IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – COLOMBIA TRADE PROMOTION AGREEMENT, ENTERED INTO FORCE ON 15 MAY 2012 (the "TPA")

- and -

THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, AS REVISED IN 2021 (the "UNCITRAL Rules")

- between -

SEA SEARCH-ARMADA, LLC (USA)

- and -

THE REPUBLIC OF COLOMBIA

PCA Case No. 2023-37

Hearing on Respondent's objections pursuant to Article 10.20.5 of the TPA

Thursday, December 14, 2023

Center for Arbitration and Conciliation
Bogotá Chamber of Commerce
Calle 76 #11-52
Bogotá, Republic of Colombia

The hearing in the above-entitled matter came on at 9:00 a.m. before:

MR. STEPHEN DRYMER, President

MR. STEPHEN JAGUSCH KC, Co-Arbitrator

DR. CLAUS VON WOBESER, Co-Arbitrator

ALSO PRESENT:

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Tribunal Arbitral Secretary

MR. JOSÉ LUIS ARAGÓN CARDIEL
MS. JI SOO KIM

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MR. GIOVANNY VEGA-BARBOSA
MR. CAMILO VALDIVIESO
MS. JUANA MARTÍNEZ
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Non-Disputing Party to the Proceedings:

(appearing remotely)
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P R O C E E D I N G S

PRESIDENT DRYMER: Good morning and welcome all. This is the first of two days of public hearing on jurisdiction in the PCA Case Number 2023-37 between Sea Search-Armada, LLC, and The Republic of Colombia.

This is the first of two days of a public hearing on jurisdiction in PCA Case Number 2023-37 between Sea Search-Armada LLC and The Republic of Colombia.

My name is Stephen Drymer. I am the President of the Arbitral Tribunal that knows this case, and I have the privilege of being here with my colleagues and co-arbitrators, Mr. Stephen Jagusch and Dr. Claus Von Wobeser.

I'm the president of the arbitral tribunal hearing the case, and it is my privilege to be joined by my fellow arbitrators, Dr. Claus Von Wobeser on my left and Mr. Stephen Jagusch on my right.

The Tribunal is assisted as well by Ms. Dina Prokic and by José Luis Aragón Cardiel, distinguished legal counsel of the Permanent Court of Arbitration in The Hague.

The Tribunal is assisted by Ms. Dina Prokic and also by distinguished José Luis Aragón Cardiel, distinguished counsel with the PCA in The Hague.

Before proceeding any further, I'd like to invite

counsel for each party, including the Non-Disputing Party, to introduce themselves and the individuals accompanying them and assisting them at the Hearing.

Let us begin with the Claimant.

MR. MOLOO: Thank you, Mr. President, and Members of the Tribunal.

With us on behalf of Claimant today, we have our client representatives. I'll start with Ms. Kathleen Harbeston-Regn. She is the daughter of Mr. Jack Harbeston, one of the early investors and the predecessor to Sea Search-Armada. He invested in 1981 and was the managing director of SSA's predecessor, SSA Cayman. To date--

THE STENOGRAPHER: I'm having difficulty hearing. It's not coming through.

(Discussion off the record.)

PRESIDENT DRYMER: For those who may be watching from a distance, please bear with us. This may not always make riveting television, but it is necessary.

(Brief recess.)

THE TECHNICIAN: I'll resume the stream now. I'll facilitate the recording for the stenographers in the first break, but we can proceed for now.

PRESIDENT DRYMER: Let's proceed. Thank you.

THE TECHNICIAN: Just a moment. I'll start the stream again.

PRESIDENT DRYMER: Right. Mr. Moloo, you were interrupted. Please proceed.

Perhaps start again, if you think that's best.

MR. MOLOO: Take 2. Thank you.

PRESIDENT DRYMER: Thank you.

MR. MOLOO: And can you hear me just before I start? The floor mic works?

THE STENOGRAPHER: A little closer to the mic would be great. Thank you.

MR. MOLOO: I'll start with our client representatives. You have Ms. Kathleen Harbeston-Regn, the daughter of Mr. Jack Harbeston, who was one of the early investors and Sea Search-Armada's predecessors. He invested in 1981, was the Managing Director of SSA's predecessor beginning in 1988.

He is, unfortunately, not able to be with us due to his health issues, but his daughter, Ms. Harbeston-Regn, and Mr. Mark Regn, her husband, are here on his behalf.

From my law firm, Gibson Dunn & Crutcher, you have my colleagues. Immediately to my left, we have Ms. Martina Monti, then we have Ms. Ankita Ritwik. We have my partner, Mr. Bob Weigel, and Mr. Pablo Garrido. And on the far end we have, from our counsel here in Colombia, Mr. José Zapata.

That's it from Claimants. We have others who are

watching with the public online.

PRESIDENT DRYMER: Very well. Thank you, Mr. Moloo. Welcome to your team. Welcome in particular to your clients.

Now, Ms. Zamora, you have the floor.

MS. ORDÓÑEZ PUENTES: Thank you, Mr. President. I will be the leading voice of Colombia. I am Ana María Ordóñez, International Defense Director for The Republic of Colombia.

And with your permission, I would like to give the floor to each one of them to introduce, if that's okay.

PRESIDENT DRYMER: Very well.

MS. ORDÓÑEZ PUENTES: Starting with our General Director.

MS. ZAMORA ÁVILA: Good morning, Mr. President, Honorable Members of the Tribunal. My name is Martha Lucía Zamora Ávila, Director General of the agency that is in charge of the legal defense of The Republic of Columbia.

MR. VEGA-BARBOSA: Good morning. My name is Giovanny Vega-Barbosa.

MR. VALDIVIESO: Good morning. My name is Camilo Valdivieso from the International Defense of the State.

MS. REYES: Good morning. My name is Mariana Reyes from the legal defense of the State.

CAPTAIN SENETTO: Captain Pedro Sanetto (phonetic) from the National Colombian Navy.

MS. MARTÍNEZ: Good morning, everyone. My name is Juana Martínez. I work at the Office of International Arbitration.

MS. SOSSA: Good morning to everyone. My name is Manuela Sossa, and I'm from the Agency for the legal defense of the State.

MS. DIAZ: Jennyfer Díaz, also the legal defense of the State.

Thank you.

PRESIDENT DRYMER: I'd like to ask now the eminent representatives of the United States of America who are participating to introduce themselves.

MR. BIGGE: Good morning, Mr. President, Members of the Tribunal. Can you hear me?

PRESIDENT DRYMER: Yes.

MR. BIGGE: Thank you. First of all, my name is David Bigge. I'm the Chief of Investment of Arbitration of the United States. I will be joined periodically throughout the day by Lisa Grosh, who is the Assistant Legal Advisor, and John Daly, who is the Deputy Assistant Legal Advisor for International Claims and Investment Disputes, all of us from the U.S. Department of State.

Before I cede the floor, let me take this

opportunity to thank the Tribunal, thank the Parties, and thank the Permanent Court of Arbitration for accommodating our virtual attendance today.

Thank you.

PRESIDENT DRYMER: Thank you, sir.

That's an excellent segue, because I would like to take the opportunity as well to express to the Parties the Tribunal's appreciation for the great professionalism and skill and the truly excellent work of each of their counsel.

It is largely thanks to counsel that we have arrived at this Hearing so well briefed and extremely well organized. The Tribunal is very grateful and looks forward to working with you over the next two days.

Allow me as well to thank the Republic for hosting this hearing in beautiful Bogota.

And I would be remiss if I did not acknowledge Claimant's and its counsel's very gracious agreement to hold the Hearing in the Colombian Capital.

I understand the reason for doing so has had a happy result. Mission accomplished.

Senior Vega-Barbosa is now a proud father. And at the same time, he is able to be with us at this Hearing to represent his Nation.

Moving on to the Hearing itself, we will, as you

know, be working according to a schedule developed jointly by the Parties and the Tribunal. We have two very full days. In fact, it's really one and a half days.

And with the assistance of counsel, the Tribunal will do its best to follow that schedule while ensuring throughout the fairness of the proceedings.

Before I invite The Republic of Colombia to present its opening submissions, are there any so-called housekeeping measures? Any procedural or administrative or logistical issues that counsel for any party would like to raise with the Tribunal?

I'll begin, as is traditional, with the Claimant.

MR. MOLOO: Not on behalf of Claimant. Thank you.

PRESIDENT DRYMER: Thank you, sir.

Señora Ordóñez?

MS. ORDÓÑEZ PUENTES: Not on behalf of Colombia.

PRESIDENT DRYMER: Very good.

Mr. Bigge, anything we need to address right now?

MR. BIGGE: Not right now, Mr. President.

Thank you.

PRESIDENT DRYMER: Thank you.

Very well. Without further ado, I invite the Respondent to make its Opening Submission.

I invite Respondent to start with the Opening

remarks.

OPENING STATEMENTS BY COUNSEL FOR RESPONDENT

MS. ZAMORA ÁVILA: Mr. President, Honorable Members of the Arbitral Tribunal, once again my greetings.

The case here today is part of our legal history. And I'm saying our legal history with initial upper case. All of the Colombian attorneys here present today are familiar with the St. Jose's Galeón as well as the controversy/the dispute that for more than three decades started between the Nation and the company Glocca Morra.

We have also known of the several claims that before D.C. Courts in Washington, D.C., and before the Inter-American Commission has been--have been presented by Sea Search-Armada/SSA LLC that allege expropriation of the rights over the Galeón already decades ago and that deserve to be compensated up to USD 17 billion.

Before those courts we were also accused of corruption and being arbitrary and also having consolidated rights for an unimaginable number. When we look at the text of those claims, the one before Washington, D.C., court and also before the Inter-American court, we are really surprised when we see that even though the decision by the Supreme Court of Justice of 2007 never recognized the right over the Galeón, those proceedings, international proceedings in nature, are based mainly on the recognition

of that alleged right.

Clearly, it will always be easier to sell a fake legal reality beyond the State because it is the State that's the one that is familiar with it directly.

As you may know, on May 15th, 2012, Colombia and the U.S. started to work with the TPA. In Chapter 10 we see the direct investors of the party may initiate arbitration against the other party.

In the preamble, it is clear that the goal--the purpose of that Treaty is to reduce poverty and also to create new and better opportunities for employment among others to--for the sustainable replacement of informal activities such as the production and sale of drugs.

Even though we see a clear purpose and intent behind the TPA, today we are here faced with an alleged investor's claim that today--up to today, they have not been able to prove any investment.

This is a frivolous and reckless case, and that's the reason why, during the 45 days after the constitution of the Arbitral Tribunal, we invoked for the first time Article 10.20.5 under the Treaty with the U.S., and we also presented the four objections to the jurisdiction that you are already familiar with.

This is the first of five arbitrations initiated under this TPA, where Colombia is invoking this defense.

As Ms. Ordóñez will show, even though the facts of this case cover--span over four decades, there has been no recognition by the executive or by our highest court, of the right that the Claimant is presenting today as his protected investment.

I should be clear. Glocca Morra has never recognized an economic right over the St. Joseph's Galeón, much less over an alleged Discovery Area. And that's the reason why such a right could not be assigned to Sea Search-Armada Cayman or the Claimant.

Here we have a case that has been created by sophisticated counsel to obtain international jurisdiction which clearly never existed. For this reason, our legal team appears here today before you to defend ourselves from a multi-billion claim and for this Tribunal with an award that can be used--as an example sets two bases for the points of reference for the future.

First, an investor may not allege a right that was never recognized under the legal framework of the host country can be recognized by international tribunals.

Second, an investor cannot go--or resort to so many courts or tribunals as they are available and introduce so many changes to their arguments as they are necessary to maintain a State hostage to frivolous, inexistent claims, or claims that are time-barred.

And it is for this reason that in addition to the declaration of lack of jurisdiction that we are presenting here today before you, we are asking for this investor to be asked to pay costs and also to be asked to guarantee that they have the economic capability to cover the award on costs against them also.

Thank you for your participation. And also, with the indulgence of the President, I now give the floor to Ms. Ordóñez, who will be presenting in our Opening allegation on behalf of the Republic of Colombia.

MS. ORDÓÑEZ PUENTES: Before I continue with my presentation, I would like to offer to the Tribunal and the assistants printed versions of the presentation if you would like to have some.

PRESIDENT DRYMER: Counsel, I'll say right away that I won't need paper of anything that you're handing out during the hearing. Simply electronic copies, please.

MS. ORDÓÑEZ PUENTES: Okay. Good.

PRESIDENT DRYMER: But I don't know what my colleagues would like.

ARBITRATOR JAGUSCH: If you have a hard copy--

MS. ORDÓÑEZ PUENTES: We do have some hard copies. Yes, we do have.

PRESIDENT DRYMER: The other thing I would ask you is if you send us documents by email, please let me

know. Because I don't have my email on, so I won't see it unless you tell us there's a document waiting for us.

Thank you.

MS. ORDÓÑEZ PUENTES: Thank you.

PRESIDENT DRYMER: Counsel, have you got a copy for your friends, obviously?

MS. ORDÓÑEZ PUENTES: Yes, we do.

PRESIDENT DRYMER: Ms. Ordóñez, whenever you're ready.

MS. ORDÓÑEZ PUENTES: Thank you.

It is an honor to appear before this Tribunal to represent the country in this arbitration that allows us to tell you one of the most fascinating stories that have been told and dealt with in Colombia for the past 40 years.

It is a story full of history, but also full of lies. To avoid confusion, and before we enter the details that created that confusion, it is crucial to understand that Colombia's jurisdictional case is cleared and only demands a comparison exercise from the Tribunal, a comparison between the rights granted by the Colombian State and the rights Claimant is invoking before this Tribunal.

As you will see, Claimant is arguing that this Tribunal has jurisdiction based on the rights recognized by Resolution 354 of 1982 from DIMAR.

Resolution 354 recognized Glocca Morra Company as a reporter of an undetermined shipwreck located in specific coordinates which are established in the 1982 Confidential Report.

DIMAR did not grant and has never granted Claimant or its alleged predecessors any rights over the Galeón San José.

This was confirmed by the Colombian Supreme Court of Justice in 2007 when it upheld the rights granted by Resolution 354, determining in last instance that the undetermined rights were limited to the specific set of coordinates, and I quote, without including different spaces, zones, or areas, and framing those rights in Article 700 and 701 of the Colombian Civil Code. The Supreme Court of Justice did not grant any rights over the Galeón San José. Nowhere in Resolution 354 nor in the Colombian Supreme Court 2007 Decision will you find a reference to rights over the Galeón San José or to the so-called Discovery Area, which is a concept built by Claimant's counsel so that this Tribunal can somehow create a right Claimant has never had.

This is the case before you. And to reach the conclusion that this Tribunal lacks jurisdiction, you just need to read Resolution 354 and the Colombian Supreme Court Decision from 2007.

This case is not about whether Glocca Morra Company found the Galeón San José. Since 7 July 1994, based on scientific evidence, Colombia conclusively determined and publicly announced that Glocca Morra Company did not find the Galeón San José in 1982. What this case is about is whether Claimant has any rights over the Galeón San José.

The frivolous and abusive nature of this case lies in the fact that there is not a single document recognizing any right over the Galeón San José in favor of Claimant or any of its alleged predecessors.

Despite the situation, Claimant seeks to move to the merits so that this Tribunal is the one who creates those rights. So, in analyzing the facts of the dispute as presented by Claimant, the Tribunal should proceed with caution. SSA has litigated for over 30 years before different local, foreign, and international venues attempting to obtain the recognition of rights over the Galeón San José.

In its unsuccessful attempts, Claimant has repeatedly changed its narrative to accommodate the facts and their timing to evade the applicable statute of limitations in the corresponding fora.

In response, for over 30 years, Colombia has consistently denied that SSA or any of its alleged

predecessors have rights over the Galeón San José.

Claimant now appears before this Tribunal with an artificial factual and legal construction to claim that Resolution No. 85 of 2020 is the measure that fully eviscerated some property rights that it doesn't even have.

Claimant presents Resolution No. 85 as the act that affected its non-existent rights because, once more, Claimant must accommodate this narrative to avoid the statute of limitations.

Colombia insists that the only possible explanation for the absurdity of this claim is Claimant's abusive attempt to use both the TPA and the investor-state arbitration system to access the coordinates where the Galeón San José is really located.

This is unacceptable. The international jurisdiction should not be abused to bypass State's essential security interests.

With this, I conclude Colombia's opening remarks, and on the screen you see the content of Colombia's presentation.

Before I continue with the relevant facts of the case, I will give the floor to Mr. Vega-Barbosa, who will address important issues related to Article 10.20.5 of the TPA.

PRESIDENT DRYMER: Thank you.

MR. VEGA-BARBOSA: Mr. Chairman, members of the Tribunal, good morning. I would like to follow up on Mr. Chairman's remarks and express my gratitude for your flexibility. It has allowed me to be a parent for the first time and to be part of this important case on behalf of the Republic of Colombia.

Mr. Chairman and Members of the Tribunal, my first ask today is to clarify the relevant task of the Tribunal under Article 10.20.5 of the TPA.

The relevant provision is on the screen and we believe that the Tribunal is already very familiar with this content.

Now, after two rounds of written exchanges between the Parties, it is undisputed that, first, the Republic of Colombia filed a request under an Article called 10.20.5 on 22 July 2023, that is, within 45 days after the constitution of the Tribunal.

Second, the four preliminary objections filed by the Republic of Colombia are objections that the dispute is not within the Tribunal's competence.

Third, the proceedings on the merits are currently suspended.

And finally, Article 10.20.5 of the TPA does not prevent the Tribunal to exercise its discretion when deciding over Colombia's jurisdictional objections.

However--

PRESIDENT DRYMER: Excuse me. What does that mean? What discretion are you referring to?

MR. VEGA-BARBOSA: At some point in time, Mr. Chairman, there was a dispute between the Parties on the relationship between Article 10.20.5 and the 2021 UNCITRAL Rules.

Since we are requesting a decision of the Tribunal on our preliminary objections, the dispute concerned whether the Tribunal was, indeed, to decide objections right now or whether the Tribunal could join the decision with the merits.

And the Parties have come to agreement in their written submissions that the Tribunal has discretion to decide on our particular matter, to decide on our objections right now or exercise their discretion and decide on those objections at a further stage.

Our position is that everything is at your disposal for you to decide that this case should be dismissed on jurisdiction.

PRESIDENT DRYMER: Thank you. That's very helpful and will save time later on.

Please proceed.

MR. VEGA-BARBOSA: However, one main issue remains in dispute between Claimant and Respondent, and

that is whether the Tribunal must defer to Claimant's characterization of the relevant facts.

Claimant submits, and Respondent opposes this view, that for the purposes of this preliminary phase, the Tribunal must defer to Claimant's factual allegations concerning the merits.

And moreover, that Respondent's factual account mostly concerns matters that are relevant to the merits and quantum phase of this case.

Claimant's position is that the objectives of efficiency and cost effectiveness underlying Article 10.20.5 of the TPA are better served by addressing Colombia's jurisdictional objections in a prima facie basis, deferring to Claimant's allegations when they concern the merits of the case.

But this request is completely unwarranted for at least three reasons. First, because Colombia's preliminary objections do not require an examination of the merits of the case.

Second, because there is simply no legal basis in Article 10.20.5 of the TPA requiring the Tribunal to defer to Claimant's factual allegations to decide on objections against the competence of the Tribunal.

And third, because as a matter of principle, Claimant bears the burden of proof regarding compliance

with the conditions of consent of the Republic of Colombia to investor-state arbitration.

First, it should be by now axiomatic that a Respondent is not only entitled but required to properly substantiate its preliminary objections, including through the explanation of the relevant factual framework. This is precisely what Colombia has done in the present case.

However, and much to its regret, Respondent has been required and continues to be required to substantiate its preliminary objections against the background of a grossly mischaracterized factual framework and the continuous reversal of key facts by Claimant.

As you can see on the screen in the Statement of Claim, Claimant correctly noted that Resolution 48 of 1980 had authorized G.M.C. Inc. to search for undetermined shipwrecks.

However, in the response to our Article 10.20.5 submission, Claimant came to argue against the objective reality that Resolution 48 authorized G.M.C. Inc. to look specifically for the Galeón San José.

But, Members of the Tribunal, the fact that Colombia is required to correct the factual record doesn't mean that the discussion of the factual framework that is relevant and necessary to the examination of Colombia's preliminary objections requires an assessment of facts

related to the merits or quantum phase of this case.

To be clear, as has been explained in our written submissions and will be confirmed through today, none of Colombia's preliminary objections touch on the merits of the dispute, even if, based on the assessment of the relevant facts, the Tribunal becomes aware of the weakness of Claimant's case should the case move forward to the merits.

We will come to this when addressing each preliminary objection.

In conclusion, since none of the relevant facts are intertwined with the merits of this case, there is no reason not to assess Colombia's preliminary objections in full depth, including by fully assessing the factors relevant to their analysis.

Now, as argued by Colombia in the written exchanges, an invocation of Article 10.20.5 of the TPA as opposed to an objection under Article 10.20.4 of the TPA does not require the Tribunal nor the Respondent to defer to Claimant's self-serving characterization of the relevant facts and measures, nor to presume its factual allegations as true.

As a threshold matter, this is a submission under Article 10.20.5, not a submission under Article 10.20.4. Article 10.20.4 governs objections that as a matter of law,

a claim submitted is not a claim for which an award in favor of the Claimant may be made under Article 10.26 of the TPA.

And this is very important. Under the general rule of treaty interpretation as also understood by previous investment tribunals, such as the one in Renco vs. Peru.

And as expressly noted by the Non-Disputing Party in his 8 December 2023 submission, the conditions applicable to an objection under Article 10.20.4 do not apply to an objection under Article 10.20.5.

Without any need for further analysis, this means that the provision requiring to assume the facts alleged by Claimant as true for deciding an objection under Article 10.20.4 do not apply to objections to competence.

Finally, as noted by the Chevron v. Ecuador Tribunal, in any event--and I open quotes--this assumption is not meant to allow a Claimant to frustrate additional review by simply claiming enough frivolous allegations to bring its claim within the jurisdiction of the BIT.

Even if under Article--end of quote. Even if under Article 10.20.4 international investment tribunals have considered that if, from the evidence, the Tribunal finds that the facts alleged by the Claimant are shown to be false or insufficient to satisfy the prima facie test,

jurisdiction should be denied. That should be even truer in an allegation under Article 10.20.5.

Now, it being clear that Article 10.20.5 does not require to pursue Claimant's factual allegations as true, there is ample evidence, Members of the Tribunal, in the record that this is not the best way to go in this particular case with this particular Claimant.

As the Tribunal is aware, Appendices B and C accompanying Colombia's Reply and part of the Hearing Bundle showed clearly Claimant's proclivity to alter and even reverse critical factual narratives to avoid the applicable jurisdictional obstacles and further militate in favor of not presuming claimant's factual allegations as true.

As an example, on the screen we have Appendix B, which shows Claimant's willingness to reshape the relevant measure and dates of the alleged breaches to escape the effects of the applicable time limitation periods.

Finally, an invocation of Article 10.20.5 does not relieve Claimant of its burden of proof regarding the conditions of Colombia's consent to the jurisdiction of this Tribunal.

As the Tribunal is aware, the proposition that a Claimant must establish all elements of its case, including the facts relevant to show it meets all relevant

jurisdictional requirements is firmly rooted in customary international law and arbitral practice.

Moreover, as seen on the screen, the Tribunal in SGS vs. Paraguay and Phoenix vs. Czech Republic have made clear that the burden of proof principle applies in the jurisdictional context requiring Claimant to prove the facts necessary to establish jurisdiction. Meaning that if jurisdiction rests on the existence of certain facts, they must be proven at the jurisdictional stage. Arbitral tribunals also agree that the nature of the relevant evidence is also very important.

As determined in the Hermanos Carrizosa vs. Colombia proceedings under this very same treaty, the evidence adduced must be convincing, less they be disregarded for want or insufficiency of proof.

Finally, but very importantly, Members of the Tribunal, as noted in Perenco, the Tribunal must establish its jurisdiction based on the actual evidence, and not based on counsel's representations. We'll come several times to this very acute formulation.

As was shown, regardless of the invocation of Article 10.20.5 of the TPA, Claimant is fully obliged to establish the jurisdiction of the Tribunal, and the task of the Tribunal at this stage is no other than to fully assess whether the requisites of Colombia's consents to

investor-state arbitration under the TPA have been fully met.

Mr. Chairman, with your authorization, I will give the floor now to Ms. Ordóñez, who will proceed to explain the factual framework applicable to this case.

PRESIDENT DRYMER: Very well. Thank you.

MS. ORDÓÑEZ PUENTES: For the next minutes I will summarize what has happened over the past 40-plus years, during which Claimant has sought on several occasions to obtain the rights it doesn't have over the Galeón San José.

To generate confusion over the actual rights granted by Colombia, Claimant has presented a factual narrative which mixes what we call two parallel worlds.

First, we have the formal real world where Claimant's predecessors--predecessors requested, were authorized, explored, and reported the discovery of undetermined shipwrecked species within the coordinates they themselves identified in the 1982 Confidential Report. As we will see in the real world, Claimant even resorted to local courts where it was determined that rights granted in the real world have nothing to do with the Galeón San José and that any rights SSA could possibly claim over an undetermined shipwreck were subject to meeting several requirements.

In parallel, Claimant's predecessors started the

confusion by presenting a baseless narrative through which they somehow claimed rights over the Galeón San José despite not having discovered nor reported that specific shipwreck, and there not being a single formal document granting any rights over the Galeón San José.

This parallel narrative is what we call the virtual world, advanced mainly in several unilateral letters, but never within the formal administrative or judicial proceedings established in the Colombian legal system for the purposes of granting rights over shipwrecks.

Given this mix-up, I will spend the next minutes unraveling the confusing narrative over the facts Claimant has presented to show the reasons why this Tribunal has no jurisdiction over this case.

Mr. Chairman, Members of the Tribunal, this story begins in 1979, when GMC Inc. submitted before DIMAR a request to carry out, and I will quote, "marine exploration works in the Colombian Continental Shelf in the waters of the Atlantic Ocean for the purpose of establishing the existence of shipwrecked species, treasures, or any other element of historical, scientific or commercial value."

As the slide shows, GMC Inc.'s request did not mention the Galeón San José. There was no request to search for that specific shipwreck, but rather to search in four widespread areas of the Colombian sea. It is well

known that the Caribbean is famous for holding thousands of shipwrecks.

Following GMC Inc.'s request, on January 29, 1980, DIMAR issued Resolution No. 48, which is--which, in its operative section, generally authorized--and I will quote--authorized Glocca Morra Company Inc. to carry out underwater exploration activities in three of the four requested areas.

On the slide you can see that Resolution No. 48 was the one that authorized exploration activities in three of the four areas previously requested by GMC Inc. It didn't authorize exploration for the search of a specific shipwreck, let alone the Galeón San José. The reason for this is that GMC Inc. did not circumscribe its exploration request to a single specific shipwreck species, so DIMAR could not have granted any authorization permits over any specific shipwreck species.

Let me take a moment here to refer to one of Claimant's most disconcerting and distorted allegations in these proceedings; that Resolution No. 48 was issued specifically to authorize GMC Inc. to search for the Galeón San José, given that its preamble refers to previous companies that effectively requested that authorization for and reported the discovery of the San José.

Claimant's position doesn't resist scrutiny.

They pretend this Tribunal to interpret that the rights that are conferred by a formal administrative act from the Republic of Colombia, by means of which it allows private parties to explore its seabed should be construed and determined, not by the express terms of its operative paragraphs that grant the authorization, but rather by assumptions derived from the content of its preamble that refers to rights previously granted to unrelated third parties.

Mr. Chairman, Members of the Tribunal, the more reasonable construction of the references made by DIMAR in the preamble of Resolution 48 is that they provide context on previous expeditions developed in an area which is known to contain hundreds of shipwrecks.

But, in fact, when approached seriously and objectively, those preambular paragraphs do not assist Claimant's case. What this shows is that even when exploration rights are requested explicitly to look for a specific shipwreck species, and even when a private party is recognized as a reporter of that specific shipwreck species, no substantive rights derive for the reporter. Those companies, which were recognized as reporters of the San José, are not unduly claiming rights over that shipwreck or seeking compensation 40 years later.

In any case, even if Claimant's predecessors

believed to be searching for the San José, there is not a single document in the record to show that they asked for any correction or clarification of the operative section of Resolution No. 48. So now, before this Tribunal, they claim that the Colombian Government should have somehow guessed that this was their intention.

Claimant now argues that their alleged belief is enough for the Tribunal to extend the terms of the authorization granted by the Colombian Government. Claimant's case rests on this unjustified extension of Resolution 48, which is an administrative act with specific effects that must be interpreted in a restrictive manner.

Having clarified this point, I will come back to the summary of the key facts.

After the exploration authorization, Claimant's alleged predecessors approached DIMAR several times seeking different authorizations.

One of these authorizations was granted by Resolution No. 753, through which DIMAR, acting upon GMC Inc.'s request, authorized GMC Inc. to transfer the rights previously granted by Resolution No. 48 of 1980 to Glocca Morra Company, which is a completely different legal entity incorporated under the laws of Cayman Islands.

Coming back to our timeline, we can see that after carrying out the exploration activities pursuant to

DIMAR's authorization for two years, Glocca Morra Company submitted--submitted a 15-page document dated 26 February 1982, named the Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia. It is known as the 1982 Confidential Report.

The 1982 Confidential Report is a crucial document because it contains the formal declaration of what Claimant's predecessors reported to the Colombian authorities. It's a document that was produced entirely by Glocca Morra Company containing the exploration activities it had carried out, what it had supposedly observed, and what was allegedly found. Ultimately, the 1982 Confidential Report concluded that, and I will quote their words: "As indicated in Figure 9, there are several large and small targets of unknown composition in an area of just one mile per half mile. The main targets, in bulk and interest, are slightly west of the 76th Meridian and are centered around the Target A and its surrounding areas that are located in the immediate vicinity of 76 degrees, 00 minutes, 20 seconds West, 10 degrees, 10 minutes, 19 seconds North."

As it reads, the 1982 Confidential Report refers to some specific coordinates and not to a Discovery Area.

The so-called Discovery Area is an artificial

creation of Claimant's counsel to overcome the jurisdictional limits of their case. The record doesn't contain a single fact that points to term--to the term "Discovery Area" because it is not a protected concept under Colombian Law.

As you can see on the screen, Figure 9 included in the 1982 Confidential Report contains the description of their observations in detail both with regards to the target and the supposed surrounding areas.

As it reads, there was complete uncertainty over what was observed. Importantly, there is no mention of the so-called Discovery Area fabricated for the purpose of obtaining jurisdiction.

PRESIDENT DRYMER: Señora Ordóñez, I'm sure it will come as no surprise if I tell you that at some point during your remarks today or tomorrow, the Tribunal would be interested in your understanding of the words "in the immediate vicinity of the specific coordinates that are identified in the Confidential Report."

MS. ORDÓÑEZ PUENTES: Absolutely, Mr. President.

PRESIDENT DRYMER: You can do so now or later or--

MS. ORDÓÑEZ PUENTES: Yes.

PRESIDENT DRYMER: --tomorrow, as you will.

MS. ORDÓÑEZ PUENTES: Well, allow me to continue

with my presentation.

PRESIDENT DRYMER: Very good.

MS. ORDÓÑEZ PUENTES: Because I think we address that concern--

PRESIDENT DRYMER: Very good. I'm sure you will.

MS. ORDÓÑEZ PUENTES: --along the rest of the presentation, but we will have that in mind for tomorrow.

PRESIDENT DRYMER: Thank you.

MS. ORDÓÑEZ PUENTES: But, in fact, what is even more telling is that the 1982 Confidential Report does not contain one single reference to the Galeón San José. I ask everyone in this room this simple question: Why does the 1982 Confidential Report, the official document produced by Claimant's predecessors, as a result of their exploration activities, make no reference to what is considered for them the greatest treasure in the history of humanity?

It is at the very least surprising considering such an exciting discovery, as Claimant has described it, that the formal document supporting Glocca Morra Company's alleged discovery and its alleged rights as are reported--as a reporter failed to use three simple but crucial words, "Galeón San José." The Republic of Colombia rejects the idea that to mention such a discovery would have been redundant.

What is more, the 1982 Confidential Report also

determined that further exploration and substantial capital investments were required for the purposes of identifying whatever had supposedly been found in the reported coordinates. This also shows that there was a complete uncertainty over what had presumably been found.

The 1982 Confidential Report does refer to a shipwreck, so Claimant pretends that the Tribunal replaces the word "shipwreck" for Galeón San José. Although there is no contemporary evidence in the record to support this replacement.

