what happened.

05:15:04 16 Second, what I told him, what I told
17 Mr. Senn, well, I couldn't have reported the details
18 and deficiencies of what was going to happen because I
19 did not know those items. I alerted him that there
20 was something serious that was being processed related
21 to the contracts and to the concession. The
22 signatures of the Ministers were being collected, and

1 that led me to think--that led me to think about what
2 happened further on.

05:15:45 3 And then the reaction of Mr. Senn, I clearly
4 remember that he was a few minutes away from going
5 into another meeting, another high-level meeting with
6 the Government officials, and his comments showed that
7 he was very surprised and shocked, because what I was
8 telling him did not agree with the next meeting that
9 he was going to go into, which was a high-level
10 negotiation-like meeting.

05:16:22 11 SECRETARY EIZENSTAT: Then in Paragraph 9,
12 you mentioned that in following months you were
13 informed that the meetings of the High-Level
14 Commission had failed to resolve the differences. So,
15 again, permit me to ask a couple of questions about
16 that paragraph. First, the person or persons that
17 informed you about the failure of the meetings to
18 resolve the differences, was that the same high-level
19 source, or another reputable person? And, second, did
20 you have any more information during the subsequent
21 months about what the nature of the differences
22 between the two parties was that had been unresolved?

05:17:11 1 THE WITNESS: The first answer, no.

05:17:13 2 SECRETARY EIZENSTAT: The first question, was
3 it the same person, and if not, was it another
4 reputable official who told you, who informed you that
5 the meetings failed to resolve the differences?

05:17:34 6 THE WITNESS: The conclusion that the
7 meetings had failed to resolve the difference, well,
8 no one told me that. I was a witness to that. So the
9 answer to your first question is no. The person that
10 informed this to me initially had nothing to do with
11 this. This is something that I lived through and that
12 I was able to see firsthand.

05:17:54 13 The second question, was--the nature of the
14 deficiencies that were left unresolved, well, if I
15 know of the nature of those deficiencies that remained
16 unresolved, well, my answer to your question is--well,
17 I know this is related to the three contracts because
18 I've heard of them umph number of times, at least I
19 understood it was three contracts, but I am not privy
20 to the details. Was this because of the right of way
21 or the Rolling Stock or of the right of way? I don't
22 know. But what I do know is that without these three

1 components, the railway project cannot become
2 operational. So the differences related to these
3 three contracts were left unresolved. There were
4 differences. That was my understanding in connection
5 with those three contracts. Each one of these three
6 contracts had unresolved issues and both Parties had
7 to come to an agreement in connection with that. I
8 don't know if I'm answering your question or not.

05:19:01 9 SECRETARY EIZENSTAT: I've served my
10 Government as a mediator in the same way you were
11 serving your Government as a mediator here. You
12 obviously knew as a mediator the general nature of the
13 three contracts, the 143, 158, with respect to Rolling
14 Stock, the 802 with respect to the Trust Fund, the 402
15 in terms of the rehabilitation. I mean, you knew the
16 sort of general purposes of those contracts; is that
17 correct? In order to be an effective mediator you
18 certainly had to educate yourself about those, and I'm
19 sure did you.

05:19:51 20 THE WITNESS: I just want to clarify things,
21 and I want to say that this is important for my
22 professional honor.

05:20:01 1 It is a bit unfair to be a negotiator, a
2 24-hour negotiator, where one has to negotiate on
3 behalf of a Government something that has been in the
4 makings for many, many years, one. And, two, not to
5 have the time and resources to do things. The word
6 "negotiator" used here is very elegant. It's a very
7 elegant word. This implied a lot of technical
8 responsibility. What the President wanted to do this,
9 as we say in Guatemala, please, try and solve this
10 problem among the Parties involved. Who are the
11 technical people? Well, the technical people are the
12 people from FEGUA and the Ministry of Communication,
13 et cetera, and the gentleman from RDC and Ferrovías,
14 well, Mr. Jorge Senn. The President came up to me and
15 said, Okay, try and have both Parties meet and solve
16 this problem. I wanted to put my professional
17 prestige in a safe place, if you will.

05:21:10 18 I don't know if I'm answering your question.

05:21:11 19 SECRETARY EIZENSTAT: Yes, it's certainly
20 safe with this Tribunal. I can assure you that --

05:21:15 21 Let me stipulate, if I may --

05:21:19 22 THE WITNESS: Thank you very much.

05:21:20 1 SECRETARY EIZENSTAT: --my humble
2 understanding. The Lesivo Declaration was made with
3 respect to contracts 143 and 158, which were dealing
4 with the Rolling Stock and had the--at least as we
5 understand it, the deficiencies of not having a public
6 bid and not having been properly ratified by the
7 Executive.

