

COURTESY TRANSLATION OF THE WITNESS STATEMENT
OF SECRETARY JULIA CARABIAS LILLO

1. My name is Julia Carabias Lillo. I have been Secretary for the Environment, Natural Resources and Fishing (SEMARNAP) since its creation in December of 1994. Prior to assuming this portfolio, I served as President of the National Institute for Ecology (INE) for ten months. Before that time, I was a professor in the Faculty of Science at the Universidad Nacional Autónoma de México.

2. I became aware of the COTERIN controversy before I joined the Federal Government. The issue generated some publicity and was the object of attention of various non-governmental organizations. Among them was Greenpeace Mexico, which later became very active in opposing the reopening of the site.

3. My official involvement in the matter started in 1994, when I was president of the National Institute for Ecology (INE), although direct contact with the matter fell to the officials for whom the matter was immediately before them. On April 22 of that year, the then Director of Environmental Impact and Risk for INE, Adriana Pinede Velázquez, an engineer, granted COTERIN an eighteen month extension to complete the construction of the facility which had been authorized by the same INE in 1993. Without a doubt, this has been one of the most difficult matters which I have faced in my position as branch Secretary. The La Pedrera project has been extremely controversial. The matter presents a very problematic situation. However, I would like to begin by noting that, in my opinion, the opposition to the project was genuine. I do not have the slightest doubt that the source of the opposition to the project originated in the legitimate and understandable concern of the community, environmental organizations and local governments, notwithstanding that we differed in our technical opinions regarding the feasibility of the project. With respect to Greenpeace, I have known the organization for many years. We have not always been in agreement in our perspectives on issues and without a doubt the San Luis Potosí facility was one of the issues upon which we took very different positions. However, I do not doubt that Greenpeace acted in accordance with their own convictions. I have similar opinions about the other political and social players who have opposed the project, including the Municipality of Guadalcázar. From my point of view, it is for this reason that the claim put forth by Metalclad is extremely tendentious and only addresses the matter from one very limited perspective. Their version of the facts completely ignores the great many ways that both the opposition to the project and the complexity of the project manifested itself.

4. For example, this case has attracted an investigation by the National Commission on Human Rights and another by the San Luis Potosí Congress; an independent environmental audit and an open consulting and review process by experts from the environmental audit; a criminal complaint with its corresponding investigation, which included the involvement of officials such as René Altamirano, Sergio Reyes Luján and Antonio Azuela; a legal challenge against the agreement signed by INE and the Federal Attorney General for Environmental Protection (PROFEPA) with the company; an

amparo undertaken by the Municipality as a result of the same legal challenge; two *amparos* undertaken by the company against state and municipal governmental actions; and not to mention the multitude of protest letters and demonstrations carried out by the community. In carrying out the review of the issue, I wish to call the Tribunal's attention to the complexity of the matter which concerns us.

5. During the time in which I have known about the matter as Environmental Secretary, I have met with Metalclad representatives in my office on one occasion. Our lawyers have reminded me of some of their names, and I believe that on that occasion on August 15, 1996 Mr. Kesler was present. I do not recall who else was present on his behalf. As well, after that, I had a telephone conversation with Mr. Neveau. With respect to the names of other individuals involved in the company, I do not remember them nor do I recognize any of them (our lawyers have informed me of some names).

6. The Tribunal is possibly already familiar with the fact that PROFEPA initiated an independent environmental audit on the site during the past federal administration, and, to these ends, the auditing services of Corporación Radián, S.A. de C.V. were contracted as were the services of Consultores Técnicos de Impacto Ambiental, S.A. de C.V. (Environmental Impact Technical Consultants) as the supervising company. The audit was concluded at the end of March of 1995. Mr. Antonio Azuela, who as federal Attorney General for the Environment is in charge of monitoring the enforcement of federal environmental legislation, has provided a witness statement which I have had the opportunity to review. To the extent that he testifies on the matter and events in which I participated, I am in agreement with his testimony. With the goal of being brief, I will let Mr. Azuela outline PROFEPA's involvement in the matter. To the best of my knowledge and understanding, that statement is accurate and true.