After Glocca Morra Company submitted the 1982 Confidential Report to the Colombian authorities, DIMAR issued Resolution No. 354 from July 1st, 1982. As you can see on the screen, the operative section of Resolution No. 354 recognized Glocca Morra Company as a reporter of treasures or shipwrecked species in the coordinates referred to in the 1982 Confidential Report. As it reads, rights were granted over undetermined shipwrecks in some specific coordinates. Just the coordinates.

Despite the clear terms of this resolution, which is the basis of the alleged rights, Claimant pretends this Tribunal to believe that Resolution 354 granted rights over the Galeón San José in the so-called Discovery Area.

Again, as with previous resolutions, Resolution No. 354 did not grant any rights over the Galeón San José.

In fact, it didn't even mention the Galeón San José.

This is hardly surprising, as it is the logical conclusion from everything that had happened within the real world up to this point.

In 1979, Glocca Morra Company, Inc., did not request authorization to search for the Galeón San José. Accordingly, in 1980, Resolution 48 did not authorize exploration activities specifically for the purpose of searching for the Galeón San José.

In 1982, Glocca Morra Company did not report the discovery of the San José. Consequently, Resolution 354 simply recognized Glocca Morra Company as a reporter of treasures or shipwrecked species located in the specific coordinates referred to in the 1982 Confidential Report, nothing more, no vicinity or additional area.

By this moment, the end of 1982, it was evident that Glocca Morra Company had not discovered the San José and required further exploration. So they assigned its rights to SSA Cayman Islands, who continued to develop the underwater explorations. This assignment and the underwater explorations were authorized by Resolution No. 204 dated March 24th, 1983.

This contemporaneous document reveals that the supposed discovery was far from certain and that further exploration for the purposes of identification was needed.

Although it is clear from what we have just seen that neither the 1982 Confidential Report nor Resolution No. 354 mentioned the Galeón San José, Claimant now argues that Colombia somehow recognized the alleged discovery.

And here we enter through what I announced as the virtual parallel world, in where Claimant and its predecessors have, since 1982, unsuccessfully attempted to obtain the recognitions--the recognition of rights over the Galeón San José.

To begin, Claimant asserts that Colombia's own Navy officials recognized the supposed discovery while they were on board the vessels that they say searched for, located, and identified the Galeón San José.

To prove their point, Claimant's counsel has presented the picture on screen, which has no date, location, or any other relevant information for this case.

Second, Claimant relies on a report from an inspector onboard the Heather Express, a vessel hired by SSA Cayman to conduct exploration activities in 1983.

Contrary to Claimant's assertions, the Inspector's Report does not provide any evidence of the supposed discovery of the Galeón San José. Instead, the report simply describes the general purpose of the expedition, which, as can be seen on the screen, was that of carrying out, and I quote, "explorations and, if

possible, extract a sample of the remains of a shipwreck found within their authorized area," which they supposed to be the San José.

What the Inspector's Report actually reveals, if anything, is that Claimant's predecessors supposed that they found--had found the San José.

PRESIDENT DRYMER: Señora Ordóñez, it might not seem this way, but the Members of the Tribunal have agreed to minimize their interruptions, but to restrict ourselves to questions that might clarify particular points now so as to save time later on.

I've read your submissions. I've heard your--heard your submissions regarding the alleged participation of the Colombian Navy in the work of the Heather Express.

Just to be clear, does Colombia deny that the Navy was involved, or are you simply telling us that SSA hasn't met a burden of proof?

MS. ORDÓÑEZ PUENTES: That's exactly the point. SSA has not met the burden of proof for what they are alleging before this Tribunal, which is that a Colombian Navy official recognized that they found the Galeón San José. That's the point.

PRESIDENT DRYMER: Right. But it's not an affirmative denial on your part that any member of the Navy

or members of the Navy participated?

MS. ORDÓÑEZ PUENTES: That is correct.

PRESIDENT DRYMER: Very good. Thank you. That--that clarifies--that clarifies that point. Please proceed.

MS. ORDÓÑEZ PUENTES: Again, the facts don't lie. By that moment, not even Claimant's own predecessors had any certainty of having found the San José. This was just a mere belief. And it is absolutely clear from this document that the belief did not come from the Colombian Navy official, as Claimant suggests, but from the company itself.

Claimant's futile attempt to cherry-pick from this document and separate the Inspector's Log from the report makes no difference. Neither the report nor the Inspector's Log certifies the discovery of the Galeón San José or proves that the Navy official recognized any alleged discovery. I invite the Tribunal to carefully review this document to confirm what I am saying.

Let me be clear. By the time this expedition was carried out in September of 1983, which is over a year after the 1982 Confidential Report, there was a simple remote belief by Claimant's predecessors of having found the San José. No certainty, but mere hypothesis and assumptions.

But that is not all. Still in the virtual world, Claimant asserts that its predecessors began negotiating a contract specifically for the salvage of the San José.

Here, Claimant relies on a letter dated March 12, 1982, to argue that by then both DIMAR and Glocca Morra Company believe that the Galeón San José had been located.

This is not true. This letter simply contains Glocca Morra Company's self-serving recount of the facts without providing any evidence of when or where was the Galeón San José discovered.

The letter not only fails to disprove the fact that the 1982 Confidential Report did not mention the discovery of the San José, but makes all the more surprising and unacceptable that, in that key document, Glocca Morra Company had failed to report the finding of the Galeón San José.

On the contrary, if this letter, in fact, predated the submission of the 1982 Confidential Report, why didn't Glocca Morra Company refer to the San José in the 1982 Confidential Report?

Although contemporaneous correspondence does not mention the existence, let alone the purpose, of salvaging the Galeón San José in advancing in the false argument that Parties were supposedly negotiating the salvage of the Galeón San José, Claimant has used a letter dated August of

1984 sent from DIMAR to SSA Cayman supposedly attaching a draft contract for the salvage of shipwrecked antiques drafted by the Presidency.

Claimant says that this shows that Colombia was, in fact, negotiating with SSA Cayman Islands for the recovery of the San José. However, contemporaneous facts show otherwise.

This letter dated August 23rd, 1984, refers to a Contract Minute for an Archeological Survey and Recovery of Shipwrecked Antiquities. There is no attachment to this letter in the record, so Claimant points us all to another exhibit that has a different name and different parties.

In any case, the most important aspects--aspect of this document is the fact that this supposed draft contract does not even mention the Galeón San José. If Colombia was allegedly negotiating with Claimant's predecessors for salvaging the San José, why did the supposed draft contract not reflect this purpose?

Finally, Claimant uses another letter from DIMAR dated November 2nd, 1984, sent within the virtual world to make you believe that Colombia was negotiating specifically for the salvage of the San José.

Contrary to Claimant's assertions, the reference to the Galeón San José, which was made only to recall that it was replying to SSA Cayman Island's previous

communications on what was still merely the possible location of the Galeón San José, falls short from being a recognition of the supposed discovery of the San José or the fact that Colombia granted any rights over that specific shipwreck. Colombia has consistently and unequivocally expressed that by that moment, the Galeón San José had not been discovered. Claimant's predecessors were merely presenting a hypothesis that needed further exploration and identification.

Mr. Chairman, Members of the Tribunal, precisely because the Galeón San José had not been located by that moment, Colombia continued its efforts to locate this shipwreck and contacted third parties for the purpose of searching for and identifying the San José.

An example of this can be seen on the screen. It is a cable from the U.S. Embassy in Colombia to the U.S. State Department.

As this document shows, Colombia contacted different states, including the United States, expressing its interest in, and I quote, "the search, identification, and the eventual underwater salvage of the Spanish colonial shipwreck, the Galeón San José."

But what is even more interesting is that by that moment, the location of the Galeón San José was so uncertain that, as the document shows, Colombia expressed

that it would not guarantee the existence of the Galeón San José but would grant rights to search for other shipwrecks.

This is additional contemporary evidence of the fact that the Galeón San José had not been located by that time. Claimant's assertions that Colombia had somehow recognized the discovery of the San José simply don't add up. They are falsely based on pure assumptions and artificial constructions on behalf of Claimant's legal counsel.

What this actually proves is that unlike the negotiations with Claimant's predecessors in the early 1980s, which did not even mention the Galeón San José, in the late 1980s Colombia did negotiate for the specific purpose of searching, identifying, and salvaging the San José.

And it is precisely because by that moment, the supposed discovery of the San José was a mere hypothesis presented by Claimant's predecessors, that in 1988 Colombia entered into an MoU with the Swedish Government for the purpose of identifying and salvaging the San José.

But what is also interesting is that the MoU shows that Colombia was not seeking to defraud Claimant's alleged predecessors.

As you can see on the screen, the MoU sought to establish an Evaluation Committee to assess any discovery,

and declared that, if the shipwrecked species was determined to be located within the coordinates reported by Glocca Morra Company in 1982, the Evaluation Committee would include a representative of Sea Search-Armada to which Glocca Morra Company's rights had previously been transferred.

Of course, this is something that Claimant has conveniently chosen to ignore. Colombia was not acting and has never acted behind Claimant's back.

Despite the fact that Colombia did not conclude any agreement with Sweden or any other State, it did continue to seek ways to corroborate the hypothesis presented by Claimant's predecessors in the parallel virtual world; that is, the discovery of the Galeón San José in the coordinates of the 1982 Confidential Report.

That is why on October 21st, 1993, Colombia signed Contract No. 544 with Columbus Exploration for the purpose of locating and identifying shipwrecked species in the area referred to in the 1982 Confidential Report.

The oceanographic study was carried out by Columbus Exploration between June 24 and July 3, 1994.

After returning to land, the results of the expeditions were--of the expedition were informed to the Office of the President of the Republic of Colombia who issued a press release on July 7, 1994, informing that--and

I will quote the exact words of the press release:

"The Government of Colombia, after reviewing the evidence presented by Columbus Exploration, Inc., following their exploration of the area whose coordinates were furnished by the nation to the contractor, being the same coordinates informed in 1982 by the Glocca Morra Company, Inc., Sea Search-Armada has concluded that no shipwreck is located thereto, and consequently, no traces of the Galeón San José either."

Mr. Chairman, Members of the Tribunal, through this document, Colombia informed to the public opinion, including Claimant's alleged predecessors, that it had absolute certainty that the Galeón San José was not located in the coordinates reported in the 1982 Confidential Report.

The results of the oceanographic study were presented in the Columbus Report, which was submitted on August 5th, 1994. The object of this study was to corroborate if the Galeón San José was located in the coordinates of the 1982 Confidential Report.

It is not true, as Claimant asserts, that the Columbus Report does not indicate which coordinates were searched. A simple look at the cover page of the Columbus Report would have easily led Claimant to see that the study was carried out in the coordinates latitude 10 degrees, 10

minutes, 19 seconds North; longitude 76 degrees, 00 minutes, 20 seconds West.

As you can see on the screen, these are the exact same coordinates reported in the 1982 Confidential Report. Therefore, there should be no doubt that the study was conducted precisely in the coordinates where Claimant's predecessors argued to have located without reporting the biggest alleged treasure in the history of humanity.

Claimant has attempted to discredit the Columbus Report and question its reliability without providing any evidence or even--or even explaining its supposed flaws.

Claimant's predecessors' only complained about not being invited to participate in the expedition, and the fact that Colombia did not submit this to the civil action initiated by Claimant's predecessors within the real world.

The truth is that the Columbus Report was the result of a serious, independent, and highly technical study. The Republic of Colombia could have easily decided to develop the study to test Claimant's hypothesis on its own. There was no legal duty to contact any third-party for the purpose of verifying the hypothesis and much less to include SSA Cayman as Claimant suggests.

However, seeking the highest standards of transparency, Colombia contacted Columbus Report from the United States, which by that moment was one of the world's

best renowned companies in the field. Also, the whole operation was audited by scientists from the Ocean Science Research Institute, also from the United States.

Furthermore, Beta Analytics, which was used by Claimant's predecessors for the 1982 Confidential Report, was also used by Colombia to test the sample--the samples for the Columbus--for the 1994 Columbus Report.

Mr. Chairman, Members of the Tribunal, the study conducted by Columbus Exploration completely disregarded the hypothesis created in the parallel virtual world that the expedition was tasked with verifying.

On screen is the Executive Summary of the Columbus Report. Ultimately, what the Columbus Report concluded is that no shipwreck was located within the examined area. The wood sample that was analyzed did not correspond to a species used in the construction of ships. And in any case, the wood sample, which appeared to be a root, was alive and grew during the modern age, therefore being impossible for it to have been part of a ship from the colonial era.

It is also worth noting that, as recognized by Claimant, Columbus Exploration examined not just the coordinates referred to in the 1982 Confidential Report, but also an area hundreds of times greater than those coordinates so that there were no errors regarding the

coverage of the areas of the coordinates.

The facts are clear and do not allow any interpretation. In 1994, Colombia adopted as its own the conclusions of the Columbus Report; that is, that no shipwreck was located in the areas reported in the 1982 Confidential Report and, therefore, there were no traces of the Galeón San José.

As you can see, even in the virtual parallel world in which Claimant had allegedly found the Galeón San José in 1982, Colombia was able to scientifically prove since 1994 that this was not true.

Mr. Chairman, Members of the Tribunal, we will go back now to the real world and the actual rights that were conferred by Resolution 354.

Based on these rights, on 13 January 1989, SSA Cayman filed a complaint before the 10th Civil Court of the Circuit of Barranquilla. In 1989, SSA Cayman resorted to the Civil Action in order to obtain a recognition of property rights over 50 percent of the assets that possessed the quality of treasure located in the coordinates and contiguous areas referred to in the 1982 Confidential Report.

This was the subject matter of the proceedings as described by the 10th Civil Court of the Circuit of Barranquilla. SSA Cayman never opposed to such statement

and, as you can see, it does not make any reference to the so-called Discovery Area nor to property rights over the Galeón San José.

In a document dated 6 July 1994, the 10th Civil Court of the Circuit of Barranquilla declared that SSA Cayman was entitled to 50 percent of the property rights over the assets that qualified as treasure located within the coordinates and surrounding areas referred to in the 1982 Confidential Report.

This 1994 Decision was rendered by a Colombian judge in accordance with the relief sought by SSA Cayman in its complaint, and no property rights were recognized over the Galeón San José.

Subsequently, upon SSA Cayman Islands' request on 12 October 1994, the 10th Civil Court issued an injunction order over the goods qualifying as treasure that were rescued or extracted from the area determined by the coordinates indicated in the 1982 Confidential Report.

This 1994 Secuestro Decision made no reference to the Galeón San José nor to the so-called Discovery Area. In fact, the 1994 Secuestro Decision explicitly acknowledged that the Civil Action did not concern the rescue, finding, or discovery of the remains of the Galeón San José or whether it was located or not in the coordinates reported in the 1982 Confidential Report.

Instead, the subject matter of the Civil Action was to determine if, pursuant to the applicable law, the report made by Glocca Morra Company granted this company property rights over the assets found at the reported site.

And this explains why Colombia did not and was not required to adduce as evidence the Columbus Report within the Civil Action. The Columbus Report was about the Galeón San José, whereas the Civil Action was not.

The injunction granted holds over the goods it found within the coordinates indicated in the 1982 Confidential Report. It does not cover the area such as Claimant wrongfully contended in its written submissions. This means that Colombia was not and is currently not precluded from entering into the area.

Subsequently, on 27 March 1997, in the context of the appeal raised by both Colombia and SSA Cayman, the Superior Court of the Judicial District of Barranquilla confirmed both the 1994 Civil Court and the 1994 Secuestro Decision.

The final and definitive decision of the Civil Action was issued on 5 July 2007 by the Colombia Supreme Court of Justice upon both Colombia's and SSA Cayman's cassation appeal. The 2007 final Supreme Court Decision partially reversed the 1994 Civil Court decision in respect of two matters:

First, it clarified that even if Glocca Morra Company was recognized as a reporter of treasures or shipwrecked species, historical or archeological monuments could not qualify as treasure, so the Court declared that not every asset found within the coordinates reported by Glocca Morra Company could, ipso facto, qualify as treasure.

Second, the Supreme Court specified that the assets in respect of which the declaration of property was made--and I quote: "The terms of the decision correspond only to those which are located in the coordinates referred to in the Confidential Report on Underwater Exploration carried out by Glocca Morra Company without including, therefore, different zones, spaces or areas."

These, Members of the Tribunal, are the terms under which Colombia's Supreme Court of Justice recognized the property rights granted by Resolution 354 which gave rise to this arbitration.

No interpretation effort needs to be done to reach this conclusion that comes out from reading the decision.

It is worth noting that nowhere in the Supreme Court's decision you will find the reference to the so-called Discovery Area that Claimant wants this Tribunal to believe it was somehow recognized by the Colombian

authorities. This decision was not challenged. SSA Cayman didn't even request a clarification of the operative paragraph of the 2007 Supreme Court Decision, which expressly excluded different zones, spaces, or areas from the declaration of property rights, unlike what was decided by the lower courts of first and second instance within the Civil Action.

The facts show that Colombia's judiciary did not recognize Claimant's alleged predecessor's right to the Galeón San José for the main reason that Colombia's domestic courts did not and could not recognize SSA Cayman's rights to 50 percent of the value of the Galeón San José because they did not file such a request.

The Supreme Court actually emphasized that there was no evidence that the 1982 Confidential Report referred to any shipwreck, much less to the San José.

The Supreme Court of Justice further found that Resolution 354 recognized Glocca Morra Company as a report--and I quote: "as a reporter of treasures or shipwrecked antiquities without referring to a specific vessel, much less the San José."

After the 5 July 2007 Supreme Court's decision, SSA Cayman signed an Asset Purchase Agreement with SSA, LLC, a U.S. incorporated company, pursuant to which it allegedly acquired the DIMAR resolutions as well as other

assets.

We will deal with the APA as part of our preliminary objections under Article 10.28.

Following the 2007 Supreme Court's decision and the 18 November 2008 APA, Colombia received several requests from SSA, LLC, pretending to extend their actual rights and demanding access to the shipwreck.

And here is where they complete the confusion when they tried to merge the rights granted in the real world and the non-existent rights from the virtual parallel world. On the screen you can see that before the TPA entered into force Colombia made clear that nowhere had the Supreme Court recognized, directly or indirectly, access to the shipwreck or any right of recovery.

You can see that although they didn't have any right, SSA, LLC, even threatened the government to unilaterally initiate preparations to recover the alleged shipwreck.

After the failed attempt of extending before the Colombian authorities the rights actually granted by Resolution 354 and the Supreme Court Decision, Claimant initiated an international campaign based on a flagrant lie that the 2007 Supreme Court Decision recognized SSA Cayman's 50 percent property rights over the so-called treasure of the Galeón San José and that Colombia had

definitively confiscated its rights, allowing it as early as 2013 to claim a compensation up to USD 17 billion. Of course, the notion of vested rights over the Discovery Area did not exist back then.

Mr. Vega will deal in depth with the 7 December 2010 U.S. civil action and the 15 April 2013 petition before the Inter-American Commission on Human Rights as part of the ratione temporis and ratione voluntatis preliminary objections.

For now, you will see that in both instances, which took place either well before the TPA entered into force--this is on May 15, 2012, which is the case of the U.S. DC District Court, or well outside the critical date for the three-year statute of limitation period of the TPA, which is 18 December 2019, SSA, LLC, was of the view that, first, Colombia's conduct had perfected a confiscation of its alleged rights over the San José as well as several instances of discrimination and arbitrariness, thereby allowing it to claim a compensation as high as USD 17 billion.

Second, that Colombia's measures were already definitive and triggered an expropriation of its property rights over the Galeón San José without compensation as well as several instances of arbitrariness.

On 24 October 2011, the D.C. District Court

rejected SSA's claims because they were time-barred and denied the enforcement of the 2007 Supreme Court Decision because it was not a money judgment.

On 8 April 2013, the United States Court of Appeals for the District of Columbia Circuit decided Claimant's appeal, stating that the D.C. District Court had properly granted Colombia's motion to dismiss.

Subsequently, a new Civil Action was filed by Claimant on 23 April 2013, claiming it had suffered damages, including the loss of amounts invested in the preparation for the salvage operation as well as funds expended in responding to the Colombian government's actions and threats. The new Civil Action and the petition filed before the Inter-American Commission of Human Rights were withdrawn on 20 February 2015.

Despite all the facts that have already been presented, SSA insisted with the confusion of the real and the virtual world and resumed the desperate strategy of sending countless letters to different Colombian authorities, advancing their erroneous interpretation of the 2007 Supreme Court Decision and pretending to enforce rights over the Galeón San José that they didn't have.

In 2015, SSA sent Colombia at least 12 letters stating its position with regards to the 2007 Supreme Court Decision and requesting to be taken to areas which exceeded

the coordinates referred to by the Colombian Supreme Court of Justice.

Colombia was clear then, as it is being clear now. On May 27, 2015, the Ministry of Culture informed SSA that the conversations had nothing to do with any specific shipwreck, as they were limited to the 2007 Supreme Court Decision which, as already mentioned, had nothing to do with the Galeón San José.

In that same letter, the Ministry of Culture asked SSA to confirm what it considered to be the margin of error of the coordinates referred to in the 2007 Supreme Court Decision. The margin of error was a concept they included before the Ministry in one of the letters submitted in 2015.

In response, on June 9, 2015, SSA addressed the Ministry of Culture and expressed that, in their view, the immediate vicinity or surrounding area of the coordinates reported in the 1982 Confidential Report were all the areas included in Section 1 of Article 1 of Resolution No. 48 of 1980.

For the Tribunal's reference, in 2015, they wanted to extend rights over areas that amounted to 18 times Cartagena, which is an area bigger than the entire city of New York.

Mr. Chairman and Members of the Tribunal, this is

not what Resolution 354 granted. Let us all recall that Resolution 354 recognized Glocca Morra Company as a reporter of an undetermined shipwreck in specific coordinates and not in one of the entire areas of exploration.

Contemporaneous facts show that as early as 2015, Claimant submitted before Colombian authorities its broad and irrational interpretation that pretended to exceed the rights recognized and upheld by the Supreme Court of Justice. Claimant was not successful with the extension of rights strategy before the Colombian authorities.

So now Claimant is asking this Tribunal to grant rights over a whole section of the area it was authorized to explore in and not over the areas it reported to have supposedly found something to advance a claim over the Galeón San José to which they don't have a right at all.

This shows that SSA has never had any idea of where the Galeón San José is located. By creating notions like Discovery Area, Claimant and its counsel have sought to generate confusion, but what they are really doing is that they are asking the Tribunal to create a right they were not successful to obtain from Colombian authorities or international adjudicators.

Despite the countless letters and unfounded assertions contained in them, Colombia has always acted in

good faith and been responsive when answering to Claimant's communications. This was the case when Colombia, in a letter dated July 28, 2015, expressed its willingness to facilitate the verification of the area determined in the coordinates established in the Supreme Court's Decision according to the 1982 Confidential Report that is an integral part of Resolution 354 of 1982 issued by DIMAR.

It is not true, as Claimant has stated, that Colombia has rejected a joint verification. This letter clearly shows that Colombia has been willing to conduct this joint verification over the areas referred to by the Supreme Court Decision.

But Claimant has been the one who has rejected this option, shockingly expressing that it would make no sense to conduct such a verification since it recognizes that nothing is located in the coordinates reported in the 1982 Confidential Report and instead requesting to be taken to areas which exceed the ones referred to by the Supreme Court.

Mr. Chairman, Members of the Tribunal, the facts show that Claimant is fully aware that there is nothing in the coordinates recognized by Resolution 354.

In 2015, Claimant was not successful in their strategy of expanding or creating additional rights, let alone forcing a sovereign country to act according to its

desires despite not providing any evidence of having any actual right to support its request.

While SSA continued with its overwhelming tactic of sending countless letters to different Colombian authorities, on December 5, 2015, the President of the Republic of Colombia publicly announced the discovery of the Galeón San José.

This was the first time that any Colombian authority has recognized the discovery of the San José. As you can see on the screen, the highest executive authority, the President of the Republic of Colombia, publicly informed that the Galeón San José had been discovered on November 27, 2015.

This discovery was not made by SSA or any of its predecessors. If all previous expressions had not been clear enough, by this moment it was evident that, as publicly informed, Colombia did not recognize the discovery of the Galeón San José by Claimant or any of its alleged predecessors and much less any rights over this shipwreck.

Based on unverified news reports from 2018, which supposedly leaked the location of the Galeón San José, Claimant asserts that the actual discovery of the San José in 2015, and I quote, "lay well within the area identified in the 1982 Confidential Report," and thus, Colombia reportedly found the San José precisely where the 1982

Report said it was located.

This false accusation, which Colombia rejects in its entirety, is rather poorly supported. It is based on a news report from one single news portal, Infobae, with no scientific support.

Despite that in 2018 Claimant apparently believed in the content--in the contents of the news report, it didn't activate any form of domestic or international mechanisms such as the one established in the TPA, for example, to claim their alleged rights.

In the aftermath of the actual discovery of the San José, SSA continued its overwhelming tactic of sending countless letters to different Colombian authorities.

As you can see on the screen, tired of this, on February 5, 2016, the Ministry of Culture replied to one of SSA's letters, taking note of the fact that it had recognized that no shipwreck was in the reported coordinates and asking it to refrain from sending its continuous and exhausting communications on this issue.

Mr. Chairman, Members of the Tribunal, Claimant's attitude has been exhausting and abusive. Over this period of time, it has written countless letters to different authorities such as DIMAR, the National Navy, the Shipwrecked Antiquities Commission, the Ministry of Culture, the Vice-President, and even the President of the

Republic. This fact cannot go unnoticed.

Each and every time Colombian authorities have been emphatic and unequivocal: Claimant's predecessors did not find the San José, and SSA has no rights over this shipwreck.

Despite Colombia's respectful request to refrain from further writing on this issue, SSA continued approaching Colombian authorities during the years of 2016, 2017, 2018, and 2019. My colleague will later dive into all of these communications to prove that for years Claimant has been aware of the alleged breach that would derive from Colombia's consistent and unequivocal acts or measures.

For the moment, let me just refer to two of the letters which I believe are extremely clear in presenting Colombia's State conduct with regards to SSA's rights.

First, we have a letter from January 5, 2018, through which the Ministry of Culture expressly informed Claimant that it didn't have any right over the Galeón San José. It clarifies that the 2007 Supreme Court Decision didn't uphold any right over the Galeón San José precisely because the 1982 Confidential Report didn't even mention it.

How can Claimant now come to argue that by this moment it could still somehow claim hypothetical rights

over the Galeón San José? What else could and should Colombia do to inform SSA that it does not and cannot claim any right over the Galeón San José?

Second, we have the letter from the Vice-President of the Republic of Colombia dated June 17, 2019. As you can see on the screen, through this letter, the Vice-President reminded SSA that it had no right over the Galeón San José, thereby quashing, once again, any expectation of rights that Claimant could still possibly have after more than 30 years of unequivocal denials from Colombia.

Mr. Chairman, Members of the Tribunal, these letters leave no doubt. The Republic of Colombia does not and has never recognized in favor of SSA any right over the Galeón San José.

Just to be clear, SSA has never had and could never have any rights over the Galeón San José for one simple reason: It did not discover the Galeón San José. This has been clear for almost 30 years, and no new fact or measure can lead to a different conclusion. In any case, any possible claim would be time-barred.

SSA is now claiming in this Arbitration that the judgment issued by the Supreme Court of the Judicial District of Barranquilla dated 29 March 2019 upheld its alleged rights over the Discovery Area. This, again, is a

gross misrepresentation of the decisions rendered by Colombia's judiciary within the Civil Action.

First, it is worth clarifying that, as can be seen on the screen, the reason why Colombia requested the lifting of the 1994 Secuestro Decision was because it no longer served any purpose, considering that the Civil Action had already been terminated through the issuance of the 2007 Supreme Court Decision.

Second, by Claimant's own admission, this 2009 [sic] Secuestro Decision is a reinstatement of the 1994 Secuestro Decision, which, as it was previously explained, ordered an injunction over the goods, it found, qualifying as treasure that were rescued or extracted from the area determined by the coordinates indicated in the 1982 Confidential Report and not over any area and much less over the so-called Discovery Area.

Therefore, the 2019 Secuestro Decision is an injunctive relief in the form of a seizure of assets that does not create any property rights.

In fact, as can be seen on the screen, the 2019 Secuestro Decision acknowledged that the materialization of the seizure is contingent upon the extraction or rescue of the goods, if found, located in the coordinates indicated in the 1982 Confidential Report, which cannot be made without prior authorization from the nation.

Consequently, the 2019 Secuestro Decision has no material effect over Colombia's jurisdictional objections in this arbitration. It is a mere reinstatement of the 1994 Secuestro Decision which never recognized Claimant's rights over a Discovery Area, much less to the Galeón San José.

Members of the Tribunal, by this point you understand why Resolution 85, issued in 2020 to declare the shipwreck of the Galeón San José as an asset of national cultural interest is immaterial to this case. There is no connection between Resolution 85 of 2020 and Resolution 354 of 1982 and the Supreme Court's 2007 Decision.

Relating Resolution 85 of 2020, with the facts of this case, contradicts legal technique and logic, but is the only argument they have to go to the merits so that this Tribunal awards a 10 billion dollar claim by creating inexistent rights over the Galeón San José.

I think this might be a good time for a break.

PRESIDENT DRYMER: Thank you, Señora Ordónez. But before we break, I know that at least one member of the Tribunal has some questions--or a question that he'd like to put to you now. And I say at least one member of the Tribunal.

ARBITRATOR JAGUSCH: Yes. Thank you, Counsel.

I just have a question relating to the logic of

the application, and it arises out of the location of the San José.

So, the government of Colombia has taken the position publicly and in these proceedings that it has found the Galeón San José, so it knows the location.

Would I be right in assuming that if that location was not in the area of the coordinates stated in the 1982 Confidential Report, that would be an absolute defense to the Claimant's claims?

Maybe think about that question.

MS. ORDÓÑEZ PUENTES: Yes.

ARBITRATOR JAGUSCH: Or is it the case that without your wanting to concede the exact location, the location is within the area of the coordinates stated in the 1982 Confidential Report, and your case is that they didn't find it?

MS. ORDÓÑEZ PUENTES: Thank you.

The location of the Galeón San José is not the point that this Tribunal should be looking at because Claimant does not have any right over the Galeón San José.

In any case, to respond to your question: Back in 1994, Colombia adopted, as an act of State, the Columbus Report, which confirmed that the Galeón San José is not in the coordinates located in the 1982 Confidential Report, which is the right they have. They didn't have additional

rights--

ARBITRATOR JAGUSCH: Counsel, I understand that. I understand that.

But my question is: If you could identify the location where it is, which is demonstrably not in the area of the Confidential--Confidential Report, surely that would be an absolute defense to the Claimant's claims. Or not. I don't know. It would be--

MS. ORDÓÑEZ PUENTES: Yes. And, actually, Colombia already did that with the Columbus Report pre-treaty.

ARBITRATOR JAGUSCH: No. I'm sorry. I think you're slightly misunderstanding my point.

I'm not talking about whether someone had a look--someone else had a look in the area and what they came up with.

My question is: If you could demonstrate that the San José is not in the area of the--as identified in the 1982 Confidential Report, one would expect Colombia to put that forward as an absolute defense.

MS. ORDÓÑEZ PUENTES: Yeah, that would be, but--

ARBITRATOR JAGUSCH: Okay. Right. So--and I accept you don't want to give the exact location. But are we to infer from your not putting forward that absolute defense that it has been located in the area identified in

the 1982 Confidential Report?

MS. ORDÓÑEZ PUENTES: No. Because that area was already searched for in 1994, and its contents and results are included in the Columbus Report.

ARBITRATOR JAGUSCH: Yeah. But searching for something and not finding it doesn't mean that something is not there. I spend my life searching for things and not finding them. And then someone finds it there, right.

And history is full of vessels and aircraft and other things--

MS. ORDÓÑEZ PUENTES: Yes.

ARBITRATOR JAGUSCH: --being searched for and not found.

But this isn't conclusive evidence that something isn't at a certain place; right? It's just despite the efforts of certain people to look in that area, they've been unable to find something.

MS. ORDÓÑEZ PUENTES: Well, that was never rebutted scientifically, and it's the only--it's the evidence that you have in the record to confirm that the San José is not located there.

In any case, the point where the San José is located is not relevant for this Tribunal, because even if the San José was there, which it's not, Claimant has no rights over the Galeón San José. Claimant would still need

to advance a lot of proceedings before the Colombian authorities so that this Tribunal can grant any right over the San José because they are, like, five steps behind.

ARBITRATOR JAGUSCH: I understand all that. I'm just trying to understand your position insofar as it concerns the location and the rights asserted.