05:21:55 8 Now, during your discussions, negotiations,
9 mediation, were you aware that these were the
10 deficiencies with respect to which the Lesivo
11 Declaration was aimed, and was there an effort to
12 correct those specific deficiencies?

05:22:22 13 THE WITNESS: These are two questions wrapped
14 up into one. The first is did I know about the
15 deficiencies? No. And the things you explained. No,
16 I didn't have the faintest idea. I only knew the
17 project in general terms. I was just trying to get a
18 communication between the Parties. The second part of
19 your question, did I try subsequently to cure those
20 deficiencies and differences? Well, I think it would
21 be very late for me to start working on those issues.
22 What I was trying to do was to solve the issues. I

1 wanted the Parties to then go back, if you will, take
2 a step back, and say, Okay, there is no lesividad, and
3 that's what I did. But not technically, if you will.

05:23:13 4 SECRETARY EIZENSTAT: My question is slightly
5 different. Did the Government try to correct during
6 these discussions? Did they try to ask that these two
7 deficiencies be corrected? Not what you, yourself,
8 did, but to your knowledge, did the Government try to
9 correct these two deficiencies?

05:23:38 10 THE WITNESS: No, that is not my
11 understanding, and that is not my personal knowledge.

05:23:46 12 SECRETARY EIZENSTAT: Professor Crawford
13 asked you a question about Paragraph 12, and I just
14 want to have myself a better understanding, because
15 he's a professor and I'm not, and so I need to go over
16 this a second time.

05:24:04 17 The Lesivo Declaration was contrary to the
18 interests of the country, you say. Why did you--I
19 want to have a better understanding of why you felt
20 that to be the case.

05:24:21 21 THE WITNESS: My intention from the
22 beginning--and this is set forth in my First

1 Statement--has always been and it is still, for a
2 country to have railways, developed railways. Now, to
3 say this is lesivo--well, it's very easy to understand
4 that this is going to prevent the development of
5 railways in my country. Even today, this is going to
6 be very difficult. It's going to be very difficult to
7 resume this issue. That is what I meant when I said
8 that this was going against the interests of the
9 country. I think the moral issues and the legal
10 issues that are wrapped into a lesividad, well, that's
11 very difficult and it could--it should have been
12 avoided at all costs.

05:25:25 13 SECRETARY EIZENSTAT: Although you were a
14 mediator, you also had a senior position in terms of
15 major projects, and although you said this didn't
16 technically fit within that, it was obviously, as you
17 said, of strategic importance; is that correct?

05:25:44 18 THE WITNESS: That is correct.

05:25:45 19 SECRETARY EIZENSTAT: Then explain to me, as
20 a senior official, why would it have been in the
21 interests of a Government to, as you said in your
22 second part of Paragraph 12, to design a strategy to

1 declare a contract lesivo dealing with Rolling Stock
2 to prevent further rendering of railroad services?
3 What would the interests of the Government of
4 Guatemala be in that kind of outcome? Again, you were
5 part of the Government. Why would they have had an
6 interest in that?

05:26:33 7 THE WITNESS: The origin of the
8 concession--and I'm going to take a few moments to
9 explain this. I'm going to make my best effort
10 without being an expert. The origin of the concession
11 of railways in our country dates back to two
12 administrations ago. It is important to point out
13 that the railway has been an icon of development in
14 many countries. So there's a parallel between the
15 development of the country and the development of the
16 railway.

05:27:06 17 Unfortunately, in our country, would have had
18 a railway plagued with disputes that are both
19 political and commercial in nature. If you look at
20 the history of railway, we have gone from private
21 hands to public hands and vice versa for a long time.
22 So to think that a Government--and I'm trying to

1 answer your question--is interested in declaring
2 lesividad, well, honestly, the Government--President
3 Berger had initially no interest in declaring
4 lesividad.

05:27:50 5 Now, the deadlines started coming up, and
6 because of good or bad luck of this Government, there
7 was a date set and the Government had to say, "We will
8 declare lesividad or we will not declare lesividad."

05:28:10 9 Why was I participating in all this? Because
10 I always thought, well, if we had--if we have goodwill
11 from both Parties, we can prevent lesividad. If the
12 parties agree to their differences, but I did not have
13 enough time to do so, and unfortunately, lesividad was
14 declared.