7. I wish to emphasize that I was very surprised and disturbed to learn from our lawyers that in August of 1994, Metalclad had declared to the United States Securities Exchange Commission that the professional from the company selected to undertake the study who was responsible for the management of the audit had accepted an invitation by the company to form part of Metalclad's Board of Directors. This was the exact same month in which SEDESOL approved the undertaking of the independent environmental audit. Fortunately, the Attorney General's office immediately contacted Dr. Ortega, the professional responsible for the audit, and determined that he had been invited by the company to accept this position, but that he had actually turned down the offer in writing. However, while this information eased my concerns with respect to Dr. Ortega's professionalism, it did not eliminate my uneasiness as I consider the mere fact that the company would try to influence the objectivity that an independent audit is based upon to be an unethical action. Later on, I will refer in greater detail to the weight we gave the independent environmental audit as well as its consulting and review mechanisms in order to define the position of the Secretary, so that the Tribunal can better understand the source of my discomfort.

8. The claim on page 8 of Mr. Kesler's witness statement to the effect that I made a positive contribution to the project from the very first day I became involved, as if I represented Metalclad instead of the Mexican Government, is false. My work as a civil

servant is incompatible with the notion of supporting a specific company, such as the one before us. Our final position was not made until the end of 1995, with the conclusion of the audit review, when SEMARNAP was convinced that the site was technically suitable for the operation of a controlled hazardous waste facility. It was then that we decided to approve the reopening and remediation of the project. We signed the agreement and the lifting of the closure, imposed in 1991, was ordered. Given this, all that can be said is that we approved the project in accordance with our public responsibilities. From our perspective, we are of the opinion that the problem was given an appropriate solution.

9. In this chronology, I referred to the claim of "complete support of the project" which Metalclad attributes to me in their Memorial. On page 13 of the Memorial, Metalclad alleges that I sent documents regarding the facility to the San Luis Potosí Congress in October 24, 1995 and that I expressed my complete support for the project. To begin with, I never sent documents to the San Luis Potosí Congress and as such I could not have expressed my complete support in this supposed communication. It is important to explain to the Tribunal that PROFEPA prepared a report based on the audit, which was distributed extensively due to the great interest that this case has generated. It is possible that the staff of that institution had sent out one of these reports to the San Luis Potosí Congress, but I do not believe that it would have been sent in my name and, in any event, I am certain that it was not accompanied by a personal letter from me.

10. Being responsible for SEMARNAP, my principal function is the regulation and implementation of public policies, and it is not one of promoting the interests of private investment. It is true that, in effect, I have the responsibility of carrying out environmental policy at the federal level and, in this sense, it is clear that Mexico requires more controlled hazardous waste facilities. However, my responsibilities do not include the promotion of the particular interests of any company. As such, to interpret our actions as personally supporting Metalclad is erroneous. What we did do, was to try to demonstrate, with the scientific information available to us, that the technology and the location of the site presented no technical impediment and, therefore, the project could proceed. I was not the representative for the project, nor its lawyer. What we did was to simply try and resolve the problem.

11. I have reviewed sections of the Memorial and the witness statements provided by Metalclad, which refer to my participation in the case. It appears to me that for the most part they are inaccurate, erroneous and false. I am going to provide the Tribunal with a more accurate description of my involvement in the events surrounding this matter with the support of the documents in my possession.

12. In my current position, I was first informed of the matter in February of 1995, when the company requested a hearing which was presided over by Gabriel Quadri, then President of INE. As I already mentioned, the environmental audit, which had been authorized by the previous administration, was already underway and our prime concern at the beginning of 1995 was to await its results. For us, on the one hand, the technical audit was of great importance as it was the first independent review of what INE had authorized in 1993.

13. On the other hand, the audit, which focused on the matter of the pre-existing wastes on the site, would enable us to formulate a technical opinion on what was necessary to remediate the site. In this way, the policy that the Secretary would adopt, in the future, to try and solve the La Pedrera problem would rest, to a large extent, on the results of the audit. That was its technical value to us.