Because none of us need to be here. We don't need to be debating this if, it seems to me, subject to what Claimants have asserted at this point, if the actual location is demonstrably outside the area identified in the 1982 Confidential Report. That would just be the end of the matter.

So if one were to infer from the fact that you're not running that defense that it is in such an area--I accept you have several other points you wish to make. But is the first of them, okay, it's in that area, but they can't claim it because they didn't find it; all they found was a root and something which didn't amount to a shipwreck? In other words, they missed it. And because they missed it, they're not entitled to bring any claim in respect of it?

MS. ORDÓÑEZ PUENTES: Yeah. Well, we have the recognition that it is not that the Galeón is not located in the coordinates and they are claiming a vicinity area which amounts--which is bigger than the New York City.

That's one point.

And another point is that, as we have mentioned, the location of the Galeón San José is a matter of State security. It is reserved.

So the reason why we are not presenting before this Tribunal where the Galeón is located is because we are not willing to allow Claimant to use--instrumentalize this arbitration to obtain the coordinates where the Galeón San José is located. That's reserved and it's a secret of State.

ARBITRATOR JAGUSCH: I understand that. And you make this point in your application and you made it again this morning that the--what you construe to be the central objective of these proceedings is for the Claimant to ascertain the actual location, and that would be an abuse, et cetera.

But if the actual location is in an area in respect of which they would have no rights anyway, what is the harm to them knowing?

MS. ORDÓÑEZ PUENTES: For them to knowing where is the Galeón San José? Because we need to protect the Galeón San José.

ARBITRATOR JAGUSCH: Well, I presume you're taking measures to protect it already.

MS. ORDÓÑEZ PUENTES: Yeah. Absolutely. It's

already protected. But still one of the measures to protect it is to keep the coordinates in reserve.

ARBITRATOR JAGUSCH: Okay. Well, have a think about this discussion.

MS. ORDÓÑEZ PUENTES: Yeah.

ARBITRATOR JAGUSCH: And you've got more time to deal with the issues later. Thank you.

MS. ORDÓÑEZ PUENTES: Thank you. We will.

PRESIDENT DRYMER: Mr. Wobeser, any questions at this state?

ARBITRATOR CLAUS VON WOBESER: No.

PRESIDENT DRYMER: Allow me just to clarify one point. I believe you answered the question just a moment ago.

Colombia has taken no position on the press article that says that it found--it knows the precise coordinates; is that correct? In other words, you're not saying it's right; you're not saying it's wrong. You're saying nothing about that because the precise coordinates remain a State secret.

MS. ORDÓÑEZ PUENTES: Yes. What we say is that news report has no scientific support at all.

PRESIDENT DRYMER: Understood.

MS. ORDÓÑEZ PUENTES: And the coordinates are still reserved and protected.

PRESIDENT DRYMER: Very good. I think that's important to get on the record.

Fine. Let's break--

ARBITRATOR CLAUS VON WOBESER: One--I do want--I would like to have a copy--hard copy of--because the quality, for whatever reasons, is not the same on my computer.

MS. ORDÓÑEZ PUENTES: Yes.

ARBITRATOR CLAUS VON WOBESER: So, if I could get a hard copy. Thank you very much.

PRESIDENT DRYMER: We're scheduled, more or less, for a ten-minute break now. Does that still suit you, Counsel, before you continue with your presentation?

Fine. So it's 10:51. Let's come back at 11:01 as punctually as possible, please.

Thank you. We are adjourned.

(Brief recess.)

PRESIDENT DRYMER: Thank you. We're back. Back live, as they might say on CNN or Fox.

Señora Ordóñez--Señor Vega-Barbosa, please continue.

MR. VEGA-BARBOSA: Mr. Chairman, Members of the Tribunal, again, good morning.

Colombia will now move forward with the association of its preliminary objections against the

competence of the Tribunal.

We propose the following outline. In--for instance, Respondent will show that SSA, LLC, our Claimant, does not own or control our protected investment under Article 10.28 of the TPA.

Now, due to time constraints, call on a Respondent will not substantiate in this presentation its ratione personae objection, and respectfully refers the Tribunal to its written submissions for these purposes.

In any case, as we will see several references regarding the lack of a protected investment are relevant to determine whether a Claimant has met its burden of proof with respect to the definition of "protected investor" in Article 10.28 of the TPA.

In a second instance, Respondent will substantiate its ratione temporis and ratione voluntatis preliminary objection.

Turning to our first preliminary objection, our proposition is simple: Claimant cannot show it possesses a protected investment under Article 10.28 of the TPA because it cannot show its alleged predecessors were conferred pursuant to Colombia's domestic law with a right over the so-called Discovery Area, much less over the Galeón San José in particular.

The controlling provision is on the screen. And,

again, we are confident the Tribunal is fully aware of the content of this article, so we will simply note that among the forms of--forms--I mean, the forms of qualifying assets, we have subparagraph (g), licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and subparagraph (h), other tangible or intangible, movable or immovable property and related property rights, such as leases.

The non-disputing party has to provided us with two important statements in respect to Article 10.28. First, that regardless of any question as to the legality of the investment where Article 10.28.(g) is invoked, the relevant authorization, license or other right must have been conferred pursuant to domestic law.

Actually, this is nothing but what Article 10.28.(g) expressly provides.

Second, that even under an expedited procedure, because the Tribunal is making the final finding on this issue, the burden of proof lies fairly and squarely on the Claimant to demonstrate that the jurisdictional requirements at issue were met.

Now, we propose the following outline in light of the relevant debates and the outstanding issues after two rounds of written submissions.

In the first instance, we will set the ground

firm and clear by recalling Claimant's definition of the alleged protected investment in the present case.

Second, we will address whether the analysis under Article 10.28 is a matter of the merits.

And, third, we will address whether Claimant has met its burden to prove that its alleged predecessors were conferred with the alleged investment pursuant to Colombia's domestic law.

Let's clarify first which is the alleged investment in this case according to Claimant.

On the screen you have Paragraph 171 and 212 of the Rejoinder, the last submission by Claimant. So that it is clear for everyone here, allow me to read from said paragraphs.

Paragraph 171 says: First, pursuant to the APA, SSA owns and controls the rights granted by Article 700 and 701 of the Colombian Civil Code pursuant to DIMAR Resolution Nos. 48 and 354.

The same is said at Paragraph 212. I open quotes: Here the investment in question is the right to 50 percent of the treasure at the Discovery Area. And this right was vested in SSA's predecessors--we said "alleged predecessors"--by the operation of, inter alia, DIMAR Resolution Nos. 0048 and 0354 pursuant to Articles 700-701 of the Civil Code of Colombia as confirmed by the Supreme

Court in 2007.

In short, according to Claimant, upon discovery, Article 700 and 701 of the Colombian Civil Code vested in Glocca Morra Company a 50 percent right over what Claimant calls a "Discovery Area," which is said to include the Galeón San José.

Now, important things have changed in Claimant's elaboration on the relevant basis for the putative investment from the Statement of Claim and the response to our Article 10.20.5 submission to the Rejoinder.

As shown on the screen, a consistent and critical argument in Claimant's Notice of Intent, Statement of Claim, and response to Colombia's Article 10.20.5 submission have been that the source of Claimant's rights was DIMAR Resolutions 0048 and 0354.

Paragraph 176 of the response was clear: The rights vested in SSA's alleged predecessors under DIMAR—under the DIMAR Resolutions.

Moreover, as seen on the screen at Paragraph 206 of the response, Claimant even reprimanded the Republic of Colombia for mischaracterizing its position as to the relevant legal basis for the investment, alleging that--and I open quotes--Colombia mischaracterizes both SSA's position, which has consistently been that its rights arise from the DIMAR Resolutions as confirmed by the 2007 Supreme

Court Decision.

But with the Rejoinder, Claimant now submits that the alleged vested right is to the Discovery Area as a whole, which includes the Galeón San José, and that the rights were vested in the alleged predecessors by Articles 700 and 701 of the Colombian Civil Code.

Now, we do see an important modification of Claimant's case. Claimant appears, but only appears to, no longer rely on the DIMAR Resolutions of 1980 as the basis of its rights.

Moreover, Claimant appears to no longer define the relevant investment as 50 percent rights over the alleged treasure of the Galeón San José, but rather a right over the so-called Discovery Area which allegedly includes the Galeón San José.

But let's not forget that this is a Claimant whose history conduct is characterized by its willingness to alter critical factual and legal narratives. This means it would not be a surprise if today Claimant once again changes a critical factual or legal narrative regarding its alleged investment.

For this reason, we will address the most pressing and overarching legal issue in this part of the case, which is whether Claimant can prove it was conferred pursuant to Colombia's domestic law with rights over the

alleged Discovery Area which is said to contain the Galeón San José in particular.

PRESIDENT DRYMER: Before you do, would you please just clarify for me what the change in position is as far--it's still not clear to me.

All right. Is it the use of the word "Discovery Area" you say in the Rejoinder? Is it the reference to the Civil Code? And/or is it the reference to the Supreme Court judgment? Where is the change in position?

MR. VEGA-BARBOSA: Yeah. This is important, Mr. Chairman.

PRESIDENT DRYMER: I think so. That's why I'd like to understand it.

MR. VEGA-BARBOSA: It is important, and we think that the modification was prompted by our reply. Because in the reply, we showed that--where they intend to rely on Article 10.28.(g) considering the DIMAR Resolutions as the legal basis of the investment, they will have to prove that certain conditions applicable to these resolutions, for example, the approval by DIMAR of the assignment would have to be met.

We believe they find these difficult to establish, so they now no longer rely, apparently, on the DIMAR Resolutions but, instead, on Article 700 and 701.

That would mean, Mr. President, that a whole

section of our preliminary objections concerning Article 10.50.(g), which specifically concern the DIMAR Resolutions, are no longer relevant.

But we do see the possibility and, in fact, we see the reference to the DIMAR Resolution still in their Memorial, so that means that we still have to make an argument in that regard.

But regarding the new focus on Article 700 and 701, will prove--again, under Article 10.28.(g)--that they have not proven that those rights they are now claiming, a right to the so-called Discovery Area, was granted, pursuant to Article 700 and 701.

And this is a new argument, we believe, completely because the notion of the Discovery Area is only part of their last Memorial, so we will focus our presentation on that section in particular and mainly on the interpretation of the Supreme Court of Article 700 and 701 and whether it is a basis to claim a right over the Discovery Area.

PRESIDENT DRYMER: Isn't the Discovery Area, as defined by Claimant--you might tell me I should ask them, but I'm going to ask you first and, if necessary, I'll ask Claimant afterward.

Isn't the Discovery Area, as they've defined it, simply a shorthand for what they call the vicinity of the

coordinates?

MR. VEGA-BARBOSA: I think you should ask them, but I will--

PRESIDENT DRYMER: Do you understand it to be that?

MR. VEGA-BARBOSA: Yeah. Yeah. We will do our best to answer your question. And we say--we will address this, but I will actually answer to you right now.

There is no legal basis under Colombian law for a so-called Discovery Area or a right over a Discovery Area as interpreted--and we will go very deeply in this--as recognized by Resolution 0354. This was explained by Ms. Ordóñez. The rights are only recognized in respect to specific coordinates.

PRESIDENT DRYMER: That's the point; right?

I guess I'm asking, isn't the use--isn't the focus--your focus on "Discovery Area" as wording a bit of a red herring or mermaid food--right?--since it is simply shorthand for what Claimants say they have always claimed and has always been recognized, which is the vicinity of specific coordinates?

MR. VEGA-BARBOSA: Yeah. We have put a lot of thought into that question, actually--

PRESIDENT DRYMER: I'm sure.

MR. VEGA-BARBOSA: --Mr. Chairman. And what we

have to say in that regard is that it is not for us to interpret the law. The law was already interpreted pre-treaty.

And what the Supreme Court of Justice said is that upon the applicable law, Article 700 and 701, and upon the applicable Resolution 0354, the only right that could be declared was a right over the specific coordinates indicated in the 1982 Confidential Report without including any additional areas.

PRESIDENT DRYMER: And that's a reference to the Supreme Court Decision of 2007?

MR. VEGA-BARBOSA: Yes.

PRESIDENT DRYMER: Understood. Right. Thank you for indulging these questions. Please proceed.

ARBITRATOR JAGUSCH: Could I just ask a question for clarification as well? What is--what is the area of a coordinate? Like, is it a point, or is it a square mile or a nautical mile?

And I'm sorry if it's in the record and I've missed it, but what is--ignore the area of the coordinate. A coordinate itself is what?

MR. VEGA-BARBOSA: Yeah. We can give you the answer because we have been working with the experts on these matters, the people from the Navy, and a coordinate is 10 square meters. That's what you--what normal people

would easily identify, 10 square meters.

That is why--and I will actually come back to Ms. Ordóñez's reference to the 2015 letter by Claimant to the Colombian Government.

That is why it's so absurd that when Colombia asked contemporaneously Claimant about the notion of the immediate vicinity, their response was that it was the whole Exploration Area Number 1 in Resolution 0048, because that would amount to an area larger than the City of New York.

Now, Ms. Ordóñez was very prudent, and she said that it's an area bigger than the City of New York. But actually, the area, if you measured that, is bigger than the area of the City of New York including the Hudson Bay.

That's far from a coordinate. And, in our position, far from an immediate vicinity. And that was settled. That was informed by Claimant pre-treaty--no, post-treaty, but with a three-year litigation period.

Apologies for that.

PRESIDENT DRYMER: I'm not sure it's relevant, but I'm not sure you mean Hudson Bay. Hudson Bay is in Canada.

The Hudson River?

MR. VEGA-BARBOSA: The Hudson River. Hudson river Sorry, sorry.

PRESIDENT DRYMER: Very good.

MR. VEGA-BARBOSA: Arbitration people are not close to Washington, D.C.

PRESIDENT DRYMER: Very good. Please proceed.

So that's 10 square meters, you're saying, is--

MR. VEGA-BARBOSA: That's the coordinate.

PRESIDENT DRYMER: Well, I don't want to get into evidentiary matters. But your representation is that 10 square meters is what is understood in the scientific community as the--effectively the accuracy of a GPS coordinate, I suppose, you know, at several hundred meters below sea level; is that correct?

MR. VEGA-BARBOSA: That's--I will have to come back.

PRESIDENT DRYMER: Very good. That's fine. But that's your understanding of what "immediate area" might mean?

MR. VEGA-BARBOSA: Our understanding.

PRESIDENT DRYMER: The area of a coordinate, to answer the question put by Mr. Jagusch.

MR. VEGA-BARBOSA: Yeah. The area of a coordinate is 10 square meters.

PRESIDENT DRYMER: 10 square meters.

MS. ORDÓÑEZ PUENTES: 3 times 3. So it's 9 meters. Approximately.

PRESIDENT DRYMER: Right. Understood.

Thank you. Please proceed.

MR. VEGA-BARBOSA: Thank you, Mr. Chairman.

Now, we must say from the outset--and the Tribunal is probably aware of this already--that Claimant has invoked Section 10 of the TPA without being able to provide you with a single formal document. A single formal document where any competent Colombian authority had recognized Glocca Morra Company with a right over the so-called Discovery Area, let alone one including the Galeón San José.

In other words, should Claimant prevail in this Arbitration, your award, Members of the Tribunal--your award would be the first, a unique document under domestically, foreignly, or internationally, where a right over the so-called Discovery Area would exist or could have ever been recognized. And we say that this is no--this is not how investment arbitration works.

ARBITRATOR JAGUSCH: Sorry, Counsel. Could I just ask a point of clarification?

If a coordinate is roughly 10 square meters--9 square meters, it must be that surely--I'll put it to you, but correct me if I'm wrong--that when you're talking about searching a seabed, rights must accrue in the area of a coordinate, otherwise it would require with

unbelievable specificity the location of whatever it is that's being looked for; right? Like, say, a shipwreck.

So, in other words, if you don't get it to within 9 square meters, you have no rights over it.

So it's--so it seems to me logically--but tell me if I'm wrong, if I misunderstand the situation. In the field of searching for shipwrecks, it must be understood that relevant areas are those areas in the immediate vicinity of a precise location.

MR. VEGA-BARBOSA: Yeah. Again--

ARBITRATOR JAGUSCH: Now, if that's the case, and Claimants use the word "Discovery Area" in that context, they're not creating any new legal definition of the word "Discovery Area."

So I'm trying to understand what the objection would be to the Tribunal accepting the concept of Discovery Area.

MR. VEGA-BARBOSA: We submit that the notion Discovery Area for the purposes of this arbitration has a massive substantial importance, because they are establishing that it is the Discovery Area which their alleged predecessors consolidated as the investment.

However, we submit that such notion simply does not exist on the law. And the reason why we say it does not exist on the law is not merely because of the

superfluous argument that the so-called Discovery Area notion does not exist under Colombian law formally, semantically. It's because, as noted--and we don't have to create law on this matter--as noted already by DIMAR, what the 1982 Confidential Report granted Claimant with was a right to whatever was located in the precise coordinates.

And in applying the relevant law to the relevant facts, Articles 700 and 701 of the Civil Code, Resolution 354, to the 1982 Confidential Report, what the Supreme Court of Justice recognize was no right to a discovery area, but the exact opposite, a right to what Resolution 354 was already recognizing that was the right over the specific coordinates, and it says, without including any additional areas.

Now, I believe that this is a very late discussion. Because if they considered that the relevant law should have provided them with a vicinity area additional to the precise coordinates, they should have come back to DIMAR to modify the resolution, or they should have come back to the Supreme Court for an interpretation or even a revision of the judgment, and none of that happened contemporaneously.

So this is a really bad moment for us to argue it, but at least we have the contemporary documents to provide you with honest objective answers based on the

actual exhibits.

If I may.

ARBITRATOR JAGUSCH: Please.

MR. VEGA-BARBOSA: I would like to just finish my idea and tell you that you don't activate the jurisdiction of arbitral tribunals for arbitral tribunals to create rights where none was previously recognized under domestic law. The process we believe and we say is the exact opposite.

Now, this leads us to assess whether the analysis under Article 10.28 is a matter of the merits. And this is important because Claimant has argued that this is a matter of merits, the question of whether or not they are granted with an investment because, as you see it on the screen, the question of whether SSA had rights capable of expropriation as of the date of Resolution 85 depends on the factual question of whether the San José shipwreck lies within the Discovery Area.

And this goes to your question to Ms. Ordóñez, Arbitrator Jagusch, and I will spend quite some time answering your question.

And we say that this is not a merits matter for at least two reasons.

First, because whether Claimant has come to this Tribunal with a protected investment, not a

one-day-to-be-protected-investment, concerns the scope of application of Section 10 of the TPA, and as seen on the screen, Claimant admits that whether the alleged breach falls within the scope of application of the TPA is a jurisdictional matter.

Second, this is not a matter of merits because this objection is not about the factual question of whether the San José lies within the so-called Discovery Area.

On one hand, this case is truly about whether Claimant can prove for jurisdictional purposes that prior to the commencement of this arbitration it was conferred pursuant to domestic law with a right to the so-called Discovery Area, which allegedly includes the Galeón San José.

On the other, as was explained by Ms. Ordóñez and will be further addressed in a few seconds, the question whether domestic law granted Glocca Morra Company with a right over the Discovery Area, which includes the Galeón San José, was already decided, in last instance, pre-treaty by the Supreme Court of Justice.

We have no more to say for the moment in this regard.

PRESIDENT DRYMER: Didn't the Supreme Court decide that SSA or its predecessors had certain rights--I'm not going to define the rights--over treasure found within

a particular area? And I'm not going to get into a discussion of the particular area. Is that correct?

MR. VEGA-BARBOSA: We are perfectly comfortable saying that pursuant to the 2007 Supreme Court Decision, they have rights to the assets that comply with the two conditions--

PRESIDENT DRYMER: Yes.

MR. VEGA-BARBOSA: --expressly noted by the Supreme Court. The assets being susceptible of being qualified as treasures.

PRESIDENT DRYMER: Right.

MR. VEGA-BARBOSA: And the assets being located in--in that--in that area, in the area of the coordinates.

PRESIDENT DRYMER: And are you saying now--and, again, this question will be put to Mr. Moloo and his colleagues if he doesn't answer it before we even get there.

Are you saying now that they are no longer claiming rights to assets within this area, but they're actually claiming the entire area rights--any--any assets found or to be found anywhere in the area? I'm still trying to understand how you say they've recharacterized their claim.

MR. VEGA-BARBOSA: That is expressly what they are saying.

PRESIDENT DRYMER: Very good.

MR. VEGA-BARBOSA: They are saying that they are entitled to the discovery area--

PRESIDENT DRYMER: Right.

MR. VEGA-BARBOSA: --which includes the Galeón San José, but, for example, may include other of the hundreds of shipwrecks that are supposed to be located in that particular area of the Caribbean, because it is well known that it's an area full of shipwrecks. It's actually very beautiful to go to dive because of this.

PRESIDENT DRYMER: And mermaids and other--

MR. VEGA-BARBOSA: And everything.

PRESIDENT DRYMER: --and other underwater species. I don't know why I'm hung up on--

MR. VEGA-BARBOSA: And we have beautiful reefs.

PRESIDENT DRYMER: --mermaids, but...

MR. VEGA-BARBOSA: We have beautiful reefs, which is the reason why there are so many shipwrecks as well, because they make reefs.

So back to our position is that even if it is true that the Galeón is located in those coordinates, this is not how it works. And this goes to the nature of the arbitral function. You don't come to arbitral tribunals, you don't activate Section 10 of the TPA for you arbitrators for the first time to create a right that has

never been recognized domestically.

The process, we say, is the exact opposite. You consolidate a right, which in this case is a right to the Discovery Area, which includes the Galeón San José, and then you come here to ask for compensation for the alleged breach. They have never created under domestic law, and this is my point in this part of the case, that they consolidated ever a right over the so-called Discovery Area much less over the Galeón San José.

PRESIDENT DRYMER: Again, though, don't they say--I'm paraphrasing. Don't they say that the Galeón San José--that's what they're telling us--is among the--what you and I agreed the Supreme Court said, assets of the nature of treasure located within a particular area? Isn't that their claim?

MR. VEGA-BARBOSA: Their claim of course is that the Galeón San José would fall within the--

PRESIDENT DRYMER: Right.

MR. VEGA-BARBOSA: --abstract description of the rights.

But we say and we have said--

PRESIDENT DRYMER: Say they're wrong.

MR. VEGA-BARBOSA: I say that Colombian law was already interpreted in a way that makes clear that a right over the Galeón San José in particular was never

consolidated. And if further explanation is required since our first submission, we call the Tribunal to analyze the interaction. It's a very nice interaction, actually, between the act of the judiciary, the 2007 judgment, and the act of the executive when adopting as its own the result of the Columbus Report. Tribunals not very often have the opportunity to apply Article 11 of the articles on State responsibility, but this is a case of adoption of the conduct of a private as its own. The Columbus report is not simply a technical report. It was adopted via the press release of 1994 as an act of the State.

That interaction that occurs pre-treaty is a very powerful one. But even without interaction, they cannot show based on the formal documents, the 1982 Confidential Report, the 354 Resolution from DIMAR, and the 2007 judgment that they consolidated a right over the so-called Discovery Area, which includes the Galeón San José. That is our main proposition.

I'm not sure how many of my items have I already covered answering to your questions, but I'll try to be efficient.

PRESIDENT DRYMER: I don't know how many you've covered, but what you have covered, you've done extremely well.

MR. VEGA-BARBOSA: Thank you. Thank you,

Mr. Drymer.

PRESIDENT DRYMER: Thank you.

MR. VEGA-BARBOSA: Now let's turn to the question whether Claimant has met its burden of proof that its alleged predecessors were conferred with a right over the so-called Discovery Area, which includes the Galeón.

And let's use the definition of the putative investment by Claimant as relevant point of departure in order to address three main questions.

First, whether the DIMAR Resolution--Resolutions of 1980 conferred Claimant's the alleged putative investment.

Second, whether Article 700 and 701 of the Colombian Civil Code conferred Claimants with the alleged putative investment.

And, finally, and this is very important, whether the contemporary conduct of SSA Cayman when entering into the 2008 Asset Purchase Agreement is indicative that it had the conviction that it was or had been conferred with rights over the so-called Discovery Area, which includes the Galeón San José.

Turning to the first question, Respondent's argument is two-fold. The 1980s DIMAR resolutions did not confer any right over a Discovery Area, let alone one including the Galeón San José in particular. First,

because on their face, they did not do such a thing. And, second, because per Claimant's own admission, and per the contemporary conduct of Claimant's alleged predecessors, DIMAR's authority remained necessary as long as further marine exploration was required for the purposes of identifying any specific shipwreck, and accordingly, any assignment of rights from SSA Cayman to Claimant still required DIMAR authorization should claim an intent as it is now intending to claim rights over the Galeón San José in particular.

Now, for the first argument, we will rely on Ms. Ordóñez's presentation of the relevant facts and we'll limit ourselves to invite the Tribunal to seeing the screen Resolution 354, which recognize Glocca Morra Company as a reporter of unspecified treasures or shipwreck in the coordinates indicated in the 1982 Confidential Report only, not in respect of the so-called Discovery Area, which includes the Galeón San José in particular. And we say this slide is very, very clear.

Now, Claimant's sole argument in response is that since the Resolution 354 is connected to the 1982 Confidential Report, then it also includes the Discovery Area. And we have two responses in this respect.

The first is that if the 1982 Confidential Report is so important, and we say it is very important, then the

Confidential Report does not assist Claimant's case for two reasons.

First, because formally semantically, the Confidential Report does not even mention the notion of the Discovery Area. But we say substantively--

ARBITRATOR JAGUSCH: Hold on. Doesn't it say on the cover, area of the location, or am I mistaken? I thought on the face of it, and it might have even been on one of your earlier slides, it says, the area of, and then it gives a location.

So when you--when you say that the Confidential Report doesn't reference the Discovery Area, well, when we accept that Discovery Area is shorthand for "area," is your submission a correct one?

MR. VEGA-BARBOSA: Well, it is in fact true that the 1982 Confidential Report provides the coordinates and it refers expressly to the contiguous areas to those coordinates, and that is what the private party did before the authority.

But if we go to the next--ah, now we're in the--in the--in the right slide, the Confidential Report, which is an act of Claimant's alleged predecessors, expressly noted that further marine exploration was needed and further capital was needed for one particular reason, for the purposes of identification.

And then again, this is a case about a Claimant claiming rights specifically over the Galeón San José on the basis of a Confidential Report that expressly noted the need for further marine exploration for the purposes of identification.

We ask: How is this 1982 Confidential Report that does not define a specific shipwreck a basis to claim specific rights over the Galeón San José?

ARBITRATOR JAGUSCH: Can I just test you on that?

So they claim to have found a shipwreck; right? Well, maybe--maybe more than a shipwreck. But just as a matter of logic, they're not capable of identifying it without more investment. Okay?

And your colleague this morning has made much of the fact that the San José was not specifically referenced in many of the contemporaneous documents.

But isn't it the case that no one could be certain what the shipwreck was until there was the further identification that is referenced in this resolution? So--so I'm wondering what is the relevance of the criticism that the San José has not been--the Galeón San José has not been specifically referenced in circumstances where it's understood that there was no certainty--could not have been certainty at the time as to the identification of whatever it was that was the subject of the Confidential Report?

MR. VEGA-BARBOSA: Surprisingly, we are very much in agreement. If we look at the preamble of Resolution 48, we would see that Reynolds (phonetic) was actually recognized as a reporter of the Galeón San José, because Reynolds reported the finding of the Galeón San José.

Is Reynolds somewhere in the world claiming 10 billion dollars for the finding of the Galeón San José? The answer is no.

But the position of this Claimant is far, far worse than the position of Rayon's, because this Claimant not even reported to have found the Galeón San José, which means that on the basis of this particular document, the 1982 Confidential Report, they cannot claim those rights.

But, of course, we are not unreasonable on this. They may have required further marine exploration for the purposes of identification. And as the record shows, and we will go into that, they went to carry out further marine exploration.

ARBITRATOR JAGUSCH: Does Colombia accept that the--the endeavor, which is the subject of the--the resolutions granting rights to--to search included the search for the Galeón San José? Because that was a well-known ship that was sunk and would be of particular interest to salvages. That would be the jewel in the crown, wouldn't it? I mean, that's the one everyone wanted

to find. Is that right? Or one of the ones that people wanted to find?

MR. VEGA-BARBOSA: We would feel more comfortable answering to your question in the affirmative if it were not for the fact that Claimant says that the sole purpose of Resolution 48 was to authorize GMC Inc. to look for the Galeón San José.

But what is more correct is that they were authorized to search for undetermined treasures and shipwrecks, which could have possibly included the Galeón San José.

ARBITRATOR JAGUSCH: Speaking for myself, I worry that you might be misstating the Claimant's submissions, because they say that they had rights--that the effect of certain resolutions were that they had the right to search for the San José. I don't think they're saying that the resolutions gave them expressly the right to search for the San José or to search for the San José expressly.

But what, once--once you have a right to search for shipwrecks, right, and--well, it seems to me that that must include the right to search for any specific shipwreck.

MR. VEGA-BARBOSA: So the proposition that pursuant to Resolution 48, Claimant was allowed and authorized to search our seabed and look for shipwrecks in

general is correct. That is correct.

What is not correct is what is Claimant's express point, and it has been consistently affirmed throughout its written submissions, that Resolution 48--because the preamble contextually refers to previous attempts to search for San José--was expressly--no, not expressly, unequivocally granted for the purpose of looking for the San José. And this is a very crucial point, because if we agree that Resolution 48 was granted specifically to look for San José, then it would make sense that no document for the next 30 years ever mentioned the San José, and that is something that based on the objective reality we are not ready to accept.

ARBITRATOR JAGUSCH: If a resolution grants the right to search for shipwrecks, do you accept that that must include the San José, unless it said you can search for shipwrecks, but you can't search for the San José? I mean, that wouldn't make any sense, would it?

MR. VEGA-BARBOSA: The proposition that if you're allowed to search for shipwrecks, and the Galeón San José is a shipwreck, is correct.

ARBITRATOR JAGUSCH: Right. So--so what difference does it make whether the resolution expressly references the San José or not?

MR. VEGA-BARBOSA: The reason why it makes a

difference is because Claimant's sole argument to explain why the 1982 Confidential Report did not mention the San José, why Resolution 354 did not mention the San José, and why the 2007 judgment did not mention the San José is because for some reason that became unnecessary because the preamble of Resolution 48 referred to the San José. And that's why I keep having trouble with that, giving you a straight answer, because it is not that simple in this particular case.

ARBITRATOR JAGUSCH: That's helpful. Thank you.

MR. VEGA-BARBOSA: Okay. So, I believe it is a good time to move to our next argument that concerns Claimant's submissions and those of its alleged predecessors that DIMAR's authority remained necessary as long as marine exploration was still necessary, and that such authority only ceases upon discovery.

The jurisdiction implication of this, we say, is very clear and very important.

Since DIMAR's authority remained relevant as long as marine exploration was necessary, the 2008 assignment of rights from SSA Cayman to Claimant required the approval of DIMAR, because as shown in the relevant contemporary evidence, marine exploration for the purposes of identification never ceased to be necessary.

Now, on the screen now, we find Claimant's

submission in these proceedings that the DIMAR's authority remains necessary as long as further marine exploration is required, and that its authority concerning marine exploration activities ceases only with the discovery of the shipwreck.

Accordingly, Members of the Tribunal, should the records show that SSA Cayman still required DIMAR's intervention even after the 1982 Confidential Report, and even after Resolution 354, then that would mean that DIMAR's authority was still needed because the need for marine exploration had not ceased.

Now, at paragraph 200 of the Response, you can also see that Claimant argues that in the 2007 decision--2007 Supreme Court Decision, the Supreme Court found that DIMAR's authority ended with the discovery. But we can comfortably tell you that this is not true.

The Supreme Court did not say such a thing. And the reason why the Supreme Court did not say such a thing is because Glocca Morra Company did request the authorization of DIMAR to assign the rights to SSA Cayman, and SSA Cayman was the plaintiff in those proceedings. So it was completely unnecessary for the court to refer to that legal issue.

What Colombia did before the Supreme Court was to merely question the fact that the assignment of contract

was not delivered and notified to DIMAR, which is a requirement contained in the Civil Code of Colombia for the transfer of credits.

That's it.

We shall also note that since the DIMAR Resolutions are administrative acts, and these can be corroborated by Claimant's Colombian counsel, Mr. Zapata, since they are administrative acts, the Supreme Court lacked any legal authority to pass judgment on the competence and jurisdiction of a public administrative entity. This competence is assigned under Colombian law to judges of what we call la jurisdicción contenciosa administrativa, the contentious administrative jurisdiction, not to the judges of the ordinary jurisdiction.

