

1 THE INTERPRETER: He would like me to interpret into  
2 English as well.

3 PRESIDENT LAUTERPACHT: Interpretation both ways.

4 THE INTERPRETER: Both ways.

5 MR. PEREZCANO: Both ways.

6 PRESIDENT LAUTERPACHT: Okay.

7 [Pause.]

8 PRESIDENT LAUTERPACHT: Please proceed, Mr. Pearce.

9 MR. PEARCE: Mr. President, I merely note that--did you  
10 intend to administer the oath?

11 Whereupon,

12 HORACIO SANCHEZ UNZUETA  
13 was called as a witness and, having first solemnly declared, was  
14 examined and testified, through the interpreter, as follows:

15 PRESIDENT LAUTERPACHT: Mr. Pearce?

16 MR. PEARCE: Thank you, sir.

17 PRESIDENT LAUTERPACHT: Sorry--and I don't want to cut off  
18 the witness.

19 Proceed, Mr. Pearce.

20 CROSS-EXAMINATION

21 BY MR. PEARCE:

1 Q Mr. Ambassador, with your kind permission, sir, may I from  
2 time to time refer to you as "Governor" since you were Governor during  
3 most of the time that we're going to inquire about? May I do that?

4 A Yes, of course.

5 Q Thank you very much, sir.

6 You have provided a Witness Statement in this case for the  
7 Government of Mexico, have you not?

8 A That is right.

9 Q Who prepared your statement, sir?

10 A I did so personally.

11 Q Did you write it yourself?

12 A Yes, sir.

13 Q Did you submit it to the Government of Mexico's Council for  
14 Review?

15 A No.

16 Q Did the Council for the Government of Mexico provide you  
17 with any documents?

18 A It would seem so, yes.

19 Q Have you read your Witness Statement again--

20 A Yes, of course.

21 Q --in preparation for this hearing?

22 A Yes, sir.

1           Q       I'm going to try to phrase my questions in a more  
2 methodical way in order to facilitate the translation. I'll try to  
3 make it clear when the question has been posed.

4                   Have you met with counsel for the Government of Mexico in  
5 preparation for your hearing here today?

6           A       Yes, of course.

7           Q       And have you done that since Friday, when you came?

8           A       Yes, of course.

9           Q       And have you reviewed documents in preparation for today in  
10 addition to your statement?

11          A       Yes, of course.

12          Q       And what documents have you reviewed, sir?

13          A       My own statement; the documents in support of my statement;  
14 and the statements of other witnesses.

15          Q       Would those be other witnesses of the Government of Mexico?

16          A       That's correct.

17          Q       Would it also include witnesses provided by the Claimant?

18          A       I didn't have enough time.

19          Q       In your testimony, sir, you make quite specific reference  
20 to dates, people, and events. By what means did you refresh your  
21 recollection of these things?

1           A       I made an effort using my own memory, and of course, my  
2 files.

3           Q       Did you make reference at all to your day book or your  
4 journal to help you remember?

5           A       Very abundant files.

6           Q       And in those files, are there records of meetings?

7           A       Sometimes, yes.

8           Q       Are there agendas for various meetings that you may have  
9 held?

10          A       Yes, sir.

11          Q       Did you keep an appointment book, sir?

12          A       Yes.

13          Q       Are you aware that the claimant has asked the Government of  
14 Mexico to produce various portions of your calendar and appointment  
15 book to be able to verify certain facts?

16          A       Yes.

17          Q       Do you know why it wasn't provided, sir?

18          A       At the end of my term as Governor in the State of San Luis  
19 Potosi, the official agendas were to be turned over to the Archives by  
20 law, and based on the requests made by the lawyers for the Federal  
21 Government, I submitted a request to the Archives, and until now, I am  
22 waiting for an answer.

1 Q So is it your testimony, sir, that you have not received  
2 any of that information?

3 A Of the information I requested--no.

4 Q But you had personal files?

5 A Yes, yes, of course.

6 Q Those were not official files?

7 A Yes.

8 Q Yes, they were not official files?

9 A They belong to me.

10 Q And do those files include documents that reflect events  
11 during your term as Governor?

12 A Yes, of course. Nevertheless, I would like to make the  
13 following comment. In my personal files, I do not have the entire  
14 information about all acts of government. That would be possible--that  
15 is impossible.

16 Q Governor, I am going to ask you please to Examine Slide  
17 Exhibit 1, which is testimony from your witness statement, page 2, the  
18 last paragraph. This is about, in your words, "a clear commitment to  
19 the people of Guadalcazar."

20 A [Pause to read.]

21 Q Did you read that, sir?

22 A Yes, sir.

1 Q And in your statement, you in fact have attached a  
2 newspaper article from El Pulso [ph.], quoting your speech of the day  
3 before where you make that promise; correct?

4 A Yes, sir.

5 Q Doesn't this promise that you made in your speech form the  
6 basis of your opposition to the landfill at La Pedrera?

7 A It reflects the problem that the Municipality of  
8 Guadalcazar was going through at that time.

9 Q That wasn't my question, sir. My question is does that not  
10 reflect the basis of your opposition to the landfill.

11 A No. It reflects my perception as a candidate to the  
12 Governorship of the problem at Guadalcazar.

13 Q Well, perhaps, Governor, we should parse the language for a  
14 moment. Do you not indicate in your promise to the people that you  
15 recognize that there is a problem, but you go beyond that, don't you--

16 A Yes.

17 Q --and you indicate to them that even though you are not  
18 completely informed on the issue, if they don't want the landfill  
19 opened, you won't open it; correct?

20 A Yes.

21 Q And is that not a position that you took as Governor, that  
22 you maintained throughout your term?

1           A       I'll repeat my first answer. This statement and this  
2 political positioning reflects the perception of the problem--and let  
3 me explain what I mean by that--

4           Q       If I might just--excuse me, sir--interrupt, and in the  
5 interest of time, if I sense that you are being nonresponsive, will you  
6 permit me to interrupt in order that we might be efficient in our  
7 proceedings?

8           A       Once I'm finished, I'll be glad to.

9           Q       The question, sir, that I ask is not whether this is a  
10 reflection of the problem, but whether you maintained throughout your  
11 term as Governor your position as stated there about not opening the  
12 landfill.

13          A       That's not right--

14          Q       That's fine, sir. Thank you. That's an answer.

15                   Your opposition seems to be based exclusively on your  
16 perception of the will of the people in the local community as you  
17 define those terms; is that right?

18                   You must speak audibly, sir.

19          A       I didn't understand the question. Could you repeat it?

20          Q       Your opposition appears to be based exclusively on your  
21 perception of the will of the people in the local community as you  
22 define those terms.

1           A       And that perception comes together with the knowledge of  
2 the history of this problem in the Municipality of Guadalucazar.

3           Q       You make no reference in your promise to the people to  
4 consideration of statutory obligations, including recognition of  
5 Federal authority in the area of hazardous waste, do you?

6           A       I would like to clarify if you will allow me that this was  
7 one paragraph in a political speech that lasted one hour where overall  
8 issues having to do with the Municipality of Guadalucazar were dealt  
9 with. It was not an official statement--it was not an official  
10 determination--or a legal opinion or point of view. I was going  
11 through a political campaign.

12          Q       Thank you, sir. Let me suggest to you, if I may, your  
13 attorneys will have an opportunity when I am finished to ask you  
14 questions where you might have an opportunity to more fully explain  
15 other answers. During this process, it is my opportunity to ask you my  
16 questions. I wish you to answer those, please. Thank you, sir.

17          A       I'd be pleased to.

18          Q       Also in that promise that you made to the Municipality, you  
19 make no mention at all of the consideration of international  
20 obligations arising out of the NAFTA; correct?

21          A       It wasn't possible, because there was no NAFTA.



1           Q     Governor, isn't it true that throughout your term in  
2 office, that for political reasons, you sought mechanisms that had the  
3 appearance of legality in order to prevent the reopening of the  
4 hazardous waste landfill?

5           A     No, sir.

6           Q     Would you please look at Slide Exhibit 2, which is  
7 Paragraph 70 from the Counter-Memorial testimony of Marcia Williams? I  
8 think that's in Spanish. Does that need to be read to you, sir, by the  
9 interpreter?

10          A     No, sir.

11          Q     You are able to read and understand that, sir?

12          A     Yes, sir.

13          Q     Would you at least agree, Governor, that other people  
14 examining your conduct could reasonably conclude that your motives for  
15 your conduct were in fact political?

16          A     I, I have no comment.

17          Q     Could they not also conclude that you were searching for  
18 some mechanism to disallow Metalclad's operation?

19          A     No. I, uh, firmly deny that.

20          Q     You deny that a reasonable person could draw that  
21 conclusion?

1           A       I cannot judge another person on what that person might  
2 think.

3           Q       Governor, do you recall that Metalclad's application for a  
4 municipal construction permit was denied in December 1995?

5           A       That is correct.

6           Q       Do you recall, sir, that this application had been pending  
7 for 13 months?

8           A       I don't remember that.

9           Q       Do you recall that the application was made in November of  
10 1994?

11          A       Yes.

12          Q       So, from November 1994 to December 1995 would be  
13 approximately 13 months; correct?

14          A       Yes, sir.

15          Q       Isn't it also true, sir, that in October or November of  
16 1995, you contacted an attorney by the name of Leonel Serrato and asked  
17 him to represent the Municipality?

18          A       Yes, sir.

19          Q       And soon thereafter, in fact, he began to represent the  
20 Municipality, didn't he?

21          A       For certain goals, for certain objectives.

1           Q       Isn't it correct that after Mr. Serrato began representing  
2       the Municipality, which he did at your request, legal mechanisms  
3       designed to prevent the landfill from opening began to be employed;  
4       isn't that correct?

5           A       I don't know--such as what?

6           Q       Such as the denial of the construction permit that followed  
7       his retention as counsel.

8           A       As far as I know, there is no link between the provision of  
9       services as a lawyer and the denial of the municipal permit. As is  
10       known, this goes back a long time, back to 1990, 1991, and at that  
11       point, at that time, Mr. Leonel Serrato was not a lawyer for the  
12       Municipality.

13          Q       Well, my question, sir, was not whether there was a link.  
14       My question was after Mr. Serrato was retained by the Municipality,  
15       weren't certain mechanisms invoked that denied the reopening of the  
16       landfill.

17          A       Allow me to make the following clarification. I understand  
18       that Mr. Leonel Serrato provided his services to the Municipality of  
19       Guadalcazar. When I made the last effort to mediate in this conflict  
20       in response to the active participation on the part of Ambassador  
21       Jones, this was the moment when Mr. Serrato participated. And it is

1 not my understanding that Mr. Serrato participated in any other event  
2 except this one.

3 Q Excuse me, sir--

4 A And this happened in 1996 and not in 1995.

5 Q --that--would you please just answer the question that I  
6 asked you. The question was not whether you engaged Mr. Serrato at the  
7 time that you were responding to Ambassador Jones. Let me try to put  
8 it to you a little more directly.

9 After Mr. Serrato became counsel to the Municipality as you  
10 had asked him to do, the municipal construction permit was denied in  
11 December 1995.

12 A That didn't happen.

13 Q The municipal construction permit was not denied in 1995?

14 A Mr. Serrato's participation as lawyer for the Municipality  
15 was in 1996 when the Municipality's permit had already been denied as  
16 far as I know.

17 Q We'll come back to that, sir, and I will show you the  
18 Declaration of Mr. Serrato that perhaps can refresh your memory.

19 Governor, is it true that during your time in office, you  
20 dealt with Metalclad and the La Pedrera Landfill in knowing defiance of  
21 Federal jurisdiction?

22 A No. I was not in defiance of the Federal jurisdiction.

1 Q Would you read the language, sir, in Slide Exhibit 3, which  
2 is Paragraph 35 of the Counter-Memorial testimony given by Antonio  
3 Azuela?

4 [Pause.]

5 Have you read that, sir?

6 A Yes.

7 Q Wouldn't you at least agree, Governor, that another witness  
8 knowledgeable of the facts in this case has a different view of the  
9 motives behind your conduct toward the Claimant?