05:28:31 15 If you allow me to say one more thing very
16 briefly, well--I don't know about these arbitration
17 proceedings. This is absolutely a new experience for
18 me in my life. What I'm going to say now, I'm not
19 going to say as a witness but as a Guatemalan citizen.
20 Regardless of the decision that this Tribunal is going
21 to make, and it doesn't matter whether one Party wins
22 or one Party loses, what I would like to say is to

1 share with you what many Guatemalan citizens wish,
2 which is that we hope, after this and after the
3 arbitration award, we're going to be able to take up
4 this issue of building a railway and--to be able to
5 overcome, both on the part of RDC and the Government,
6 to overcome obstacles and for us to be able to have
7 both a cargo and a passenger railroad.

05:29:33 8 SECRETARY EIZENSTAT: I appreciate that, and
9 I appreciate the sentiments, and I appreciate your
10 very candid statement, but permit me again, if you
11 could look at the actual wording in the second part of
12 the--Paragraph 12. You mentioned that the Government
13 had already designed a strategy that involved
14 declaring of the Usufruct Contract for the Rolling
15 Stock lesivo as a way to prevent FVG from further
16 rendering railroad services and consequently give the
17 Government sufficient legal grounds to terminate the
18 other two usufruct contracts. Why, in your opinion
19 again, as a Government official, as well as a mediator
20 and negotiator, would they have developed such a
21 strategy? What would have been the benefit from their
22 standpoint of having such a strategy? Because if, as

1 you said yourself, you felt that this would be the end
2 of the railroad, so explain to the Tribunal why they
3 would, from your opinion, have designed such a
4 strategy which you've set forth here.

05:30:50 5 THE WITNESS: That is the question that I was
6 trying to answer, that I have always been trying to
7 answer, and I do not have a legal answer that could be
8 convincing to you, but I will try to answer in the
9 following manner.

05:31:06 10 If fulfilling a deadline to be able to
11 declare the Contract lesivo was a priority and also
12 more of a concern for the General Secretary as well as
13 to protect the President of the Republic, which I can
14 fully understand, I didn't think it was strong enough
15 to say that's the only reason. Therefore, let's go
16 ahead and fulfill the program, the project, and we
17 need to declare lesivo. Therefore, based on my
18 understanding, it was necessary to have a smart
19 strategy to say if I am able to declare lesivo one of
20 the contracts, that contract will not be able to be
21 fulfilled, and it is legitimate for the country to say
22 I am going to declare this lesivo. Which of the two

1 parties is right? I do not know, because the
2 Government is acting in good faith trying or
3 attempting to fulfill their role. There is no bad
4 faith, in my opinion, but on the same token, I think
5 that Ferrovías has the same right to say that this
6 cannot be punished because this was not done at that
7 pace. And I think that this case goes beyond a
8 private company that acquires a public service, with
9 due respect to Ferrovías. This has to do with how the
10 laws need to be applied in the rule of law, if you
11 allow me to say it in your own language, this is the
12 key of the matter. Because today, this is the issue,
13 but tomorrow, it could be any other contract with any
14 other company or for any other service where the
15 people from Guatemala may say we would like to have a
16 better service or a better product, but no company in
17 the world will be interested in investing in our
18 country because of the consequences that this may
19 have.

05:33:25 20 ARBITRATOR EIZENSTAT: Just one more set of
21 questions.

05:33:29 22 Regardless of whether you developed the notes

1 or not, it's quite obvious from your responses that
2 several meetings in which you participated involved
3 all three of the major Contracts, not just the
4 Contract to which lesividad was applied. It looks
5 like there was an effort of what I would call a global
6 agreement of all three. Is that your understanding,
7 that they would try resolve all three of these, not
8 just the technical defects with respect to 143 and
9 158?

05:34:09 10 THE WITNESS: Yes, it is correct.

05:34:24 11 ARBITRATOR EIZENSTAT: In your Second
12 Statement in the end of Paragraph 9, you've mention
13 that that the proposals were designed to have
14 Ferrovías surrender a considerable part of the
15 property and rights granted to them involving real
16 estate. They would have to return certain unused
17 property. This is your understanding of the
18 Government's demand? Is that case?

05:34:55 19 THE WITNESS: At Paragraph 9 of the First
20 Statement?

05:34:57 21 ARBITRATOR EIZENSTAT: Yes, second Statement
22 but also, more generally, this is your understanding

1 of what the demand was from the Government going back
2 to October 24 to August 24, but continuing forward.

05:35:21 3 THE WITNESS: My understanding, as I said at
4 Paragraph 9, was not to offer an opportunity: "Let's
5 forget about lesividad. Let's move forward. It's
6 either this or nothing." There was no room like the
7 one I would like to have, as the negotiator, to
8 determine what of the three Contracts has not been
9 fulfilled and what can we do to fulfill the Contract.
10 But if the deadline is tomorrow, the goodwill is over
11 and this is what happened.