In any case, as will be seen, the contemporary evidence shows that since SSA Cayman did not believe Glocca Morra Company had found the Galeón, it kept requesting DIMAR's authorization for further marine exploration even after Resolution 354.

Let's turn then to the contemporary conduct of Claimant's alleged predecessors.

Now, we say that the slide in the screen is a strong one. And it is a strong one because it allows the Tribunal to comfortably determine that Claimant's argument

that DIMAR's authority ceased upon the alleged discovery was created just to manufacture jurisdiction in this case.

As we can see, and we say this is spectacular from it's--from a probative perspective, Claimant admits that by 22nd April 1982--22nd April 1982--that is after the 26 February 1982 Confidential Report, DIMAR authority was still needed, notwithstanding the so-called exciting discovery.

But Claimant also admits, and this is even more spectacular in terms of its probative value, that on 24 March 1983, almost a year after 1st June 1982, when DIMAR Resolution 354 was issued, DIMAR's authority was still needed to authorize the assignment of rights from Glocca Morra to SSA Cayman, so as to allow SSA Cayman to carry out further marine exploration for the purposes of identification.

Accordingly, Claimant lacks all credibility when it argues that DIMAR authority ended with the discovery of the shipwreck and with a conferral of the rights via Resolution 354. We have shown that this is simply not true.

And let's be absolutely frank on this. The reason why the contemporary conduct of Glocca Morra Company and SSA Cayman do not match Claimant's allegation in this arbitration is because, as reflected in the 1982

Confidential Report, Glocca Morra's contemporary view was that further exploration was needed for the purposes of identification.

As a final point on this matter, let's briefly deal with Claimant's argument that Colombia is somehow estopped--estopped with a "e" before the "s"-, from raising this argument because it never raised it before this arbitration.

Now, Colombia already made clear from Paragraphs 93 to 98, and Paragraph 134 of its Reply, that there was simply no need to raise this argument before this arbitration. But, in fact, it raised it in its interactions with SSA LLC.

This slide contains the relevant responses, but let's go to the fourth row. There you can find that after a countless of Claimant's letters claiming alleged rights over the San José and asking for a verification campaign, on 28 July 2015, the Minister of Culture expressly referred SSA LLC to DIMAR.

In conclusion, because the identification of a specific shipwreck was pending, that is, required further marine exploration, DIMAR's authorization was still necessary at the time SSA Cayman allegedly transferred its rights to Claimant via the APA.

Of course, if the purpose was to claim rights

specifically over the Galeón San José, whose identification still needed marine exploration.

That being clear, let's assess whether Articles 700 and 701 of the Colombian Civil Code as construed in last instance by the Supreme Court in 2007, conferred Claimant--Claimant's alleged predecessors with any right over the so-called Discovery Area, which includes the Galeón San José.

And the answer we say is in the negative.

In the screen are Article 700 and 701 of the Colombian Civil Code, and we promise we will be brief on this point.

Article 700 provides that the discovery of a treasure, a treasure is a kind of invention or discovery.

Article 701 comes after Article 700, and provides that the treasure found on another's land shall be divided equally.

Now, we have the translation by Claimant of Article 701 that failed to include the particle "the" at the beginning of Article 701. So let's read Article 701 with such particle.

The treasure found on another's land shall be divided equally between the owner of the land and the person who made the discovery.

As can be seen in the complete translation, the

word "the" is decisive as it illustrates that the conferral of rights under Article 700 and 701 is premised on two grounds. First, the discovery of a treasure. And, second, on the treasure being found on another's land.

And this is what happened to Reynolds, Members of the Tribunal. They reported a treasure, but never found the treasure.

It is the treasure found, not an unfound treasure which shall be divided equally.

Importantly, in the present case, one does not have to create a big dispute with respect to the effect of Article 700 and 701 of the Colombian Civil Code in respect to the 1982 Confidential Report.

The task of you, Members of the Tribunal, we say, is much simpler, and the reason is that on 5 July 2007, the Supreme Court of Justice of Colombia in last instance already--already interpreted that particular legal situation.

Now, to assist the Tribunal, on the slide we have on the left SSA Cayman's prayer for relief in its 13 January 1989 Civil Action. And on the right the final decision by the Supreme Court of Justice.

As can be seen in the slide, in line--in line with the fact that the 1982 Confidential Report did not report the discovery of a particular treasure, SSA Cayman

did not ask for the recognition of rights in respect to a particular treasure. Accordingly, the Supreme Court did not declare any right over a particular treasure.

Moreover, as can be seen in the slide, although Claimant did request a recognition of rights not only in the coordinates indicated in the report, but also in the contiguous areas, in a correct application of Article 701 of the Colombian Civil Code, the court recognized rights only in respect to the coordinates indicated in the 1982 Confidential Report, and I open quotes "without including, therefore, different spaces, zones or areas."

Now, the Tribunal knows the only two arguments placed by Claimant in this respect are--

PRESIDENT DRYMER: Excuse me. I'm not sure I heard correctly and my transcript is not transmitting. That's okay. But I'm going to ask you, therefore, to repeat your last statement so that I've--I've heard it.

MR. VEGA-BARBOSA: Yeah, for sure.

PRESIDENT DRYMER: I'm sorry. I don't have a transcript in front of me. Would you just say that again? What--your last--your-your conclusion a moment ago--

MR. VEGA-BARBOSA: Yeah. Although Claimant--

PRESIDENT DRYMER: --about the difference between what was requested and what was granted.

MR. VEGA-BARBOSA: Although Claimant did request

a recognition of rights--

PRESIDENT DRYMER: Yeah.

MR. VEGA-BARBOSA: --not only in the coordinates indicated in the 1982 Confidential Report--

PRESIDENT DRYMER: Yeah.

MR. VEGA-BARBOSA: --but also in the contiguous areas--

PRESIDENT DRYMER: Yeah.

MR. VEGA-BARBOSA: --we say in a correct application of Article 701, the Supreme Court recognized rights only in respect to the coordinates indicated in the 1982 Confidential Report, and I open quotes, "without including, therefore, different spaces, zones, or areas."

And we say for that reason that--

PRESIDENT DRYMER: Maybe I'm reading the wrong document, but I'm reading within the coordinates and surrounding areas. In the second paragraph of the court's resolution. And so if I'm looking at the wrong place, please let me know. That--that--that was my question for you.

MR. VEGA-BARBOSA: So we're relying on Exhibit C-0025.

PRESIDENT DRYMER: Yes.

MR. VEGA-BARBOSA: Which contains SSA Cayman's prayer for relief in the domestic Civil Action.

PRESIDENT DRYMER: And on the next page you have the court's decision, here by resolves.

MR. VEGA-BARBOSA: And it says that it confers the rights in respect to the coordinates referred to in the Confidential Report on underwater exploration carried out by the company, Glocca Morra, without including, therefore, different spaces, zones or areas.

PRESIDENT DRYMER: Okay. You know what? I'll clear up this inconsistency later. I must be looking at the wrong document. C--C-25?

MR. VEGA-BARBOSA: C-25 is Claimant's alleged predecessor prayer for relief. They did ask for a recognition of rights.

PRESIDENT DRYMER: Pardon me. I'm looking at the English translation. I'll figure this out later. I just want it stated so that anybody can address it if necessary, that the document I'm looking at in the second resolution, in English at least, declare--the court here by resolves, declare that the goods of economic, historic cultural and scientific value that qualify as treasurers belong in common and undivided equal parts to the Colombian Nation and to Sea Search Armada, and which goods are found within the coordinates and surrounding areas.

MR. VEGA-BARBOSA: Ah, yeah, yeah, yeah. I know what is happening.

PRESIDENT DRYMER: Yes.

MR. VEGA-BARBOSA: I think you're not looking at the last instant decision.

PRESIDENT DRYMER: Okay.

MR. VEGA-BARBOSA: But one of the lower court decision. And this is a point I'm going to address right now.

PRESIDENT DRYMER: Okay.

MR. VEGA-BARBOSA: Because--

PRESIDENT DRYMER: It is in fact the lower--the 10th Civil Court. It's the 1994 decision. But I misunderstood the exhibit number you were taking us to.

MR. VEGA-BARBOSA: Ah. Of course the Tribunal would understand that Colombia is not relying on a first instance decision--

PRESIDENT DRYMER: I understand.

MR. VEGA-BARBOSA: --when we have a last instance decision.

PRESIDENT DRYMER: I understand. And that's at C-28.

MR. VEGA-BARBOSA: And that is C-28.

PRESIDENT DRYMER: Right. Pardon the confusion.

ARBITRATOR JAGUSCH: Is it your submission that the final--the Supreme Court Decision limits Glocca Morra's rights or that--to what is effectively a 9-square-meter

area? That's your submission?

MR. VEGA-BARBOSA: Yeah, that's our submission.

ARBITRATOR JAGUSCH: Okay. Understood. Thank you.

MR. VEGA-BARBOSA: And that is why we're surprised to see that Claimant considers this one of the bases of its rights and not better an expropriatory--an alleged expropriatory conduct, because this is what makes clear that they have no right to this so-called Discovery Area. But let's go to what Claimant has to say about our proposition.

Claimant argues, first, that because the preamble of DIMAR Resolution 48 of 1980 mentioned the Galeón San José, it was unnecessary to mention the finding of the Galeón San José in any of the formal documents thereafter, and that it was irrelevant that no formal document from the Republic of Colombia expressly recognized such a specific finding in the next 27 years.

Ms. Ordóñez already elaborated on this argument. Suffice it to note at this moment that this is, for sure, the only 10 billion dollar arbitration based on the preamble of a resolution.

Claimant's second argument is that somehow it is irrelevant that the operative paragraph in the 2007 decision doesn't recognize rights to the contiguous areas,

or what Claimant now calls the Discovery Area, because the lower courts--and we go now to your concern, Mr. Chairman--because lower courts had recognized such rights.

On this point we note first that the burden lies with Claimant to enlighten us with the interpretative process that somehow allows to transform the expression without, including, therefore, different spaces, zones or areas into including, therefore, different spaces, zones or areas.

Second, and in what our side of the burden concerns, we just say that the "without" in the operative paragraph is what one would expect from a court of last instance that applies the law to the case presented by SSA Cayman.

The "without" makes sense because although the 1982 Confidential Report indicated specific coordinates plus an undetermined contiguous area, DIMAR Resolution 354 only recognized Glocca Morra Company as a reporter of treasures in respect to the specific reported coordinates.

All in all, as established, Claimant cannot prove it was conferred with the alleged right to the Discovery Area pursuant to domestic law.

As a final point on this argument, let's take a look at the contemporary conduct of SSA Cayman as reflected

in the 2008 Asset Purchase Agreement, and whether it showed the conviction that it had secured rights over the so-called Discovery Area, which includes the Galeón San José.

PRESIDENT DRYMER: Can we speak for one quick further moment about the Supreme Court Decision?

MR. VEGA-BARBOSA: Yes, of course.

PRESIDENT DRYMER: Now that I understand it that that's what you're referring to. And I'm very familiar with it.

The--I'm looking at the very--at the particular paragraph of the finding.

Are you saying--is it Colombia's position that the Supreme Court modified the 1994 10th Civil Court decision as regards "the area" or that it simply recognized the area as found by the 10th Civil Court in first instance?

MR. VEGA-BARBOSA: So to answer your question, we must first look--this is why we designed the slide this way to make it easy for you.

PRESIDENT DRYMER: Yep. It's perfect.

MR. VEGA-BARBOSA: And for everyone in the room. The prayer for relief--

PRESIDENT DRYMER: Well, I'm not asking about the prayer for relief. I'm asking about whether the Supreme

Court decision modified the court judgment in 1980--in 1994?

MR. VEGA-BARBOSA: Yeah, the answer is objectively, yes, because the lower court decisions--

PRESIDENT DRYMER: Yes.

MR. VEGA-BARBOSA: --as you were mentioning both the first instance and the second instance decision did recognize--

PRESIDENT DRYMER: Yes.

MR. VEGA-BARBOSA: --did recognize rights to not only the assets in the reported coordinates, but also to those on--in the contiguous areas.

PRESIDENT DRYMER: That's what I'm getting at. And you're saying this paragraph of the Supreme Court decision intended to and did modify that finding, didn't simply purport to restate the finding?

MR. VEGA-BARBOSA: Yeah. We say--

PRESIDENT DRYMER: Very good.

MR. VEGA-BARBOSA: --that it's objectively on the plain terms very difficult not to interpret the without including, therefore, different spaces, zones or areas as something different than a modification of the previous court's--of the lower court's rulings.

And this, we believe, may have created confusion, discomfort, a sentiment of denial of justice by Claimant's

alleged predecessors back at the time, but they never come back to the court to ask for an interpretation provision. But on the plain terms of the decision it's very difficult to say, Mr. Chairman, that this did not modify the lower court's previous decision. It's a decision expressly denying the contiguous areas that were recognized by the lower courts.

PRESIDENT DRYMER: So, okay, very good. It effectively overturned the finding of the lower court's--lower court's, plural, finding with respect to rights in the vicinity of the coordinates.

Very good. I understand. Thank you. That's extremely helpful.

ARBITRATOR JAGUSCH: Just if I may just on that point. It would be helpful, at least to me, if you could identify for us in the Supreme Court Decision where the extent of the area itself was debated or at issue. Because implicit in overturning a prior decision would be that it was a matter that was being debated and reevaluated.

So I would presume that there'd be some discussion of that in the judgment.

So at some point, if you could direct me to the relevant passages of the judgment, I would find that helpful.

MR. VEGA-BARBOSA: We will.

ARBITRATOR JAGUSCH: Thank you.

MR. VEGA-BARBOSA: Mr. Arbitrator. We submit for the moment that the--that since this is an evaluation of the relevant rights under Article 700 and 701, a necessary task of the Tribunal is to determine whether a treasure reported was found where the reporter said it had found it. And accordingly, that analysis is absolutely necessary in this type of proceedings. By the way, we'll provide you with a more elaborated response to your question.

Now, turning back to the question about the contemporary conduct of SSA Cayman and whether it shows it had the conviction that it had been conferred with the rights over the so-called Discovery Area, which includes the Galeón San José. We should look first at the relevant private act invoked by Claimant. And we say that this slide very usefully illustrates that SSA Cayman did not have such conviction because objectively the APA lacks any mention whatsoever to a so-called right gained by Glocca Morra Company over the Galeón San José in particular, much less to the Discovery Area. And we're dealing with the alleged biggest treasure of humanity and the APA, the relevant private act does not mention the greatest treasure of humanity.

As you can see, this is also relevant for the ratione personae preliminary objection because the sole act

invoked by Claimant to argue that it secured the putative investment is the APA.

Now, since the APA does not mention the San José, let's look then at the other documents allegedly accompanying the Asset Purchase Agreement, which is referred to--

ARBITRATOR JAGUSCH: Just before you do, and it would help me to understand--there's a question about who cares what they thought.

But parking that, let's look at the issue that you've put in front of us.

Is there evidence of what the assets were that were the subject of this transaction, if not the treasure found in the area that may or may not have been the San José?

MR. VEGA-BARBOSA: Yes there is evidence of what the assets transferred where because they are listed there. It says all rights, title, and interest.

ARBITRATOR JAGUSCH: Yeah. But I'm asking: What would they be, though, if not the treasure found at the location which may or may not have been the San José?

If you're saying that they're--if you're asking us to construe this as referring--as not referring to the San José, then presumably they were transacting in respect of some other assets.

So what were those other assets?

MR. VEGA-BARBOSA: So to be clear, the position of Colombia is that SSA Cayman, as assignee of the rights secured by Glocca Morra, is in possession of important assets. It is in possession of a resolution, Resolution 354, which granted it the recognition of a reporter of treasures in the indicated coordinates. Why is that? Because SSA Cayman--because SSA, LLC, failed to do it. We don't know what that is.

What they're claiming here is that an existent on recognized right to 50 percent of the treasure of the Galeón San José. And we don't see this here. And because we don't see it here, we have the same questions.

So what we did for assisting the Tribunal was to look at the other additional documents that accompany the APA, and which are described in the APA as the assumed liabilities.

And perhaps the most important assumed liability is the 1988 management contract entered into by SSA Cayman with IOTA partners.

So let's look at the IOTA contract. As the slide shows, the 1988 IOTA contract entered into by SSA Cayman and IOTA does not support the argument that the APA somehow transferred rights over the Discovery Area, much less over the Galeón San José.

We cannot escape to see that the recitals on the first page of the agreement already showed that in 1988, SSA Cayman did not believe that it had been authorized by Resolution 48 of 1980 to look for the San José only.

Moreover, the recital shows it only had the belief, SSA Cayman only had the belief, not the certainty, that it has found the San José. But, moreover, as seen now on the screen, the recitals in the second page showed that this contract was not aimed at obtaining the alleged investment in this case, which is 50 percent property rights over the Galeón San José, but to obtain a completely different investment, a salvage contract.

Also important, and still on the screen, is IOTA's primary obligation as manager, which was concerned with identification of treasures in 1988, with identification of treasures, not the treasure of the Galeón San José in particular, in reported targets, targets in plural.

In conclusion, although Claimant argues that the APA is not governed by Colombia's domestic law, which we agree to, illustrative of what SSA Cayman understood, it was entitled to give under Colombia's domestic law is that it did not assign Claimant any rights over the so-called Discovery Area, much less one including the Galeón San José.

In light of all we have seen, Claimant cannot prove it possesses the qualifying asset. Accordingly, you lack jurisdiction pursuant to Article 10.28 of the TPA.

Although it is not in the particular order, I would like to ask one minute to go to the bathroom, please.

PRESIDENT DRYMER: Say no more. Please. We'll take a very quick comfort break. I don't really believe there is such a thing as a five-minute break, but I'll ask you to prove me wrong. Okay. Thank you. We'll adjourn now for five minutes.

(Brief recess.)

PRESIDENT DRYMER: Let's proceed without further ado.

MR. VEGA-BARBOSA: Thank you, Mr. Chairman, the Colombian team has requested me to transmit to you clarifications on responses to two questions that were raised before.

The first one is a clarification. Although it is correct that a coordinate is roughly 10-square-meters, in this case we're not dealing with a coordinate. What reporter--what Glocca Morra reported in 1982 was a polygon of coordinates, and those are the coordinates. So we're not dealing here with the absurd proposition that the Galeón should be located in 10-square-meters. That is the polygon. And we're dealing with a set of coordinates, not

one coordinate.

ARBITRATOR JAGUSCH: Do you know what the area was of that polygon?

MR. VEGA-BARBOSA: The total area? We can provide you with the total area.

ARBITRATOR JAGUSCH: I mean, at some point we'll need to consider what, you know, vicinity of means, et cetera. Obviously that--that's something that has to be considered in context. And to understand the context, it's useful to understand what the area is of what you call the polygon.

MR. VEGA-BARBOSA: We will do that. We will do that.

And second and answering to Arbitrator Jagusch's question on whether the Supreme Court had actually engaged with the position of the lower courts, you should look, but we will come with a written answer at page 233 of Exhibit C-28, the Supreme Court Decision, and you will see that in the last paragraph before going to the operative paragraph, the court does engage with the question of the precise location and its relevance to the type of right it could grant. So it was addressed.

PRESIDENT DRYMER: You said a moment ago you're going to come back with a written submission. Did I hear correctly? I don't think that was--I don't think that was

requested or is part of the procedure.

MR. VEGA-BARBOSA: Apologies.

PRESIDENT DRYMER: I just want to be sure.

MR. VEGA-BARBOSA: For our presentation tomorrow--

PRESIDENT DRYMER: Very good. There's no further written submissions--

MR. VEGA-BARBOSA: Yeah. Apologies for that.

PRESIDENT DRYMER: Thank you.

MR. VEGA-BARBOSA: We will move now to address Colombia's ratione temporis and ratione voluntatis preliminary objections.

From the outset, we must clarify that every piece of allegation of the Republic of Colombia in this part of the case is made ex-hypothesis in the remote event this Tribunal considers that we have here a protected investor with a protected investment, and of course we clarify that every piece of reference to the alleged responsibility of the Republic of Colombia is also made ex-hypothesis just for the purposes of the ratione temporis and ratione voluntatis preliminary objection.

Let's turn to our ratione temporis preliminary objection.

Our main proposition is that the Tribunal lacks jurisdiction to rule on the alleged responsibility for the

issuance of Resolution 85 of 23 January 2020 because to do so would be in breach of the non-retroactivity principle which finds expression in Article 10.1 of the TPA.

And you have the provision on the screen. It says: For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this agreement.

Again, to address this objection, we propose an outline that considered what was already amply discussed this morning on what the most pressing outstanding legal and factual issues before the Tribunal currently are.

On the legal side, we will address two main legal issues. The first one: Whether, as alleged by Claimant, the date of its selected impugned measure is the only relevant date you should consider for the purposes of the ratione temporis analysis.

The second one: Whether a selected measure falls within the jurisdiction ratione temporis of the Tribunal just because it can be placed formally post-TPA.

After making clear that the Tribunal is entitled to look beyond Claimant's self-serving characterization of the relevant measure and that a measure does not fall within the jurisdiction ratione temporis of the Tribunal just because it can be placed formally post-treaty, we will

address--sorry--we will review shortly some of Ms. Ordóñez's main findings to show for the last time we expect on one hand that as a result of definitive pre-treaty State conduct, Claimant's alleged predecessors were never--never conferred with a right over the so-called Discovery Area, let alone over the Galeón San José; and second, on the other hand, that as recognized by Claimant before the D.C. District Court in 2010, the alleged expropriatory acts and arbitrariness all perfected as a result of alleged pre-TPA State conduct.

This would allow the Tribunal to conclude that Resolution 85, although placed post-treaty, is not independently actionable under the TPA and the Tribunal lacks jurisdiction ratione temporis.

Now, the first outstanding legal issue is whether, as claimed by Claimant, its selected impugned measure is the only relevant date--or the date of its selected impugned measure is the only relevant date for the ratione temporis analysis.

Claimant's clear purpose with this proposition is to set a basis for its rather desperate argument that notwithstanding all we have seen this morning, notwithstanding 40 years of relevant facts, Resolution 85 of 2020 is the only relevant measure.

Respondent's first task is then to show you,

Members of the Tribunal, that contrary to Claimant's view, international law does not divest you from your power of analysis, but, instead, gives you the power to determine which is the relevant date as a prerequisite to determine whether you have jurisdiction ratione temporis.

At the core of our argument is a well-known competence-competence principle. You, not Claimant, are the masters of your own jurisdiction. As the Tribunal is aware and can be seen on the screen, Claimant alleges that the only relevant measure is Resolution 85 of 2020. Importantly, Claimant finds support for this proposition on the fact that Article 10.1 of the TPA, in settling the scope of obligation of a TPA, refers to measures and not to disputes.

Claimant also relies in the ruling in Gramercy v. Peru to structure it's argument, that even if we can find disputes prior to 15 May 2012, the ratione temporis analysis is circumscribed to the relevant measures selected by Claimant.

But we say that something is clearly missing in Claimant's argument. It is not clear at all why the fact of the TPA sets the scope of obligation in terms of measures and not in terms of disputes translates into a prohibition for you, Members of the Tribunal, and for us, the Respondent, to contest Claimant's definition of the

relevant measure for the purposes of determining whether the Tribunal has jurisdiction ratione temporis.

The award in Gramercy does not assist Claimant's case either. As seen on the screen, Gramercy only served the purpose of establishing that when a treaty sets a scope of application in terms of state measures, then the analysis should be directed to assess the date when an impugned measure took place.

However, Gramercy is clearly not an authority to argue that the only relevant date for assessing that ratione temporis objection is the date of Claimant's certainly selected impugned measure.

Now, in our Reply, we have changed views with Claimant in respect to Gramercy by noting that in that case, the legal situation of the Claimant only fully consolidated post-treaty, meaning that the pre-treaty State conduct was merely contextual. As seen on the screen, Claimant replied, noting that in Gramercy, the Tribunal used the date of the impugned measure and not the date of the consolidation of Claimant's legal situation.

But for the present purposes, this is irrelevant. What matters is that Gramercy is still not a basis for the pervasive and astonishing proposition that the only relevant measure for the purposes of the ratione temporis analysis is the date of this measure self-servingly

selected by Claimant. And since this is the only legal authority provided by Claimant, then Claimant has failed to bring a single authority to prove this controversial proposition.

One final but important point on this matter. Arbitral case law has made clear why not even the alleged presumption of truthfulness of Claimant's factual allegations is absolute at the jurisdictional stage.

As noted, for example, in Chevron v. Ecuador, Claimant should not be allowed to frustrate a jurisdictional review by simply making enough frivolous allegations to bring its claims within the jurisdiction of the BIT. As Ms. Ordóñez made clear earlier this morning, this is exactly what is happening here. You are the third tribunal outside Colombia that Claimant is trying to instrumentalize to claim a multi-billion-dollar compensation for a right that exists in no formal document.

As seen in Appendix B of our reply, which is part of the hearing bundle and you have on the screen, Claimant has adjusted the relevant measure every time he had been in need to circumvent a statute of limitations.

As you can see, for the past decade we have had several impugned measures selected by Claimant. It is not a surprise, then, that in the current proceedings, the impugned measure is the only one that will allow Claimant

to escape the effect of the non-retroactivity principle as well as the three-year time limitation period.

And this leads us to the second legal issue; that is, whether a selected measure falls within the jurisdiction of the Tribunal just because it can be formally placed post-treaty. And this legal issue was addressed by the Tribunal in Astrida Benita Carrizosa v. Colombia, which analyzed a ratione temporis preliminary objection based on this very same treaty.

As seen on the screen, the Tribunal presided by the distinguished arbitrator Gabrielle Kauffmann-Kohler noted that the relevant task when dealing with this type of issue is to determine whether the post-treaty conduct may trigger an independently actionable breach under the relevant treaty.

Now, in that case, Colombia successfully argued that although the measures selected by Ms. Astrida Carrisoza was the only post-treaty measure in a factual framework spanning for over several decades, said measure was not independently actionable because adjudication of those claims would require a finding on the lawfulness of pre-treaty conduct.

The Tribunal agreed with Colombia and noted, quite correctly, that unless the post-treaty conduct--in this case, unless the Resolution 85 of 2020--is itself

capable of constituting a breach of the TPA; namely, independently from the question of lawfulness or unlawfulness of the pre-treaty conduct, claims arising out of such post-treaty conduct would also fall outside the Tribunal's jurisdiction.

The underlying reason for this, Members of the Tribunal, is that the non-retroactivity principle is not just another principle. It is a very powerful principle which substantially and materially, and not simply formally or superfluously, seeks to prevent that the conduct of a State is measured against a treaty or customary international law obligation that did not exist at the time the relevant conduct took place.

Now, the Carrizosa award is in line with previous important awards in international investment case law. Importantly, the Mondev versus USA tribunal expressly noted that. And I open quotes: The mere fact that earlier conduct has gone unremedied or unredressed when a treaty enters into force does not justify a tribunal applying the treaty retrospectively to that conduct. Any other approach would subvert both the inter-temporal law principle in the Law of Treaties and the basic distinction between breach and reparation which underlies the law of State responsibility.

Well, as the Tribunal is aware, under the guise

of a distinction between a simple breach of the right to property and an absolute nullification of the same right, Claimant tries to escape the fact that it repeatedly and unequivocally asserted before the D.C. District Court that its alleged rights over the Galeón San José had already been expropriated as early as 2010, thereby entitling it to a compensation up to 17 billion dollars and that several instances of arbitrariness had already taken place.

Now, having clarified the legal questions, the first factual question to address is whether Resolution 85 is independently actionable.

And of course, the answer is in the negative.

Claimant's position is that the relevant State measure in this case is Resolution 85 of 2020, which declared the totality of the Galeón San José a national asset of cultural interest. But, as the Tribunal is probably already aware, Resolution 85, although placed post-treaty and within the three-year statute of limitations, is not independently actionable under the treaty because any assessment of State responsibility of the Republic of Colombia for passing such resolution would require passing judgment as well on at least two types of pre-treaty State conduct:

First, fully crystallized pre-TPA State conduct through which Claimant--through which

Colombia--apologies--through which Colombia definitively denied Claimants any right whatsoever to the so-called Discovery Area, which includes the Galeón San José;

And, second, allegedly fully crystallized pre-TPA conduct through which Colombia allegedly confiscated Claimant's right to the Galeón San José, entitling it already in 2010 to a compensation of USD 17 billion.

Regard--

PRESIDENT DRYMER: I want to be clear because this is an important proposition, and I'd like to understand it better.

Certainly the Tribunal is asked by both Parties to consider pre-treaty conduct and acts. Certainly the Tribunal is being asked to interpret, if you will, the acts and the statements of courts as well as government agencies and other representatives.

But I'm not aware that we're being asked to pass judgment on the international legality or illegality of those acts. And if we are, I'd like you to specify that for me in the course of your presentation today or tomorrow, please.

MR. VEGA-BARBOSA: Perfect.

PRESIDENT DRYMER: Okay. Thank you.

MR. VEGA-BARBOSA: So regarding the first set of State conduct, the screen shows the relevant measures that

pre-treaty already perfected Colombia's recognition of rights over the so-called Discovery Area, which allegedly includes the Galeón San José.

But since Ms. Ordóñez amply explained this part of the case already, I will not refer to these factual instances.

PRESIDENT DRYMER: I'm going to use this just as an example and then I'm going to stop and let you answer the question later on.

Even if we--even in the hypothetical scenario, that the Tribunal were to disagree with your characterization of these pre-treaty acts, it's not evident to me that that is the same thing as pronouncing on the lawfulness of those acts. And that's--that's why I'm--I'm not completely clear on this concept. Well, I'm clear on the concept that a post-treaty act could be--could be an insufficient basis for jurisdiction if we're required to actually declare the lawfulness or otherwise of pre-treaty acts.

But I'm not sure that simply disagreeing with your contention regarding pre-treaty acts is the same thing.

MR. VEGA-BARBOSA: If I may, and because this is very important--

PRESIDENT DRYMER: Now or later. It's up to you.

MR. VEGA-BARBOSA: It is super important to our case, and I think the right moment to answer that question is now.

PRESIDENT DRYMER: Very good. That's your decision. Okay.

MR. VEGA-BARBOSA: So the fact that you have not been expressly or by Claimant to pass judgment on the pre-treaty conduct does not mean that you are not necessarily required to pass judgment of said pre-treaty conduct in order to pass judgment on whatever responsibility may derive from the enactment of Resolution 85.

As mentioned before, all Resolution 85 did was to declare the totality of the Galeón San José as a national asset of cultural interest. The sole purpose of Resolution 85 is to do that, to address the particular situation of the Galeón San José and to declare it a national asset of cultural interest.

In order to pass judgment on whatever responsibility may arise due to the enactment of said Resolution, in this particular case, with this particular Claimant, you will need to decide whether prior to 15 May 2012, Colombia somehow had already denied any right whatsoever that this Claimant could have over the Galeón San José, which is the sole subject matter of the

Resolution.

And we say that at least three times pre-treaty, such non-recognition of rights over the Galeón San José took place as a result of Colombia State conduct.

First, because of Resolution 354 of 1982, which recognized rights only in the reported coordinates;

Second--

PRESIDENT DRYMER: Again, I'm sorry to interrupt, but that's a perfect example. All right?

Nobody's questioning, I don't believe, whether 354 or any other resolution was legal or otherwise. The only question in respect of them, I believe, is how they're to be construed and what rights they recognized or did not recognize.

And you're saying that our construction of those acts is equivalent to declaring the lawfulness or unlawfulness of those acts or that conduct?

MR. VEGA-BARBOSA: Our proposition is that--

PRESIDENT DRYMER: Right. Okay. I'm just making clear where I need to be convinced in case that's helpful.

MR. VEGA-BARBOSA: I understand.

PRESIDENT DRYMER: I'm hoping that it's helpful. Thank you.

MR. VEGA-BARBOSA: We understand this is an important question and concern, and we have exchanged a lot

of views--

PRESIDENT DRYMER: But it's got nothing to do with whether they explicitly allege unlawfulness. I'm not--that's--that's a waste of time to talk about whether--it's clear that they haven't explicitly alleged that and you're saying that that's irrelevant. All right? So forget the explicit or implicit dichotomy.

The question is more conceptual: whether construing conduct is the same thing as declaring the legality or otherwise of that conduct.

Thank you.

MR. VEGA-BARBOSA: At the simplest possible conceptual level, they are arguing that they secured rights over the Galeón San José--

PRESIDENT DRYMER: Yep.

MR. VEGA-BARBOSA: --pre-treaty, and we argued that they did not. That because of Colombia state conduct--

PRESIDENT DRYMER: Right.