10 A He has his right.

11 Q Would you also, sir, please read Slide Exhibit 4? And I  
12 point out to the members of the panel that your tab numbers correspond  
13 to the slide numbers. Would you read that, please, sir?

14 [Pause.]

15 Have you read that, sir?

16 A Yes, sir.

17 Q Would you agree, Governor, that with respect to your chief  
18 environmental official, Dr. Pedro Medellin, Mr. Azuela is of the view  
19 that Dr. Medellin openly opposed the intervention of the Federal  
20 Government in the matters of hazardous waste in San Luis Potosi?

21 A What you have just asserted, that he openly opposed to it,  
22 is not written.

1 Q Would you accept the fact, sir, that he opposed the  
2 intervention of the Federal Government?

3 A No, sir.

4 Q You would not accept that?

5 A No, sir.

6 Q Thank you, sir.

7 Reading Slide Exhibit 5, this is paragraph 19 from the  
8 testimony of Secretary Carabias given in this case--have you read that,  
9 sir?

10 A Yes.

11 Q Would you agree that Secretary Carabias also seems to agree  
12 that your opposition to the landfill was politically motivated?

13 A Yes.

14 Q Thank you. By the way, Governor, which of the concerns of  
15 the community as they are expressed in the denials of the applications  
16 by the company for the municipal construction permit are not addressed  
17 in the Convenio?

18 A Could you kindly repeat it?

19 Q Certainly. Which of the concerns of the community as those  
20 concerns are expressed in the denial of the applications for the  
21 municipal construction permit are not addressed in the Convenio?

22 A In which Convenio, please?

1 Q In the Convenio which was executed on November the 24th,  
2 1995 between the Federal Government--that is, SEMARNAP, INE and  
3 PROFEPA--and Metalclad.

4 A I don't--I was not a municipal authority, so I am nobody to  
5 really judge who would have been doing that.

6 Q Did you read the Convenio, sir?

7 A Yes, sir.

8 Q So you are aware of its provisions?

9 A Yes.

10 Q Would you read the material in Slide Exhibit 6, please--  
11 this is Reply Exhibit 65.

12 A Do you have the document in Spanish, please?

13 MR. PEARCE: Is it there--on the next page.

14 MR. PEREZCANO: Could you show it to the Ambassador in  
15 Spanish, please?

16 MR. PEARCE: I'm sure it's in Spanish in your reply brief.

17 MR. PEREZCANO: Mr. Pearce, if you have the document, we  
18 could do it a little bit more efficiently.

19 PRESIDENT LAUTERPACHT: Could you give him that document?

20 MR. PEARCE: Yes, sir.

21 BY MR. PEARCE:

22 Q Have you read that, sir?

1 MR. PEREZCANO: Mr. Pearce, what is the source of this  
2 document? Where does it come from?

3 MR. PEARCE: It's our Reply Exhibit 55. It's an article  
4 published in Pulso on September 18th, 1997.

5 MR. PEREZCANO: Is it a newspaper?

6 MR. PEARCE: El Pulso, yes.

7 BY MR. PEARCE:

8 Q Do you see that this article quotes the Potosinian  
9 industrialist, Senior Cavera [ph.]?

10 A Uh-huh.

11 Q Does it appear to you, sir, that he is questioning your  
12 motives in creating an Ecological Zone that included Metalclad's  
13 landfill, thereby revoking all their possibilities of ever recuperating  
14 what they had spent?

15 A To my knowledge, the only thing that reflects is the  
16 opinion of Metalclad's officers that met with Mr. Cabrera Cavera.

17 Q Do you have personal knowledge of some kind of meeting,  
18 sir?

19 A It is written in the article.

20 Q Do you find it significant, Governor, that just as  
21 Metalclad has done in this case, individuals from a variety of sectors



1 have looked upon your conduct in this matter as being politically  
2 motivated?

3 A No, what that reflects, I do not agree. What it reflects--

4 Q What I would like to do now, Governor, is to look with you-

5 -

6 A Excuse me, but you didn't let me finish.

7 Q Oh, I thought you said "No."

8 A I tell you that I do not agree, because as it is written in  
9 this note from the newspaper, this statement of this person  
10 particularly is reflecting comments that he had with officers from  
11 Metalclad at that same day.

12 Q I think I heard that answer, sir.

13 What I'd like to do now, Governor, is to look with you at  
14 some of the specific statements you have made in your Counter-Memorial  
15 Statement to help you recall the precise language of your campaign  
16 promise. Let's look again briefly at Slide Exhibit 1. We looked at  
17 this earlier, sir; do you recall that?

18 A Yes, sir.

19 Q Governor, did you believe that as the Governor, you would  
20 have the statutory authority to keep that promise?

21 A Of course, yes.

22 Q And what is that authority, sir?

1           A       The law.

2           Q       Can you be more specific?

3           A       Yes, gladly, if you would allow me to give you an  
4 explanation. This is a political summary of a social, political and  
5 legal problem in accordance to which the Municipality of Guadalcazar  
6 systematically had been denying during three municipal periods and  
7 during three different Governor periods construction permits. And at  
8 the same time, it had shown its determination not to grant any  
9 operation permits, either.

10                    If you look at the records of the site, municipal  
11 authorities took this determination precisely for the reason of what is  
12 written right there. That is, there was a explicit and open opposition  
13 from the community that had systematically felt that it had been  
14 deceived because they introduced hazardous waste to that site.

15           Q       Thank you, sir. Now let's return to the question. On  
16 January 29th, 1993, you admit that you don't know the problems in  
17 detail, but nevertheless, if the people don't want it, you won't permit  
18 the landfill to open.

19                    My question to you, sir, is on what statutory authority  
20 were you able to make that promise that you thought you could keep?

1           A       I repeat that this political perception at that time cannot  
2       be confused with the institutional and legal positioning of the State.  
3       Let me give you an example.

4                       In the State Development Plan of my Government, it is  
5       written that the problem of La Pedrera and Mexquitic [ph.] in  
6       Guadalcazar as landfills were going to be subject to a viability study,  
7       and its possibility of operation to seek the best solution for the  
8       problem--

9           Q       Governor, I believe I'm being quite generous in letting you  
10      talk on. I remind you again that anything you feel you don't get an  
11      opportunity to say, you will be able to say later. But your question,  
12      sir--your answer is not responsive to my question.

13                    I am not asking, sir, for an explication of what sort of  
14      procedures you were going to take in your State Development Plan. I am  
15      asking you to cite the legal authority, sir, on which you as Governor  
16      could deny the landfill reopening based on the will of the people.

17           A       I repeat to you that this statement is a political  
18      statement and not a legal positioning. Neither is it a sustainable  
19      project at all, because it was not a discussion about what the  
20      positioning of the Government was. It was an action that reflects the  
21      problem that is political and social in January 1993.

1 Q At page 18, paragraph 6, in your Witness Statement, you  
2 state that your position has always been that the La Pedrera site could  
3 not be opened due to the opposition of both the Municipality of  
4 Guadalcazar and the community.

5 Can you tell us, sir, the difference between the  
6 Municipality of Guadalcazar on the one hand and the community on the  
7 other?

8 A The Municipality is the authority, and the community is the  
9 overall society.

10 Q I'm sorry--would you repeat that answer?

11 A The Municipality is the authority, and the community of  
12 Guadalcazar is the population of Guadalcazar.

13 Q So would it be correct, sir, that when you refer to the  
14 Municipality of Guadalcazar, you are referring to the Municipal  
15 President and the ayuntamiento?

16 A Yes, agreed.

17 Q And when you refer to the community, you are referring to  
18 everyone else, not those people?

19 A That is correct.

20 Q Did Dr. Diaz Bariga [ph.] and Dr. Medellin advise you in  
21 matters of hazardous waste?

22 A Yes, sir.

1           Q     And after you were elected, they assisted you in putting  
2 together your State Development Plan; correct?

3           A     Yes, sir.

4           Q     Would you look at Slide Exhibit 7, please, which is in your  
5 statement at page 3, the second full unnumbered paragraph. Do you  
6 acknowledge that your plan recognizes both the La Pedrera and Mexquitic  
7 problems, in fact, as you said a moment ago; right?

8           A     Yes.

9           Q     And that you planned to, in your words, "study and resolve  
10 these problems to determine their operative convenience, feasibility,  
11 and what their real environmental impact is"; correct?

12          A     Yes, sir.

13          Q     Well, from that, Governor, wouldn't you agree that a  
14 reasonable person might expect that if studies confirmed the site as  
15 being suitable, feasible, and if the environmental impact were  
16 consistent with Mexican normatives, you would support the opening of  
17 the landfill?

18          A     Without any doubt.

19          Q     Governor, beginning on page 7, the first full paragraph of  
20 your statement, you also spend some time discussing the involvement of  
21 a group of university professors referred to as "the University  
22 Committee," and I'd like to ask you some questions about that.

1           Is it your position, Governor, as you sit here today that  
2 the University Committee's only purpose was to help Metalclad find a  
3 different site--

T1B 4           Q     [Continuing] --from that at La Pedrera?

5           A     [Pause to read.] I would like to point out that, uh, as  
6 such, a University Committee was never established and that the only  
7 opportunity as far as I remember of having pointed out to how pertinent  
8 or relevant as university researchers was for them to help to find  
9 alternative sites to develop landfills for controlled waste. That is  
10 what I remember.

11          Q     Looking at your Witness Statement, sir, at the bottom of  
12 page 7, which you have read, the heading to that paragraph says  
13 "Metalclad accepts to search for an alternate site"; isn't that  
14 correct?

15          A     Where is this that it appears?

16           MR. PEREZCANO: It's page 12 of the Spanish version, sir.

17           [Pause.]

18           BY MR. PEARCE:

19          Q     Have you read the heading there, sir? That's all I'm  
20 referring to.

21          A     Yes, of course.

22          Q     Does it say what I read to you?

1           A     Yes.

2           Q     So is it your position, sir, that the purpose of this  
3 university group was to help Metalclad find a site other than that at  
4 La Pedrera?

5           A     Yes, sir.

6           Q     Do you deny, sir, that this "Committee," I shall call them,  
7 undertook to evaluate the La Pedrera site as to its scientific adequacy  
8 as a landfill site?

9           A     No. These university researchers were not Government  
10 employees. They were free to carry out any study they would have  
11 wanted to.

12          Q     I refer you, sir, to page 7, in English, of your Counter-  
13 Memorial statement. It is the last paragraph before the heading that  
14 we just read.

15                   I begin with the second sentence, sir. "I simply said that  
16 it would be important to have the assistance of university researchers  
17 in finding alternate sites, but never with regards to undertaking  
18 studies on the viability of La Pedrera."

19                   Is that correct?

20          A     Yes, sir. That is what it says.

21          Q     At page 7, in the first full paragraph, you state: "I  
22 suggested that we engage the assistance of the most competent

1 researchers at the university." When you suggested "we engage", who  
2 was the "we" you were referring to?

3 A [Pause.] Everybody--everybody who would be interested.

4 Q Would you please, sir, look at Slide Exhibit 8. This is  
5 Reply Exhibit 27 in Volume II, and it is a postscript to the February  
6 3rd, 1994 minutes of the University Committee. From that postscript,  
7 Governor, it appears that this Committee reported to Dr. Medellin,  
8 doesn't it?

9 A [Pause.] I don't know.

10 Q Did you read that, sir?

11 A Yes, sir.

12 Q From that, does it not appear that that Committee reported  
13 to Dr. Medellin?

14 A I don't know.

15 Q Does it not at least appear that they kept him informed?

16 A It could be.

17 Q Well, getting back to the purpose of this Committee, sir,  
18 would you please look at Slide Exhibit 9 taken from those same minutes,  
19 under the heading, "Objective." The underlined language, sir, says  
20 that "This will allow them to evaluate if the physical characteristics  
21 of the site are adequate for the construction of the controlled  
22 hazardous waste landfill."



1                   Would you agree, Governor, that the focus of these  
2 scientists seems to be that of a technical examination of La Pedrera?

3                   A       I repeat that they were completely free to undertake any  
4 studies about La Pedrera.

5                   Q       Whether they were free or not to do that, sir, doesn't this  
6 language under their "Objective"--wouldn't you agree that that language  
7 indicates that their focus was to make a technical evaluation of La  
8 Pedrera?