05:36:09 12 ARBITRATOR EIZENSTAT: But you mentioned a
13 Government official was proud to have Ferrovías sign a
14 settlement "whereby the company would surrender
15 considerable part of its rights as usufructory of real
16 property," just like they did the day before the
17 publication of the declaration of Lesividad.

05:36:25 18 So, is it your understanding that there was
19 an effort to--that this was the Government's demand?
20 Was this the Government's demand as part of the--you
21 said "Sign. Sign. Sign. Sign." Is this what they
22 wanted Ferrovías to sign?

05:36:45 1 THE WITNESS: I always understood that it was
2 an influx--it was a position with no flexibility. It
3 was my way or nothing. So, "If you'd like to avoid
4 future problems, lesividad, et cetera, we need to sign
5 this." And I also understood on the other hand that
6 if there is lesividad, it would be very difficult to
7 develop this project later on.

05:37:10 8 ARBITRATOR EIZENSTAT: But when you said
9 "sign this or not," this would be a settlement
10 agreement about surrendering their rights and so forth
11 as you say in Paragraph 9? Is that what they were
12 demanding?

05:37:25 13 THE WITNESS: Correct.

05:37:27 14 ARBITRATOR EIZENSTAT: One last question,
15 which is, at the very end of that paragraph, you say,
16 "In other words, one of the Parties focused on
17 removing the grounds of lesividad of the contract
18 involving equipment."

05:37:38 19 So you're saying basically that neither
20 Parties seemed focused on correcting the problems that
21 led to lesividad, neither side. Is that what you're
22 saying in this last sentence?

05:37:55 1 THE WITNESS: What statement? The first one
2 or the second one?

05:37:59 3 ARBITRATOR EIZENSTAT: The second one,
4 Paragraph 9, the paragraph we've been talking about.

05:38:09 5 I'm sorry. Pardon me. I thought it was a
6 carryover. It's Paragraph 10. It's the concluding
7 numbered paragraph on your Second Statement.

05:38:25 8 THE WITNESS: Let me read it quickly. Yes,
9 it is correct. No one focused on the reasons or the
10 grounds in the three Contracts for lesividad. Both
11 positions were stalled; "either you give me this or
12 nothing," and the other one was in the same situation.
13 That is not the reason that could technically lead to
14 lesividad. The agendas were not really different,
15 and, therefore, I could see that there was no
16 possibility to carry out any negotiation, and that was
17 the end of the story.

05:39:58 18 ARBITRATOR EIZENSTAT: Thank you.

05:40:00 19 PRESIDENT RIGO: Mr. Foster, any questions on
20 the matters raised by our questions?

05:40:05 21 MR. FOSTER: No, sir.

05:40:13 22 PRESIDENT RIGO: Mr. Orta?

05:40:16 1 MR. ORTA: Yes, Mr. Chairman.

05:40:17 2 RE-CROSS-EXAMINATION

05:40:23 3 BY MR. ORTA:

05:40:24 4 Q. Mr. Fuentes, I'd like to take you to your
5 first Declaration, Paragraph 12. You were asked about
6 that by the Tribunal. Maybe that's the second one.

05:40:41 7 MR. ORTA: You have the second one up on the
8 screen. We need the first one.

05:40:46 9 BY MR. ORTA:

05:40:46 10 Q. And it is Paragraph 12 you were asked about
11 that. 12. Thank you.

05:41:02 12 A. Can we see it in Spanish?

05:41:04 13 Q. No, for purposes of the Tribunal, we're going
14 to put it up in English, but you should have in front
15 of you--well, actually, I think you drafted this in
16 English, if I'm not mistaken. I don't believe we have
17 a Spanish version of it.

05:41:22 18 A. Please go ahead.

05:41:24 19 Q. So, first of all, this conversation that you
20 mentioned you had with the -- with Mr. Arroyave, he is
21 the Secretary General of the President. Would you
22 characterize him as a close adviser of the President?

05:41:45 1 A. Of course.

05:41:47 2 MR. ORTA: Did you hear the answer?

05:41:48 3 THE COURT REPORTER: Yes.

05:41:48 4 BY MR. ORTA:

05:41:58 5 Q. In relation to what Mr. Arroyave told you, he
6 told you that in his Legal Opinion, the President had
7 to make the Lesivo Declaration to avoid potential
8 future legal consequences; is that correct?

05:42:12 9 MR. FOSTER: Objection. This is the one
10 sentence in the paragraph that the arbitrators did not
11 ask Mr. Fuentes about.

05:42:22 12 MR. ORTA: If you'd like, I can respond, but
13 he was asked about the meeting and what--the
14 conversation he had with Mr. Arroyave. And to single
15 parcel out of context that conversation is, I think,
16 silly. I'm allowed to ask him about it, and he was
17 asked about it.