MR. VEGA-BARBOSA: --we denied any right over the Galeón San José.

PRESIDENT DRYMER: And the Claimant is asking us to find that that same conduct to which you referred did not deny them, right? The Supreme Court Judgment should be read differently. The Presidential Decrees should be read

differently.

I'm not saying they're right. I'm saying that's the case that's put to us. And I just want to be sure that that's addressed and not--and not conflated unhelpfully in the concept of declaring lawfulness of pre-treaty acts.

That's all. Thank you.

MR. VEGA-BARBOSA: And we will then think a bit further on this question.

PRESIDENT DRYMER: Yeah. And I hope that it's helpful before the end of the hearing tomorrow.

MR. VEGA-BARBOSA: But, thank God, that is not all we have to show you in the ratione temporis objection.

So let's turn now to the second set of State conduct.

PRESIDENT DRYMER: To be clear to you, the lawyers will know this. Let me state it very clearly for the laypeople.

This Tribunal has not reached any decision on any of these issues. We're exploring these topics with you because we think they're important and you yourself have acknowledged they're important. So I haven't made up my mind. The Tribunal certainly hasn't made up its mind. But these are just issues which we're considering. We're pondering as we listen to them.

MR. VEGA-BARBOSA: From a public international

law perspective, it is not always easy to find an opportunity to distinguish between the notion of dispute, a disagreement and a point of law or fact, and a notion of breach. Your question goes to that distinction, so we will come back. We have an answer to that question.

That--that distinction that I just referred to is not that difficult to draw when looking at the 2010 Civil Action file by this Claimant before the D.C. District Court.

In the U.S. Civil Action, our Claimant submitted two counts, one of breach of contract and one of conversion, both having as the underlying State conduct several alleged acts of arbitrariness, including corruption, that could have led to an expropriation of its alleged rights over the San José that would have led to an expropriation amount in damages to--from 4 to USD 17 billion already clear at the moment.

As the screen shows regarding the breach of contract, Claimant alleged that--and I open quotes: Despite the plaintiff's adherence to the terms of the Agreement, Colombia has failed to comply with its obligations. Specifically, Colombia has refused to permit SSA to initiate salvage operations at the site and is therefore misappropriating SSA's property valued in the amount of 4 billion to 17 billion.

Now, with regards to the count of conversion, Claimant argued that by its actions, Colombia has intentionally exercised dominion and control over SSA's chattels, which intentional dominion and control by Colombia so seriously interferes with SSA's rights to control the chattels.

Paragraph 95 says SSA respectfully requests that the court render a judgment in its favor in the amount of 17 billion compensatory damages.

Moreover, the U.S. Civil Action is full of express references to the allegation of expropriation expressly. Because of the alleged work behind the scenes of Colombia's high officials, including the allegation that on 15 July 1998, due to the alleged corrupt practices of Colombian officials, SSA's Managing Director was already exercising efforts to regain--to regain SSA's rights to its properties.

Now, as explained in our written submissions and as seen on the screen, the U.S. Civil Action is also full of references to acts allegedly amounting to violations of the FET standard. On one hand, we have the allegations of discrimination in favor of a Swedish investor. And although not in the screen, in our Memorial, you would have seen a reference to Colombia's alleged threat to use force against this Claimant.

There is no doubt all these instances are allegations and, for the purposes of these objections, admissions that Colombia's alleged pre-treaty conduct had already perfected an expropriation.

Now, all Claimant has to say about this is, first, that counts of breach of contract and conversion are not tantamount to an allegation of expropriation and that their references to expropriation were made only in the factual narrative of the U.S. Civil Action.

But we say that this totally misses the benchmark. Under Article 10.1.3 of the TPA, Respondent is not required to prove a triple identity as if Colombia were raising an objection based on their res judicata principle or a fork in the road preliminary objection.

What Colombia is required to prove under Article 10.1.3 is simply that the alleged expropriatory conduct had already taken place prior to the TPA's entry into force, even if it went unremedied post-treaty.

All in all, what this means is that Resolution No. 85 of 2020, although formally placed post-treaty, is not independently actionable under the TPA, because to assess whether Claimant had any rights over the Galeón San José in 2020, it would be required to assess whether such rights were, as recognized by Claimant before the D.C. District Court, already expropriated back in 2020,

entitling them to a compensation of US 17 billion.

ARBITRATOR JAGUSCH: Counsel, can I ask you a question about this?

These allegations, they amount effectively, you say, to expropriation, so we don't need to get into the detail.

But these are allegations that Colombia denied at the time.

MR. VEGA-BARBOSA: Yes, as mentioned--and this is a public hearing--Colombia is not accepting that Colombia breached the TPA at any moment of the treaty.

ARBITRATOR JAGUSCH: I'm not talking about the TPA. The allegations made in the prior proceedings, they were denied by Colombia at the time?

MR. VEGA-BARBOSA: That's an important question, because we had never had the opportunity to go that far. Actually, what Colombia did was to oppose those objections before the D.C. District Court was to make use of a possibility that exists under U.S. law that allows for the early dismissal of these claims in a manner similar to what this treaty provides in Article 10.20.4, which requires to prove that even accepting all the facts as true--all the facts as true and correct, the allegation lacks or manifestly lacks legal merit.

So for those reasons, Colombia never opposed to

any of the factual allegations, including the breaches, made by Claimant before the D.C. District Court.

ARBITRATOR JAGUSCH: Okay. Excuse my random thinking. But if Colombia were to be asked today does it accept or reject the prior allegations in the prior proceedings, what would its answer be?

MR. VEGA-BARBOSA: Well, I'll have to say that that would be the exact prohibition provided for in Article 10.1.3 that is to pass judgment on Colombia's responsibility in regards to the treaty.

ARBITRATOR JAGUSCH: I'm not proposing that we pass judgment. I'm just trying to ascertain in my mind-- and I don't speak for my co-arbitrators and nothing is decided--but what is the relevance of a mere--a pre-TPA allegation effectively of expropriation if in substance that allegation wasn't accepted by Colombia at the time and--or if it wasn't ruled on?

MR. VEGA-BARBOSA: Yeah, it's important--first of all, as a threshold matter, the internal conception of Colombia about the legality or illegality of its conduct is irrelevant both in respect to the ratione temporis and in respect to the ratione voluntatis objections. It is irrelevant for the ratione temporis objection because all this objection cares about pursuant to Article 10.1.3 is whether, in Claimant's view, the acts that may amount to a

breach of the relevant right occurred pre-treaty, and it's irrelevant for the ratione voluntatis because the knowledge of the breach that is regulated in Article 10.18 of the treaty is their knowledge, not our knowledge.

That said, the relevance of their admissions before the D.C. District Court is that this is an Article 10.20.5 submission and we need to do this on an expedited basis, and we believe that the best way to do this on an expedited basis is by relying on Claimant's own characterizations of your conduct--on Colombia's conduct pre-treaty, which you have seen was characterized as a confiscation of the rights to a definitive, that they were already entitled in 2010 to a compensation amounting to USD 17 billion.

ARBITRATOR JAGUSCH: So are you asking the Tribunal to hold against the Claimant in a manner that deprives them of being able to advance a TPA claim--to hold against them those allegations even though they were only allegations but were not accepted by Colombia at the time and were not ruled upon at the time?

MR. VEGA-BARBOSA: We are asking you to--

ARBITRATOR JAGUSCH: I'm not being critical of the exhibition. I'm just trying to understand that that is what your submission is.

MR. VEGA-BARBOSA: Yeah. We are asking you to

take Claimant by their word.

ARBITRATOR JAGUSCH: Okay.

MR. VEGA-BARBOSA: And we think it's important.

So now let's move forward to our last objection, which is--

PRESIDENT DRYMER: How much time do you think you have left? I'm trying to make sure we--

MR. VEGA-BARBOSA: This is supposed to last 23 minutes.

PRESIDENT DRYMER: --finish it--supposed to.

How much time do you think you'll need?

MR. VEGA-BARBOSA: 25 minutes.

PRESIDENT DRYMER: It's supposed to last 23 and you think you'll need 25? Okay.

MR. VEGA-BARBOSA: Because it should.

PRESIDENT DRYMER: That's fine.

Should we perhaps break for lunch now, then, or do we continue?

All right. The Tribunal is happy to continue if the court reporter and the interpreters--Señor Rinaldi, among others--I've got the semaphore, the thumbs up, from up there. Thank you, Madame.

Counsel, is this fine with you to continue?

I didn't hear the court reporter say anything.

THE STENOGRAPHER: Another 25 minutes is good.

Sure.

PRESIDENT DRYMER: Okay. That's good.

Thank you.

MR. VEGA-BARBOSA: Again, this preliminary objection is made ex-hypothesis. And the controlling provision is in the screen now.

Article 10.18, as a condition of Colombia's consent to this pretty extraordinary form of arbitration, provides that no claim may be submitted to arbitration under Section 10 if more than three years have elapsed from the date on which the Claimant first acquired or should have acquired knowledge of the breach and knowledge that the Claimant has incurred loss or damage.

After two rounds of written submissions, the Parties agreed to the following:

Article 10.18.1 establishes a condition of consent.

Second, the knowledge referred to in the provision may be actual or constructive.

Third, the knowledge must concern both the breach and the resulting loss or damage.

Fourth, the knowledge referred to is the first knowledge.

And, finally, we agree that the critical date for the ratione voluntatis analysis is 18 December 2019.

In short, since the Notice of Arbitration was filed on 18 December 2022, the Tribunal lacks jurisdiction ratione voluntatis if Claimant first knew or should have first known of the alleged breach and resulting damage prior to 18 December 2019.

As seen on the screen, arbitral tribunals agree that an investor cannot gain first knowledge of the breach and the resulting damage in more than one occasion. Moreover, as noted by the non-disputing party, this means that--and I open quotes: Subsequent transgressions by a party arising from a continuous course of conduct do not renew the limitation period once an investor knows, or should have known, of the alleged breach and loss or damage incurred thereby.

The rationale supporting this important rule was clearly explained by the Tribunal in Ansung versus China. There the Tribunal noted that to allow the Claimant to adjust the date of first knowledge of the alleged breach would be to allow an endless parsing up of a claim into finer sub-components of the breach over time in an attempt to trump the time limitation period provided for in the relevant treaty.

And let's recall that the Ansung Tribunal early dismissed Ansung's claim for breach of the three-year limitation period after considering that its claim

manifestly lacked legal merit.

Now, the United States, our non-disputing party, further elaborated on the tragedies deriving from an ineffective time limitation period provision. In their words, and I open quotes: An ineffective limitation period would fail to promote the goals of ensuring the availability of sufficient and reliable evidence, as well as providing legal stability and predictability for potential respondents and third states.

And after 40 years of litigation with this Claimant, we can see that the United States is very much right with this concern. But they also say that an ineffective limitation period would also undermine and be contrary to the State party's consent because, as noted above, the parties did not consent to arbitrate an investment dispute if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach and knowledge that the Claimant has incurred loss or damage.

Now, also in the screen is Corona vs. Republica Dominica, a case where the Tribunal dismissed the case for being time-barred, as in this case under the same expedited procedure in the exact equivalent to Article 10.20.5. In Corona, the Tribunal noted that for the limitation period to begin to run, it is not necessary that a claimant be in

position to fully particularize its legal claim, nor must the amount or loss of damage suffered be precisely determined.

Now, Appendix C is now on the screen. And as it reveals, the legal problem in this case is far less complex because well before the TPA's entry into force and, also, while in breach of the three-year limitation period, Claimant had already argued that its alleged rights had been unlawfully expropriated without compensation as a result of several instances of alleged arbitrariness and discrimination and even quantified the damage in US 17 billion.

That said, the Parties are divided in the most important factual issue, whether Claimant first knew or should have first known about the alleged breach or breaches prior to Resolution 85 of 2020. Let's address this issue.

Now, we must say first that although Claimant's Statement of Claim focuses on Respondent's alleged violations of the standard of expropriation in Article 10.7 of the TPA, Claimant has also alleged quite lightly violations to the FET, MFN, and national treatment standards. Given the time constraints for the purposes of this presentation, Respondent will focus on Claimant's allegation that its alleged rights over the Galeón San José

were expropriated as a result of several instances of arbitrariness.

I can only--accordingly, we kindly ask the Tribunal to refer to our written submissions and to Appendix C accompanying our reply explaining the violation of the three-year time limitation period in respect to the alleged breaches of Full Protection and Security, MFN and national treatment standards.

To begin with, let's look at the way Colombia and the U.S. define the standard of expropriation in Section 10.7 and Annex 10(b) of the TPA.

As can be seen, the Republic of Colombia and the United States of America agreed that, first, Article 10.7.1 addresses both direct and indirect expropriations.

Second, an indirect expropriation may derive from a series of actions having an effective equivalent to a direct expropriation even if there is no formal transfer of title or outright seizure.

Third, a series of actions of a party may constitute expropriation if they interfere with a tangible or intangible property right or property interest in an investment.

Fourth, among the factors to be considered are the economic impact of the government action, the extent to which the government action interferes with distinct,

reasonable investment-backed expectations, and finally, the character of the government action.

Now, as noted by the disputing party, a Claimant can be said to have actual or constructive knowledge of a breach of Article 10.7 when it has or should have knowledge of all the elements in said article, including--I open quotes: that the destruction of or interference with the economic value of the investment is sufficient to constitute a taking--end of quote--but the date--and I open quotes again--need not coincide with the last of the government measures that are alleged to have harmed the Claimant's investment.

Relying in Berkowitz, the non-disputing party also noted that a Claimant may have actual or constructive knowledge that the interference with the economic value of its investment is sufficient to constitute a taking before that investment has lost all of its value.

Let's turn to the relevant facts. Colombia will first rely on Claimant's 15 April petition before the Inter-American Commission of Human Rights. As will be seen in the following minutes before the Commission of Human Rights, Claimant expressly admitted that an indirect expropriation without compensation had already crystallized, and moreover, that it was notified of said breach as early as 26 November 2012 when in breach of the

three-year limitation period.

Now, we would like, first, to note that a petition before the Inter-American Commission of Human Rights is a serious business under the American convention of human rights.

We can tell you a lot about the Inter-American systems, since our very same team currently faces more than 1,000 petitions before the Inter-American commissions, and with more than 30 lawyers dedicated exclusively to address those petitions, we can say we take these matters very, very seriously.

Now, before the Inter-American Commission, Claimant had to overcome the obstacle placed by Article 46.1(b) of the American convention on Human Rights which orders--and you can see it on the screen-- the inadmissibility of a petition that is submitted more than six months after the alleged victim was notified of the last judicial act, a matter of knowledge.

With this in mind, SSA LLC held that the six-month limitation period established in Article 46 should start to run from 26 November 2012, the date in which Colombia allegedly notified its definitive decision not to subject to the Supreme Court Decision.

The reason for this is even more important for the ratione voluntatis assessment. As noted by Claimant

before the Inter-American Commission, the reason to start counting the time limitation period from 26 November 2012 is that this was the date not only of the definitive confiscation without compensation of its treasures, but also the date it was notified of said confiscation without compensation.

Allow me to read from the exhibit, because this is really, really important.

Said answer from 26 November 2012 was the notification of the definitive purpose of the Republic of Colombia of not complying with the judgment of its Supreme Court. This necessarily implies, in addition, the notification of the definitive confiscation of its treasures without the payment of compensation. This necessarily implies in addition the notification of the definitive confiscation of its treasures without the payment of compensation.

As seen on the screen, Claimant connected this conduct to a breach of the right to property contained in Article 21 of the American convention. And this is important because, as you can see, there is an evident substantial overlap between the two rights protected in Article 21 of the American convention and Section 10.7 of the TPA.

As the slide shows, both standards protect the

right to property, and in both cases, the right to property is said not to be affected except for public purpose and upon payment of fair compensation.

Moreover, Claimant's elaboration also clarifies that as early as 2012, it was of the view that Colombia had acted arbitrarily; that is, in breach of the FET standard. As you can see on the screen, SSA LLC argued that although after an interview on 11 June 2011 there seemed to be a change of attitude in favor of compliance with the 2007 Supreme Court Decision, corruption would have once again changed the course of action leading to the 26 November 2012, when the Republic of Colombia definitively rejected its access to the shipwreck in any form.

This shows, based on Claimant's own admissions, that Claimant first gained knowledge of the alleged breaches as well as the resulting laws deriving from Colombia's confiscations well before 18 December 2019. That is in favor and violation of the condition of consent established in Article 10.18.1 of the TPA.

Now, Claimant's response contains the false assertion that as Colombia appears to acknowledge, the underlying courses of action in both the U.S. litigation and the Inter-American Commission petition which arose out of Colombia's reluctance to allow SSA access to its discovery were addressed once the Colombian government

agreed to meet with SSA to discuss joint verification.

Claimant also refers to the withdrawal of the new Civil Action before the Civil District Court and the petition before the Inter-American Commission as a result of Claimant's desire to comply with Colombia's alleged condition to meet with Sea Search-Armada to discuss just--to discuss joint verification.

Finally, in the rejoinder, Claimant tries to minimize the fatal impact of its admissions before the D.C. District Court and the commission by claiming that, and I quote: Colombia later reversed this position by agreeing to engage in discussions with SSA to verify the precise location of and salvage of the San José from the Discovery Area.

But this is all irrelevant and not true. First, as mentioned before, Colombia's internal conceptions of its alleged conduct is irrelevant under Article 10.18.1. But this is also not true. Suffice it to note in this respect that the alleged invitation from Colombia to discuss verification is based on Exhibit C-32, which corresponds to a letter dated 22 December 2014 from the Minister of Culture where she refers to a communication by Fernando Arteta, presumably connected with Sea Search-Armada, where he--he expressed the willingness of said company and, in this part the Minister's letter quotes from Mr. Arteta when

asking to initiate a dialogue to attempt a negotiated solution to the application of the judgment of the Supreme Court of Justice of 5 July 2007, which settled the controversy with the nation over the shipwreck whose property was the object of litigation.

However, as it is objectively discernable from the 22nd December 2014 letter, the Minister of Culture nowhere refers or invites Sea Search-Armada to discuss joint verification.

That being clear, Colombia will now proceed to the very last part of its presentation to show you the several instances between 2015 and 2019 where Claimant should have known about the alleged breaches and the resulting loss it is claiming for this Tribunal.

We will try to be brief because everything is amply substantiated in the greater submissions.

So first--

PRESIDENT DRYMER: Which the members of the Tribunal have amply read, just to be clear.

MR. VEGA-BARBOSA: We will need to be brief on this, yes.

PRESIDENT DRYMER: Thank you.

MR. VEGA-BARBOSA: First in the slide, that Exhibit C-35, showing a letter sent on 20 May 2015 by Claimant to the Minister of Culture recognizing Colombia's

long-standing position that the 2007 Supreme Court Decision excluded the surrounding areas of the 1982 Confidential Report from its ruling and therefore, SSA had no right over the so-called Discovery Area.

This is the second instance, post-treaty where Claimant should have known of the alleged breach and resulting damage. Now we have on the screen Exhibit C-37, which contains Colombia's former President Santos--and this is very important--statement of fact December 2015 regarding the actual discovery of the Galeón San José.

As you can see on the screen, there is no single mention to Claimant or its alleged predecessors as the ones who found the Galeón San José this is the first--the third instance post-treaty where Claimant should have known of the alleged breach and resulting damage. And we ask: What else does a treasure hunt company need in order to gain knowledge that it's alleged rights over the alleged treasure, inside a galleon had been fully eviscerated that an express announcement by the President of that country that the government found the galleon without its help.

On the screen now is Exhibit R-28 which contains a letter dated 17 June 2016 from the Ministry of Culture making clear to Claimant once again that it did not have any right over the Galeón San José. I open quotes to the express position of the ministry of culture: The Supreme

Court of Justice's ruling is clear. It does not admit interpretations and no alleged rights over the Galeón San José can be inferred from it, as you claim.

Furthermore, the Ministry of Culture stated that in 2007, the Supreme Court Decision did not confer Claimant any rights over areas different from the express coordinates stated in the 1982 Confidential Report; therefore, quashing Claimant's new argument related to a right over the so-called Discovery Area. This is the fourth instance post-treaty where Claimant should have known of the alleged breach and resulting damage.

Now on 4 November 2016, Claimant sent, once again, a letter to Colombia's president restating their alleged property rights over the Galeón San José. On the screen is Exhibit R-29, containing a letter of 13 November 2016 where Colombia responds once again to Claimant by restating the longstanding position that having verified the coordinates indicated in the 1982 Confidential Report, there was no trace of any shipwreck in that place and that, therefore, there was no place for Claimant to allege that 50 percent referred to in the 2007 Supreme Court Decision.

This is the fifth instance post-treaty where Claimant should have known of the alleged breach and resulting damage.

Currently on the screen is Exhibit R-37, containing a letter dated 5 January 2018 where the Ministry of Culture reminded Claimant that neither the DIMAR Resolutions nor the local courts had conferred any rights over the Galeón San José to Glocca Morra Company this is the sixth instance post-treaty where Claimant should have known of the alleged breach and resulting damage.

Finally, and this is very, very important, on the screen you have Exhibit C-40 this is an exhibit from Claimant containing a letter of 17 June 2119 before the critical date of 18 December 2019 where the Vice-President of Colombia unambiguously rereminded Claimant that since the San José shipwreck could not be found in the coordinates indicated in the 1982 Confidential Report, it could not claim any right over it.

As you can see, the rationale of the Vice-President of Colombia was flawless since it was based on decades of consistent conduct by Colombia. First quoting from the relevant operative paragraph of the 2007 Supreme Court Decision the Vice-President reminded that pursuant to Article 700 of the Colombian Civil Code, the Supreme Court expressed the condition for any right on the assets being located in the specific coordinates indicated in the 1982 Confidential Report without including any other spaces or areas.

Second, the Vice-President reminded Claimant of the verification work carried out in the coordinates in 1994 by Columbus exploration, which included not only a site visit but the testing of the wood samples by beta Analytics, actually, the same expert relied upon by Glocca Morra Company in 1982, and the conclusion of which was that there was no shipwreck at all in said coordinates let alone the San José and that the sample did not belong to any shipwreck.

The 17 June 2019 letter even includes the demonstration that the State adopted as its own the act of Columbus exploration. As you can see on the slide, the Presidency of Colombia sent a letter to DIMAR appending the 1994 press release expressing that based on the Columbus Report, and I open quotes: the government--the government has concluded that no shipwreck exists in the area.

Finally the Vice-President made reference to the finding of the Galeón San José by marine archeology consultants a Swiss investor in 2015 noting that as has been certified by DIMAR, the coordinates reported by this company did not correspond to those reported by Glocca Morra Company back in 1982 (maritime consultants).

In light of the above, the letter concludes, we must say with desperation, in the following terms this has been communicated since 1994. So it is hard to understand

why the company insists on a claim without a case, this is the seventh instance post-treaty where Claimant should have known of the alleged breach and the resulting damage.

Members of the Tribunal, the recollection of exhibits just made by Colombia including SSA's own admissions before the D.C. district court and the Inter-American Commission on human rights and the government make one thing clear: Claimant knew or should have known about the alleged unlawful expropriation and the deprivation of the value of its investment and of the other alleged breaches through various instances, seven, in fact, of unequivocal State conduct between 2012 and 2019.

If Claimant wanted to initiate an investment arbitration proceeding against Colombia once the TPA entered into force on 15 May 2012, it had plenty of opportunities in the post-treaty period.

In light of the above, the arbitral tribunal lacks jurisdiction ratione voluntatis.

Thank you Members of the Tribunal.

ARBITRATOR JAGUSCH: If I may, counsel. It's very interesting. But you talk about knowledge of the breach. But the breach is the Resolution 85. That's how the claim is brought. And--right?

MR. VEGA-BARBOSA: No.

ARBITRATOR JAGUSCH: So if I understand--no, it's

not.

MR. VEGA-BARBOSA: Claimant submits that the breach comes from Resolution 85 from 2020.

ARBITRATOR JAGUSCH: Yes.

MR. VEGA-BARBOSA: But as mentioned before that is just their charring conversation of the relevant measure.

ARBITRATOR JAGUSCH: But it's not making claims in respect to those prime measures its making its claims, as I understand it, from the effect of Resolution 85. It maintains that Resolution 85 is an act that amounts to a treaty violation, not only as to expropriation but also as to fair and equitable treatment and so on and so forth.

So I'm just struggling with how you put the relevance of the various complaints that the Claimant may have legitimately made post-treaty entering into force but before Resolution 85 when, in fact, its only claim is for the consequences of Resolution 85.

It may be--and I don't want to put words in your mouth, but I'm just trying to understand--it may be that your argument is whatever was taken, if anything, by the Resolution, it was of no value or considerably less value because the Claimant knew or ought to have known that Colombia was not recognizing that it had any lawful investment at the time.

And if that's right, wouldn't that just go to the quantum of the claim for the effects of Resolution 85?

MR. VEGA-BARBOSA: So as a threshold matter, we must say that under Article 10.18 what is relevant is not the designated measure. That is relevant under Article 10.1.3 for the ratione temporis preliminary objection. What is relevant for Article 10.18.1 under the ratione voluntatis objection is the breach. And the breach, they say is an expropriation without compensation, violation of the FET standard via an arbitrary conduct and as previously mentioned, the breaches it should have been the knowledge of claimant took place well before, in this case, because this is what is relevant, the time limitation period in 18 December 2019 this is what we should look at. The relevant breach that they have identified not the relevant measure.

ARBITRATOR JAGUSCH: The relevant breach is surely what the Claimant claims is the relevant breach.

MR. VEGA-BARBOSA: Which is expropriation and arbitrariness.

ARBITRATOR JAGUSCH: Yes. But brought about by Resolution 85.

MR. VEGA-BARBOSA: It is Claimant's submission that Resolution 85 is a triggering measure versus a breach. We say that, first, because of their own admission before the inter-American commission, the breaches expropriation

without compensation and arbitrariness took place as early as 26 November 2012 and, moreover, that they were notified--they gained knowledge of such breach that early. We say afterwards that there were at least seven occasions in addition where Claimant should have gained knowledge that their--that the breach expropriation without compensation occurrence had already taken place.

ARBITRATOR JAGUSCH: But I think you would accept that there was no occasion prior to Resolution 85 where the Claimant knew or ought to have known that it would have a claim arising from the effect of Resolution 85.

MR. VEGA-BARBOSA: One moment.

ARBITRATOR JAGUSCH: Look, it may not be an important question. But it's something that's bothered me and I don't want to hold you to an answer now particularly at this time of day. But you might again just want to reflect on our discussion.

MR. VEGA-BARBOSA: I would like to answer that question immediately. Because the problem with the question and with Resolution 85 is that it touches on one of the elements that were relevant in the 2007 decision that is the nature of the assets. And this one refers to the assets insusceptible of being characterized as treasures. What Resolution 85 does is to preempt any possibility for these assets wherever found to be

characterized as treasures but with respect to the Galeón San José; right.

This is, we say and we have--it has been or position for the past one hour and a half, two hours, three hours, that Resolution 85 has no material relationship with this Claimant because this Claimant has no right whatsoever.

ARBITRATOR JAGUSCH: You say that. It is the sole claim at least as I understood it. You said it has no material connection. It is the cause of action. It is the event that they say creates an expropriation without compensation and breach of the other obligations under the treaty.

MR. VEGA-BARBOSA: Yes but this was expressly--the concern expressed and position expressed relying on the relevant case law by non-disputing Party submission. Even if you can find other examples of a breach further in time, that doesn't mean that you can violate a State party's condition of consent because that would mean that that condition of consent would be merely superfluous. If you were to be able to notwithstanding edification of knowledge--first knowledge which is what is relevant first knowledge of a breach well before a breach of the three-year limitation period and then just find another expression of said violation, then the time period

you would have no purpose whatsoever and that was the express concern of the Non-Disputing Party and we believe that that reflects the current state of the law under international law.

ARBITRATOR JAGUSCH: I understand. Thank you.

PRESIDENT DRYMER: Anything further, counsel, at this stage before lunch.

MR. VEGA-BARBOSA: No we are ready for lunch.

PRESIDENT DRYMER: Very good. So we will adjourn for no more than 45 minutes, please. And during those 45 minutes, the Tribunal may come to the Parties and--may come to the counsel for The Republic and ask you to shorten your remaining submissions. All right? The schedule is indicative. The essential principle is fairness and that's the essential principle to which we'll adhere, ensuring that all parties, including the non-disputing party, has an opportunity to have their say.

How much time do you think you need for the remainder of your presentation? Subject to what the Tribunal might decide.

MS. ORDÓÑEZ PUENTES: Ten minutes.

PRESIDENT DRYMER: Ten minutes.

MS. ORDÓÑEZ PUENTES: Yeah.

PRESIDENT DRYMER: Very good. Fine. We will adjourn.

Mr. Moloo, does this work for you? We're going to adjourn for 45. We may hear Respondent for 10 more minutes, and then you'll move immediately to your submissions. Would that work?

MR. MOLOO: Absolutely. I should mention I have a procedural conference in another case at 6:30. I'll try and move it, I'm not sure. We may trespass on that.

PRESIDENT DRYMER: I said earlier we might sit longer than 6:00 p.m. and it had not been my intention to sit beyond 6:30 but let me take a look at the numbers and the math and we'll confirm with you before we begin in 45 minutes.

ARBITRATOR JAGUSCH: To participate in this other matter when would you need to leave this room.

MR. MOLOO: 6:20/6:25.

PRESIDENT DRYMER: We're adjourned until 2:30 p.m.

Thank you all.

(Whereupon, at 1:38 p.m., the Hearing was adjourned until 2:20 p.m. the same day.)

AFTERNOON SESSION

PRESIDENT DRYMER: Very good. Thank you.

Ladies and gentlemen, welcome back.

Counsel, you said you might have ten minutes left. I hope--I ask you please to try to stick to that. We're a bit over schedule. Every minute counts. A lot of that is the Tribunal's fault.

I just want to say that we're going to be a lot more restrained for the rest of this afternoon. That's not because we're any less interested in what you have to say or any more willing to take it at face value. It just means that we're going to hold many of our questions until tomorrow, all right, to be clear.

Señora, the floor is yours.

MS. ORDÓÑEZ PUENTES: Thank you.

To conclude the submission, Colombia reiterates their request for an award on costs in its favor and the application for security for costs.

For the record and for the reasons you have heard, Colombia has not dropped the allegation that this arbitration is abusive.

According to Article 10.26 of the TPA, we request the Tribunal to award Colombia the costs incurred in this arbitration based on the frivolous nature of SSA's claim, which is yet another failed attempt to adjust its narrative in order to substantiate the claims they have lost before domestic, foreign, and international fora.

For over 30 years, Colombia has had to

participate in all these proceedings even though SSA, LLC, acknowledges that it knew from the outset that the Galeón San José was not located within the coordinates indicated in the 1982 Confidential Report.

The Republic of Colombia condemns SSA's conduct within this arbitration. This proceeding is the materialization of a threat of continuous litigation due to Colombia's unequivocal and consistent response rejecting demands related to rights SSA has never had.

At this point, we all know that SSA is not paying for its own counsel fees and that Gibson Dunn has an agreement--and I quote--to offset contingency fee agreements entered into by the firm like the one on this case, end of quote.

In other words, the economic resources through which Claimant is covering the legal representation in this arbitration are being secured by a third party through the Financing Facility Agreement.

On the contrary, the Republic of Colombia is using taxpayers' money to cover the costs of this arbitration, and it is just fair to expect a full recovery of these costs.

The whole arrangement used by Claimants to fund this case, which includes the contingency fee arrangement and the financing facility agreement, qualify as

third-party funding. Third-party funding has been considered by investment arbitration tribunals as a decisive element deciding on State's application for security for costs.

This was the case in Garcia Armas vs. Venezuela, an arbitration also conducted under the UNCITRAL Arbitration Rules. In this case, you see that the Tribunal acknowledged the relevance of the existence of third-party in the assessment of the Respondent's possibility of executing a potential award on costs.

The fact that third-party funding agreements do not cover potential adverse awards and costs was considered by the Tribunal in Dirk Herzig versus Turkmenistan as a circumstance likely to undermine Respondent's rights to enforce an order for costs and a critical and decisive factor in its decision to grant security for costs.

In the case at hand, Claimant's counsel has been reluctant to disclose whether the Financing Facility Agreement covers a potential adverse award on costs. That is why we say that there is no certainty as to whether Colombia would be able to enforce a potential award on costs in its favor.

What is certain, indeed, is that there are serious doubts that Claimant, by itself, would not be able to cover an adverse award on costs considering it is not

even paying for its own counsel's fees.