9                   A       I don't ignore it, because I don't know the entire  
10 document. I don't know if the document may have other parts.

11                  Q       At pages 7 and 8, the last continuing paragraph on 7--the  
12 last paragraph on 7, continuing to page 8 in your testimony, as support  
13 for your assertion that Metalclad had agreed to look for an alternate  
14 site in lieu of La Pedrera, you refer to your Exhibit 15; is that  
15 correct?

16                  MR. PEREZCANO: What is the reference you make, Mr. Pearce,  
17 to which document?

18                  MR. PEARCE: It's Exhibit 15 to his Witness Statement. I  
19 believe it's behind Tab 35, the last page behind Tab 34.

20                  Did you find it, Mr. Perezcano?

21                  MR. PEREZCANO: Is this the letter from Metalclad addressed  
22 to Dr. Medellin?

1 MR. PEARCE: I'm not sure. In the exhibit book that we  
2 have, it is not that exhibit. It is a May 31, '94 press release.

3 THE INTERPRETER: Excuse me--did you say '94?

4 MR. PEARCE: Yes, sir.

5 MR. PEREZCANO: It's Attachment 16 to his statement.

6 MR. PEARCE: I believe, in fact, that the letter of the  
7 25th from Mr. Kesler is what was intended as 15; I was merely trying to  
8 get to that point from what I felt was an erroneous document.

9 BY MR. PEARCE:

10 Q Let me ask you, Governor, did you intend for your Exhibit  
11 15 to be a letter of April 25, 1994 from Mr. Kesler?

12 A I didn't find it. I didn't find that exhibit.

13 Q In your Counter-Memorial statement, sir, you will find  
14 Exhibit 15.

15 A [Pause.]

16 MR. PEREZCANO: Mr. Pearce, it seems there has been a  
17 mistake in the numbering of the attachments. Can you tell me in which  
18 paragraph of the document by Ambassador Sanchez Unzueta the reference  
19 is to be found?

20 MR. PEARCE: I believe I stated that. In English, it's on  
21 pages 7 and 8.

1           Would you provide the Governor with a copy of the document,  
2 please, and let him verify the authenticity of his own Exhibit 15?

3           THE WITNESS: The April 25th letter directed to Dr.  
4 Medellin?

5           BY MR. PEARCE:

6           Q       Is that what you intended to be your Exhibit 15, sir?

7           A       If you will allow me to verify this.

8           Q       Certainly.

9           A       [Pause.]

10          Q       Is that it, sir?

11          THE INTERPRETER: Excuse me--if I could ask the witness if  
12 he's saying, "No, there is a mistake," or "There is no mistake."

13          THE WITNESS: If you will allow me to conclude reading  
14 through the letter.

15          MR. PEARCE: Oh, I'm sorry.

16          [Pause.]

17          THE WITNESS: Yes. Yes, sir.

18          BY MR. PEARCE:

19          Q       Thank you. Would you now please look at Slide Exhibit 10,  
20 which is paragraph 6 of that letter, and tell me, please, sir, whether  
21 that is the paragraph you cite in your Witness Statement at pages 7 and  
22 8?

1 A Yes, sir.

2 Q Now, sir, would you please look at Slide Exhibit 11, and  
3 will you tell us if that accurately depicts paragraph 2 of that same  
4 letter? Note that it refers to construction of a controlled landfill.

5 A Yes.

6 Q Thank you.

7 A And if you'll allow me to make a clarification?

8 Q Perhaps when I finish going through these, we'll permit  
9 that, sir.

10 Would you please look at Slide Exhibit 12 and indicate  
11 whether that accurately depicts paragraph 3 of that same letter?  
12 You'll note the reference to "in situ remediation" and "thermal  
13 treatment for nonconfineable wastes". Do you see that, sir?

14 A Yes, sir.

15 Q Would you please examine Slide Exhibit 13 and tell us if  
16 that accurately depicts paragraph 4 of that same letter? Note the  
17 reference to "construction and operation so that the company can be  
18 financially compensated for remediation." Do you see that, sir?

19 A Yes.

20 Q And now that we have found the document that you say you  
21 intended to be your exhibit, can you tell us why you only quoted  
22 paragraph 6 to this Tribunal?

1           A       Because the public agreement that we had was to establish  
2           an alternative site, and I would recall that this is not a letter from  
3           Mr. Pedro Medellin to Grant Kesler but rather from Grant Kesler to  
4           Pedro Medellin.

5           Q       Moving on to additional evidence, you offer for your  
6           assertion that Metalclad agreed to look for another site in lieu of La  
7           Pedrera. Would you please look at Slide Exhibit 14, which contains  
8           language from page 8 in English and the bottom of page 12 and top of  
9           page 13 in Spanish of your Witness Declaration.

10                    You state, sir, "With respect to this meeting, the press  
11           reported the following commitments undertaken by Metalclad."

12           A       Yes.

13           Q       Is it your position that these commitments were simply  
14           reported by the press or that these reflect the actual points of  
15           agreement between the company and the State?

16           A       [Pause.] Here, it states clearly that it's from the press.

17           Q       I understand, sir, that it's from the press. I am asking  
18           you about your testimony concerning that article from the press. Is it  
19           your testimony that, as reported in the press, the elements listed  
20           constitute the agreements between the State and the company?

21           A       I would reaffirm what is written in the text that this  
22           meeting between the Secretary for Industrial Promotion and Coordinator

1 of Ecology and Metalclad that they held a meeting from which the press  
2 drew and disseminated the following commitments.

3 Q And are those commitments, sir, reflecting of the actual  
4 commitments that were achieved at the meeting?

5 A Yes.

6 Q And, sir, those commitments are that, first, Metalclad will  
7 remediate the La Pedrera site; 2) that it will carry out studies of an  
8 alternate site; and 3) the construction of the controlled landfill.  
9 And you say in your statement that "these conditions precedent clearly  
10 set out the basic agreement between the State Government and Metalclad  
11 at that time to find an alternate site," in parentheses, "(other than  
12 La Pedrera)", close parentheses, "for the construction of a landfill."  
13 Correct?

14 A Yes, sir.

15 Q Sir, could you please look at your Exhibit 16 of your  
16 Counter-Memorial statement as provided to us in our Counter-Memorial  
17 Witness Book--and that's the Article behind Tab 36 in that book--give  
18 that to the Governor--and can you tell me, sir, where in that article  
19 the assertions you make are reported?

20 A [Pause.]

1           MR. PEREZCANO: Mr. Pearce, once again, there is a mistake  
2 here in the attachment; Attachment 16 to the statement by Ambassador  
3 Sanchez Unzueta does not reflect what is said in his statement.

4           MR. PEARCE: What I think we should have, Mr. President, if  
5 I may implore you, is for the witness to testify and not his counsel.

6           MR. PEREZCANO: It's just that there is a mistake in the  
7 numbering of the attachments. The documents are right there.

8           MR. CIVILETTI: And what should the number be?

9           MR. PEREZCANO: The correct article is an article presented  
10 by Metalclad in its complaint in Volume II--in its Memorial, in Volume  
11 II.

12           BY MR. PEARCE:

13           Q       Governor, on page 8 in the middle paragraph of your  
14 testimony, you refer us to Exhibit 17, a May 31, 1994 press release, as  
15 further evidence that Slide Exhibit 14 reflects your agreement.

16                    Behind Tab 37 in the witness book is what appears in our  
17 Counter-Memorial as your exhibit. That appears to be an obvious  
18 mistake; is that correct?

19           A       It is an obvious mistake. the press release you refer to  
20 is right here.

1 Q If you will turn to Tab 38 in the book, it is a copy of  
2 your Exhibit 15, which is the May 31, 1994 press release. Is that the  
3 document, sir, you intended to be your Exhibit 17?

4 Sir, you will need to refer to the witness book in front of  
5 the translator, because that's the document I ask you to verify.

6 A Yes.

7 Q That is the correct document?

8 A Just a moment, please. [Pause.]

9 Q It is the May 31, 1994 press release; correct?

10 A Yes; yes, sir.

11 Q And that's what you intended to be your Exhibit 17;  
12 correct?

13 A Correct, yes.

14 Q Thank you. If you will now, sir, look at Slide Exhibit 15.  
15 It reflects the third point of agreement described by Metalclad in that  
16 press release. Isn't it clear from that language that the company is  
17 describing working with the State to find additional sites for future  
18 use as opposed to an alternate site, as you have so testified? Isn't  
19 that correct?

20 A No, sir. What is correct is that this press release is  
21 false. It does not reflect the Agreement reached between the  
22 Government and San Luis Potosi and Metalclad. It was clear that it was



1 to find an alternative site and not an additional site in the future.  
2 That is the Agreement which, in good faith, I affirm was reached.

3 Q This is an Agreement, sir--this is a document, sir--that  
4 you attached to your testimony as--pardon me, sir--as evidence of the  
5 fact of the Agreement achieved between you and the company; isn't that  
6 correct?

7 A No, it is not correct, because in the last line, that last  
8 line does not reflect the Agreement; the rest of the document does  
9 reflect the Agreement.

10 PRESIDENT LAUTERPACHT: Mr. Civiletti?

11 MR. CIVILETTI: Did you in your Witness Statement indicate  
12 in any way that the press release which you attached was false in any  
13 material part?

14 THE WITNESS: [Pause.] No, because that was not the gist  
15 or the objective of my statement.

16 MR. CIVILETTI: Thank you.

17 BY MR. PEARCE:

18 Q Let's look at one further statement in that press release  
19 that you attach, Governor, at Slide Exhibit 16. There is an  
20 announcement in that same press release by Metalclad's Chairman, Mr.  
21 Neveau, that "the facilities now under construction by Metalclad will  
22 be state-of-the-art."

1           What facility under construction on May 31, 1994 did you  
2 believe that Mr. Neveau was referring to?

3           A     [Pause.] Obviously, La Pedrera.

4           Q     Looking at Slide Exhibit 17, we read Bullet Point 2 of the  
5 Agreement that "Metalclad will receive full State report as well as  
6 local encouragement for using the technology for landfilling." And  
7 since the La Pedrera facility was the landfill under construction,  
8 isn't it reasonable, sir, that Metalclad thought it now had your  
9 support?

10          A     At all times, Metalclad had the opportunity to develop the  
11 environmental infrastructure. So I don't understand the meaning of  
12 your question.

13          Q     The meaning is quite simple, sir. It goes to the issue of  
14 their reasonable expectation of your support. And since we have  
15 established that within the terms of this Agreement, it was the La  
16 Pedrera Landfill that was under construction at the time, that based  
17 upon the language contained in this second point in that Agreement,  
18 that Metalclad would receive full State support for using the  
19 technology for landfilling, isn't it reasonable that now they thought  
20 that they had your support?

21          A     According to the terms and conditions of the Agreement,  
22 yes.

1 Q I would now like to move to another area that you testify  
2 about, Governor. The Claimant's Memorial raised some doubts about your  
3 credibility, and in your Counter-Memorial Statement, you responded with  
4 your versions of events and offered some supporting documents. I would  
5 like to explore some of those with you now.

6 Before doing that, however, may I ask you, as a busy  
7 Governor, how many meetings do you think you attended in your four  
8 years as Governor--hundreds?

9 A Many.

10 Q And how many letters do you think you sent and received--  
11 hundreds--or thousands?

12 A That's it, yes.

13 Q Showing you at Tab 39, Exhibit 1 to Mr. de la Garza's  
14 Counter-Memorial Statement--

15 THE INTERPRETER: Sorry--whose statement?

16 MR. PEARCE: It's his Counter-Memorial Statement.

17 BY MR. PEARCE:

18 Q --you can see that it is a copy of a letter from Mr. Neveau  
19 to you dated February 23, 1995; correct? Can you see that, sir?

20 A [Pause.] What date, please, again?

21 Q February 23rd, 1995.

22 A Yes, sir.

1 Q Do you recall receiving this letter from Mr. Neveau?

2 A May I please read it?

3 Q Absolutely.

T2A 4 A [Pause.] I have read it.