14. It is important to emphasize that for SEMARNAP, within the scope of its authority, there existed two fundamental concerns. First, we had a company that had the authorization required by the federal legislation for the establishment of a controlled facility. The National Institute of Ecology (INE) had reviewed all the company's plans and projects and had decided that due to its characteristics, the site was suitable for the establishment of a hazardous waste facility, and the technology and the design which the company proposed to use met all the requirements of the existing federal Mexican legislation. It was in this way that in 1993, INE granted the approval for the Environmental Impact and Risk Study and the final authorization for the establishment and operation of the facility. However, it is important to note that the situation had commenced years before with a serious violation of the environmental legislation, in which the owners of COTERIN (before Metalclad) had inadequately deposited approximately twenty thousand tons of hazardous waste at the site. For this reason, the site had been closed in 1991 by the then Secretary of Urban and Ecological Development and a decision had to be made with respect to the closure. We also had a second concern, stemming from the concerns of the local population which had manifested themselves due to the manner in which COTERIN had started the operation. Perhaps in no other case has such a clear conflict been shown between the technical requirements of a project primarily referring to the suitability of the site and the perceptions of the neighboring community rooted in the project's history of violations.

15. The results of the independent environmental audit confirmed that the site was suitable. The results also showed that it was necessary to undertake remedial work on the site and provided us with the technical requirements so as to be able to work with the company to form a plan of action. These results, along with our obligation to implement an environmental infrastructure and the country's need to have facilities for hazardous waste generated by industry, were in line with the position that the Secretary would adopt with respect to La Pedrera.

16. However, while the audit had been initiated prior to our administration, we wanted to carry out the process at a faster pace and we were assured, once again, that the review and the technical solution to the problem was appropriate. It is for this reason that technical meetings were held with experts in the area, which Attorney General Azuela describes in his statement. The experts invited were carefully selected to ensure that their ability and reputation were a guarantee for both the Secretary and for public opinion, which by that time was very interested in the problem. Within this rubric, technical personnel and advisors of the State of San Luis Potosí and the Municipality of Guadalcázar were included. In other words, we carried out an extensive information process from the results of the audit. This time, in an open and transparent manner.

17. Once this review was finalized, SEMARNAP had the capacity to define its position on the problem. The site was suitable and the authorizations had been granted. Moreover, the company had prepared a plan of action to clean up the site, which from our perspective was appropriate. As such, at the end of 1995, within the scope of the applicable legislation in our jurisdiction, the Secretary did not have any technical objections to the establishment of the facility, the lifting of the closure and the simultaneous remediation of the area where the wastes had been deposited in violation prior to 1992. From a practical point of view, this solution would resolve the problem of the improperly deposited wastes and the establishment of a new facility to meet the needs of national industry. This was the decision made by SEMARNAP and was finally solidified through an agreement with the company signed by PROFEPA and INE, in which the greatest benefits that this solution offered were sought, including additional benefits for the local population through specific commitments by the company.

18. It is fitting to note that the position of SEMARNAP was never to impose its will on the State of San Luis Potosí. Our motivation was to respond with the authority which the law gives us and, in this way, we did what we needed to within the limits of our jurisdiction. The agreement did not free the company from the need to obtain other permits which were necessary at the state or municipal level, given that the reach of the agreement could not exceed the federal area of jurisdiction. This was clearly explained to the company and it was made known to the public in a press release issued by PROFEPA on the same day that the agreement was signed. A photocopy of the press release is attached to this statement as Exhibit 1. As well, PROFEPA prepared a document explaining the agreement, which was made available to the press and was published by various newspapers. A photocopy of the publication of this document in the *EL Nacional* newspaper on November 25, 1995 is attached as Exhibit 2 of this statement. The publication of this document sets out in its last paragraph, the following:

“Finally, it is important to clarify that the federal authorizations are a necessary requirement but are not sufficient for the operation of a hazardous waste facility. The company needs to comply with State legislation on the matter, whose interpretation and application rests exclusively in the local authorities.”

It is also important to clarify that the company never made me aware of the fact that some time before, the municipal authority had already rejected the license for the construction of the facility.

19. Unfortunately, with the signing of the agreement, our differences in perspective with the Governor of San Luis Potosí were significantly emphasized. This was a political risk which originated in our position and which regrettably materialized. However, the Constitution clearly sets out the autonomy of the States and the Municipalities and we have always respected this principle, both in our conduct and in our discussions. For this reason, I reject all the allegations and insinuations that Metalclad has made in their claim, to the effect that the decision by the Secretary showed that one could essentially ignore any local requirements, as if the decision absolutely prevailed.