Article 26(3) of the UNCITRAL Arbitration Rules provides for a three-tier test according to which the applicant shall satisfy the Tribunal. Under the three-tier test established in the UNCITRAL Rules, the contingency fee arrangement between Claimant and its counsel is indicative of Claimant's inability to cover a potential adverse award on costs.

This circumstance, along with the lack of certainty as to whether the Financing Facility Agreement covers a potential adverse award on costs implies that Colombia is likely to be deprived from its right to recover the costs incurred in an arbitration proceeding that will terminate in its favor for jurisdictional reasons.

This certainly constitutes a harm not adequately but be repairable by an award of damages and thus an exceptional circumstance under which security for costs is warranted.

In fact, the lack of a guarantee as to Claimant's ability to pay an adverse award on costs was considered by the Tribunal in Garcia Armas vs. Venezuela as a circumstance under which the Respondent State was likely to face harm not adequately repairable by an award of damages. The Tribunal in Garcia Armas v. Venezuela further acknowledged the risk faced by Respondent States of not

being able to enforce favorable award on costs in cases of third-party funding and, in this context, the relevance of obtaining some sort of guarantee which in the case at hand is also in existence.

With respect to proportionality of Colombia's application for security of costs, it is not likely that SSA, unlike Colombia, might suffer any harm resulting from said measure.

It is undisputed that SSA is not bearing the legal representation costs in these arbitration proceedings. Therefore, although Colombia's request for security for costs, if granted, might result in a decision ordering SSA to secure funds for said purpose, this does not affect in any way its access to the TPA's adjudication system and Claimant has not proven otherwise.

By contrast, Respondent's likeliness of not being able to recover an award on costs is certain considering Claimant's proven inability to cover the legal representation costs in this arbitration.

Finally, as required by Article 26(3) of the UNCITRAL Arbitration Rules, there is more than a reasonable possibility that Colombia's jurisdictional objections will succeed.

In light of these considerations, Colombia's request for security for costs is fully compliant with the

requirements required in Article 26(3) of the UNCITRAL Arbitration Rules.

Therefore, Colombia respectfully requests the Tribunal, pending its decision on jurisdiction, to order Sea Search-Armada to post security for costs in the amount of USD $800,000.

Mr. Chairman, Members of the Tribunal, in light of the frivolous character of SSA's claims in this arbitration, which also extends to the defenses raised within this expedited proceeding, Colombia respectfully asks the Tribunal to, first, declare that it lacks jurisdiction over all the claims submitted by Sea Search-Armada, LLC.

Second, order Sea Search-Armada, LLC, to bear all the costs of this arbitration, including legal fees assumed by the Republic of Colombia.

Third, order that, pending its award on jurisdiction, Sea Search-Armada, LLC, post security for costs in the amount of no less than USD 800,000 to cover a potential award on costs in favor of the Republic of Colombia, and to be deposited in an escrow account or provided as an unconditional and irrevocable guarantee or as the Tribunal deems appropriate in light of the circumstances underlying Respondent's request.

Thank you for your attention.

PRESIDENT DRYMER: Thank you, Señora Ordóñez.

Any questions? Not at this point?

One matter I'd like you to think about before tomorrow. I'm asking you please not to answer now. Let's save time. You've asked for an award of costs, but you haven't specified what your costs are.

Tomorrow tell me if you have any comment on how that might potentially be addressed. I think I know what your answer will be, but I'd like to hear from you tomorrow.

MS. ORDÓÑEZ PUENTES: Okay.

PRESIDENT DRYMER: All right. And just so--yes. And your basis for an order for costs, again, so that I'm clear, the--not security for costs, an order for costs, is that this proceeding is abusive because SSA has known or should have known for a long time that the Galeón was not within the coordinates indicated in the 1982 report.

Is that it? Have I understood correctly?

MS. ORDÓÑEZ PUENTES: That is correct. That they know that they have no rights over the Galeón San José.

PRESIDENT DRYMER: Very good. Okay.

So that's fine. Thank you.

And thank you, Counsel for the Republic, for an excellent job and for including your answers to the Tribunal's questions this morning and this afternoon.

Now, without further ado, assuming, Mr. Moloo, you and your team are ready, the floor is yours.

OPENING STATEMENTS BY COUNSEL FOR CLAIMANT

MR. MOLOO: Thank you very much, Mr. President.

Let me just first check by making sure that I can be heard by everybody. Yes.

PRESIDENT DRYMER: Have we received slides?

MR. MOLOO: Yes. Both on Box and by email.

PRESIDENT DRYMER: Thank you.

MR. MOLOO: It's quite a large file.

PRESIDENT DRYMER: Don't wait for us. Please proceed. If you have physical hard-copy handouts--

MR. MOLOO: We do have physical hard-copy handouts. It's in Box as well. It's a 44-megabyte email.

PRESIDENT DRYMER: Please proceed. We're ready to start based on what we see in front of us.

MR. MOLOO: Okay. Just making sure my friends have a copy.

Well, thank you very much, Members of the Tribunal. We very much, obviously, appreciate the time and dedication that you have obviously given to this case and preparing for us being here today.

My goal today is, in fact, to answer any questions you have and to try and make this job a little easier for you. So please do not hesitate to ask any

questions you have. I will adjust my presentation accordingly to make sure that it fits the time.

To start--

PRESIDENT DRYMER: Be careful what you wish for.

MR. MOLOO: It's a good warning.

PRESIDENT DRYMER: No, no, no. Not a warning. I want to be sure that you have the opportunity to have your say--

MR. MOLOO: Absolutely. I appreciate that.

PRESIDENT DRYMER: --as well.

MR. MOLOO: I appreciate that.

Let me start by saying that as I was listening this morning and this afternoon to my friends, it was a little bit like ships passing in the middle of the night, no pun intended.

And the reason behind that is because a lot of what we heard this morning and earlier this afternoon--and I'll go through it nonetheless--in our view is irrelevant to the current phase that we're in right now.

I'll explain to you why I think that's the case. But I want you to have in your mind what, in fact, is relevant for the Tribunal to assess for purposes of jurisdiction.

So I will give you some background facts. But before I get into the background facts, I will set out the

standard of review and the burden of proof so you, at least in our submission, can appreciate my submissions on the facts at least within the proper context for purposes of this jurisdictional phase.

Before I do that, I think it's helpful, especially in a case like this, to take a step back and see what it is we're talking about and maybe go a little bit further back in history than 1979, where my friends began.

And so if you'll indulge me. And I promise you I won't cover the entire 300-year period, but I will start in the 1700s.

And I'll start in 1708 because that's when the San José left Portobello in Panama and was headed to Cartagena. This was a ship that had been built in 1698. It was considered to be the Captain of the Navy of the Guard for Spain. It was a very important vessel at the time. And it had traveled to the New World to collect, among other things, treasure from the New World and to bring it back to Spain.

And in 1708, filled with treasure, gold, and other private goods, the San José was about to embark on a journey. And when it was about to embark on a journey, it was early summer and the hurricane season was approaching, and so it had a decision to make whether or not it would leave Portobello in light of certain threats that were

imminent.

The threats that were imminent were a UK--an English battalion essentially of four ships led by Commodore Charles Wagner, who was on an expedition in the Caribbean and knew that this vessel, in particular the San José and other ships, were going to be traveling back to Spain with all of this treasure.

And so they had a series--they had a network of spies that were sort of tracking where the San José was going to be. And the Governor of Cartagena sent a warning to the San José that said: You're being tracked, so you might not want to come to Cartagena.

But to avoid the hurricane season, nonetheless, the San José embarked on this journey. And on June 7th, 1708, it was found near Barú by Commodore Wagner and his fleet.

And you will all have read what happened the very next day on June 8th, 1708.

On June 8th, 1708, the two fleets met each other and there was a battle that lasted at sunset, about an hour and a half long. That's what the accounts say.

And after an hour and a half, in a very short amount of time after a gun battle at very close proximity, one ship sank, and that was the San José.

And, in fact, Commodore Wagner was

court-martialed because his mission was not to sink the San José. It was to capture the San José. But the outcome of the battle, as we all know and is now infamous, was unfortunately that the San José sank. And with the San José, all of the treasure aboard it sank as well.

And I want to go back to slide 5, if I might. You've heard it a lot this morning, but this treasure that sank with the ship included 7 million pesos, 116 steel chests full of emeralds, 30 million gold coins, what Colombia has said this morning in their submissions, the biggest treasure in the history of humanity, a treasure that I dare guess did not fit within 9 square meters.

And, in fact, you can see what that treasure looks like today because there is no doubt, there is no dispute that the San José treasure has been found. That is not in dispute.

What's in dispute is who found it. But it's not in dispute that it has been found.

And here are some modern images, and you can see it changes color if the graphics work. You can see some parts of treasure, cannons, and this is just a part of it. Because what happens when you have a gun battle and a ship that blows up is you have a dispersion field.

Just to give you a sense, the Titanic, when it sank--and it didn't blow up--it was about a 3 to 5-mile

dispersion field.

PRESIDENT DRYMER: It was also 2 miles under water, I believe.

MR. MOLOO: It was 2 miles under water and it was found much less than 300 years later. And over time, obviously, you would expect the dispersion field to increase, given the currents, et cetera.

And the explosion scattered the pieces over the centuries and the elements helped bury the ship under sand, rock, and/organic matter. So, what you see is not a particular ship, but you see parts of the heavier stuff, if I can call it, some of the cannons and things of that nature.

PRESIDENT DRYMER: And the scale at the bottom, those are meters?

MR. MOLOO: Those are meters.

PRESIDENT DRYMER: 5000 meters.

MR. MOLOO: I believe those are meters, yes.

PRESIDENT DRYMER: Very good. Thank you.

MR. MOLOO: And, obviously, it's scattered over a much larger area, but you can see with today's technology, on the next slide, they can get fairly close up and take, you know, specific pictures of what they're finding on the bottom of the ocean floor.

If you go to the next slide. Again, here you can

see a lot of rocks because at that time they used rocks as part of the ballast. They were made of wood and needed to be ballasted to float properly, as I understand it, so they used, among other things, iron artillery, rocks, and things of that nature. And you can see some of that at the bottom of the ocean floor.

And what you can also see today, which with technology in the 1980s you couldn't, is you can actually see on the next slide gold coins. You can see some of the treasure. So there's no doubt that this treasure has been found.

What we say the question for this Tribunal is, is who and whether or not the Claimant is entitled to some part of that treasure, or whether, in our submission, Colombia gets a windfall because they--the treasure was found and is now in the possession of Colombia, whether they just get to keep it all.

You know, it's funny because in investment arbitration, it's often the State accusing the investor of claiming and getting a windfall. Here it's exactly the opposite in our submission.

In our submission, there is a treasure. It has been found. No question about it. And the State says it's all theirs. In our submission, that would be a windfall because it was due to the efforts of my client and their

predecessors that it was found.

Those are our submissions.

And where was it found? And I understand that it's not--well, at least it's not clear what Colombia's position is with respect to the Infobae article. But there was an investigative report that has identified--it's a very credible news source, one of the leading news sources in Latin America, that identified where they say Colombia found the treasure. And that's the green dot.

And the red dot is where the coordinates that were presented--specific coordinates--and we will talk about, you know, what the vicinity means and we will get to that. But the specific coordinates are indicated by the red dot. And those are about 3 miles apart.

PRESIDENT DRYMER: Nautical miles?

MR. MOLOO: Nautical miles. So I think that's--

THE INTERPRETER: 1.34.

MR. MOLOO: Thank you, Mr. President. I looked it up, but I didn't have it off the top of my head, so I appreciate it.

So you can see that the proximity is, in our submission, within the surrounding area even if you accept that those coordinates are the correct coordinates.

Now, quite clearly, as I mentioned, there is a dispersion field. To suggest, as we heard for the first

time this morning, that pinpoint coordinates allocate a 3 by 3-meter area, that's about a tenth of this room. This is a thousand-foot galleon. To suggest that you're going to precisely allocate--and first of all, that it could even fit within a 3-by-3 area is, quite frankly, ridiculous.

They recanted on that a little bit later on and they said, well, they provided a rectangle. I'm going to come onto that.

But in the 1982 report, as you all will have seen, there was a specific coordinate and it said "within the vicinity of." There was sort of a broader area given at some later point in time, and I'll come onto that in due course.

So with that by way of background, what are the issues that are before this Tribunal that have been agreed by the Parties? They're the ones that are up here. And we heard about some of them today, but not all of them, in this morning's presentation. But I'll--and between myself--and I should mention my colleague, Ms. Ritwik--we will address each and every one of these.

Before I do, as I promised, where I want to start before we go into the facts in further detail is what is the burden and the standard of proof that applies at this phase of the proceedings.

The burden of persuading the Tribunal to grant

preliminary objections rests with the party that's raising the objections. I don't--I hope that's not in dispute. That is Respondent.

And you heard from Respondent this morning, and we completely agree, that in bringing a proceeding under 10.20.5, it suspends the merits of this proceeding. That's expressly on the next slide, in 10.20.5 itself. And we appear to agree on that.

What we don't agree on is what that means in terms of the three of you gentlemen, how you should interpret or accept our facts. And what they say is this prima facie test that we've proposed to you only applies to 10.20.4, but does not necessarily apply to 10.20.5.

However, what I think I heard this morning is that they accept that this Tribunal has discretion as to whether or not they want to join some of the merits issues and some of the facts to the merits of this dispute.

PRESIDENT DRYMER: I think they agreed with your proposition that we should decide in accordance of Bridgestone.

THE STENOGRAPHER: It is difficult to hear you, sir.

PRESIDENT DRYMER: Oh. Well, Mr. Moloo, I think they said that they agree with your proposition which I believe is at Paragraph 150 of your response, although I

don't have it in front of me, that this Tribunal should decide in accordance with Bridgestone, specifically Paragraphs 118 to 121 of Bridgestone; right?

MR. MOLOO: Precisely. And those are the paragraphs we have up there precisely.

PRESIDENT DRYMER: Very good.

MR. MOLOO: I think just for the avoidance of doubt, we are on the same page, however I did hear that you did not need to necessarily accept the facts as pled on a prima facie basis, so I'm not sure if that's being contested.

What I would submit to this Tribunal, however, is in exercising its discretion under the UNCITRAL Rules, that is the test that should apply and that is the test that Bridgestone indeed applied because it makes sense.

And what is that test? That test is essentially if there's a purely jurisdictional fact, that is something that the Tribunal would need to assess at this stage or it would be reasonable for them to assess at this stage.

PRESIDENT DRYMER: Reasonable for us to assess or we're obliged to assess? What do you say?

MR. MOLOO: I say you have discretion. I accept their standard. However, I can say with confidence that you can definitively determine any purely jurisdictional fact, purely jurisdictional fact at this stage.

PRESIDENT DRYMER: Very good. Which is what Bridgestone says at 118.

MR. MOLOO: Which is what Bridgestone says at 118. And so in exercising your discretion that is the Bridgestone test. Any purely jurisdictional fact is one that a Tribunal is likely going to want to assess definitively at the preliminary stage. Any that is intertwined with the merits, it makes sense to accept it on a prima facie basis for the purposes of a jurisdictional objection.

PRESIDENT DRYMER: That I'll ask you to expand on in due course because that's not within those four key paragraphs of Bridgestone.

MR. MOLOO: Well, so, I would suggest at 120--

PRESIDENT DRYMER: Okay.

MR. MOLOO: --it says: The Tribunal rejects Panama's submission that it has no authority on an expedited objection to competence under Article 10.20.5 to reach a decision on a prima facie basis and to join the issues of competence to the merits of the dispute.

Such authority is essential if the Tribunal is to be in a position to prevent the hearing of the expedited objection turning into a mini or even a maxi trial. It is also consonant with the obligation under Article 10.20.5 to suspend any proceedings on the merits.

So the way I interpret that, is to say, if there are facts that are intertwined with the merits of the dispute, those are the kinds that the Tribunal might be inclined to use its discretion and say those are ones I'm going to accept on a prima facie basis and--so that it doesn't turn into a mini or maxi trial and defer those to the merits.

PRESIDENT DRYMER: Understood. Thank you.

MR. MOLOO: That's my interpretation of 118--sorry, 120.

Yeah. And 119 also says that, where an objection as to the competence raises issues of fact that will follow for a determination at the merit stage, the usual course is to postpone the final determination of those issues at that stage.

And this is precisely because they don't want this to turn into a mini or maxi trial, and that's what we have on the next slide, a couple of quotes from both Bridgestone and Pac Rim that confirm that concept.

So what that leaves you with, in our submission, is the only way in which you should not accept our submission, the facts as we've alleged them, prima facie, is if the Respondent is able to adduce evidence that conclusively contradicts those facts. And that's what you see in Chevron versus Ecuador where the Tribunal said,

"This means that if the evidence submitted does not conclusively contradict the claimant's allegations, they are to be assumed to be true for the purposes of a prima facie test."

Now, that's interpreting a different treaty of course, but that's saying--that's when, in their view, they should not defer a question of--or accept, I should say, the facts as alleged and, you know, just decide them up front at the jurisdictional stage.

Yet, this morning, when we--when asked a few times, Colombia did not say that they were even trying to affirmatively disprove any of the facts that we were--that we alleged. And, in fact, I think in response to one particular question from Mr. President, they said, We're just alleging that the Claimant has not met its burden of proof. We are not affirmatively trying to prove one way or the other or that they--our case or our version of the facts as being true.

And with respect to whether or not we found the San José, we've also heard Colombia take the position that they are not going to take a position as to where exactly the San José was or was not found at this stage of the proceedings or perhaps at any stage of the proceedings.

PRESIDENT DRYMER: Well, they have taken the position that it was not found within the specific

coordinates, I believe.

MR. MOLOO: So I think--I'm not sure about that.

PRESIDENT DRYMER: Okay.

MR. MOLOO: I think--I think one point when asked about this, the response was in 1994, we adopted the position of the Columbus Report. So to me it wasn't clear if that was simply a statement that they were--that in 1994 they adopted the position reflected in the Columbus Report, or if they are saying today that the San José is not within the--what I'll call Discovery Area. And, by the way, just for the avoidance of doubt, when we say Discovery Area, we mean the area defined in the 1982 report.

PRESIDENT DRYMER: Coordinates and--

MR. MOLOO: And vicinity.

PRESIDENT DRYMER: --immediate vicinity.

MR. MOLOO: Correct.

PRESIDENT DRYMER: All right. Okay.

MR. MOLOO: And I would say a second point to the extent that they are actually saying that it's not at the pinpoint coordinates, my understanding would be that there's a disagreement as to what we mean by "coordinates." I think they may be allege--they may actually be saying it may not be at the pinpoint coordinates. Because I understand their position to be that we did not have any claim over anything other than just that 3-by-3 square

meters.

PRESIDENT DRYMER: Target A, I think. No?

MR. MOLOO: I'm not even sure if it's as broad as Target A. I think it's the 3 by 3 meters at the coordinates that were identified.

So our submission is the facts as pled should be accepted on a prima facie basis unless conclusively contradicted.

And Colombia appears to accept this. They adopt a slightly different version of the conclusively contradicted test, and they say that it--you know, if they're frivolous, then that's the standard. There's a frivolousness threshold.

And that frivolousness language has been adopted in another case Mainstream versus Germany, and that case has made it very clear that the frivolous threshold is a very low one and that it relates, as you can see here, it simply means that on their face they appear to warrant serious attention and consideration by the Tribunal. And we think it won't surprise you that we clearly meet this test.

So with this in mind, what is the factual background that we are saying this Tribunal should accept on a prima facie basis? I will now take us to right around where Colombia started this morning around 1979, before

I--well, I'll start with the Civil Code, 700 and 701.

In 1873, Colombia passed this law that made it clear that treasure found on another's land shall be divided equally by the owner of the land and the person who made the discovery, so 50/50.

And then we've heard a lot about this, this morning. I'm sure the Tribunal has looked at this. DIMAR Resolution No. 48. They say, oh, well, it wasn't about the San José, you know. I don't know if that actually matters and we'll come on to that. But irrespective of whether or not that matters, just to be clear, it was obviously about the San José.

In the late 1970s, you had several members of--of the team at that time, Mr. Lyons included, who went to Spain in Seville and were researching the San José. The reason why they picked these specific coordinates is because that's where they thought the San José had sunk. It's not like they just picked them at random. They had done a lot of research about this particular battle that I walked you through earlier and identified that this was the place where it was most likely to be.

And you can see in DIMAR Resolution No. 48, that's why obviously in the preamble they're talking about the San José. They're saying, hey, this Reynolds company that had been looking for the San José, just to be clear,

we want everybody to be aware that they're--they don't have any rights to the San José. Why say that in the resolution if the San José was completely irrelevant? There's no other Galeón mentioned at all anywhere in this resolution except for the San José.

It is true that the rights granted are broader than that, but I don't think that's either here nor there. It certainly included rights over the San José, if that's what was found.

And that's what was authorized in Resolution No. 48. Glocca Morra Company was authorized to do underwater exploration in the areas hereafter set forth, and that included the areas that we then eventually searched and found--where we found what we now know to be the Galeón San José.

PRESIDENT DRYMER: You're going to eventually come on to the question you yourself raised as to why it's relevant that a specific vessel would have been targeted?

MR. MOLOO: I will come on to that.

PRESIDENT DRYMER: Very good.

MR. MOLOO: Yes, absolutely.

PRESIDENT DRYMER: That's an important question for the Tribunal.

MR. MOLOO: Yes, I will absolutely address that. Let me answer it briefly now, because I hate to leave

questions hanging.

It may or may not be relevant because ultimately the rights we obtain in--by finding the treasure and the shipwreck that we found was over that shipwreck and treasure.

If we--I'm not saying this is the case, but let's say for argument's sake that we didn't know at that time it was the San José Galeón. We still had rights to that treasure and that shipwreck, and I don't think that's being denied by Colombia. They're just saying we didn't specifically know at that time that it was the San José Galeón. That doesn't change at all the investment and the rights that we had. And if today we know that that Galeón is the San José Galeón, then Resolution 85 eviscerated those rights. Now that will be for the merits. You know, one of the first things they tell you is this case is not about did we find the San José.

I don't know how this Tribunal can divorce the question of whether or not we have rights over the San José from the question of whether or not we found the San José.

So I would submit that that is a question that this Tribunal is going to have to decide, but that's a decision--that's something the Tribunal is going to have to decide at the merits phase of this arbitration.

PRESIDENT DRYMER: Eventually you'll tell us

whether there are any jurisdictional questions that are not intertwined with the merits in your view. Don't answer it now.

MR. MOLOO: I will. I will.

PRESIDENT DRYMER: I don't want to take you too off track.

MR. MOLOO: I will.

PRESIDENT DRYMER: But that's important to us as well.

MR. MOLOO: Yes.

So coming back to the facts that we have to assume as being true. As this Tribunal will probably be aware, there were--and after the research phase in Seville, there were three phases where a significant amount of money was expended to hire the Morning Watch, which was a surface vessel, the Heather Express, another surface vessel, the State Wave in Phase 3, a surface vessel, and the Auguste Piccard, which has its own really interesting story which I don't have time to get into, which was a submarine vessel that was brought to Colombia for the purposes of finding definitively the--and doing further investigative work on the Galeón--what they had found.

PRESIDENT DRYMER: Do you know who Auguste Piccard was? Never mind the vessel. You know what, fascinating, that man. So you can look it up another time.

He explored the atmosphere. He explored the depth--explored the depths of the ocean. Anyways.

MR. MOLOO: Yes. No. And I know that he also inspired many different people, including those who wrote Star Trek.

PRESIDENT DRYMER: Okay.

MR. MOLOO: Like I said, its own separate story, which is fascinating. The 1982 report that we've heard a lot about discusses these three--well, the phases and the work that was--that had been done up to that date. And Phase 1 is described as involving a wide area of search using a side scan sonar, various other navigational equipment, and 50 prime targets were scheduled for future investigation as a result of that initial work done in Phase 1.

We move to Phase 2. They bring additional technical equipment, a TREC, which you--which is attached to a 5,000-foot cable that is basically dragged on the bottom of the ocean floor. This is in 19--from 19--October 1980 to August 1981. I'm actually pretty impressed that they had--who would have known that they had this technology back then. But they had television cameras, photographic cameras. Obviously not as good as what they have now. They had sonar and various other equipment that they brought on to that ship to identify and

look at these specific targets.

So I'm going to show you a video. And there's more video--hopefully we'll get to see it at the merits phase--of one of the finds that they found.

(Video played.)

PRESIDENT DRYMER: That's the Ellipses.

MR. MOLOO: I think the Tribunal heard what the Ellipses was, yes.

But as you can see, they have moments of clarity. Obviously the TREC is touching the bottom of the ocean floor. It's disrupting the sediments at the bottom of the ocean floor. It's a lot harder to see things at the bottom of the ocean floor back in 1980 when you're dragging a TREC on a 5,000-foot cable.

But that's what they did and they were on these ships for weeks looking for and finding things like a cannon. But it's not as clear as what you saw in those first pictures. This is the way they found these individual things. They found ceramics at one point. There were a number of things that they found. But this is the way they were going about finding all of the things that they found at the time.

And then we move to Phase 3. The Auguste Piccard also had a side scan sonar, a magnetometer. I'm going to talk a little bit about some of these things. But

hopefully at some point you'll be able to hear from someone who's more experienced about these things than me. An underwater television, sonar, et cetera, that helps them to identify what it was that they were finding.

And we saw this picture on the next slide in the presentation this morning, and they said, we have no idea who any of these people are.

Well, on the back of the picture, that's that--what you see on the top right there, and it says that the gentleman who's wearing the gray is the Colombia Navy rep. I don't know if you can read the handwriting there. It says, NV Colombia Navy rep in gray coveralls, top right.

So, in fact, at the back of that very picture, it tells you that's the Colombian Navy official. At all times there was someone from the Colombian Navy on the ships with them, and they were keeping contemporaneous records of all of this.

You also have on this picture Captain John Swann. He was the captain of the Auguste Piccard. Canadian office--Navy officer with over two decades of naval experience. You have Helmut Lanzinger, very well-known for pioneering electronic charting technology. He's a member of the Order of Canada. I'm not just highlighting the Canadians because I'm Canadian, nor that because Mr. Chairman, you're Canadian. There just happened to be

some really smart Canadians who were involved in this project. And they were supported by a number of other folks like Dr. Eugene Lyons, a historian and archivist on colonial era, Spanish, Central America.

ARBITRATOR JAGUSCH: Is there a date on the back?

MR. MOLOO: Is there--sorry?

ARBITRATOR JAGUSCH: A date. We were told it's not dated as well as--

MR. MOLOO: I have to double-check that. I'll come back to you on that. There's no date, but that--that is a picture of the Auguste Piccard. They're standing on the submarine.

ARBITRATOR JAGUSCH: You may recall the criticism made of this photo as probative evidence, which included that it wasn't dated. I get that you're now able to identify some of the people, but is there any other way of placing this in its proper context in the timeline?

MR. MOLOO: I--I will come back to you on that.

ARBITRATOR JAGUSCH: Yep.

MR. MOLOO: Thank you for the question. And if not today, then by tomorrow.

There was a number of--there was a lot more technical information that they acquired over time. Among other things, there was sonar readings. And what this basically is, as I understand it, and this is in C-106--is

a sonar reading of the discovery. It's an acoustic sonar reading. So essentially what you see in white is a shadow. It's an acoustic shadow.

So if you're--basically that means that something was in front of what you see in white. And further investigation confirmed that what they found on December 10th, 1981 was the San José. At the time what they identified in this acoustic shadow was about the same size as a big part of the San José. But that was one of the things that they identified in part of the area that they had identified in the 1982 report.

At the same place they also had very high magnetometer readings, which shows basically a spike in iron material. And it won't surprise you to know that a ship with nails and various ferromagnetic material, again, as part of the ballasts they had, among other things--correct--iron that would have formed part of that ballast. Showing a spike in the iron readings at that same location also gave them a clue that they had found the San José.

The Auguste Piccard also, perhaps serendipitously, ended up--a wood sample got stuck in the Auguste Piccard and they--when they came back up, they found this wood sample and they tested it. They carbon dated it. Experts found that it was from the same time

period and of the same make that--of the same type of wood, rather, that the San José would have been made from. So it's just over 300 years old. And it is from the type of wood, white oak, that was used to build these types of ships.

So there were a number of different indicators that they were led to believe, these experts, that they had found, in fact, the San José.

And so they wrote this report. They wrote a report, which is known now as the 1982 Confidential Report, and they outlined all of their findings, and they said the main targets in bulk and interest are slightly west of the 76 meridian and are just centered around the Target A and its surrounding areas. So it's Target A and its surrounding areas. I think that's an important part of it, because we--you know, I think we have to read this whole thing in context centered around target area and its surrounding areas that are located in the immediate vicinity of those specific coordinates.

So it's not just in the immediate vicinity, it's Target A and the surrounding areas located in the immediate vicinity of those coordinates. That's how they define the area in which they had found a number of different targets. It wasn't in one--in a 3-by-3 specific area. You can see that they had been traversing quite a large area and had

found a number of different wood piles, cannons and different targets. It would make no sense for them to pick a 3-by-3 area and say, that's where we're claiming. And that's not what they did. They claimed Target A and its surrounding areas that are located in the immediate vicinity of those coordinates.

And that--just--I know there was some confusion. Our reference to Discovery Area is a short form for that.

PRESIDENT DRYMER: There's no confusion anymore and I think that's understood now by your friends.

MR. MOLOO: And I apologize if there was any confusion.

And then we have DIMAR Resolution 354. And what does that do? DIMAR Resolution 354 acknowledges what has been found and it says--it doesn't say, you know--it doesn't refer to any specific coordinates. Rather, what it does, and this is important, it says there's been this discovery by means of technical proofs, which are included in the Confidential Report, and it makes Page 13, and what I just showed you is on Page 13, an integral part of this resolution. And it says, Acknowledges that Glocca Morra Company as Claimant of the treasure--Claimant of the treasures or shipwreck in the coordinates referred to in the Confidential Report at Page 13.

It doesn't give specific coordinates. It's

making reference to what is claimed in Page 13, and it makes it an integral part of the resolution.

At the time in 1983, so this is shortly after the report, you had a letter from the Colombian National Navy to the legal advisor to the President, and they write, The General Directorate of the Maritime and Port Authority requested and obtained from Dr. Fernando Ferraro, who I understand--well, at the time was legal counsel of this directorate, but is also a very well-known scholar in Colombia. He's reading as a--recognized as a foremost Colombian law academic. He was on the Colombian Supreme Court. Dean of Universidad Externado de Colombia, which I understand many of my colleagues across the way probably attended. He writes--

PRESIDENT DRYMER: And they obviously excelled.

MR. MOLOO: And they obviously excelled, of course. And the Dean of that faculty of law wrote a report on this matter in which he concluded that the discoverer was entitled to one-half, and owner the other half in light of Article 701 and 703 of the Civil Code.

In 1983, they go back out to do a further confirmation expedition. And I think it's interesting to see some of the notes from the inspector that was onboard from the Colombian Government at that time. And you can see that this starts the 30th of August. These expeditions

take a long time. This goes from 30--the notes go from 30th of August to the 18th of September. And on the first day what does he say? There's much optimism about a potential reencounter with the San José.

So this morning we heard 30 years, no reference to the San José. Again, I don't know if it matters at all. I don't think it does. Nonetheless, it is obvious that the ship that they were talking about was the San José.

And he says the Heather Express continues making movements. It will be possible to start using the side scan sonar to locate the flagships San José.

I mean, there's--that's what he's saying. He's saying, we're going out to go and relocate the San José.

On the next slide, there was so much excitement about this on September 3rd, the Rear Admiral Manuel Avendaño--I'm sure I'm pronouncing that incorrectly and I apologize for that--arrives onboard the Heather Express along with Mr. Obregon representing the President.

So you have a representative of the President who's coming onboard the ship and knows about this reported find, and is meeting with and talking to the various folks on the ship.

September 6th they find tracks of the Auguste Piccard and signs of marine life that may indicate the proximity of the San José.

September 7th from the island station, the possible remains of the San José were located.

September 15th, on the next slide, coral reefs and footprints from the submarine Auguste Piccard can be observed through a TV screen indicating the proximity of the San José.

September 15th an object was found that because of its shape simulates the appearance of a cannon. September 15th, again, contact is made again with the possible remains of the San José.

This is from a Colombian Government official at the time.

PRESIDENT DRYMER: Remind me, because I haven't opened up the exhibit. If I recall, this is from a shipboard log kept by the official?

MR. MOLOO: Shipboard log kept by the--correct. Contemporaneous log kept by this Colombian official.

Again, September 17th they were talking about, well, there's not much in what this particular area looked at except for what appears to be pieces of ceramics. Unfortunately, when it was brought to the surface, it fell off the ROV. Of course they just didn't have the type of technology that they have today.