05:42:39 18 ARBITRATOR EIZENSTAT: If it's necessary,
19 I'll ask him the question so he can respond. Okay?
20 So why don't you just let him answer the question.

05:42:48 21 PRESIDENT RIGO: Go ahead.

05:42:49 22 BY MR. ORTA:

05:42:49 1 Q. Would you like me to re-ask the question?

05:42:54 2 A. Please.

05:42:55 3 Q. Okay. So in this meeting, the
4 Secretary-General told you that, in his Legal Opinion,
5 the President had to sign the Lesivo Declaration in
6 order to avoid any potential future legal
7 consequences; is that correct?

05:43:09 8 A. That is correct.

05:43:12 9 Q. Did he say anything more? Can you expand
10 upon that, or is that all that you recall about that?

05:43:20 11 A. I'm just answering your question whether
12 Mr. Arroyave told me that he had said that, and that
13 is what we just read. That is correct. Yes, that is
14 correct.

05:43:31 15 Q. And do you recall him saying anything more
16 other than just that statement about the--did he tell
17 you what legal consequences would--the President would
18 incur, for example, if he didn't proceed with the
19 Lesivo Declaration?

05:43:46 20 A. No, I don't remember. I just remember what
21 you see there, basically, was that the President may
22 have some sort of impact in the future, and it is

1 necessary to do it. And if that is the motivation
2 behind it, I understand it, and I do not share it, as
3 I stated it there.

05:44:05 4 Q. Did Mr. Arroyave tell you that if the
5 Contract was not declared lesivo by the 25th of
6 August--if it wasn't published, I should say, the
7 Lesivo Declaration by the 25th of August, that the
8 Government would forever lose its right to challenge
9 that Contract under Guatemalan Law? Did he say that
10 to you?

05:44:29 11 A. Something to that effect. I am not a lawyer,
12 and I cannot ascertain that that is the case, but,
13 more or less, that is what I heard. There was a time
14 to be able to declare lesividad.

05:44:43 15 Q. You were asked some questions--I'm sorry.
16 Just, if we can, going to the end of Paragraph 12,
17 Professor Crawford asked you about the ending of
18 Paragraph 12, and in it, you say that Mr. Arroyave
19 told you that the Government designed a strategy
20 involving declaring the usufruct Rolling Stock lesivo
21 as a way to prevent FVG from further rendering railway
22 services and consequently giving the Government

1 sufficient legal ground to terminate the other
2 Usufruct Contracts.

05:45:26 3 As we sit heard today, do you know if the
4 Government has terminated the other Usufruct
5 Contracts?

05:45:43 6 A. What I heard is exactly what I wrote. And
7 your question is whether today?

05:45:50 8 Q. As we sit here today, do you know whether the
9 Government has followed through--assuming that that,
10 in fact, was a strategy the Government had, do you
11 know whether the Government has followed through with
12 what Mr. Arroyave told you, which is to terminate the
13 other two Usufruct Contracts between FVG and FEGUA?
14 Has the Government done that, to your knowledge?

05:46:16 15 A. Yes. It was declared lesivo.

05:46:20 16 Q. That wasn't my question. My question was
17 whether the Government terminated the other true--the
18 other two Contracts--not the one that was declared
19 lesivo, which is the Equipment Contract, but the other
20 two contracts that were not declared lesivo.

05:46:35 21 Do you know whether the Government has taken
22 action to terminate those agreements as you say it was

1 reported to you by Mr. Arroyave?

05:46:46 2 A. It would be inconsistent because it was not
3 the duty of the Government to do so, but I do not
4 know.

05:46:56 5 Q. You were asked by Secretary Eizenstat whether
6 during the negotiations the Government ever tried to
7 or expressed opinions about wanting to cure the
8 lesivo--the causes that made the Contracts lesivo. Do
9 you recall that?

05:47:23 10 A. Are you asking me if I remember the question
11 or the answer?

05:47:26 12 Q. I'm asking you if you recall that.

05:47:29 13 A. Yes.

05:47:29 14 Q. And you recall telling Secretary Eizenstat
15 that the Government, to your knowledge, never during
16 those meetings brought up the issue of curing the
17 causes that made the Contracts lesivo. That's what
18 you told him?

05:47:47 19 A. Yes.

05:47:49 20 MR. ORTA: Let's put up C-44, Clause 6.

05:48:00 21 BY MR. ORTA:

05:48:00 22 Q. Sir, this document you do have in your

1 notebook under Tab C-44 in Spanish, if you would like
2 to read the Spanish version, but for purposes of the
3 Tribunal, we have the English version up on the
4 screen.