20. For example, Metalclad in their chronology attributed to me a statement made on June 29, 1995 (page 11 of the Memorial) in which I allegedly stated that the decision of the federal authority would be irreversible. Upon reviewing the newspaper clipping cited by Metalclad, I note that the statement was taken out of the context in which it was made. On this occasion, I stressed that we were looking to all other technical elements within our reach in order to provide a solid foundation for our decision, which would have to be a final decision. The finality of a decision cannot be interpreted so as not to have the possibility of challenging it through existing judicial measures. In fact, the municipal authority of Guadalcázar took legal action against the decision. A photocopy of this newspaper article is attached to this statement as Exhibit 3. As I previously explained, I did not have the authority to force the Governor to act in a particular manner and this is, in fact, what the claimant suggests with this reference. Each one of us has our proper sphere of jurisdiction.

21. Further down in the chronology, it is stated that I declared in August of 1995 that the country would have close to 30 projects like Metalclad's in San Luis Potosí by next year, notwithstanding the opposition from the local communities. However, what I said to the media was stated as such in order to publicly acknowledge the need to have more secure hazardous waste facilities to dispose of wastes, which can be treated in another manner. If what Metalclad is trying to say is that our will would be imposed in those "thirty cases," and they want to claim that this is what our intention was in their case, this is totally false. What we did was to simply inform the public regarding the opposition, which these types of installations tend to generate in the neighboring communities. From this, it cannot be deduced that the decisions of the federal government in this respect could have been imposed over the jurisdiction of the state authorities or with disregard for the concerns of the communities. On the other hand, these statements cannot be interpreted to suggest that the Metalclad experience is a model to follow. As stated in the interview which I just gave to the *La Jornada* newspaper published on July 10th, I noted that in "La Pecera there were a lot of irregularities and violations of the law, which has generated very strong public controversy...."

22. On page 12 of the Memorial and 14 of Mr. Kesler's witness statement, it is noted that on October 7, 1995 I called Mr. Neveau to ask him not to "embarrass my President" and to withhold the matter from the discussions between President Zedillo and President Bill Clinton in Washington several days later, and that if the company so agreed the federal government would resolve the matter. I categorically deny this allegation. It is true that I spoke with Mr. Neveau prior to the Presidential visit to the United States, but I never used the language that they attribute to me. My having done so would have been undignified and my own actions would have embarrassed the President of the Republic and my country. I explained to Mr. Neveau that we were completing the review of the environmental audit and that we had tried to convince Greenpeace and other opponents of the project that that site was technically suitable for the establishment of the facility. With respect to matters within federal jurisdiction, I also informed them that we would soon be issuing a final decision regarding the remediation plan and the agreement which we planned to sign soon, as eventually did occur on November 24, 1995. This, however, does not show that we had stated that the "federal government would resolve the

problem" given that we were not in a position to do so by ourselves.

23. Metalclad states on page 25 of their Memorial that on August 7, 1997 "Carabias stated that she had told Governor Sánchez Unzueta in a previous meeting that the facility would be open in a period of "no later than fifteen days." To support this allegation, I suppose that Metalclad relies on an article published by the *Excélsior* newspaper on that same day, as if the publication were full proof of what in fact occurred. I never told the Governor of San Luis Potosí, as *Excélsior* states in the article and Metalclad in their Memorial "that the facility should open in fifteen days." First, it appears to me that to say this would have been incorrect. Second, when I read the article, I immediately wrote a letter to the editor of the newspaper denying the statement attributed to me. I never tried to tell the Governor that the site would open in spite of everything, nor did I discuss a set date in this respect, much less did I issue orders. I only discussed with the Governor the fact that my technical advisors considered the site to be suitable. A photocopy of the letter I sent to *Excélsior* in response to their publication is attached as Exhibit 4 in this statement. I want to emphasize that frankly it appears to me to be irresponsible that the company would use newspaper articles to describe as a fact a supposed event or statement published therein.