5 Q Do you recall receiving that letter from Mr. Neveau, sir?

6 A No, sir.

7 Q Is this letter addressed to you correctly?

8 A Apparently, yes.

9 Q What procedures were in place in your office for delivery  
10 of mail to you?

11 A I had an office for that.

12 Q And what were the procedures in place for them to get mail  
13 to you, sir?

14 A They were distributed into the different agencies according  
15 to the different issues and subjects dealt with in the correspondence.

16 Q And someone other than you, of course, made that decision?

17 A Yes, of course.

18 Q Is it--

19 A Yes, sir.

20 Q Thank you. Would it have been normal for this kind of  
21 letter to have been sent to you?

22 A Yes.

1 Q Do you admit, Governor, that it's possible that this letter  
2 in fact was received in your office?

3 A It's possible.

4 Q And is it also possible that you have received and read  
5 this letter before?

6 A No, sir, because I would have been very concerned.

7 Q So it's still your position before the Tribunal today that  
8 if this letter were received in your office, you never got it?

9 A Correct.

10 Q And of all the thousands of letters you dealt with during  
11 your administration, you specifically recall not reading this letter?

12 A What I recall without certainty is that this event--that  
13 was actually the facts or the events at that time--as was the case of  
14 the statement made by Pedro Medellin, who informed me about this event.  
15 And it was through Dr. Pedro Medellin that I became aware of this  
16 event.

17 Q If your office had received this letter, Governor, wouldn't  
18 you agree that that would be evidence of Metalclad's efforts to keep  
19 your administration informed about activities at the site?

20 A Yes, but until--as far as I recall--

21 Q By the way, Governor--

22 A --I did not receive this.

1 Q --I'm sorry, sir--are you aware that Mr. de la Garza has  
2 testified that the reason this letter was not sent to you is that it  
3 was only a draft?

4 THE INTERPRETER: Excuse me. Could you repeat, please? I  
5 just want to make sure.

6 BY MR. PEARCE:

7 Q Are you aware, sir, that Mr. de la Garza has testified--and  
8 that's at paragraph 1 of his additional statement--that this letter was  
9 not sent to you because it was only a draft?

10 A I have not read the supplementary testimony of Mr. de la  
11 Garza.

12 Q Well, showing you at Tab 40 the Spanish copy of Exhibit 2  
13 to de la Garza's statement, notice the handwritten word "Projecto"; do  
14 you see?

15 A Yes, sir.

16 Q And if you look at page 2 of the draft, you will see  
17 markings that apparently someone made editing the letter; correct?

18 A Yes, sir.

19 Q Now if you'll turn the page, you'll see that it is another  
20 copy of that same letter, and you will see that it is not labeled  
21 "Projecto"; isn't that right?

22 A Yes--no, no, it doesn't have it.

1 Q Now, if you will look at Slide Exhibit 32, you will see  
2 there language which is at the top of page 2, the first paragraph of  
3 the second letter, referring to the United States Secretary of  
4 Commerce, the Mexican and the U.S. Embassies that is not in the  
5 "Projecto" version; correct?

6 A [Pause.] Uh-huh. Yes, sir.

7 Q But in fact this second letter appears to have been written  
8 following the editing denoted in the "Projecto" version, doesn't it?

9 A Yes, sir.

10 Q In fact, sir, are you aware that the English translation  
11 provided by the Government of Mexico as Counter-Memorial Exhibits 1 and  
12 2 to de la Garza's statement are identical translations of the second  
13 edited letter?

14 Wouldn't you agree, sir, that it appears that after the  
15 "Projecto" version, a second final version was prepared?

16 A I cannot know that.

17 Q Wouldn't you also agree, Governor, that this letter from  
18 Mr. Neveau, whether you admit to receiving it or not, shows an  
19 understanding on the part of Metalclad about the meeting on February 18  
20 and the points discussed there?

21 A I don't know.

22 Q Did you read the letter, sir?

1           A       No, sir, I have not read it yet.

2           Q       Let me ask you finally, sir, on that area, wouldn't you  
3 agree that if in fact no such meeting had occurred, that this letter  
4 from Mr. Neveau would make no sense at all if it refers to a meeting?

5           A       What meeting? I don't know.

6           Q       Take a moment, sir, and look at the letter, then, if you  
7 would. You'll see it in the first paragraph.

8           A       [Pause.] There are three already. Which one?

9           Q       Of the final version.

10          A       Is that Tab 32--39?

11          Q       It's Tab 40, and the first paragraphs are the same in both  
12 versions, apparently.

13          A       [Pause.] Excuse me, sir. I don't recall having met or  
14 having had that meeting with Mr. Rodarte in February of 1995.

15          Q       I understand that, sir. My question is merely this.  
16 Wouldn't you agree that this letter from Mr. Neveau, whether you admit  
17 to receiving it or not or to having a meeting or not, shows an  
18 understanding on the part of Metalclad about a meeting on February 18th  
19 and the points discussed there?

20          A       Honestly, I cannot say anything, because I--I can't--I  
21 don't know about this meeting of February 18 of '95, so how can I then  
22 express whether it reflects something, or how can I deduce something?



1           Q       While we're on the topic of the reliability of your  
2       recollection regarding your receipt of correspondence, let me ask you  
3       about a letter that you say you did receive on April the 29th, 1995  
4       from Mr. de la Garza.

5                    On page 10, the first full paragraph of your testimony, you  
6       testify that "On April 29th, 1995, I received a letter from de la  
7       Garza"; correct?

8           A       Yes, sir.

9           Q       Behind Tab 42 is Exhibit 32 to de la Garza's Counter-  
10      Memorial Statement. You will see that the letter is on paper without  
11      letterhead and is unsigned; correct?

12          A       Yes, sir.

13          Q       Do you also see, sir, that the date on the unsigned letter  
14      is April 29, 1995?

15          A       Yes, sir.

16          Q       Do you remember, sir, that April 29, 1995 was a Saturday?

17          A       No, sir.

18          Q       Well, while that's subject to judicial notice, if you'll  
19      turn the page, sir, on the last page, you will see a perpetual  
20      calendar--one more page--and looking at that perpetual calendar, you  
21      can in fact see, can you not, that April the 29th was a Saturday?

22          A       Yes, sir.

1 Q So it is your testimony, Governor, that you received Mr. de  
2 la Garza's letter on a Saturday, the same day that he wrote it;  
3 correct?

4 A No, I don't--I don't know whether I received it the day  
5 that it was written or afterwards.

6 Q Well, your testimony, sir, is that you received it on the  
7 29th of April.

8 A Let me verify my statement.

9 Q You'll find that on page--

10 A The--in my statement, the date is the date of the letter  
11 itself, not the date that I had received the letter.

12 Q Even though that's what you say in your declaration?

13 A Yes, because I--yes, because I'm making reference to the  
14 date of the letter and not the date that I specifically received that  
15 letter.

16 Q Do you know, sir, that Mr. de la Garza testifies that he  
17 also wrote a letter similar to the one he sent you to Pedro Medellin,  
18 your Ecology Director, also on the 29th?

19 A Dr. Pedro Medellin told me about that, yes.

20 Q Looking at Tab 43, sir, which is Exhibit 33 to de la  
21 Garza's Counter-Memorial testimony, I ask you if you see the stamp in

1 the lower right-hand corner indicating receipt in the Governor's Office  
2 on May 2nd, 1995.

3 A Yes, sir--no--the Governor's Office? No.

4 Q You see the date-stamp received in Dr. Medellin's office?

5 A No, sir--no--it doesn't say the Office of the Governor. It  
6 says the Office of the Coordinator for Ecology.

7 Q That's what I said when I corrected the question.

8 Do you also see, sir, that the letter to Dr. Medellin is  
9 signed and on letterhead stationery of de la Garza's law firm?

10 A Yes.

11 Q Do you find it odd at all that a prominent San Luis Potosi  
12 lawyer would address and sign on law firm letter head a letter to one  
13 of your subordinates and provide an unsigned, non-letterhead copy to  
14 the Governor?

15 A No, because the letter that I have has a letterhead.

16 Q Do you have a copy of that letter, Governor?

17 A Yes, sir.

18 Q Do you have it with you?

19 A Yes, sir.

20 Q Can you provide that letter to us?

21 A Yes. I would be pleased to do so.

22 Q Thank you.

1           PRESIDENT LAUTERPACHT: Mr. Pearce, can I ask at what  
2 moment you think we can break?

3           MR. PEARCE: In just probably five minutes or so.

4           BY MR. PEARCE:

5           Q     Are you aware, Governor, that on Friday, the 28th of April,  
6 the day before de la Garza professes to have written his letter to you,  
7 Mr. Kesler and Mr. Neveau had a letter delivered to de la Garza's  
8 office firing his law firm?

9           A     Now that I have read the Counter-Memorial of Mr. de la  
10 Garza, I am aware of this fact.

11          Q     Oh, so you also have read--

12          A     And at the time that this happened, I was not aware.

13          Q     So you have also read the Counter-Memorial?

14          A     This is the Reply--the Rejoinder.

15          THE INTERPRETER: Sorry. The Counter-Memorial.

16          BY MR. PEARCE:

17          Q     Showing you a copy of Reply Exhibit 18-7 behind Tab 44--

18          THE INTERPRETER: You said 18?

19          BY MR. PEARCE:

20          Q     It's Exhibit 18-7 behind Tab 44. Can you see that this is  
21 a letter to de la Garza from Messrs. Kesler and Neveau? The Spanish  
22 copy is behind the English copy, sir.

1 A [Pause.]

2 Q Do you see that, sir?

3 A Yes.

4 Q Can you also see, Governor, in the lower right-hand corner  
5 of the letter--

6 A Yes.

7 Q --that is was received in Mr. de la Garza's office on April  
8 28th, 1995?

9 A Yes.

10 Q As you sit here today, Governor, do you agree that Mr. de  
11 la Garza's letter to you dated April 29, 1995 was written at least one  
12 day after he had been fired by Metalclad as its lawyer?

13 A I ignore when he write it. I have not the slightest idea.  
14 The only thing that I recognize is that it is written on the 29th of  
15 April the way it is written here.

16 Q If you will look at the exhibit again, sir, in front of  
17 you, you will see that it has a date of the 28th of April, do you not?

18 A Yes. That's what it says here, yes, sir.

19 Q And there is a signed receipt at the bottom of the page, is  
20 there not?

21 A Yes, sir.

22 Q Received on what date, sir?

1 A The date that you said.

2 Q Which is?

3 A The 28th.

4 Q Of April, 1995. And the 28th of April would be the day  
5 before the letter dated to you; correct?

6 A Of course; the 29th is the day after the 28th.

7 MR. PEARCE: We can break at this point if you prefer, sir.

8 PRESIDENT LAUTERPACHT: We'll take 20 minutes' adjournment  
9 until 11:20.

10 [Recess from 11:03 to 11:25.]

11 PRESIDENT LAUTERPACHT: it may be of interest to the  
12 parties to hear from our Secretary, Mr. Escobar, as to how much time  
13 has already been used.

14 MR. ESCOBAR: The Claimants so far have used 7 hours and 7  
15 minutes. Respondent has so far used 30 minutes. And the Tribunal has  
16 used approximately 40 minutes.

17 MR. PEARCE: Thank you, sir.

18 BY MR. PEARCE:

19 Q Governor, in the letter that was sent to you by Mr. de la  
20 Garza, he indicated that he withdrew his representation because of  
21 ethical differences with Metalclad; correct?

22 A Yes, sir.

1 Q And later, he disclosed to you that he had been offered an  
2 amount of money to bribe you with; is that correct?

3 A Yes, sir.

4 Q And in fact you never asked Mr. Kesler about this  
5 accusation by de la Garza, did you?

6 A No, sir.

7 Q And are you aware that there is testimony in evidence in  
8 this case that Mr. de la Garza asked a company official for \$250,000 in  
9 order to influence you?

10 A No, sir.

11 Q So the lawyers for the Government of Mexico did not show  
12 you that evidence?

13 A There is a statement, but not evidence.

14 Q Besides yourself, sir, it appears that the one person  
15 common to both of those reports of so-called bribes is Mr. de la Garza,  
16 doesn't it?