05:48:13 5 MR. ORTA: If we could highlight all of
6 Clause 6, go all the way down to where it says
7 "Seventh," please.

05:48:40 8 BY MR. ORTA:

05:48:41 9 Q. Just to refresh your recollection, this is
10 the document that was handed to, you say, Ferrovías on
11 the day before--on 24 August 2006, the day before the
12 Government published the Lesivo Declaration, and one
13 of the clauses in here, Clause 6, reads "Issues to be
14 settled in connection with Onerous Usufruct Contract
15 involving railway equipment owned by Ferrocarriles de
16 Guatemala." And under (a) of Clause 6 it says,
17 "Modifications to the Onerous Usufruct Contract
18 involving railway equipment in order to rectify the
19 terms which are deemed to cause lesion to the
20 interests of the State of Guatemala, according to the
21 Opinion rendered by the Solicitor General's Office,
22 Ferrocarriles de Guatemala and the Ministry of Public

1 Finance."

05:49:37 2 So, in this Draft Contract that was presented
3 to them, it appears that the Government was offering
4 at that point in time to negotiate with Ferrovias to
5 resolve the reasons that made the Contract lesivo as
6 set forth in the three Opinions that are mentioned in
7 this agreement. Isn't that right?

05:50:04 8 A. I don't know because I am not--I do not have
9 the technical knowledge. If you are saying that, I
10 have to confirm it, but I am not the one who, from the
11 technical point of view, did it. And based on what I
12 heard from both Parties, I said, "Okay. We are not
13 getting--reaching an agreement. I am not interested
14 in what you are saying or we should not change what
15 you are saying should be change.

05:50:33 16 Q. And I understand you're not a lawyer, and you
17 did not actually read this document before it was
18 handed over to the other side, but as you're reading
19 it now, it certainly looks like the Government was
20 offering to negotiate, to rectify the causes that made
21 the Contract lesivo. That's what this says; isn't
22 that right?

05:50:51 1 A. I need to read it and study it to be able to
2 give you my opinion.

05:50:55 3 Q. I think the Tribunal can see it.

05:50:57 4 Let's go, if we can, please, to R-36. You
5 have it highlighted. If you can go to Monday,
6 August 28.

05:51:16 7 We went through this before, but Secretary
8 Eizenstat also asked you about whether, after the
9 Contract was rendered lesivo and the Lesivo
10 Declaration was published, whether the Government
11 during those meetings that took place after, ever
12 tried to address the issues that made the Contract
13 lesivo. And I believe you responded to him that the
14 Government didn't do that.

05:51:41 15 Now, under the meeting notes from August 28,
16 bullet point under Point 5, Bullet Point Number 4, it
17 in fact, says that there were discussions during that
18 meeting about executing a new Contract for the
19 Usufruct of the Railway Equipment considering the
20 Lesivo Declaration of the previous Contract. Correct?

05:52:07 21 A. I did not write these minutes.

05:52:10 22 Q. I'm not asking if you wrote it. I'm saying

1 based on the recollection of the person who wrote this
2 document, it says during the meeting, that's an issue
3 that was discussed; isn't that right?

05:52:23 4 A. What topic? You're confusing me because you
5 are giving me a lot of information, so please ask me a
6 more specific question: What topic was addressed at
7 what meeting, and I am going to answer it.

05:52:37 8 Q. The meeting of August 28, Monday, August 28.
9 It looks, according to this, if this is correct, the
10 Parties did discuss the issue of executing a new
11 Contract to deal with the lesivo causes. Isn't that
12 right?

05:53:01 13 A. I don't remember whether it was the lesivo
14 issue, but it was what had not been solved between the
15 Parties.

05:53:11 16 Q. So you don't recall--you don't have a
17 recollection that differs from what is recorded in
18 these notes, do you?

05:53:20 19 A. August 28? Please repeat your question.

05:53:26 20 Q. Yeah, let's see it different.

05:53:28 21 A. Lesivo had already happened.

05:53:29 22 Q. (Overlapping translation.) Indeed, that

1 whoever put these notes together was wrong and that,
2 as a matter of fact, the Parties did not discuss
3 fixing the causes that make the Contract lesivo as
4 reflected in this point. Can you say with certainty
5 that did not happen?

05:53:49 6 A. What I can say with certainty is that I did
7 not write this. I cannot say whether the content is
8 wrong or not. I can say that the meeting took place
9 based on the agenda, and that these topics were
10 discussed.

05:54:08 11 MR. ORTA: I know I'm running a little short
12 on time, but these are points that directly were asked
13 by Secretary Eizenstat, so I think it's important.