24. Metalclad notes at pages 26 and 105 of their Memorial that in a meeting with *Excélsior* (referring again to the newspaper article dated September 5, 1997) that I declared that the company had carried out the operations poorly by not having obtained a municipal construction permit. Immediately after this, the claimant states in surprise that that was the first and only such statement by a Mexican government official that informed the company that they had illegally constructed without a municipal construction permit. I, in fact, wrote this statement in the letter that I sent *Excélsior*, which the newspaper used to publish the article (and not in an interview with the newspaper as Metalclad states). In fact, I have stated this many times and I constantly use Metalclad as an example of how not to do things.

25. As well, I was surprised that Metalclad said that this was the first declaration of a Mexican government official in relation to the need to obtain a municipal permit. First, COTERIN, the company now the property of Metalclad on two occasions requested the municipal construction permits and on two occasions was rejected. The first time towards the end of 1991 and, the second time, at the end of 1995. This second time, COTERIN was already a subsidiary of Metalclad. The municipal authority is an authorized public organ in Mexico. Second, I refer the Tribunal to a press release issued by PROFEPA on the same date as the signing of the agreement cited in paragraph 18 of this statement. There is no doubt that the Federal Attorney General's Environmental Protection Office is a branch of the Mexican government.

26. There is another matter that Metalclad attributes to me which is being taken out of context. The claimant tries to interpret my statement that the problem was not solely an environmental problem, and that there were a variety of diverse interests, as if this were a statement to the effect that there were specific commercial interests behind the opposition. On various occasions, I have handled complex environmental problems not only in regards to this specific case: these problems are comprised of a number of

variables, both social and political, power relations in the federal state, the press, the economy, etc. Mexico has had to face the environmental measures of other countries many times, which affect our trade manifesting themselves with the maturing of commercial and environmental policy interests.

27. It is in this context in which I actually told the company representatives, that it appeared difficult to me to believe that the Governor would reject a proposal that the company is said to have made to him. At that time, it appeared to be an excellent solution to me and it is for this reason that I commented that these types of problem many times go beyond the purely environmental context. In any event, I never referred to it so as to say that I had the suspicion that a competitor company such as RIMSA was behind the blocking of the project, as Mr. Kesler wants to believe, when he draws such a conclusion on page 21 of his statement. As in many other parts of his statement, Mr. Kesler takes a completely subjective perspective which is not supported by any evidence whatsoever.

28. Finally, I would like to refer to the two events mentioned by Metalclad in their claim. On page 18, the claimant notes that in a bilateral meeting between Mexico and the United States held on May 6, 1996, the Metalclad matter formed part of the agenda and the problem was put forth by Mr. Stuart Eisner of the United States Commerce Department.

29. On the date noted in Metalclad's documentation a bilateral meeting between Mexico and the United States was not carried out in the City of San Antonio, and this statement made by the company is incorrect. Perhaps what Metalclad is referring to is the Bilateral Meeting which the countries held in Mexico City in our Ministry during those dates.

30. I do recall that in this last meeting where matters concerning Mexico's fulfillment of the NAFTA requirements were discussed, that the matter of La Pedrera was brought up. At that time, I explained to Mr. Eisner that the problems surrounding the La Pedrera hazardous waste facility, were due among other reasons to the fact that Metalclad carried out works without the corresponding municipal licenses, in addition to the fact that the company should have addressed the existing social concerns more effectively.

31. The other event to which Metalclad refers is the Conference of the Northern Boarder (Mexico-United States) held in San Antonio from August 4 to 6, 1996. On page 20 of the Memorial, Metalclad alleges that at this conference various points of view were expressed with respect to the company, regarding the government's failure in advancing both the operation of the facility and the remediation works even though the company had complied in all areas, and that these comments were supported by others. Immediately after this, Metalclad alleges that Secretary Herminio Blanco and I publicly committed ourselves to fully review the problem.

In this respect, I wish to make known that, at the meeting held in San Antonio, Texas, I, at no time, committed myself to ensure the opening of the hazardous waste facility. In fact, on that occasion I did not discuss anything specific with respect to the issue.

32. I make this witness statement with the intention of providing evidence to assist the Tribunal in resolving this conflict. I am aware that I may be called to provide further testimonial evidence and to be cross-examined on the evidence which I have presented. I make this declaration with the promise to tell the truth and in those areas where I have testified on matters which I did not witness directly, I declare that the information contained in my witness statement is in my understanding and to the best of my knowledge the most accurate information.

SIGNED IN THE ORIGINAL:

Julia Carabais Lillo