17 A Of the second, I only have the statement, of the former, I  
18 only have the statement by Mr. de la Garza and a letter.

19 Q Are you still asking this Tribunal to consider as credible  
20 your hearsay testimony about a bribe which has as its only basis the  
21 allegation from de la Garza?

1           A       I have solely presented my testimony on events that in fact  
2 took place as the oral communication of Mr. de la Garza and the letter  
3 that I asked from him on the version that he provided to me orally.

4           Q       And on that basis, sir, are you still asking this Tribunal  
5 to take your evidence as credible?

6           A       All I'm asking the Tribunal is that the evidence that I am  
7 presenting reflects the truth.

8           Q       And you support that as the truth--the letter and the oral  
9 testimony or the oral information that you received from Mr. de la  
10 Garza?

11          A       The only truth that I am fully aware of myself is what my  
12 written testimony states, which is part of the document.

13          Q       Governor, I would now like to turn to your testimony about  
14 your knowledge of Metalclad's interest in the La Pedrera Landfill. At  
15 pages 2 and 4 of your Counter-Memorial Statement, you have testified  
16 that in January 1993, you ere completely unaware of Metalclad's  
17 presence in San Luis Potosi; correct?

18          A       Yes, sir.

19          Q       And isn't it also true that you have stated that until Dr.  
20 Medellin informed you in September of 1993, you ere not aware that  
21 Metalclad had an interest in COTERIN; right?

22          A       That is true.



1           Q     Are you aware, sir, that as early as January 1992, that  
2 Metalclad officers, along with some businessmen from San Luis Potosi  
3 and Mexican SEDUE officials, announced to the world from the Press Club  
4 in Washington, D.C. that Metalclad was investing in the hazardous waste  
5 business in San Luis Potosi?

6           A     No, sir.

7           Q     Is it your position before this Tribunal that the first  
8 time you knew of Metalclad's interest in the La Pedrera site was in  
9 September of 1993?

10          A     Yes, sir.

11          Q     Do you deny, sir, that on June 11th, 1993, at the meeting  
12 in your office with Metalclad officials and others from your  
13 administration, that you or one member of your administration were  
14 given a brochure by the company explaining its activities?

15          A     It was not in my office--it was at Government House--and I  
16 did not receive anything.

17               MR. PEARCE: I am going to hand out copies of the booklet,  
18 a copy of which is also behind Tab 46 and is Reply Exhibit 49.

19               I am going to ask Mr. Escobar to give to the President of  
20 the Tribunal one of the original copies, with an original note as  
21 evidence on the cover.

1           PRESIDENT LAUTERPACHT: Mr. Pearce, do I need to keep this,  
2 or can I hand this to Mr. Escobar for safekeeping, because as you just  
3 said, I've got a copy at Tab 46.

4           MR. PEARCE: Perhaps following this part of the  
5 examination, sir, we're going to use the book.

6           PRESIDENT LAUTERPACHT: Okay. Thank you.

7           BY MR. PEARCE:

8           Q     Now, is it your testimony, sir, that you did not receive a  
9 copy of this book at the June 11th, 1993 meeting?

10          A     Not only did not I receive it--nobody else received it.

11          Q     Would you look, sir, at Slide Exhibit 18? This is a copy  
12 of the routing sheet that is attached to the original, a copy of which  
13 is on your booklet, indicating that "This is the handout provided to  
14 Governor Sanchez during the meeting on June 11th. This is my only  
15 copy. Sandy. Governor's meeting."

16                 Governor, do you have any explanation as to why anyone  
17 would record that information on a routing slip except for the purpose  
18 written?

19          A     I haven't the slightest idea, and I don't know when this  
20 was written.

21          Q     If you will look, sir, at the first yellow tag in the back  
22 of the booklet--in yours, Mr. President, it will be the green tab, the

1 large green tab--you will see on that page, it refers to "Landfill bulk  
2 receipts"; correct?

3 A Yes.

4 Q And if you look now at the second yellow tab--the second  
5 green one in yours, Mr. President--you will see the second technology  
6 described, that of "incineration"; correct?

7 A [Pause.] Yes.

8 Q These two technologies, incineration and landfill  
9 confinement, are the same technologies, are they not--

10 A No.

11 Q --let me finish, please--that you refer to in your June  
12 11th, 1993 letter to Mr. Kesler?

13 A Not only there, but in all the text, when you manage waste,  
14 insofar as I know, they only talk about destroying or reducing residue  
15 substances through incineration or by depositing them in controlled  
16 sites. There is nothing else.

17 Q Thank you, sir.

18 Now, sir, I would like to take a closer look at this  
19 booklet that Metalclad says it provided you on June 11th. Would you  
20 look at the orange tab with the Number 1 on it, please? Do you see the  
21 page with the heading "Company Organization"?

22 A Yes.

1 Q And in the lower right corner, do you see a dotted-lined  
2 box?

3 A Yes.

4 Q And what company name do you see inside that box?

5 A COTERIN.

6 Q Would you turn to the yellow tab marked Number 2, please,  
7 sir? And do you see the heading "Metalclad Corporation Investment in  
8 San Luis Potosi Projects"?

9 A Yes.

10 Q And on the right of the page, a column entitled  
11 "Guadalcazar"?

12 A Yes, sir.

13 Q And do you see the three columns beneath "Construction and  
14 Development"?

15 A Yes.

16 Q "Operations and Remediation"?

17 A Yes.

18 Q Do you see that the total amount of money under  
19 "Construction" is \$19,500,000?

20 A Yes. That's what it says.

21 Q And for "Remediation," \$4.5 million?

22 A Yes.

1 Q Will you turn now, sir, to the blue tab, Number 3? Do you  
2 see that this is titled "Organization and Management"?

3 A Yes.

4 Q And the highlighted sentence which is the first sentence of  
5 the last paragraph indicates that Metalclad has negotiated an agreement  
6 to purchase the stock of what company?

7 A No. [Pause.]

8 THE INTERPRETER: We were on the wrong page.

9 BY MR. PEARCE:

10 Q Shall I repeat?

11 A Please.

12 Q Thank you. If you look at the last paragraph on that page,  
13 it indicates that as of March 31, 1993, Metalclad had negotiated an  
14 Agreement in Principle to purchase 94 percent of the stock of what  
15 company, sir?

16 A Of COTERIN--this is what the text says.

17 Q Yes, sir. Would you turn to Tab Number 4, the green tab,  
18 please, sir? The heading of that page is "Corporate Entity  
19 Relationships." On the right side, you seen an "Eco-Metalclad  
20 Corporation" box.

21 A Yes.

1 Q And down the left fork, sir, in the company marked in  
2 yellow, what company name do you see?

3 A Here? COTERIN?

4 Q Yes, sir. And finally, at Tab 5, the red tab, what is the  
5 heading of that page, sir?

6 A "Guadalcazar."

7 Q And the heading on the left side of the page?

8 A "Landfill."

9 Q And can you see, sir, that that entire page, those seven  
10 paragraphs, speak of COTERIN and the hazardous waste landfill?

11 A Yes.

12 Q Now, Governor, if you or anyone in your office had received  
13 this booklet, you would know of Metalclad's involvement with COTERIN  
14 and a landfill in La Pedrera, would you not?

15 A Obviously, yes.

16 Q Does this change your testimony, sir, that on June 11th,  
17 you did not receive this booklet?

18 A Not at all. I will not change it.

19 Q Will you please look, sir, at Tab 19, Reply Exhibit 9-4?  
20 This is a letter dated September 16, 1993, addressed to you. Is this  
21 address correct, sir?

22 A May I read it?

1 Q The address?

2 A Ah--the address?

3 Q Yes. Is the address correct?

4 A There is no address.

5 Q Does it not say "Lessentio [ph.] Horacio Sanchez Unzueta,  
6 Governor of the State of San Luis Potosi"?

7 A That is not an address.

8 Q That does indicate you as the Governor of the State?

9 A That's different; yes.

10 Q Okay. Do you see Item Number 1 of the four summary points  
11 on page 1 of this letter that says "Our acquisition of the company  
12 known as COTERIN is now complete"?

13 A That is what it says.

14 Q And now showing you Slide Exhibit 19, sir, this reflects  
15 the language contained in paragraph (a) on page 3 of the letter, and  
16 that says "Much of this information was included in the back of the  
17 document given you during the meeting on June 11th."

18 A That's what it says.

19 Q Do you now remember getting that booklet on the 11th of  
20 June, Governor?

21 A Nor have I received this letter dated September 16 nor the  
22 booklet.

1 Q This is a letter also that you haven't received?

2 A Where is it? Let me see if there is the original. Let me  
3 see the original. [Pause.]

4 Q I am asking for your recollection, sir, whether you  
5 received it or not.

6 A In order to try to give you an answer, I must read this  
7 first.

8 Q All right, sir.

9 A Thank you. [Pause to read letter.]

T2B 10 Frankly, I don't remember having read this letter.

11 Q Thank you. You have testified, sir, that COTERIN had a  
12 negative reputation in the community; correct?

13 A Who?

14 Q COTERIN.

15 A Yes, sir.

16 Q Did you or anyone from your administration suggest to  
17 Metalclad representatives that they should change the "Metalclad" name?

18 A That as an idea that people from Metalclad submitted at a  
19 meeting I think we held in 1996 where I agreed in this last effort that  
20 we were making in order to find a solution.



1 Q Did anyone from your administration, or you, ever suggest  
2 that the company should move its offices from the COTERIN offices to a  
3 different location?

4 A The offices?

5 Q The physical office of the company, that is should be  
6 relocated.

7 A Where to?

8 Q I'm just asking if it was--

9 A I don't remember.

10 Q Showing you Slide Exhibit 20, this is an exhibit tendered  
11 in the Post-Rejoinder Declaration of Mr. Deets. I note for the record  
12 that Respondent has objected to this Declaration. I also note that this  
13 is in response directly to testimony from Dr. Diaz Bariga [ph.], who is  
14 a new witness to the Rejoinder.

15 This is a document--

16 MR. PEREZCANO: Mr. President, I don't wish to interrupt  
17 the examination, but I would like to point out the objection to which  
18 we will return further on when we finish the questioning.

19 PRESIDENT LAUTERPACHT: Mr. Pearce has identified the item  
20 to which this letter has been filed in response. We note your  
21 objection, and we will go on de bene esse.

22 BY MR. PEARCE:

1           Q     Mr. Deets of Metalclad at the time, Governor, who was also  
2     at the June 11th, 1993 meeting with you, attaches this memorandum of a  
3     meeting with Dr. Diaz Bariga on June 9th, 1993. He was your  
4     Environmental Coordinator at the time, was he not?

5           A     Yes; yes, sir.

6           Q     And you can see where it was suggested at the meeting about  
7     which these notes are made that the name COTERIN be changed and the  
8     company offices relocated; do you see that, sir?

9           A     Yes, I see it.

10          Q     Would you agree, sir, that this evidence at the very least  
11     seems to indicate that prior to June 11th, your chief environmental  
12     officer was discussing La Pedrera with Metalclad and even suggesting to  
13     the company strategies for reopening the landfill?

14          A     I can tell you with full honor to the truth that Dr. Diaz  
15     Bariga never mentioned this meeting with Mr. Deets that you say that  
16     was held.

17          Q     Would you agree; sir, that he may have had the meeting and  
18     not mentioned it?

19          A     That would have been to be questioned Mr.--Dr. Bariga.

20          Q     You have testified at page 4, paragraph 3 in your  
21     Declaration--page 6 in Spanish--that about one month after the June  
22     meeting, you received information that Mr. Kesler was about to announce

1 a partnership with you, and you refer to your Exhibit 9, which is the  
2 July 15, 1993 press conference; correct?

3 A Yes, sir.

4 Q Looking at Slide Exhibit 21, this is the language from the  
5 bottom of page 2 of this release that caused you such great concern.  
6 Kesler states, "We play to be able to announce the acquisition"--or,  
7 I'm sorry--"the acquisition of an existing and operational hazardous  
8 waste landfill in the near future."

9 Isn't this stated intention quite consistent with the  
10 description of expected operations set forth in the booklet the company  
11 says it gave you on June 11th?