05:54:16 14 BY MR. ORTA:

05:54:16 15 Q. Just going to R-37 to finish with this line
16 of questioning, you testified before that you
17 recall--and this is R-37. You also have, if you need
18 to look at it, the Spanish version of the document.

05:54:34 19 A. Thank you. I can see it.

05:54:36 20 Q. Under Contract Number 143, Usufruct of
21 Railroad Equipment, you testified before that you
22 remember that Mr. Senn said during these meetings that

1 he didn't think it was advisable to draft a new
2 contract, and that he thought that--in terms of the
3 railway equipment, and that he thought that was of
4 secondary priority; correct?

05:54:59 5 MR. FOSTER: Objection; asked and answered.
6 He covered this exact question in his original
7 cross-examination.

05:55:04 8 MR. ORTA: This is going directly to his
9 answer to Secretary Eizenstat and the Tribunal that
10 this issue was not discussed during the meetings. If
11 you will allow me to ask my question, you'll see, I
12 think, it will help to elucidate that.

05:55:18 13 PRESIDENT RIGO: Ask the question first.

05:55:20 14 MR. ORTA: Thank you.

05:55:21 15 BY MR. ORTA:

05:55:21 16 Q. Now, sir, can you explain to us if the issue
17 of drafting a new Contract to correct the Lesivo
18 Declaration causes was not discussed during these
19 meetings, why would Jorge Senn be saying that it
20 wasn't necessary to draft a new Contract and that it
21 was of secondary priority?

05:55:42 22 MR. FOSTER: Objection; he's asking him to

1 speculate on why Mr. Senn did something. That's
2 ridiculous.

05:55:49 3 MR. ORTA: It's an incredibly fair question.
4 He recalls that Mr. Senn said that it wasn't necessary
5 to draft a new Contract, but at the same time, he
6 tells Secretary Eizenstat that the issue wasn't even
7 discussed. It makes no sense, and he needs to explain
8 that.

05:56:24 9 PRESIDENT RIGO: I think what Mr. Senn
10 thought is a different matter.

05:56:28 11 MR. ORTA: But he--okay. Let me rephrase the
12 question then.

05:56:31 13 BY MR. ORTA:

05:56:32 14 Q. You did testify earlier that Mr. Senn--you
15 have a recollection that Mr. Senn said these things,
16 correct?--you told us that earlier?

05:56:46 17 A. Uh-huh.

05:56:46 18 Q. Okay. Can you explain to Secretary Eizenstat
19 and the rest of the Tribunal how it is--or why it is,
20 if you know, that Mr. Senn would be talking about this
21 issue if the issue never came up during the meetings?

05:57:00 22 MR. FOSTER: Same objections.

05:57:02 1 MR. ORTA: I said "if you know."

05:57:04 2 MR. FOSTER: He can't possibly know what was
3 in Mr. Senn's mind. I mean, there is a way to ask the
4 question. I'm not going to tell him how to do it.

05:57:13 5 ARBITRATOR EIZENSTAT: Just ask him whether
6 or not this did come up during the meetings as
7 reflected in the minutes.

05:57:19 8 MR. ORTA: Thank you, Secretary Eizenstat,
9 for the help.

05:57:23 10 BY MR. ORTA:

05:57:26 11 Q. Do you recall that this came up during the
12 meetings, this issue of the new Contract, to resolve
13 the lesivo?

05:57:34 14 A. Yes. There I have some doubt. I don't know
15 whether it was to cure lesividad causes, but there was
16 an interest to address the issue of lesivo, and
17 Mr. Senn's position was that that was not important or
18 fundamental, but that is vaguely what I remember.

05:58:00 19 Q. You do recall that it was discussed that a
20 new Equipment Contract had to be elaborated, given the
21 fact that the other Contract had been declared lesivo?
22 You recall that?

1 It's not up on the screen yet. There we go. Thank
2 you.

05:59:38 3 BY MR. ORTA:

05:59:45 4 Q. In the minutes of the meetings that took
5 place post-lesivo, you mentioned to us earlier in your
6 testimony that the Parties were discussing the
7 possibility of reprogramming the phases for
8 rehabilitating the railway. Do you remember that?

06:00:12 9 A. (Witness indicated.)

06:00:12 10 Q. You have to answer verbally.

06:00:14 11 A. Yes. I'm sorry, yes.

06:00:16 12 Q. And you also told us in your Declaration and
13 in response to the questions by Secretary Eizenstat
14 that the Government was insisting on having certain
15 land or that land in which the restoration would occur
16 returned to it, returned to the Government.

06:00:41 17 A. That's correct.