The second object was a piece of wood about 50 meters long and about 10 meters--sorry, .5 meters long

by 10 meters wide. This piece of wood alone goes outside the 3 meters by 3 meters that we're talking about here. And they're saying--and he says, with one of the faces having a semicircular shape and the other being flat, but with evidence of having been separated violently.

Again, September 18th, agrees with pieces of wood previously found by the Auguste Piccard. This piece has the same construction as a piece of a Galeón contemporaneous with the San José.

Again and again throughout this log it is clear that what's being referenced is the San José, and clear indications from this government official that what he thinks he's seeing are--is evidence of the San José having been relocated in 1983.

Oceaneering, another independent expert was brought on by the predecessor to our client. And in 1983, they likewise go out and look for what was found by Glocca Morra Company. And they, too, find that the target was successfully located.

PRESIDENT DRYMER: Remind me. I don't recall whether or not any of these reports actually use pinpoint coordinates.

MR. MOLOO: No, they don't. This is--they're going to now view the area, because that was what was understood at the time the Colombian Government officials

that were going to confirm, you know, let's go see where the San José was find--found, where it was reported. They were on this ship for three weeks.

PRESIDENT DRYMER: I understand.

MR. MOLOO: And so it was a number of different locations around--

PRESIDENT DRYMER: And they covered a lot of those square miles. They went into and out of ports several times.

MR. MOLOO: Correct.

PRESIDENT DRYMER: They repaired equipment several times. The target was successfully located, for example, but it doesn't say where. I don't recall it saying where--

MR. MOLOO: Correct.

PRESIDENT DRYMER: --in any of these logs.

MR. MOLOO: That's correct.

PRESIDENT DRYMER: Very good.

MR. MOLOO: And what they were using as references like baskets that had been left behind as locators. Because it wasn't just at one specific spot. They had left a number of different markers so that they could go back and find it.

Now, this is interesting. Colombia then attempts to negotiate with Glocca Morra, and they send a letter in

1984 November to Sea Search-Armada, and they say, In regards to your suggestion that we participate in the salvage of these goods, here's what we suggest. We suggest you get 50 percent of what's under USD 100 million. Between 100 million and 200 million, we'll give you 35 percent, and we'll use a sliding scale. And everything under--beyond 400 million, we're going to keep 80 percent. We'll give you 20 percent.

So they're trying to now negotiate down the 50/50 split that everybody understood, including contemporaneously in 1983--you saw the report to the legal adviser to the President--they're now trying to negotiate that number down. And at that time Sea Search-Armada was like, well, we don't have much choice. And so they actually accepted it at that time.

And the Colombian Government goes, well, maybe we'll take it a step further. And they passed decrees in January and September of 1984 to say, Actually, anybody who finds part of this--a treasure, we're going to basically give them a 5 percent finder's fee. So forget about the 50 percent. Forget about this new proposal that we had. Now we're changing it to 5 percent.

So at that point in time--you know, obviously, the predecessor to our client starts to say, wait a minute, this isn't what we bargained for. This isn't what we

thought we had. And so they do challenge it in the courts, and I'll come on to that.

At the time what they do is they--the Colombian Government goes out to other sovereigns and they say, Hey, maybe the U.S. Government or some other government, the Swedish government could help us salvage the San José. And what's interesting is you saw this morning Paragraph 2 of this cable from the U.S. Embassy back to Washington, D.C., and what it showed--I'll just put it up for a second. They showed you Paragraph 2. And it's clear that they're talking about the San José again; right? This is what you saw this morning. They said--they said, oh, look, they wanted help identifying the San José, so that means nobody ever found it; right?

They put up Paragraph 2, the Government of Colombia is interested in contracting the search identification of the eventual underwater salvage of the Galeón San José.

Let's go to Paragraph 3.

So they're saying--slide 45. So they're saying we're--we want to identify and eventually recover this ship. And in Paragraph 5 they say, If the contractor finds wreck valuables in the area to be identified later--they haven't sent them where the area is, but they're talking about an area, by the way, not just specific

coordinates--they're saying, If you find it in that area that we're going to identify, you will have to grant a 5 percent participation of the gross value of the recovered valuables to Sea Search-Armada. Because they're acknowledging, of course, that that area is the area that had been identified. And if you find it within that area, because they changed the law, right, to say now it's only 5 percent, you're going to have to give 5 percent to Sea Search-Armada.

In 1988, they actually enter into an MOU with Sweden. And in that MOU, they, again, say, If you find anything here, we shall recognize, Colombia, and the Swedish Government shall recognize the rights of the Claimant, and at that point again they say it's 5 percent of the gross value if the shipwrecked species are found within what? The reported area.

And what is the reported area? What is the--what's Colombia's view of the reported area? Well, there's a section in the MOU that says "area." And what is the area that Colombia identified? Well, it's a lot more than 10 square meters. It was 100 square nautical miles. Which if you do the math is 5.64 nautical miles radius if you're looking at a circle. So the diameter would be about 11 nautical miles. A radius of 5.64 nautical miles around those coordinates.

That's how Colombia in an MOU with the Swedish Government is defining the area where if they find something, they better--they have to give--they're saying, shall recognize the rights of the Claimant of 5 percent of the gross value if you find it within that area.

PRESIDENT DRYMER: That is what you would say the Colombian Government at the time recognized as the quote/unquote Discovery Area?

MR. MOLOO: As--correct. And to what they acknowledge in our submission in this MOU as being the reported area.

PRESIDENT DRYMER: Yes.

MR. MOLOO: Because if they find something in there, they're acknowledging that they have to give 5 percent to SSA. Now we'll talk about that 5 percent in a moment. But they're recognizing that SSA is entitled to whatever portion they're entitled to under law; right?

And they're saying, shall recognize the rights, the rights that they have of the Claimant. Shall recognize the rights of the Claimant.

PRESIDENT DRYMER: I understand. But to be clear and succinct, do you say that this is putting a geographic area of 100 square miles around the concept of Page 13 of the Confidential Report about the vicinity of this coordinate?

MR. MOLOO: Yes.

PRESIDENT DRYMER: And surrounding areas.

MR. MOLOO: Yes. I would say that that was Colombia's under--contemporaneous understanding of what area would mean.

PRESIDENT DRYMER: Very good. Thank you.

MR. MOLOO: Now we have this 5 percent issue that I've been mentioning. And SSA starts litigation in the courts. And I'm sure you saw this in the pleadings. But there were a number of different actions that lasted 20 years.

And--oh, yeah, actually, this is important. I'll go back to the past slide and I appreciate this.

Just to be very clear about the 100 square nautical miles, the next two sentences are important, too. The coordinates identifying the area--the coordinates identifying the area shall be set out in the contract. The identification shall start in the first place with the coordinates declared by Sea Search-Armada. The Swedish operator shall use the most precise means to determine the coordinates declared by SSA in a manner that there's no doubt whatsoever that it's the same precise place.

They're saying, we're talking about this 100 square miles, and we're starting with the coordinates that Sea Search-Armada has identified, because that's obviously

where they all know--that it is.

So, after this, we have the series of litigation. And I'm going to go through a bit of this timeline. But it starts in 1989 and it goes to 2007. In 19--if we go to the next slide--I mention to you that they had passed a--the Colombian Government had passed these 1984 Decrees, reducing the amount that Sea Search-Armada would be entitled to from 50 percent to 5 percent. And there was a constitutional court challenge to that--to those decrees. And ultimately, in 1994, the Constitutional Court determines that those decrease are unconstitutional.

So, we're no longer talking about 5 percent. In parallel, you have Sea Search-Armada, its predecessor, fighting in the courts as to what amount that they are entitled to. And the Civil Court, the first-level court in 1994, issues this judgment and what does it say? It says, "We declare that the goods of economic, historic, cultural, and scientific value that qualify as treasure--treasures, belong in common and undivided equal parts: 50 percent to the Colombian Nation, and to Sea Search-Armada, which goods are found within the coordinates and surrounding areas referred to in the confidential report."

We talked a bit about this this morning. And we talked about whether or not the Supreme Court Decision alters this. I'm going to come on to that--it doesn't.

But I'll come on to that.

That's in July of 1994.

PRESIDENT DRYMER: In your opinion, does that say that goods have been found? Or it's entitlement to any goods that might, in the future, be found?

MR. MOLOO: The latter.

The goods that are to be found in that vicinity. Every single gold coin was not found, if that's your question. The--

PRESIDENT DRYMER: No. My question relates more to the argument by your friends--which, if I understood correctly, is that there's no such thing as property or rights over goods that haven't yet been found.

MR. MOLOO: And I--what I don't fully understand with that is, what was then expected--every single gold coin be found? So my submission would be, no, we aren't--we--what we identified, and what we were required to identify as a matter of law, and then what was ultimately accorded to us in terms of our rights, was a right to the goods and the treasure that were to be found in the area that we had reported.

So, whatever was to be found there we had a right to.

PRESIDENT DRYMER: So, not only the sonar blipped at what may have been identified in the report, or Target

A. It wouldn't. That's what I'm trying to clarify.

MR. MOLOO: Correct. That's correct. It's the surrounding area of Target A, which is the language used in the 1982 report, which were--which was in the immediate vicinity of specific coordinates.

PRESIDENT DRYMER: Okay.

MR. MOLOO: That, then--so that's July of 1994. July 6, 1994. In parallel, what Colombia's doing in the background is they're--they commissioned a report that is issued less than one month after the Civil Court decision. Civil Court decides 50/50. And less than one month later, you have Columbus Exploration say, "We went and looked at these coordinates and an area 100 times the size of the coordinates, that area, and we didn't find the San José."

And this--Columbus Exploration, the principal of it is a gentleman by the name of Thomas Thompson. Now, there's a lot of problems with this Columbus Report. And you've seen some of that in Paragraph 82 of our submission, just to highlight a couple of things. Nobody from SSA Cayman was involved in that. This was prepared in the midst of litigation.

The Columbus Report says it looked at an area a hundred times greater than the area identified in the report. But 22 years later, we know that the San José--well, it's reported that it's been found 3.2 nautical

miles away. Which, if they looked 100--an area hundreds of times greater, it's just simply not credible that they did not find the San José. It doesn't comport with the fact there were all of the--they didn't find anything. You know, no sonar readings, no iron, no wood planks, no cannon. I mean, there is documented evidence of this being found by SSA.

So, you know, that--the fact that they didn't find anything I think is A), irrelevant, but B), just not credible. And then, Colombia sort of runs away from that report in their reply. They say, "Well, the alleged deficiency of the Colombia--Columbus Report is irrelevant. What matters is we adopted the findings of the report." So we announce, SSA, you didn't find it.

All there was at that point in time was a dispute about whether or not where the San José was. There was no dispute about our legal rights, and I'll come on to this in further detail when I come on to the actual legal submissions. But I just want to point that out for the time being of factual background.

The principal of the Columbus Report, Tommy Thompson, is currently in jail in Michigan for refusing to disclose information about missing gold coins in relation to another historic shipwreck. He's been in jail since 2015.

After we get the civil court decision, we get another important decision, and I'm going to come back to this. It's a 1994 injunction that says--that orders the seizure of goods that have the nature of treasure, that are rescued or removed from the area determined by the coordinates indicated in the Confidential Report. And they're going--it says, "to commission the assigned Civil Judge of the circuit of the city of Cartagena, to carry out the injunctive measure." And we're going to appoint a trustee, and we're going to decide what's treasure and what's not.

PRESIDENT DRYMER: Once those items have been salvaged, not before.

MR. MOLOO: Correct, once those salvaged--that's going to be salvaged under, presumably, court supervision. We come--we come back to that. And I--it's actually a super-important injunction. I'm going to come back to it because it becomes relevant again later on.

That, then--the 1994 decision in Civil Court gets appealed by Colombia, to the Superior Court, which is the first level Court of Appeal. And ultimately, in 1997, the Superior Court confirms in its entirety the lower court decision. That's on the screen there.

This then gets appealed further to the Supreme Court.

And the Supreme Court confirms, for the most part, the lower court decision. Now, we talked about in what way is it modified. And Colombia, earlier today, only put up the second clause right here. And they're saying that somehow this language at the very end modifies what the Civil Court decided. It doesn't.

I'm going to explain to you exactly why I submit to you that it doesn't. This--

Go back. Sorry.

The second clause starts with something very important: in accordance with the preceding ruling, the aforementioned second item of the trial court judgment is modified.

So, you didn't see this earlier this morning, but what is the preceding ruling? The preceding ruling is this: They're modifying the fact that what they're saying is, it expressly excludes each of the goods that are, or may be, movable monuments according to the description that a--and reference, set forth in Article 7 of Law 163 of 1959, from the Declaration of Ownership set forth in the second item of the operative part of the trial court judgment.

So, what they're saying is, whatever is cultural patrimony ex--is not treasure, and is excluded. We'll come--we'll deal with that on the merits. But what they're

saying, they want to clarify, is you just have 50 percent of what's treasure and not cultural patrimony.

So, in that respect, we are going to modify the second order of the trial court judgment. And you can see the second one says, "In accordance with that ruling that we've just said, we're amending the second item of the trial court judgment with the understanding that the property recognized therein, in equal parts for the nation and plaintiff, refers solely and exclusively to the assets that, on the one hand, due to their own characteristics and features, in accordance with the circumstances and guidelines indicating in this ruling, may legally qualify as treasure, as provided by law--by Article 700", and then it says, "and in accordance with the restriction or limitation imposed on it by Article 14 of Law 163 of 1959."

That's the modification.

PRESIDENT DRYMER: What about--and all the other--what about the rest of that? The question is effectively whether that's a second modification. And on the other hand, it only refers to those goods found at the coordinates.

MR. MOLOO: I think all that is saying is that--

PRESIDENT DRYMER: Which does not include other spaces or zones.

MR. MOLOO: Right. So, two responses to that. I

think it's just saying--it's talking about two different legal instruments. Its talking about--because the rights arise from the Civil Code 700, and the resolution. So they're just saying: on the one hand, you have rights under the Civil Code 700, and on the other hand, the resolution.

That reference, in fact, I would say confirms that the rest of that--confirms that they're just simply incorporating what the lower court did. They're incorporating the coordinates referred to in the Confidential Report of 1982 on Page 13. That language, which does not include other spaces, zones or areas. It's just saying--does not include other spaces, zones, or areas that is not referred to in the Confidential Report. Which is fine, we don't have any objection to that. But it--if it meant anything other than that--if they wanted to say, "It's just this very specific coordinates", then they could have said, "these specific coordinates". But instead, all they do is what every other court leading up to any point has done, which is they simply adopt Page 13 of the Confidential Report.

And, in fact, in the third part they say, "Aside from what we've talked about above here"--about the cultural patrimony issue--"we confirm the rest and pertinent the aforementioned judgment of the first instance." I think there's a translation issue there. But

they're confirming the rest of the judgment.

Mr. Jagusch asked this morning, "Are there other aspects of the judgment that talk about", you know, "the specificity with which this area was located?" And in fact, there are. And this is one of the parts of the Supreme Court judgment that talk about it. Because one of the things that Colombia has argued before the Supreme Court was, "Well, there's an error because they didn't precisely, at the exact location, identify where this was."

And the court says, "Now then, regarding the error of fact alleged by the nation, consisting of considering the exact location of discovery of the treasure as having been demonstrated", although it was not. The Court deems that the Superior Court did not make such a mistake, strictly speaking.

They're saying, "We're"--"If there was a mistake to be made, it was actually made by Resolution 354. But that has the presumption of legality." You can see that in the last little bit there.

So, what they're saying is, the rights that arose were actually not--the court doesn't create any rights. It's the resolution that created those rights, and it adopted the report and the coordinates and the location that was allocated in the report.

So, when they talk specifically about not having

identified specifically enough the coordinates, in fact, the court rejects Colombia's argument in the text of the treaty--in--of the judgement.

Yeah. And this is the same point I made on the last slide, but you can see it confirms, aside from the error that they had just discussed--which was with respect to, you know, making sure it was clear that it's just treasure. It says that the Superior Court did not commit the remaining legal errors ascribed to it, as will be explained below.

And I think this is also important on the next slide. The court confirms that the Civil Court and Superior Court and, in fact, the Supreme Court--none of them are creating rights here. The right to the treasure was acquired by its discovery and then its reporting to DIMAR. That's what gave rise to the rights. So, any modification of the lower court judgment is not a modification of the actual rights. Because the rights were not accorded by the lower courts. The rights--and the Supreme Court confirms this. The right to treasure is acquired by its discovery.

After the Supreme Court Decision, before the TPA is entered into, the APA is entered into in 2008 and SSA Cayman transfers its interest to SSA U.S. And just so we can see on the next slide, it's--it looks a little messy

but hopefully I can explain it to you in simpler terms.

You have GMC Inc., which is the original entity. It transfers its interest to GMC Cayman Islands. GMC Cayman Islands is owned by SSA Cayman.

So, the beneficial owners of the rights at that stage are the folks that you see listed in the partners. Armada Company, Armada Partners, San José Partners, Royal Capitana, Sea Search Joint Ventures. Managing director as of 1988 was Jack Harbeston, and you have the board members.

This was transferred--this interest was transferred, as you know, via the APA in 2008 to SSA. The Economic Interest Holders are all the same.

So this is--it's a reorganization, but the beneficial owners are all the same. You can see the Economic Interest Holders are all aligned with the partners in SSA Cayman.

PRESIDENT DRYMER: Why is that at all relevant?

MR. MOLOO: I don't think it's at all relevant from--

PRESIDENT DRYMER: To the objection of the validity of the transfer.

MR. MOLOO: It's--in my view it's not at all relevant. I think just from the extent the Tribunal is interested.

PRESIDENT DRYMER: Right.

MR. MOLOO: The interest holders--the American--Ultimate Beneficial American Interest Holders, this whole time, have been the exact same. And there are several hundred American investors behind this. Unfortunately a number of them passed away. Some of them are probably watching us livestream. Others, it's their children, and in some cases even grandchildren.

It has been exhausting. I think we heard that this morning. It's an exhausting tale. But, you know, it's interesting because it's an exhausting tale that SSA's predecessors pursued through the courts. You know, it's often the case that the--that a State will say: "Well, why didn't you pursue this in our local courts?" They went through the local courts for 20 years and were vindicated at the end of it. This is a tale of an investor trying to play by the state's rules by taking their grievances to the State, to another organ of the State. And they were ultimately vindicated. So, the fact that it's exhausting, I thought it was--it was not fair, quite frankly, to my clients. Because the--if it's exhausting to anybody, it's been exhausting to them, because they've had to endure years of litigation to try and abide by the rule of law.

The SSA then resumes discussion with Colombia after they get this decision; 2009, 2011. Throughout this period, there are letters from SSA to the President of

Colombia, and they're getting stonewalled. So what do you do when you're getting stonewalled?

Well, they file claims abroad.

They file in the district of Columbia and in the Inter-American Court of Human Rights. I'm going to come to this, and I'm going to spend some time on it after the break. But, for the time being, I just want to say I think it's a red herring. And I'm going to explain to you why in a moment. We'll come onto that in further detail.

Part of the reason it's a red hearing is, ultimately what happens in 2014, is the Minister of Culture says: "Look, drop these lawsuits. Drop these lawsuits and we'll start talking again." And you can see that letter up on the screen. They said: "Look, there's no possibility of dialogue until the court actions of any kind seize on a definitive basis." And SSA goes: "You know what? I'm going to take the Minister of Culture at his word." And they write back on January 20th, 2015, and they say: "SSA informs you that it will proceed to terminate the proceedings before the District of Columbia and the Inter-American Commission on Human Rights in order to definitively seize all legal actions in progress and pave the way for dialogues as a peaceful and mutually agreed application or implementation of the 2007 judgment."

Clearly, everybody thinks that this time they

have legal rights recognized by the government. Because the Government is saying: "Hey, stop and well start dialogue again." And, what happens from there? That's exactly what happens. The letter--the president writes to SSA and says, "In the new circumstances, now that you've withdrawn these proceedings, we're ready to reopen direct dialogue, and I would like to summon you to a working meeting on May 19th." So, this is May 14th, 2015. These dates are important. May 19th at 5:00 p.m. they say: "Come meet us at the Minister of Culture." And they meet on May 19th, and I'll come on to that. And then May--

PRESIDENT DRYMER: I want to be clear, if I've understood your own answer to your own question. The prior litigation in those other fora is irrelevant because as of May 2015, you would say the Government of Colombia recognized that SSA had rights.

MR. MOLOO: It may. Correct. Yes, to answer your question. And they continue to recognize their rights. Other arms of the government, including most importantly in 2019, the courts. And I'll come on to that.

So, May 19th, there's an in-person meeting. In the background, unbeknownst to my client, on May 26th, 2015, the Ministry of Culture issues a resolution to approve the pre-feasibility and authorize MAC, Maritime Archaeology Consultants, to go and try and find the San

José. And they say: "You get 20 percent of whatever you find that's not cultural heritage."

Now, that's a much better deal than what the Supreme Court said--"You owe SSA. They only owe us--they owe SSA 50 percent." And they've now just made a deal with MAC that says: "Oh, we're going to give you 20 percent."

This is a week after they had the in-person meeting unbeknownst to my client.

May 26th, Ministry of Culture issues that resolution. May 27th, the next day, the Ministry of Culture writes to SSA. And what do they ask SSA? They said: "We received your communication", and--"which was offered to you in the meeting--your communication of the reference, which was you offered by you in the meeting in--on May 19th."

"And, in order to complete our analysis, what we want from you is: We want to know what you mean by the margin of error with respect to the court's ruling." What are the coordinates? You know, you're talking about this margin of area. We can talk about--Discovery Area, Reported area, whatever you want to call it. Here, they're talking about a margin of area. Once this information is received, it will be analyzed by the relevant technical team, MAC, who they just hired the day before; right?

So, they're saying: "Tell us what you mean by

this margin of error." And on June 9th, they write. They write and they say, "We've told you. This margin of error is, you know, what the Supreme Court and everybody has recognized is the reported area. But if you want specific coordinates, here are some specific coordinates."

Now, think this is what Colombia was referring to this morning when they said there's a polygon, because there's no polygon in the 1982 report. When they were asked, "Tell us what the margin of error is", this is now what SSA tells them. So we know in--back in the 1980s, Colombia has said it's this 5.67 nautical miles, right, in their MoU, with the Swedish government.

Now, this is what SSA says is the coordinates. And they report these four coordinates, which forms a rectangle. Now just to be clear, this is not the entire area that Sea Search-Armada was entitled to search. They had been given three different polygons, and this is a subset of one of those polygons. So this is just a part of the broader area that they were entitled to search.

PRESIDENT DRYMER: And do we know how these figures were derived? How this polygon was delineated? On what basis? I--maybe we don't know.

MR. MOLOO: I don't know at this point in time. I don't know at this point. I can't answer that for you today. I may be able to by tomorrow. But I'm not sure

it's necessarily relevant, but my answer to you today is no, I don't know.

But what happens after this, June 2015, Colombia stalls again. SSA writes and writes and hears nothing. And why do they hear nothing? Because in the meantime, MAC is looking in this area. And on December 5th, President Santos declares what? Surprise. MAC found the San José.

MAC found the San José, and we now know that 307 years after its sinking, without a doubt, we found the San José in coordination with international scientists. That's MAC. There's no--I don't think there's a dispute. That was MAC. That was the one that found it.

What happens then? What happens then is more legal proceedings. After the SSA has withdrawn its legal proceedings, it's negotiated, Colombian Government says hey, tell us more information. What are the coordinates you know that this--that we should be looking in to verify?

They send the coordinates, and they find the San José. And that triggers, as I said, this ultimate--this finding.

And what we know--and this comes back to the slide that I showed you, they find it, apparently, we think, reportedly--might be closer, 3.24 nautical miles apart. And by the way, like I said, there's clearly a dispersion field. So, just because there's a part of the

ship 3.24 miles away doesn't mean that it also isn't 3.24 miles away.

PRESIDENT DRYMER: I haven't pulled out my parallel rules, but are those dots within the polygon on the two previous pages?

MR. MOLOO: Well, I'll tell you this, Mr. President. Our understanding is that it's within the dispersion field of the Titanic, 3 to 5 miles. It's within the 5.64 miles that was reflected in the Sweden MoU. And, indeed, it was within the polygon that was reported in that letter.

So very clearly in our submission, it was within the surrounding area and vicinity of the coordinates that were reported in 1982.

ARBITRATOR JAGUSCH: Would it be possible to overlay the polygon over that map?

MR. MOLOO: We can do that. We can do that for tomorrow.

ARBITRATOR JAGUSCH: Also, just while I'm asking a question about the polygon. Have you got the slide here that had the floor--was there a typo there? One of the B's should have been a C, or have I misunderstood?

MR. MOLOO: I think it should be C. I don't know if that's a typo in--it's a typo in the original.

ARBITRATOR JAGUSCH: So, it is a typo. Okay, I'm

just--

MR. MOLOO: Yes. It should be those are the four coordinates. So, if you plop those out it's a rectangle.

ARBITRATOR JAGUSCH: I was trying to figure it out, how it would work to have different B's.

MR. MOLOO: Yes, you're right.

PRESIDENT DRYMER: We've been going for about an hour and a half now. You tell me when soon it might be appropriate to take a break.

MR. MOLOO: If you give me five minutes, I think we'll be--

PRESIDENT DRYMER: Done.

MR. MOLOO: And the last bit of this is the litigation that ensues after this. The litigation that ensues is as a result, quite frankly, of the Colombian Government's position. The Colombian Government on the next slide says in a letter--well, you see SSA writing to the Ministry of Culture saying: "Just to be clear, it's not at the coordinates. We never say it was at the coordinates, but it's the immediate vicinity where we're denied the ability to verify whether it's actually there."

And the Ministry of Culture writes back and says: "Your letter of January 18th is in admissible. If you have accusations to make about the actions of the Ministry, please resort to the respective judicial authorities." The

Ministry of Culture says, "Go back to the courts."

So they said: "Stop your court proceedings, we'll negotiate." Now they've found it after getting the polygon from SSA and now they're like, "Oh, go back to the courts."

So SSA says: "We'll have to take the appropriate legal actions to protect our interests." And in parallel, what happens? Well, in parallel, Colombia knows all along that there's this embargo from 1994. So, if they actually want to go salvage this property, if it's within the surrounding area, they gotta lift this embargo. And that's an impediment.

PRESIDENT DRYMER: The Secuestro you mean. The injunction.

MR. MOLOO: Correct, the injunction. Yes. It's called different things in different papers, but in the September 2017 letter, it's referred to as the embargo, decreed in 1994.

And sure enough, in parallel, that's exactly what the Colombian Government does. Now, you have to ask yourself: if they found it, and if they say it's not in the area that SSA found it, then why in December 2016 does Colombia apply to the Civil Court and say: "Hey, remember that 1994 injunction? We need it lifted." Because that proceeding ended a year after the 2007 decision of the Supreme Court and went back to the Civil Court and they

concluded the proceeding July 9th, 2008.

Why does it matter that, all of a sudden, 22 years after the injunction and just after they found San José, they say: "Oh, we better lift the injunction that prevents us from being able to go to the surrounding area--to the area that's designated by SSA." It's a rhetorical question.

PRESIDENT DRYMER: That's because you are not allowed to ask questions of the Tribunal.

MR. MOLOO: Yes. That is fair.

They lifted initially at the Civil Court--the Civil Court actually lifts the injunction. But then, SSA appeals it to the Superior Court. And the Superior Court in March 2019 reinstates the injunctive relief declared on its same terms from 1994. And then what happens? Well, you saw the letter that the vice-president wrote to SSA; right, in June 2019. And he wrote and he said: "You didn't find the San José. So, what are you talking about?"

And SSA writes back to the Vice-President July 2019. You didn't see this this morning. And they say the Superior Court has established that these goods are to be seized, and there's a detailed procedure for which we're going to salvage this. And we've applied to the court that under court supervision we're going to now enforce this injunction. That's what we're going to do. We're going to

go enforce this injunction, and what it ordered was that it would deposit the recovery in the bank of Cartagena or similar entity, and we'll see what's treasure and what's not treasure. That's July 2019.

And in response to July 2019, what's the next act that the government takes? January 2020, they have no choice, I think, to--but to say: "You know what? Forget about all of this. Let's just declare the entire thing natural cultural interest, and we don't need to deal with any of this." And that's what they do.

And this is the first time that, if we found the San José, we no longer have any legal title to it. It's no longer a factual dispute. Did you find it? Did you not find it?

Now it's a legal measure passed that says: "You no longer have any rights to it even if you found it." That happens for the first time in January of 2020.

That's the factual background that we say--not just on a prima facie basis, but more than that--establishes our keeps on the merits. But at the very least, for present purposes, you should accept on a prima facie basis.

I think now is an appropriate time to break and well come back and address you on the legal standards.

PRESIDENT DRYMER: Thank you, Mr. Moloo. Shall

we say a ten-minute break? I don't know what we're scheduled for. Is that sufficient for everybody? Reporters and interpreters? I see Señor Rinaldi's comes up. Okay. Please, let's all try to keep it to 10 minutes so that we can conclude at a reasonable hour this evening. Thank you very much. So we are adjourned. I hope to get it right this time. Oh, I'll give you 12 minutes. Until 15 minutes past 4:00 p.m.

(Brief recess.)

PRESIDENT DRYMER: Counsel, I'd like to acknowledge on the record what occurred over the break.

I'd like to acknowledge on the record what occurred during the break a few minutes ago.

As you've seen, the PCA, and hence the Tribunal, has received a request from the Kingdom of Spain to file written submissions in this phase of the arbitration.

The Tribunal asked itself whether we should impose on you for your initial responses overnight or given--or give you more time. And you see that we've asked you to do this overnight, not because we want to overburden you, but because we think it's prudent that we address this issue as soon as possible.

So we look forward to receiving your comments on Spain's request at the opening of the proceeding tomorrow morning. Thank you.

Mr. Moloo, we continue with your submissions.

MR. MOLOO: Mr. President, you may be very pleased to hear that for the next few minutes, you don't need to listen to me, and you will have the pleasure of listening to my colleague, Ms. Ritwik.

MS. RITWIK: Thank you, Mr. Moloo. Just confirming that the transcribers can hear me okay? Great.

Well, Mr. President, Members of the Tribunal, good afternoon. Thank you for the opportunity to address you today.

I will kick us off with the legal section. I will be addressing Colombia's first preliminary objection regarding whether SSA is a qualifying investor under the TPA.

Colombia has not chosen to discuss these objections in its oral submissions today, indicating perhaps confidence in them, so I will try to make a short job of this objection as I hope it will be very clear to the Tribunal very quickly that Claimant satisfies the requirements of showing that it is a qualifying investor under the TPA.

I will start out with the legal standard. It should not surprise you, Members of the Tribunal, that Article 10.2.8 defines both Claimant and Investor.

Claimant is an investor of a Contracting Party to

the TPA that has brought an investment dispute against the other Contracting Party.

And to be an investor, there are two requirements.

First, you have to have the appropriate nationality, and there is no dispute between the Parties that SSA is a U.S. company.

The second requirement is that the investor has to attempt to--through concrete action, to make, is making, or has made an investment in the territory of the other party.

The present dispute between this Tribunal is over the interpretation of this specific provision. What does it mean to make--quote/unquote, make an investment.

Next slide.

And the answer to that question is as that to make an investment, one needs to simply acquire it. That is the natural result of the interpretation of the provision under Article 31 of the Vienna Convention.

Starting with the ordinary meaning, the dictionary definition of "to make" is, among other things, to acquire. The choice of Black's Law Dictionary here as a source of the ordinary meaning is significant as that is the primary legal dictionary used by U.S. lawyers.

The TPA, of course, is based on the Model U.S.

BIT drafted by U.S. lawyers. So there can be little doubt that the ordinary meaning of what it means "to make" is to acquire, or at least includes to acquire.

There is nothing in the context or purpose of the treaty that undermines the ordinary meaning of "to make." On the contrary, the definition of Investment and Investor in Article 10.2.8 made clear that the drafters intended to cover a broad set of investment activities under the umbrella of making an investment.

You saw on the last slide--and maybe we can just flip that for a second--that the TPA protects investors that have made investments through both--through three--both past, present, and future acts, including attempts to make an investment. That is quite a broad formulation that is fairly rare, I would submit, in investment treaties.

We can go to the next slide.

Likewise, investment is defined quite broadly, as you can see on the slide, to include every asset. And like other investment treaties, the TPA is aimed at promoting economic development by, among other things, encouraging a predictable legal and commercial framework. That purpose is best enabled by protecting a broad array of foreign investments.