12 A Your opinion is that one; that's not mine.

13 Q When you read, sir, in early July that part of the press  
14 release we just referred to, what existing hazardous waste landfill did  
15 you believe it was referring to?

16 A Would you allow me a minute to read it, please?

17 Q Certainly.

18 A [Pause to read.] From reading at this moment, it is  
19 obvious that it is making reference to La Pedrera.

20 Q Thank you, sir. And this information that you had in early  
21 July, you had at least six weeks before your September meeting with Dr.  
22 Medellin; correct?

1 A Yes.

2 Q I would now, sir, like to move into--

3 A Yes, but will you allow me to clarify something? In this  
4 booklet, in this press release, they talk about a matter that is  
5 uncertain.

6 Q Thank you.

7 A In my testimony, I declared that I found out in September  
8 that Metalclad had acquired these shares of COTERIN. It was not until  
9 September where, honestly, I found out that Metalclad had decided to  
10 acquire COTERIN's shares.

11 Q But you just testified, did you not, sir, that this  
12 language from the slide exhibit, from this press release, refers to the  
13 La Pedrera site as the hazardous waste landfill they intend to acquire;  
14 correct?

15 A What I say is that it's not read that Metalclad is  
16 reporting acquiring the site.

17 Q But you agree, sir, that they are reporting that they  
18 expect to acquire it.

19 A But that they have not acquired.

20 Q My question is do you agree that they have stated that they  
21 expect to acquire it.

22 A This is what the text reads.

1 Q Thank you, sir.

2 I would now, sir, like to move into an examination of your  
3 testimony about the municipal construction permit. When did you first  
4 become aware that the Municipality had denied the Aldrett application?

5 A I can't be precise in time.

6 Q Did you know about it, sir, at the time you became  
7 Governor?

8 A No, I don't think so.

9 Q Did you know it--I'll wait--did you know about it, sir, at  
10 the time of the June 11, 1993 meeting?

11 A I don't know.

12 Q Have you actually read the reasons set forth by the  
13 Municipal President for that denial?

14 A At some time, I did read it, yes.

15 Q Looking at Slide Exhibit 22, which is Counter-Memorial  
16 Exhibit 43, this contains language from the October 1, 1991 letter from  
17 the Municipal President to Mr. Aldrett stating the action taken by the  
18 Town Council the night before.

19 Let's look for a moment at the three reasons given by the  
20 Town Council for denying the municipal construction permit. The first  
21 one is the lack of an Environmental Impact Study as required by Federal  
22 SEDUE; correct? Is that correct, sir?

1           A       That's what it says.

2           Q       And the second is that the land use authorization as  
3 required by the State was not yet granted; is that also correct?

4           A       Yes.

5           Q       And finally, that there was a concern about the control of  
6 the high risk, the technical parts of the project; correct?

7           A       That's what it says.

8           Q       I ask you, sir, is it your position that the reasons given  
9 are within the legal authority of the Municipality for denying the  
10 permit?

11          A       It seems to be so.

12          Q       Let's take a look, Governor, at Slide Exhibit 23, which  
13 derives from your Exhibit 32, which reflects the action taken by the  
14 Guadalcazar Town Council in January '92. Specifically, this language  
15 is in the next-to-the-last paragraph on the first page: "Where today,  
16 this honorable cabildo determines the denial of any permit that favors  
17 the continuity of the company in Guadalcazar."

18                   The company referred to is COTERIN; correct?

19          A       Yes, sir.

20          Q       So, Governor, this appears to be an official expression by  
21 the Town Council to deny any and all permits that may be sought by  
22 COTERIN; correct?

1           A       That's what it says.

2           Q       This resolution does not even refer specifically to the La  
3       Pedrera Landfill, does it?

4           A       What it says is to deny any permit that might favor the  
5       continuity of said company in Guadalcazar, with emphasis on the term  
6       "continuity."

7           Q       So any permit applied for by COTERIN, even one not  
8       involving hazardous waste, would not be granted, according to this  
9       resolution; correct?

10          A       That is your opinion, but that's not what it says.

11          Q       You do not agree that's what it says?

12          A       It says, and I quote: "to resolve to deny any permit that  
13       might favor the continuity of said enterprise or said company at  
14       Guadalcazar." The interpretation is--is obviously that it's a  
15       reference to the--to the hazardous waste landfill.

16          Q       Well, does that give you any concern, sir, even if you are  
17       correct, about the objectivity given to any future application by  
18       COTERIN?

19          A       No. It's obvious that in the context of the words, and in  
20       accordance with the Mexican legal system, all permits that one might  
21       wish can be sought, and if the authority denies them, there are legal  
22       remedies for challenging the decisions of any authority.

1           Q       I am not speaking about the legal remedies at this point,  
2       sir. We're talking about your opinion as to whether the prior  
3       determination by the ayuntamiento to deny any permit applied for would  
4       provide fairness and objectivity to the company COTERIN.

5           A       What's indicated here, and it can also be interpreted, is  
6       that should the unfavorable or unlawful conditions persist, the  
7       Municipality would deny any permit that might favor the continuity.

8           Q       And these unlawful conditions would be those referred to in  
9       the January 1991 denial; is that correct?

10          A       I don't know.

11          Q       Please look at Tab 47, which is Exhibit 20 to your Counter-  
12       Memorial testimony. It is a copy of the Municipality's denial in 1995  
13       of the application for a construction permit.

14                    When did you first see this document, Governor?

15          A       I don't remember exactly when.

16          Q       Have you read it?

17          A       Yes.

18          Q       By the way, sir, for context, this denial by the  
19       Municipality was just a few days after the signing of the Convenio  
20       between SEMARNAP and Metalclad, isn't that right?

21          A       I don't know. I haven't reflected on this nor have I--



1 Q The date of the denial, sir, is December 5th, 1995;

2 correct?

3 A The building permit?

4 Q The document that you have in front of you that you

5 sponsored as your Exhibit 20 is a copy of the Municipality's denial of

6 the construction application.

7 A Yes, that was my question--

8 Q Yes, sir.

9 A --because I haven't read it all through. I can--

10 Q I'm sorry--I thought you had stated earlier that you had

11 read your statement and all the attachments before today.

12 A Yes, but I'm not certain that this document that I have

13 before me is the one that you're referring to. Would you allow me to

14 read through it?

15 Q Certainly.

16 A [Pause to read.]

17 Q Perhaps, Governór, in the interest of time, we'll ask you

18 questions about the document, and if you need to be reassured later,

19 you can check it.

20 A Yes--December 7th, '95--well, okay.

1 Q And for purposes of the question, which was relatively  
2 simple, this denial came a few days after the execution of the  
3 Convenio; correct?

4 A Excuse me--which Convenio?

5 Q The Convenio of November 24, 1995 between SEMARNAP and  
6 Metalclad.

7 A Correct.

8 Q And it was also just a few days after your public rejection  
9 of that Convenio, wasn't it?

10 A Correct.

11 Q Looking at Slide Exhibit 24, according to the Council, it  
12 met in an extraordinary session; correct?

13 A Correct.

14 Q And looking at Slide Exhibit 25, this appears to be the  
15 first reason given for the denial of the Metalclad application for the  
16 construction permit.

17 A [Pause.] Yes.

18 Q Wouldn't you agree, sir, that this appears to be nothing  
19 more than a reference to the October 1, 1991 denial of the Aldrett  
20 application?

21 A I don't know because there was another agreement--I think  
22 it was in 1992--involving the Municipal Authority.

1 Q But doesn't the language here refer to a denial in its  
2 session of October 1st, 1991?

3 A That the language refers to it?

4 Q Yes, sir.

5 A Yes.

6 Q Please examine Slide Exhibit 26, which appears to be the  
7 second reason given for the denial of the application. Would you  
8 agree, sir, that that appears to be nothing more than a ratification of  
9 the January 20th, 1992 ratification of the earlier denial of the  
10 Aldrett application?

11 A All that I can be aware of is what I read.

12 Q Examining those two reasons for denial, sir, there is no  
13 indication that the Metalclad application was reviewed on its merits  
14 according to some established, objective criteria, is there?

15 A I don't know.

16 Q Please examine Slide Exhibit 27. This appears to list a  
17 reason for denial which is described as an "obra nueva" [ph.], or "new  
18 work." Was it your understand, Governor, that this reason for denial  
19 was because the work had already been done?

20 A That's what it says.

1           Q        Would you agree, sir, that this reason for denial seems to  
2 be based entirely on the timing of the application and isn't based on  
3 any objective criteria?

4           A        As regards the expression and definition of the criteria, I  
5 wasn't present at the act; I wasn't in the Municipal Council meeting; I  
6 had no communication with the members of the Municipal Council in  
7 determining what the criteria might be in respect of such a  
8 determination.

9           Q        Finally, Governor, looking at Slide Exhibit 28, this  
10 appears to set forth the final reason for the denial of the application  
11 for the construction permit, and it is denied for "all the effects that  
12 could give place to grant a construction license to the referred site  
13 by the applicant."

14                    Would you agree, sir, that it appears that the Municipality  
15 is essentially stating that the permit is denied for any and all  
16 reasons possible?

17           A        No. What it says is "for all effects," not "for all  
18 motives."

19           Q        And apparently, it is done without regard to whether those  
20 reasons were even considered by the Town Council; correct?

21           A        I don't understand the question.

22           Q        That's all right. We'll move on.

1                   And at this time, by the end of 1995, you were certainly  
2 aware, were you not, that Metalclad was a foreign investor?

3           A        In late '95?

4           Q        Yes, sir.

5           A        Yes, sir.

6           Q        And you were aware, too, were you not, that other parties,  
7 especially Ambassador Jones and some U.S. Congressmen and Senators, had  
8 raised concerns about the treatment of Metalclad's investment under the  
9 protection of the NAFTA?

10          A        Yes.

11          Q        What steps did you take, sir, to ensure that the treatment  
12 given to this foreign investor by the Municipality complied with the  
13 laws of the State of San Luis Potosi and the NAFTA?

14          A        At all times, this company was treated on an equal footing  
15 independent of the majority shareholder status of Metalclad.

16          Q        What steps did you take to ensure that that treatment was  
17 given by the Municipality in compliance with the provisions of the  
18 NAFTA?

19          A        It was treated as a local company at all times, and the  
20 fact that it was a company with foreign capital was irrelevant, because  
21 the problem was defined, as it is today, by the problems inherent to

1 the La Pedrera hazardous waste landfill in Guadalcazar and the history  
2 of the location.

3 So the company had access at all times to legal and  
4 judicial remedies within our legal system.

5 Q So the fact that it was a foreign investor made no  
6 difference to your treatment?

7 A Not in respect of the actions of the Municipality.

8 Q Did it make a difference in respect to your actions?

9 A The difference that I provided was better treatment in  
10 accordance with our interest and the interest of Mexico in attracting  
11 foreign investors to Mexico--preferential treatment.

12 Q You're testifying that you gave preferential treatment to  
13 this claimant?

14 A To the foreign investor, yes.

15 Q Did you do anything, sir, between November 1994 and  
16 December 1995 to see what was taking the Municipality so long to act on  
17 the construction permit application?

18 A Evidently not, because I didn't represent the company.

19 Q You felt no responsibility representing the Government to  
20 step in and do that?

21 A Not insofar as the company didn't ask me to do so.

22 Q You felt no responsibility on your own initiative?

1           A       I could never take the place of initiative on the part of  
2 the company.

3           Q       Did you do anything, Governor, after the denial of the  
4 permit to determine the nature and scope of the Municipality's inquiry  
5 and the objectivity of its review and decision?

6           A       By then, the only way to judge the actions of the  
7 Municipality wasn't in the hands of the executive but only in the hands  
8 of the judiciary.

9           Q       Having examined the reasons given for the denial in 1995,  
10 can you explain to this Tribunal how those reasons indicate that  
11 Metalclad was reviewed under the standards of fair, objective, and  
12 timely treatment?

13          A       [Pause.] I don't understand your question.

14          Q       My question is that we have just examined the reasons given  
15 for the denial in 1995 of the construction permit from an exhibit you  
16 provided to your testimony. Having looked at those reasons, I am  
17 asking you now if you can explain to the Tribunal how those reasons  
18 given for the denial indicate that Metalclad was reviewed under  
19 standards that were fair, objective, and timely.