06:00:41 18 Q. Can you explain to us how it is or why it is
19 that the Government would be talking to Ferrovías
20 about reprogramming its restoration phases so as to
21 continue with the restoration while at the same time
22 demanding that the land be given back?

06:01:03 1 A. No, I cannot.

06:01:06 2 MR. ORTA: I have nothing further. Thank
3 you.

06:01:07 4 QUESTIONS FROM THE TRIBUNAL

06:01:08 5 ARBITRATOR EIZENSTAT: With your permission,
6 Mr. President, one last, more of just an interest.

06:01:13 7 Going back to your much earlier testimony
8 about Mr. Pinto's interest, you mentioned that it was
9 because of the sugar industry. What did you
10 understand Mr. Pinto's relationship was to the sugar
11 industry? Did he represent them in some way, or did
12 he have an interest of some kind that was disclosed to
13 you with regard to the sugar industry?

06:01:45 14 THE WITNESS: Yes, one hundred percent. The
15 answer is yes to both. I know that Héctor Pinto
16 worked his whole life for the sugar industry. His
17 call was to talk about the interests of the sugar
18 industry and to see what path or what vision the
19 railway had that could benefit the work of the Sugar
20 industry in our country.

06:02:09 21 ARBITRATOR EIZENSTAT: This would have been
22 with reference to the South Coast extension of the

1 line?

06:02:15 2 THE WITNESS: Yes.

06:02:16 3 ARBITRATOR EIZENSTAT: And what would have
4 been Mr. Pinto's interest in the extension of that
5 line?

06:02:26 6 THE WITNESS: Well, I wouldn't say
7 Mr. Pinto's interest, but, rather, for the country, I
8 would say it's important to have an alternative means
9 of transportation for the logistics of sugar which is
10 concentrated in the Southern Coast.

06:02:40 11 About 95 percent of the sugar mills are along
12 the Southern Coast, and the main port for the export
13 is also on the Pacific, on the Southern Coast. So, I
14 imagine that for them the interest is a--a major
15 logistical commercial interest, but I'm talking about
16 the interest of the sugar agro-industry. Now, what is
17 or what was Mr. Pinto's interest or his clients'
18 particular interest, or his particular client, I don't
19 know. I could assume or intuit, but it would be
20 speculation on my part.

06:03:19 21 ARBITRATOR EIZENSTAT: Did he ever mention a
22 project called Ciudad del Sur?

06:03:25 1 THE WITNESS: Yes, of course, I'm perfectly
2 familiar with it.

06:03:29 3 ARBITRATOR EIZENSTAT: What was Mr. Pinto's
4 discussion with you about Ciudad del Sur?

06:03:40 5 THE WITNESS: How the question of the
6 railroad might make sense and have synergy with the
7 project that they've developed over many years in
8 Ciudad del Sur.

06:03:50 9 ARBITRATOR EIZENSTAT: Who did you understand
10 controlled Ciudad del Sur?

06:04:02 11 THE WITNESS: The owners of the farms where
12 Ciudad del Sur is located. I don't know exactly who
13 they are. I presume, based on what we all know in our
14 country, who it might be, but I could not say it was a
15 specific person, first name/last name, because I don't
16 have personal knowledge of who the owners are other
17 than what I'm generally familiar with.

06:04:24 18 ARBITRATOR EIZENSTAT: But your understanding
19 was that Mr. Pinto had an interest in this particular
20 project?

06:04:33 21 THE WITNESS: Yes, that was my impression.

06:04:35 22 ARBITRATOR EIZENSTAT: Thank you very much.

06:04:39 1 THE WITNESS: With pleasure.

06:04:41 2 PRESIDENT RIGO: Questions?

06:04:43 3 MR. FOSTER: Nothing further.

06:04:45 4 MR. ORTA: Nothing.

06:04:45 5 PRESIDENT RIGO: Mr. Orta?

06:04:48 6 MR. ORTA: Nothing from Respondent.

06:04:49 7 PRESIDENT RIGO: Mr. Fuentes, thank you so
8 much. You may step down.

06:04:55 9 (Witness steps down.)

06:04:56 10 THE WITNESS: Thank you very much. Thank
11 you. Good evening.

06:05:46 12 PRESIDENT RIGO: Could we have a word with
13 counsel?

06:09:38 14 (Discussion held off the record.)

06:09:40 15 PRESIDENT RIGO: We are going to adjourn now
16 as it was foreseen it was going to be from 2:00 to
17 6:00, and we'll see you all tomorrow morning at 9:00.
18 So have a good evening.

06:10:02 19 MR. ORTA: Thank you, Mr. Chairman.

04:54:34 20 (Whereupon, at 6:10 p.m., the hearing was
21 adjourned.)

04:54:34 22

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAWN K. LARSON