20          A       I would repeat what I indicated a moment ago. The nature  
21 of this problem, which is to say having to make a determination as to  
22 the legality of the Municipal Administrative Act, is not nor was it in

1 the hands of the executive but rather in the hands of the judicial  
2 bodies, access to which is open to all companies in my country.

3 So if, at some point in time, Metalclad had considered the  
4 Municipality's determination to be unfair, it had open access which it  
5 availed itself of through the Mexican judicial system.

6 Q Thank you, sir. Despite your helpful tutorial on the  
7 judicial approach--

8 A It seems that this is not an appropriate means of  
9 expression for this appearance.

10 Q --I am just trying to ask you, sir, not what the judicial  
11 approach is, but what your opinion of the treatment that was given in  
12 the denial--

13 A [Interrupting.]

14 Q --excuse me, sir; please let me finish my question--given  
15 in the denial of the 1995 application. And in your opinion, having  
16 examined those reasons, can you tell us how that was fair, timely, and  
17 objective?

18 A As an attorney, I have not studied the case.

19 Q Is it your view, Governor, that the reasons given for the  
20 refusal to grant the construction permit were really a reflection of  
21 the fact that the people and the community had not been consulted?

22 A I don't know.



1 Q Is it your view, Governor, that no matter what Metalclad  
2 might have done, the Municipality was not going to let the landfill  
3 open and operate?

4 A It's up to the municipal authorities of those years to give  
5 that answer.

6 Q I'm just asking for your opinion, sir.

7 A I don't have an opinion in that regard.

8 Q Claimant has submitted as evidence testimony of a notary  
9 who discovered many unpermitted projects in Guadalucazar that were  
10 underway after the present action was filed. That's at Tab 48, which  
11 is Memorial Exhibit 5.

12 For your convenience, sir, those projects are highlighted  
13 in yellow. To your knowledge, sir, were any of those projects required  
14 to apply for a municipal construction permit, only to have it denied  
15 because--

T3A 16 A [continuing] --to have an opinion.

17 Q We'll move along. Is it your opinion, sir, that the  
18 Municipality acted fairly and in good faith in denying the permit for  
19 the reasons stated?

20 A One more time, I would like to say that I am not and have  
21 not been the appropriate authority to judge the different actions of  
22 the Town Council. That's irrelevant.

1 Q Your opinion is not irrelevant to me, sir.

2 A It's--

3 Q Let me move on, let me move on. You have testified and  
4 confirmed during this examination that throughout your term in office,  
5 it was your position that if the community did not want the landfill,  
6 regardless of the reasons or the facts supporting feasibility, you  
7 would not let it open. How do you reconcile that position with your  
8 responsibilities under Mexico's environmental law?

9 A Because this expression not which you make reference refers  
10 only to one part of the problem-- in this case, the acceptance or  
11 rejection by the community of the opening of the landfill in La Pedrera  
12 Guadalcazar.

13 Aside from this, there is an administrative legal  
14 procedure--

15 Q I'm sorry?

16 A --there is an administrative legal procedure that also  
17 follows up this problem. During my whole administration--and I have  
18 multiple examples of the strict enforcement of the law despite social  
19 protests. And this within its own context could document that my  
20 administration never ceased to enforce the law for matters that were  
21 within the law, and this independently of opinion or of the protests  
22 that existed.

1           Q       So is it your testimony, sir, that your position that you  
2 would not let the landfill open if the community did not want it to,  
3 regardless of the reasons or facts supporting its feasibility, was in  
4 fact in compliance with your legal responsibilities?

5           A       Well, you, as everybody else in that locality, understand  
6 perfectly well that the social unrest from the community took the  
7 different--the following municipal administrations or Town Councils to  
8 take the decision of opposing the reopening of the landfill and to be  
9 able to give the operating and the construction licenses. This is a  
10 result--and this happened, actually, even before I became Governor.

11          Q       All right, Governor. Let's look for a moment, please, at  
12 another area of your testimony, and this regards the negotiations that  
13 eventuated in the 1997 Acuerdo.

14                 We earlier had some confusion, apparently, on the timing of  
15 Mr. Serrato's role. I am going to distribute copies provided by  
16 counsel for the Government of Mexico, which is a translation of the  
17 Witness Statement of Leonel Serrato.

18                 I direct your attention to paragraph 2, where Mr. Serrato  
19 says that he "began in late 1995"; two sentences later, he says "in  
20 November 1995, the Governor called me and asked whether I would like  
21 to work on behalf of the Municipality."

1                   Do you recall now, Governor, that he began to work for the  
2 Municipality in 1995, not 1996?

3                   A       What I recall is having asked Mr. Serrato for his support  
4 on the issue of the last effort that my Government was undertaking in  
5 order to find a solution. But I don't recall, honestly, that it was  
6 for some other reason or before 1996.

7                   Q       But he was participating at the time of the negotiation of  
8 the Acuerdo for certain in your mind; correct?

9                   A       Mr. Pearce, are you referring to the Agreement of November  
10 of 1995, or to the Agreement of Understanding of January 1998 between  
11 the--

12                  Q       I'm talking about the Agreement that began to be negotiated  
13 toward the end of 1997. You took the lead, did you not--

14                  A       You said toward the end of '97?

15                  Q       Yes--I'm sorry--toward the end of '96, the early part of  
16 '97. And Mr. Serrato was employed by the Municipality at that time;  
17 correct?

18                  A       Excuse me--I am confused. I don't know what time period  
19 you are referring to.

20                  Q       All right. Let me go back. Mr. Serrato apparently  
21 testifies that he began to work for the Municipality as a result of  
22 your request--

1 A Yes, that's the way it was.

2 Q --at the end of 1995. I am now, sir, moving ahead to the  
3 end of 1996 with the beginning of the Acuerdo negotiation, so-called.  
4 And Mr. Serrato was representing the Municipality at that time, wasn't  
5 he?

6 A Yes, of course.

7 Q Now, you took the lead in setting up these negotiation  
8 sessions, didn't you, Governor, as a result of your meeting with  
9 Ambassador Jones?

10 A Yes.

11 Q And this was after Ambassador Jones threatened to blacklist  
12 the State of San Luis Potosi for its treatment of Metalclad; correct?

13 A Yes.

14 Q And didn't you at one point, Governor, personally offer the  
15 solution that would permit Metalclad to operate commercially for a  
16 period of six months, the time remaining in your term of office?

17 A What is your question?

18 Q My question is didn't you make that offer?

19 A No, no. What happened, and according to what I recall--

20 Q Sir, before we go there, I could perhaps save us some time.  
21 If you'll look at page 15 of your Declaration, paragraph (a) at the top  
22 of that page--

1 A Yes.

2 Q --you have testified that "Metalclad returned to its  
3 original request to operate five years as opposed to my proposal for  
4 six months." You personally offered that solution; correct?

5 A Could you please tell me--give me the reference again, Mr.  
6 Pearce?

7 Q It's page 15 of the Witness Statement in English, paragraph  
8 (a) at the top of the page.

9 Do you see that the statement is there, sir?

10 A [Pause.]

11 Q Did you find the statement, sir?

12 A Yes, uh-huh.

13 Q Do you see the language I referred to?

14 A Yes.

15 Q And you made that offer, I take it, in good faith, with a  
16 genuine belief that it was a fair and equitable solution?

17 A May I please make a statement?

18 Q I'd prefer that you just answer my question, sir, and  
19 you'll have an opportunity--

20 A Well, I have to answer.

21 Q I'm sorry?

22 A I have to answer. I have to respond.

1 Q I think it can be answered "yes" or "no." Did you, sir,  
2 make the offer in good faith?

3 A Yes, of course.

4 Q And did you have a genuine belief that it was a fair and  
5 equitable solution?

6 A The commitment which I had acquired was to try to find  
7 solutions to the problem, but this possibility was negotiated by Mario-  
8 -Mario, who was the coordinator of my advisors--together with counsel  
9 of Metalclad and with the Municipality's officials to try to find a  
10 solution to this problem. And this was actually subordinated to the  
11 acceptance of both interested parties.

12 Q I understand that, sir, but with respect to your suggestion  
13 that they operate for six months, did you believe that was a fair and  
14 equitable offer?

15 A That's what the parties discussed during the negotiations  
16 held with Mr. Mario del Valle. That was a possibility that was  
17 mentioned, as was testified to be several individuals.

18 Q I take it, Governor, that this plan--that is, to operate  
19 for the six-month period--if it had been acceptable by Metalclad, that  
20 your plan anticipated the granting of the municipal construction  
21 permit, didn't it?

1           A       No, not at all, because I could not guarantee it. This  
2 depended upon the will of the Municipal President and the Town Council  
3 members and the agreement they would reach with the company, and that  
4 was the effort that we were undertaking since the beginning.

5           Q       So even though you have testified that you treated this  
6 investor with preferential treatment and that you made your offer in  
7 good faith, you had no belief that the Municipality would even grant a  
8 construction permit to make your offer effective; is that your  
9 position?

10          A       We were looking--or, we were trying to find a solution in  
11 order to try to convince and persuade the interested parties to reach  
12 an agreement.

13          Q       I understand that, sir. I am asking if you had formed no  
14 basis of believing that if the company adopted your proposal to operate  
15 for six months, that the municipal construction permit would not be  
16 granted.

17          A       That was not in my head, sir.

18          Q       Let's move now to another area of your testimony, the part  
19 that deals with your Declaration of the Ecological Preserve. You make  
20 a distinction in your Declaration between Metalclad's accusation that  
21 the intent of the creation of the Zone was to injure the company and



1 whether the implementation of the Zone actually injured the company.

2 Do you understand the question, sir?

3 A No, sir.

4 Q Then, let's turn to your Witness Statement in English at  
5 page 20, paragraph 10, and it's behind Tab 49 in the book.

6 A Correct. I have it in front of me.

7 Q Your statement says that "Metalclad alleges that this  
8 region was created to deliberately injure the company"; correct?

9 A I am stating that Metalclad affirms or alleges--what is  
10 written.

11 Q Yes, but your--and your response to that, sir, is that that  
12 is false because the Declaration doesn't damage the company in any way.

13 A Yes, sir.

14 Q Is there a reason that you give an answer that deals with  
15 your view of the actual damages--

16 THE INTERPRETER: Excuse me--could you repeat?

17 BY MR. PEARCE: .

18 Q Is there a reason that you give an answer dealing with your  
19 view of the actual damages, and you don't respond to Metalclad's  
20 statement that you intended to injure them with your Declaration--with  
21 your Decree?

1           A     No. This was just in response to the affirmation made by  
2 Metalclad, not regarding my point of view.

3           Q     Looking at Slide Exhibit 29, sir, which is Reply Volume IV,  
4 Exhibit 56, this contains your statement in the press on September 16,  
5 1997 that "any possibility that exists of opening the hazardous waste  
6 landfill at La Pedrera is definitely cancelled." Is that now how it  
7 was reported, sir?

8           A     No, sir.

9           Q     That is not a correct report?

10          A     It's written as you read it, but that's not what happened  
11 in reality.

12          Q     So you deny that that quotation is accurate?

13          A     Yes, without any doubt.

14          Q     And looking at Slide Exhibit 30, you read what seems to be  
15 the conclusion of the interviewer at another place that "the Governor,"  
16 you, who would leave your post in just ten days, "confirmed that there  
17 are no ways for the North American company, Metalclad, owner of the  
18 landfill at La Pedrera, to obtain the reopening and operations of it."  
19 Is that also a misreporting, sir?

20          A     It's the same report that you are reading, that you have  
21 just given us--both of them are the same.

1           Q       Mr. Medellin was part of the decisionmaking process with  
2 you?

3           A       He was the Coordinator for Ecology.

4           Q       In creating this Ecological Zone; he participated with you  
5 in that decision?

6           A       Yes, within his attributions, yes.

7           Q       Please look at Slide Exhibit 31, which is Reply Exhibit 59,  
8 citing the press report of Dr. Medellin's statements regarding the  
9 intention why this Decree was made. And can you, sir, tell this  
10 tribunal if it is just a coincidence that two different reporters,  
11 speaking with two different State officials regarding the reason  
12 Government action was taken, come up with exactly the same motives?

13          A       What is very clear from these two press releases is that  
14 the same concept is attributed to two different persons--the Governor  
15 and Pedro Medellin. This is what is perfectly clear. And precisely  
16 because of this, I state that this was an issue treated in the media as  
17 a reflection of the problem.

18          Q       Let me ask you now, sir, reading Slide Exhibit 33, which is  
19 at Tab 50 in the book--this is a Memorial Exhibit from Volume II,  
20 unnumbered page, Tab 1--is it still your position here today, sir, that  
21 the State of San Luis Potosi is free of any responsibility for the

1 NAFTA because the State does not have any signatures in an  
2 international agreement?

3 A May I please read it?

4 Q Sure.

5 A I don't know this note. [Pause to read.] Is that the  
6 whole paragraph? Is that all the information?

7 Q That's all that we've extracted, and you can see where  
8 information has been omitted by the appropriate sides.

9 A But without reading the newspaper article, then it seems to  
10 be correct. It's just not very clear here in the book.

11 Q And your position as reflected in Slide Exhibit 34, which  
12 is Memorial Exhibit Volume II, unnumbered page, Tab 2, which is behind  
13 Tab 51 in the books, your position there hasn't changed, that no matter  
14 what resolution emitted by an arbitration panel of the NAFTA, it will  
15 not affect the State of San Luis Potosi. Is that correct?

16 A That's what one can--is that what one can read?

17 Q I'm sorry--what was the answer?

18 A That's what one can read.

19 Q I am asking you if your position remains the same--if you  
20 believe, sir, as you sit here today, that any resolution that comes  
21 from this arbitration panel will not affect the State of San Luis  
22 Potosi.

1           A       This statement cannot be taken out of its own context, and  
2       the context is the following. In the media, it had been published that  
3       Metalclad had sued the Government of San Luis Potosi in the amount of  
4       \$130 million, so then, this response was regarding that statement,  
5       because it was not possible for Metalclad to sue, then, the Government  
6       of San Luis Potosi for \$130 million.

7           Q       Does that statement accurately reflect your position at the  
8       time, Governor?

9           A       Yes, because in accordance with the Treaty and Chapter 11,  
10      one of the regions in the country--in this case, San Luis Potosi--  
11      cannot be sued directly, according to the provisions of the Agreement.

12          Q       Is it your position that as the--is it your position,  
13      Governor, that as the former Governor of San Luis Potosi, you had no  
14      responsibility under NAFTA or for the outcome of this NAFTA  
15      arbitration; is that correct?

16          A       I repeat to you that this statement was made in order to  
17      clarify the statement that the Government and the Municipality of  
18      Guadalcazar were being sued and were being asked to provide relief of  
19      the order of--or, damages of the order of \$130 million.

20          Q       That didn't answer my question, sir. Let me ask it again.  
21      Is it your position that as the former Governor of San Luis Potosi, you

1 have no responsibility under NAFTA or for the outcome of this  
2 arbitration?

3 A Of course; no doubt about it.

4 Q All right, sir. Let me ask you this. Please recall your  
5 1993 pre-election promise to keep the landfill closed based exclusively  
6 on the wishes of the community irrespective of any rational basis for  
7 those wishes. Recall also your statement in your Declaration that  
8 throughout your term, you maintained that position. Recall also your  
9 support of local opposition based on the absence of a municipal  
10 construction permit which was not required of other projects in the  
11 same community. Recall also your declaration of the area surrounding  
12 and including La Pedrera, an environmentally-protected zone, and the  
13 reasons reportedly given by you and your Ecology Coordinator at the  
14 time.

15 Now, with that in mind, sir, please explain to this  
16 Tribunal how those measures and your support of them are consistent  
17 with your responsibilities under the NAFTA, especially Articles 1105  
18 and 1110.

19 A I believe that you, or this statement that you have just  
20 made, is based from the beginning on an erroneous assumption as I see  
21 it, because this first statement of January of 1993 when I was running  
22 for the Governorship of San Luis Potosi, which consisted of

1 scrupulously respecting the will of the people of San Luis Potosi, is  
2 not independent from and does not contradict as you have stated it  
3 anything that is a rational position. That is your opinion. It is not  
4 what is written, nor is it what I ever said.

5 So that I feel responsible in this case where an effort was  
6 made in order to let reason, but not only reason, but also Mexican law,  
7 prevail, regardless of the nationality of the company that was running  
8 the landfill. And therefore, this position was never an attempt to be  
9 against a company that happened to be a foreign company.

10 Q Is it your position, sir, that the actions you took as  
11 Governor with respect to your position as compared with the Federal  
12 Government and your position as compared with the Municipality and your  
13 position as compared with this company were in compliance with NAFTA  
14 Articles 1105 and 1110?

15 A Of course.

16 PRESIDENT LAUTERPACHT: All right. Thank you, Mr. Pearce.  
17 Does that conclude your examination?

18 MR. PEARCE: Unless there is anything in--any redirect that  
19 would be necessary to recross, I think.

20 PRESIDENT LAUTERPACHT: This is a convenient moment at  
21 which to break, and we'll resume again at 3 o'clock.

1                    Presumably, Mr. Perezcano, you want to reexamine the  
2 Ambassador.

3                    MR. PEREZCANO: That's correct, Mr. Chairman, but I'll be  
4 brief. Thank you.

5                    PRESIDENT LAUTERPACHT: Three o'clock.

6                    [Whereupon, the proceedings were recessed, to reconvene at  
7 3 o'clock p.m. this same day.]

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## AFTERNOON SESSION

PRESIDENT LAUTERPACHT: The session is resumed, and His Excellency is now the witness of Mexico for reexamination.

Mr. Perezcano?

MR. PEREZCANO: Thank you, Mr. President.

## REDIRECT EXAMINATION

BY MR. PEREZCANO:

Q Ambassador, Mr. Pearce asked you to read some paragraphs of the letter dated April 25, 1994, that Mr. Kesler writes to Dr. Pedro Medellin Milan. We are distributing these letters and some other documents to the Tribunal, to the Claimant, and to yourself.

Please refer to the first paragraph of this letter, and please read it aloud for the Tribunal.

A Of course. "As a result of our several interviews related to the transfer station that is cited in La Pedrera, Municipality of Guadalcazar, San Luis Potosi, and in accordance to the agreement held, we are pleased to submit to your consideration the following activities program."

Q Thank you, Mr. Ambassador. Could you please now read the last paragraph of that same letter?

A Yes. "Awaiting your response in order to start the corresponding work, we are very yours truly."

1 Q Mr. Ambassador, to clarify, is this a proposal that is  
2 submitted to your consideration?

3 A It is like that, just as it is read.

4 Q it is not the Agreement, as you understand it?

5 A No.

6 Q Could you please refer, Mr. Ambassador, to the second  
7 document now, and would you kindly identify it?

8 A It is dated May 26th--right.

9 Q Could you tell us if it is a letter written by Dr. Medellin  
10 to Licensiano [ph.] Jose Mario de la Garza?

11 A Yes, sir, that's what it reads.

12 Q Jose Mario de la Garza, who is a representative of  
13 Metalclad Corporation?

14 A Yes, sir.

15 Q And it is Exhibit 72 of the Counter-Memorial. Please take  
16 a few moments to read it, please.

17 A [Pause to read.] Yes.

18 Q May I ask you, please, to read the first two paragraphs  
19 aloud for the Tribunal?

20 A Of the first page?

21 Q Yes.

1           A        "As you know, the program of the Government of the State of  
2 San Luis de Potosi, in order to treat and finally dispose of hazardous  
3 waste, significantly involves the Corporation"--

T3B 4           [continuing] --"and therefore, I review our agreement items to  
5 comply with the purpose of the State insofar that it may operate a  
6 comprehensive system of managing hazardous waste that could include  
7 collection, reutilization, recycling, incineration, confinement,  
8 minimization of waste, training, research, and those that would be  
9 deemed necessary in the future, and where Metalclad could play a basic  
10 role as or according to what we may foresee. The specific agreements  
11 include"--

12           Q        Ambassador, please move to paragraphs 3 and 4. Would you  
13 please read those aloud?

14           A        "The installation and operation of a hazardous waste  
15 landfill in an area of the State that was established in common  
16 agreement and where Metalclad again will undertake the local studies  
17 that are required to comply with all legal requirements and to be  
18 highly sure or safe in operations in order to satisfy the Federal,  
19 State and Municipal authorities. In this case, the Government of the  
20 State will fully support Metalclad Corporation with existing technical  
21 information, particularly geo--geography maps and geo-hydrological  
22 studies, and well as with local technical support, particularly through

1 an agreement with a local university and other institutions with which  
2 we cooperate. Likewise, the State Government will support Metalclad  
3 Corporation by granting and quickly facilitating the requirements--the  
4 paper requirements--for Metalclad Corporation. Surely, they will also  
5 request the Corporation participation in the new project for the  
6 Industrial Zone of Controlled Risks of this Government."

7 "4. The decision on the authorization to establish a landfill in  
8 La Pedrera that would receive additional hazardous waste to those  
9 already existing would be subject to a) the State and municipal  
10 authorities' convincement that such operation could perform high  
11 standards of safety; b) to the acceptance of these operations by the  
12 community as well as the assessed acceptance by State and municipal  
13 authorities together with the Corporation, having first a true and  
14 clear planning for what the terms and significance of the operation  
15 would be to that community."

16 Q Thank you, Mr. Ambassador.

17 May 27th, there was a press conference at the Government  
18 Palace. What was reported at that press conference?

19 A The Agreement.

20 Q Which I understand is that the Agreement is reflected,  
21 then, in Mr. Medellin's letter?

22 A Yes, sir.

1 Q Thank you, Mr. Ambassador.

2 Please refer to the third document of this package that I  
3 just distributed to you--that is, the letter you made reference to this  
4 morning from Mr. Jose Mario de la Garza dated April 29, 1995, where you  
5 stated to the Tribunal that you had it with you.

6 A Yes, sir. If the Tribunal allows me, I would like to add  
7 that this letter was handed by Mr. Jose Mario de la Garza to my private  
8 secretary; it did not come through the Government mail room, and that's  
9 why I received it by hand.

10 MR. PEREZCANO: Thank you, Mr. Ambassador.

11 I don't have any more questions, Mr. President.

12 PRESIDENT LAUTERPACHT: Thank you.

13 Mr. Pearce, would you like to examine?

14 MR. PEARCE: I do, sir.

15 PRESIDENT LAUTERPACHT: Briefly, I hope.

16 MR. PEARCE: I shall attend to your hope, sir.

17 RECROSS-EXAMINATION

18 BY MR. PEARCE:

19 Q I am just curious, Governor, as to what occurred between  
20 one o'clock and now that you suddenly recall that this letter was hand-  
21 delivered to your private secretary?

1           A        You did not give me an opportunity to finish my statement,  
2       as you well may see from the reporting, in such a way that I was going  
3       to state that before one o'clock, what I have just said at this time.

4           Q        Let's take a look for just a moment at the letter to Dr.  
5       Medellin of April 25th, '94. I'm sorry--I wish to refer to Exhibit 72  
6       of the Counter-Memorial, the letter of May 26th to Mr. de la Garza.  
7       Did you participate in the drafting of this letter, Governor?

8           A        Yes.

9           Q        You did participate in writing this letter?

10          A        The agreement was between Mr. Pedro Medellin and Carlos  
11       Robles Oyasun [ph.].

12          Q        I understand that, sir. I am asking--I am asking if you  
13       personally had a hand in drafting this letter signed by Pedro Medellin.

14          A        They brought it to my consideration, of course, and before  
15       it was sent to Mr. de la Garza.

16          Q        And you approved it?

17          A        Yes, sir.

18                   MR. PEARCE: Was that short enough, Mr. President?

19                   PRESIDENT LAUTERPACHT: Unbelievably short.

20                   [Laughter.]

21                   MR. PEARCE: Thank you, Mr. Ambassador.

22                   THE WITNESS: Thank you, sir.