So we submit to you, Members of the Tribunal,

that "to make" must be accorded its ordinary meaning, which means that the investor simply has to acquire it. We have heard no submissions to the contrary from the Respondent so far.

Next slide.

Unsurprisingly, this is what tribunals have also consistently found. In the Addiko case, for example, which you can find at CLA-80, the Respondent made the same argument that Colombia has made in its written submissions here. There the claimant had acquired shares in a local company without paying for those shares, and there the Respondent had alleged that the Claimant's acquisition of those shares was not enough to meet the requirement of making an investment, and instead there must be an acquisition of value or exchange of resources.

The tribunal there conducted precisely the same analysis we just did under Article 31 of the Vienna Convention and reached precisely the same results. It found that the ordinary meaning of "making" requires--or includes, I should say, the act of acquiring.

It held that the emphasis is not on the exchange of monetary value, but on the act of obtaining title or possession.

Next slide.

Addiko is not the only case to hold this. The B3

case, which you can find at CLA-73, also interpreted the word "made" precisely in the same manner.

The Tribunal also found that the ordinary meaning of the verb "to make" and very similar words to the Addiko Tribunal includes the act of acquiring the investment and that the emphasis is on the act of obtaining title to or possession over something as opposed to the monetary value exchanged for title or possession.

So in the face of such clear treaty language and consistent jurisprudence, what is Colombia's basis for asserting that the TPA required the investor to have, quote/unquote, actively and personally have made an investment by showing some exchange of value?

Next slide.

Colombia's primary authority is the jurisdictional decision in Clorox, which Colombia likes so much that it cited to it over a dozen times in its reply. It hasn't mentioned Clorox today. Possibly because, as we let the Tribunal and Colombia know with our rejoinder, the Clorox decision was set aside by the Swiss Federal Court, which was the court at the seat of the arbitration.

In that case, the Claimant had also acquired shares in a local company through a restructuring process and, therefore, did not pay anything for them.

And the Swiss court's decision, which can be

found at CLA-73, set aside the Tribunal's decision specifically because it found that the Tribunal had misinterpreted the treaty, which did not contain any requirement of an active investment that must have been made by the investor itself in return for consideration.

That is precisely Colombia's position here, which the Swiss court roundly rejected.

Next slide.

The other case Colombia seeks to rely on is Komaksavia, but that also is not helpful for Colombia. This case, like Clorox, is currently in set-aside proceedings.

But even putting that aside, the Tribunal's findings are not applicable here because in that case, the Tribunal was interpreting a completely different phrase. It was interpreting the term "invested by investors," which, of course, does not exist in our TPA.

And, in fact, the Komaksavia Tribunal cautioned against broader usage of its finding, noting that it was tied specifically to the treaty language in that case.

The Tribunal noted that in the great majority of cases, mere shareholding without any exchange of value would be sufficient and that would be the end of the matter.

So even the Komaksavia Tribunal, I would submit,

would accept that its findings are simply not applicable here.

Next slide.

The difference in language becomes important because Colombia invokes Komaksavia to argue that in this case, the investor itself must have contributed capital to Colombia in order to make an investment.

But that is not what the treaty says. We've put up the treaty language again for you. The TPA defines an investor as someone who has made or is attempting to make or will make an investment. And that investment, of course, must be situated in the host State.

And then the TPA goes on separately to define certain investment characteristics which Mr. Moloo will get into.

So it is important to make clear here that SSA did not have to provide funds to Colombia, as Respondent appears to submit, to be considered an investor under the TPA.

Such a restricted definition, in fact, would preclude all indirect investments, which is clearly not what the TPA is set out to do. And, in fact, the TPA expressly authorizes indirect investments in Article 10.28's definition of "Investments."

Colombia has also tried to invent another

requirement in its written submissions, another one that it has chosen not to argue before the Tribunal here today, that to be an investor, you have to provide substantial benefit to the host State.

Colombia in its written submissions cited absolutely nothing for this proposition. The TPA does not state this, neither does any jurisprudence. In fact, quite the opposite. Tribunals and scholars have roundly disclaimed any such requirement.

We have added a quote here from the Quiborax Tribunal, one of Colombia's authorities on which it, in fact, relies extensively otherwise. And you can find that at RLA-31.

The Quiborax Tribunal confirmed that while contribution to the local economy can be a consequence of a successful investment, it is not a requirement for one.

I will now turn to the application of the legal standard which, as you can probably surmise, Claimant satisfies quite easily.

PRESIDENT DRYMER: Did I understand you to say that Mr. Moloo is going to come back to the characteristics of an investment argument?

MS. RITWIK: That's correct, Mr. President.

PRESIDENT DRYMER: Very good.

MS. RITWIK: So before I delve into whether or

not Claimant satisfies the obligation, I just want to clarify precisely what we meant by investment here.

As you have seen in our pleadings, the investment comprises of rights to 50 percent of the treasure found at what we have defined as the Discovery Area. Mr. Moloo has described this Discovery Area to you earlier today.

Colombia today alleged that Claimant has somehow changed its position on what constituted the investment. That is not true, Mr. President and Members of the Tribunal.

Our position has consistently been that our rights arise from the application of the Colombian Civil Code to DIMAR Resolutions, including Numbers 0048 and 0354. And I refer the Tribunal to Paragraph 20 of the Claimant's Notice of Arbitration that makes clear the role of Colombia's--the role of Colombia's Civil Code and giving rise to the underlying rights.

Next slide.

And so we've talked a little bit about the APA today. The APA makes clear--the APA being the Asset Purchase Agreement--at C-30bis makes clear that through that instrument, SSA acquired all rights, titles, and interests to all acquired assets.

"Acquired assets" is a defined term in the APA, and it's defined as all assets that were owned by

SSA Cayman. Today Colombia appeared to accept that SSA Cayman was in possession of some very important assets, including Resolution 0354. Under this instrument, therefore, those assets were transferred to SSA.

Were there any doubt? The very first example of an acquired asset that was transferred includes all rights, title, and interest arising from Resolution 0048 and its progeny, which included ownership of 50 percent of all items found and recovered from the search area. The search area, obviously, includes the Discovery Area.

Next slide.

PRESIDENT DRYMER: You're going to get to the question of authorization to--

MS. RITWIK: Yes, we will. We will shortly. I should say Mr. Moloo will. But, yes.

In its written submissions, Colombia made some vague arguments about Claimants not having met certain conditions in the contract, specifically in Sections 4.1 and 4.2. We have not heard Respondent makes those submissions again today. It is unclear, frankly, whether they even maintain those arguments.

In any case, as you can very clearly see, these conditions are not conditions to the validity of the contract, but to the closing of the transaction. And in any case, they are waivable by the Parties to the

transaction.

So Colombia's arguments in this sense are simply not understood. And it is very clear that the Parties did close the transaction. The instruments underlying the closing of the transaction--or the key instruments, I should say, are the bill of sale and the assignment and assumption agreement, which are the instruments that exchange the rights, the underlying rights between the Parties.

Next slide.

And as you can see, those were duly executed. All of those agreements are in C-30bis.

With that, I will conclude this section and hand it back to Mr. Moloo.

PRESIDENT DRYMER: Thank you.

MR. MOLOO: Sorry. You're stuck with me again for a bit. Ms. Ritwik is always there if you need her.

So I will now move to the question of whether or not SSA made a protected investment.

In our submission, of course--otherwise we wouldn't be here--SSA of course believes that it did make a protected investment and that it is--it has acquired assets that constitute an investment under the TPA.

So what exactly does the definition of "investment" entail in the TPA? Well, 10.28 says an

investment means "every asset that is owned or controlled, directly or indirectly, and that has the characteristics of an investment."

So we will take each of those in turn, but I'd like to start by saying, you know, the treaty itself recognizes that there are many different forms that an investment can take and lists, as often treaties do, typical forms of treaty--of investments. And among them is 10.28.(g).

This is not an exclusive list. It says, obviously, "Forms that an investment may take include."

In our submission, we fall within 10.28.(g). But, of course, that's not necessary. I think if we fall within 10.28.(g), the Tribunal can expect that the Parties obviously contemplated that that was the type of thing that would be considered an investment.

So what exactly--and I'll go through each of these, but what exactly was the investment here?

Just so we're all on the same page, the investment here and you've probably heard me say this in some way earlier, when I was going through the facts, but it constitutes essentially three different instruments, legal instruments. And they all, like I said, fall within my submission 10.28.(g).

The first instrument is Colombian Civil Code 700

and 701.

And so when you look at 10.28.(g), when it talks about rights conferred pursuant to domestic law, we're talking about things like the Civil Code 700 and 701.

In addition to the Civil Code, there are two licenses, authorizations, permits, whichever one of those you want to call them under 10.28.(g), and those take the form of DIMAR Resolutions.

There's DIMAR Resolution 0048, which permitted Glocca Morra Company to search within the area that it ultimately found the reported area and the treasure within it.

And then DIMAR Resolution 0354, which recognizes the findings that had been reported.

So those are the rights that we say are--that constitute the assets. Those are the assets that constitute the investment. And in our submission, they are owned and controlled by SSA because of the execution of the APA.

So let me briefly go through each of these.

The assets themselves. We have 700 and 701. And I put these up at the very outset. They're the ones that make it clear that a finder of a treasure is entitled to 50 percent of it.

So that's one aspect. That's the--a right

conferred by domestic law on a finder of treasure.

DIMAR Resolution 0048 is what authorized us--authorizes Glocca Morra to actually engage in that exploration.

And then you have Resolution 0354, which is then a recognition of the report, saying: Okay. You've reported it, and we recognize the rights that you have to what you've reported.

PRESIDENT DRYMER: Are you coming back to 701 of the Civil Code? You were accused--or not accused--that's the wrong word. Excuse me.

It was pointed out that your translation is incomplete, that you're missing the first word of 701, which should read: The treasure found on another's land.

MR. MOLOO: Yeah.

PRESIDENT DRYMER: Is that material, as far as you are concerned?

MR. MOLOO: I don't think it's material. It's the first time I think we've heard that argument is this morning.

But in my submission, it's--I don't think it changes at all the--what 701 means. It's "the treasure found on another's land" or "treasure found on another's land."

At the end of the day, "the treasure" or

"treasure," it all comes back to ultimately what is recorded and what is the recorded area to which you are entitled to have rights over treasure, the treasure that's found in that area. I don't think the presence of the word "the" changes anything.

PRESIDENT DRYMER: I may be wrong. I may not remember correctly. But my understanding of Colombia's point on this was that the use of the word "the" simply adds weight to the fact that it has to be a particular treasure already found.

MR. MOLOO: Right.

PRESIDENT DRYMER: Now, I'm not asking you to address that. But if it helps to join issue, that's my understanding of what they said. And you'll have an opportunity to rebut tomorrow if you'd like to or to respond now.

MR. MOLOO: And what I might--in response to that, it comes back to what I said I think earlier, which is I think their concern is we didn't say this treasure was originally on the San José.

So if I were to say, oh, this is a gold coin that I found on the bottom of the ocean floor. If I can't identify from where it came, then all of a sudden I'm--I don't have any rights to it. That's just not--well, that's not my understanding of the way the law works.

But it doesn't make any sense either. We declared a find, and whatever treasure in our submission that is within that find we were entitled to pursuant to 701 and the DIMAR Resolutions.

But if their suggestion is that we didn't label it "the San José Treasure" but rather we said whatever treasure comes within our area, I think as a practical matter, you know, you could take that argument to the Nth degree and say, you know, you didn't identify, you know, 17 gold coins and 8, you know, rubies, and--you know. How detailed do you have to be?

The law is--in my submission--quite clear that what's being--what you're required to do and what Resolution I think 0483 recognizes is that you are required--once you find something, you're required to report it. Once you report it, you have rights to that find as a general matter.

ARBITRATOR CLAUS VON WOBESER: Sorry to interrupt. What's the Spanish? Do you remember Spanish?

(In Spanish.)

It doesn't say--sorry to interrupt, but the translation is not right. It's "the treasure found" or "a treasure found." (In Spanish), "a treasure found."

ARBITRATOR CLAUS VON WOBESER: What does the Spanish Civil Code say?

MS. ORDÓÑEZ PUENTES: (In Spanish.)

ARBITRATOR CLAUS VON WOBESER: Then it's that. I wanted to check in Spanish because clearly the translation is wrong. It's "the treasure."

MR. MOLOO: Again, I think this morning is the first we heard of it. But give me one second.

PRESIDENT DRYMER: You can address that tomorrow.

MR. MOLOO: Well, let me just address this one point now. Because this was something that came up in the Supreme Court as well.

So if we go back to Slide 57, if we might, you can see that the Supreme Court addressed an argument that was raised in a similar vein. And they said: From a legal perspective, it is clear that the right to a treasure is not only exclusively acquired when there is physical or material discovery of precious objects, but also when the place where they are located is specified or identified, even if they have not been extracted and fully identified.

So you don't need to fully identify it. Your right to the treasure is acquired when you identify the location of where it is. That's what the Supreme Court said.

And we'll think about it overnight as well and supplement this as needed. But I think the Supreme Court's words are helpful in that regard.

In addition to 700 and 701, our rights are vested by virtue of DIMAR Resolution 0048 which gave us the right to go and search for that treasure, and 0354, as I mentioned, which acknowledges the find, as it were.

And even if you look at that, by the way, Article 1, it says: Acknowledges the Glocca Morra Company established in accordance with the laws of the Cayman Islands as claimant of the treasures or shipwreck in the coordinates.

So it's not saying--you know, it's recognizing that we are the claimant of those treasure or shipwrecks found at that area.

So it's clear that even Resolution 0354, in and of itself, gives us the right to the treasures or shipwreck found within the area that we had identified, as the Court ultimately then says: Whether or not it had been specifically identified or what that treasure is or is not.

If we go to--I've spent time on this so I won't spend too much time on this next slide, 101, the Supreme Court Decision again.

Just to come back to one point that, Mr. President, you asked me about earlier on this slide, it does seem clear to me, at least, that what this is saying is the rights that you have are accorded pursuant to Article 700 of the Civil Code and Resolution 0354 subject

to the limitation that we're identifying, which is anything that is cultural patrimony that is not considered to be--that doesn't count in the 50/50 split.

And then they go on. I think this is important. They're saying that is--that is--to those that are in the coordinates referred in the Confidential Report.

So, again, they're saying, we're not--it's the same as what was identified and recognized by Resolution 0354, the coordinates that were referred to in the Confidential Report.

One other aspect of the Supreme Court decision that I think is interesting is here on the next slide. In particular, I might have--perhaps the intervention by the Spanish government over the break, and I will have to review the transcript to see what it might--what I might have said in the first part of my presentation to perhaps trigger that.

But if you can--if you see what the Supreme Court of Justice mentions, there was a discussion about what was or what was not treasure, and one of the things that the Court said, it is clear that the Supreme Court--the Superior Court did not violate the provisions referred to in the appeal since none of them established without a shadow of a doubt that the goods found by the plaintiff company indisputably belonged to the Colombian Nation in

June of 1982.

So it's at least the Supreme Court's view that what was found as the owner of the property, with which we had to split 50/50--and I don't think it's in dispute in this arbitration; I wouldn't expect it to be--was that it belonged to Colombia at that time.

So what was it that we then own and control as a result of the APA? Well, it's very clear. It's all rights, title, and interest in and to the search area license granted to Glocca Morra validly granting the holder thereof the right to search areas for ancient shipwrecks and sunken treasure and ownership of 50 percent of all items found and recovered as a result of such search and salvage efforts.

So it was very broad. They were assigning--selling, assigning, transferring, conveying, delivering title and interest of all of those assets. And that's defined, as you can see, on the screen there. So there is, in our submission, clearly ownership and control.

So there's the last piece of this, which is what is a characteristic of investment and how does what SSA possess satisfy the characteristics of an investment.

First observation. I think we satisfy all of the five that are on the list here: Commitment of capital, commitment of other resources, expectation of gain or

profit, assumption of risk, and duration.

I'll go through each one in turn. But for the avoidance of doubt, as Gramercy vs. Peru indicates, these are not cumulative. You don't need to satisfy all of them.

And the Gramercy v. Peru case, as this Tribunal will well know, is based on a model of TPA that uses the same language as the FTA that's before this Tribunal.

A quick observation. Initially the only objection with respect to the characteristics of investments that were raised by the Respondent were with respect to the contribution of capital.

In their initial submission, they said: Oh, well, there hasn't been a contribution of capital.

One important clarification, because details matter, as all lawyers know, the language in the treaty is not "contribution of capital," which is the language that was used in the first submission, it is "commitment of capital." I'm not sure if that was deliberate or not.

But it's important, because the language of the treaty, when it talks about the one example it gives as a characteristic of investment is the commitment of capital, not the contribution of capital, but that was the only objection in the initial submission.

They then raised in their second submission other objections, including that there was no expectation of gain

or profit or assumption of risk. In my submission, those should have been raised, if properly raised within the 45-day time period, within their first submission.

I'm not going to make a big deal out of it, but if we are to give any meaning to the language of 10.20.5 that the Respondent so requests within 45 days that we have not satisfied a particular criteria in the TPA, then that should have been done within 45 days, and it was not with respect to those two objections.

PRESIDENT DRYMER: Well, please clarify. You're not making a big deal of it. In other words, you're not objecting to our consideration of those--that term of the objection?

MR. MOLOO: I maintain the objection.

PRESIDENT DRYMER: You do. Okay.

MR. MOLOO: I maintain the objection.

PRESIDENT DRYMER: That's a big deal.

MR. MOLOO: Well--

PRESIDENT DRYMER: Arguably.

MR. MOLOO: Mr. President, I--what I should have said is I'm not going to spend a lot of time in this particular submission.

PRESIDENT DRYMER: Very good.

MR. MOLOO: Because--

PRESIDENT DRYMER: You maintain the objection.

That was my question.

MR. MOLOO: We're maintaining the objection, yes.

But what I should have said is I'm not going to spend a lot of time on it in my submissions today.

What I will tell you is in our submission, we satisfy those nonetheless, and I'll come to that in a moment.

The language of the treaty, I've already taken you to it. The important aspect here that I would draw your attention to is this requires the--it says, including such characteristics as the commitment of capital as opposed to the actual contribution of capital.

And in this case, it did involve the commitment of capital. What's important--actually, let's go back to the last slide. What requires the commitment of capital? The investment must reflect the commitment of capital. It's not necessarily that the investor has to commit capital. The investment must reflect a commitment of capital. And in our submission, what that allows the Tribunal to consider is capital that was invested as part of the investment whether by this specific investor or its predecessors that include millions of dollars that were spent by Glocca Morra to hire the ships that we talked about earlier to do the research, to, obviously, then, engage in unfortunately a litigation that was subsequent to

that. And you can see that in communications with DIMAR, it was made clear that millions of dollars had, in fact, been spent.

In the 1982 report, it was clear that 6 million had been spent. They were prepared at that point to spend another USD 5 million. If you talk about the total amount of capital that had been spent in current dollars, it's about USD 40 million. That's an approximate number. But just to give you a sense of the amount of money that had been spent at that time to actually locate the treasure.

And I think--

ARBITRATOR JAGUSCH: Sorry to interject. And I apologize if this is already on the record. But do we know the cost incurred by Colombia in finding the San José?

MR. MOLOO: Don't know. I don't have that information today.

ARBITRATOR JAGUSCH: So it's not on the record?

MR. MOLOO: I wouldn't be able to tell you the answer to that definitively. I don't think it is, but I will--I'll come back to you on that.

ARBITRATOR JAGUSCH: What about the cost of the Columbus Report--

MR. MOLOO: I don't know off the top.

ARBITRATOR JAGUSCH: Okay.

MR. MOLOO: We can check that as well.

ARBITRATOR JAGUSCH: Okay. Thank you.

MR. MOLOO: I think what's a helpful case in this respect is the Reneé Rose Levy vs. Peru case. And in that case, the Tribunal was confronted with a similar objection to the one here. And the Tribunal there--there was a--an assignment from a father to a daughter of an investment. And what the Tribunal said there, and you can see it at 148: It is clear that the Claimant acquired her rights, being the daughter, and shares free of charge. However--by the way, that's not the case here, but just even in that extreme situation.

However, this does not mean that the persons from whom she acquired these shares and rights did not previously make very considerable investments of which ownership was transmitted to the Claimant by perfectly legitimate legal means. And the Tribunal considers that this initial investment made by the claimant's relatives meets all the requirements described by the respondent.

So the question is not whether or not the investor contributed or, in fact, committed--not just committed, but contributed capital, but whether or not the investment reflects a commitment. And in this case, actually, a contribution of capital.

Nonetheless, SSA itself committed capital in many ways. It assumed several liabilities, including the

payment of contractual obligations. It assumed the requirement to distribute profits amongst the Economic Interest Holders. It assumed certain contracts that had along with them certain obligations. And if you go to the next slide, you can see what some of those were.

Among other things, there was a management agreement that had management fees associated with it that were deferred. There was in the limited partnership agreement an obligation, so a liability to pay Chicago Maritime Corporation USD 1.2 million.

These were all assumptions of liability and commitments to make the payments that were assumed by SSA, specifically in the APA when they acquired their investment in 2008.

So SSA itself committed capital. And even if that capital had not been expended at the time that it had acquired its rights, that doesn't matter. And Malicorp vs. Egypt confirms that. The case in that--in that case the award reflects the following. It says, The fact of being bound by that contract implied an obligation to make major contributions in the future. That commitment constitutes the investment. It entails the promise to make contributions in the future for the performance of which that party's henceforth contractually bound.

In other words, the protection here extends to

deprivation of the revenue the investor had a right to expect in consideration for contributions that it had not yet made.

So future commitment to make--well, it is. It's the commitment of capital in the future. Of course, here there's also legal fees and other things that were actually committed over the course of time. But that commitment in and of itself in the APA is--has been found by other tribunals to reflect the characteristic of an investment.

Similarly, in RSM vs. Grenada, the tribunal said the same thing. There's no need for actual expenses to have been incurred. The relevant criterion being the commitment to bring in resources towards the performance of, in that case, an exploration contract.

PRESIDENT DRYMER: If I understand you correctly, in your use of this authority, this does not turn on the magic of the word "commitment" versus "contribution" since in Malicorp they were talking about a contribution of capital.

MR. MOLOO: Correct.

PRESIDENT DRYMER: Right?

MR. MOLOO: I think the term "commitment" makes it even more clear--

PRESIDENT DRYMER: Right.

MR. MOLOO: --that it's referring to something

that had not--that has not been expended, because it's talking about a commitment as opposed to a contribution.

PRESIDENT DRYMER: Thank you.

MR. MOLOO: So I think in our case it's even more clear.

But the commitment of capital is not the only thing one looks at. There's also other--commitments of other resources, which we would say obviously have been committed and provided in this case. The Deutsche Bank case makes clear that there are other forms of--other resources that can be contributed including know-how, equipment, personnel and services.

Of course, as I mentioned at the outset, there were a number of very educated folks who, in addition to some of them being paid, others took equity and were committing their know-how to ultimately find the ship. That was in large part what was being contributed here. The know-how of individuals, the research, the ability to know where to look to use their technical skills to identify the shipwreck.

So those resources were, of course, incurred at the very outset and since then have continued to be incurred through the various legal battles in Colombia in particular over time.

The--I think it's fairly obvious, but I'll detail

it. Of course, as I say, assumed risk. There was the risk of--and its predecessors assumed risk. This investment reflects the assumption of risk. That risk, to be clear, is we are going to expend a lot of money to try and find something, and if we don't find it, those expenses, that time is sunk. Apologies for the second pun of the day.

PRESIDENT DRYMER: This time intended.

MR. MOLOO: I have to admit intended, yes.

But there was--

PRESIDENT DRYMER: We're on to you.

MR. MOLOO: Sorry?

PRESIDENT DRYMER: We're on to you.

MR. MOLOO: Yes. Yes, I can tell. Well, I think that will be my last pun of the day until something pops into my mind.

But that sunk cost, as it were, at the risk of not finding anything, is, of course, an assumption of risk.

SSA itself also assumed risk. They assumed liabilities, as I mentioned earlier. And it that also is an assumption of risk by this Claimant specifically to the extent that that's something that the Tribunal finds is relevant for the reasons I've said. I don't think it is, but there you have it. SSA as well in the APA itself assumed all of the liabilities of its predecessor.

Was there an expectation to make profit? Well,

I'm a bit surprised that Colombia suggests that there was not despite saying that there was this--this was the biggest treasure in the history of humanity. Of course there was an expectation to make a profit. And it's not just the fact that this was the biggest treasure in the history of humanity, but the Civil Code itself made it clear that if we find the treasure, we get half of it. So of course there was an expectation to make a profit when--and that's reflected in the investment that's made.

SSA itself made a qualified investment. And this comes to the point that Mr. President, you asked earlier about the approvals that are required. Are there any approvals required? I would submit to you, no, there are no approvals required by DIMAR for the transfer of these rights.

Why do I say that? Well, Colombia itself seems to accept what the authority of DIMAR was. And what is the authority of DIMAR? They say at Paragraph 281 of their Reply: Accordingly, pursuant to domestic law, as proven through the conduct of SSA alleged predecessor, the assignment--sorry. This is not where they admit this. This is their argument. They're saying the assignment of rights requires DIMAR's authorization. And I'll come on to what they accept--

PRESIDENT DRYMER: Next page.

MR. MOLOO: It's the next page, yes.

They say DIMAR is the relevant Colombian authority with the power to do what? To authorize underwater exploration, that's it. They have the authority to authorize underwater exploration.

And the Supreme Court confirmed that. They say the activity of the administration, i.e., DIMAR, was limited simply to exercising the specific legal powers related to oversight and control of underwater exploration and exploitation. And what they talk about, then, is they say, With the recognition of the discovery, all of the stuff that relates to the discovery, the rights of DIMAR is all independent of the effects that the recognition itself could have.

Now, the translation's not great, but my understanding and interpretation of the Supreme Court's paragraph here that's quoted is that they're basically saying, The rights that arise from you actually finding the treasure are independent of the authority of DIMAR. DIMAR has the authority to authorize exploration. But then once you find the treasure, certain rights attach at that moment.

And what we say is those are vested rights. The authority is simply to authorize the exploration. Then you have vested rights once you find the treasure.

And if we're talking about, by the way, the prior conduct of SSA, I think the only document that's on the record in this regard is R-3. It was put on the record by the Respondent. And I think it's important, again, to look at the details. Because forgive me for being pedantic about this, but I don't think it says and does what Respondent says it does.

What we did at that time is Glocca Morra wrote to the Government and said this. They said, Glocca Morra has assigned its submarine exploration rights to Glocca Morra Company. We have assigned them. We're not seeking authorization for it. We have assigned them.

And then it says, What we're seeking your authorization for is authorization for the underwater exploration, which by the way at that point in time--because this is back in 1980; right--the successor still needed to do underwater exploration. Because this is while they're still in that stage of exploration.

So what they're going to DIMAR for is, hey, we've assigned our rights, but we still need this new entity to still be able to be authorized to do the exploration. So I think--you know, I don't think anything turns on it because ultimately, you know, the authorization then recognizes the transfer.

But my point is just that's not really what we

were asking for and we always--well, it seems in this document that what they understood was they had the right, and in fact had assigned the rights, and what they were going to DIMAR for was authorization for that new entity to engage in underwater exploration, which we expect DIMAR has jurisdiction over it.

PRESIDENT DRYMER: I'm confident you know your opponent's position far better than I do. But leave aside the issue of prior conduct, my understanding of their position is that these rights related to exploration--excuse me--yes, DIMAR's authority with respect to exploration and exploitation covered--I forget the exhibit--covered the identification and rescue or recovery of the wreck. And so you still needed them at the time of the APA.

MR. MOLOO: What I would say is if--

PRESIDENT DRYMER: If I've understood correctly.

MR. MOLOO: What I would submit--there's two different issues here, I think, that are important to disaggregate. One is the effectiveness of the transfer of the legal rights. That happens without DIMAR's approval. The only--if--if--if SSA wants to go salvage the goods, or if they want to do further exploratory work, they need to go to DIMAR. I accept that. If SSA tomorrow wants to go and do some additional search work, they would need to go

to DIMAR and say, hey DIMAR, we want to go and do some further exploratory work, and DIMAR would have to authorize that.

That doesn't change the fact that the legal entitlements that were vested and crystallized upon the discovery, whether those rights were adequately transferred. And, by the way--

PRESIDENT DRYMER: Got it.

MR. MOLOO: --Respondent admitted this morning in their submissions that they accepted that that transfer was not governed by Colombian law, but was governed under the APA by Illinois law. So as a matter of Illinois law as Mr. Ritwick explained, there was an effective transfer of those crystallized vested rights. If SSA wants to go do further exploratory work, then do they need to go get DIMAR's approval? Yes, they do. We accept that.

PRESIDENT DRYMER: Thank you. That's--that's very helpful.

ARBITRATOR JAGUSCH: Can I just clarify? What you said earlier was that if the further exploratory work was required, you said DIMAR would have to authorize that. I take you to mean it would have to be authorized by DIMAR or do you mean DIMAR would have to authorize it?

PRESIDENT DRYMER: It would have no discretion; was obligated to authorize it.

MR. MOLOO: It would--they have discretion and they would--

ARBITRATOR JAGUSCH: They couldn't proceed without the authorization of DIMAR. That's point one, I guess.

MR. MOLOO: We can't go tomorrow--SSA can't go tomorrow and without the Colombian Government's authorization go start, you know, sending Auguste Piccard down there and go look for the treasure. And go start salvaging it for example.

ARBITRATOR JAGUSCH: Okay. That is understood.

And would DIMAR have a discretion--in respect of a treasure found pursuant to an exploratory license, what would be the power according to you of DIMAR to accept or refuse a follow-up application for authority to conduct further research or even to salvage?

MR. MOLOO: I would need to consult with my colleagues under Colombian law to give you an answer to that. But my submission to you today is for present purposes, that's irrelevant. Because ultimately--I actually don't know that it's even relevant on the merits, because ultimately in my submission, even if we were not the ones to salvage this and the Colombian Government decided they wanted to do it alone or they wanted to do it with the U.S. Government or the Swedish Government, they

can do it with whoever they want. We are entitled to 50 percent of the treasure that is salvaged. That is--the Supreme Court has recognized that 50 percent entitlement is what the discovery entitles us to.

ARBITRATOR JAGUSCH: Right. So in response to Colombia's argument that your claim is still subject to further--the turning into value of the discovery is subject to further steps, your position is no because the right to the value crystallizes upon discovery?

MR. MOLOO: The right to--the right to 50 percent of the treasure crystallizes upon the discovery.

ARBITRATOR JAGUSCH: Understood.

PRESIDENT DRYMER: Which you say occurred irrespective of whatever further work your predecessors thought may remain to be done to positively identify the wreck?

MR. MOLOO: Yes. In fact, there is--

PRESIDENT DRYMER: I think that's your position.

MR. MOLOO: Yes, that is my position. Absolutely. By the way, identification, there's some, you know, question as to what actual identification means. Because, in fact, in some of the contracts--and this is in the record--that were exchanged at the time when they were actually negotiating a salvage contract, identification was defined in some of those contracts. And it was defined as

actually being able to physically basically recover the goods and bring them up, essentially. So it wasn't like they were talking about, oh, did you actually find it or not? It was--it was talking about the physical seizure essentially of the goods. We could--

PRESIDENT DRYMER: Seizure and cataloging of the--

MR. MOLOO: Catalog. Exactly. In fact, I think the word catalog might even be expressly used.

PRESIDENT DRYMER: It is.

MR. MOLOO: Yes.

So, you know, I think we're also using the word in further--or identification, that word "identification," it's--again, I don't think it's relevant for present purposes, but I think it's being used a little loosely by the Respondent. There was a particular use as between the parties back in the 80s when they were negotiating that--

PRESIDENT DRYMER: Here's the hardest question you're going to get today. How much longer will you be?

MR. MOLOO: How much longer do I have?

PRESIDENT DRYMER: Well, the U.S. will have at least 15 minutes.

MR. MOLOO: Yes.

PRESIDENT DRYMER: Which means that they should begin no later than 6:00 p.m.

MR. MOLOO: We will be done at 6:00 p.m. for sure.

PRESIDENT DRYMER: Fine. And if earlier, the better.

MR. MOLOO: Yes.

PRESIDENT DRYMER: Very good. Please--please continue.

MR. MOLOO: I think an important second element to all of this is this argument--and everybody understood that there was a valid transfer of the rights at the time. This is a made-for-arbitration argument. And why do I say that? Because since 2008, we have not once heard any objection from Colombia that SSA was not the proper owner of these rights. In fact, the opposite. And I'm going to take you through some of that now.

As early as March 2012, probably earlier, the SSA wrote to the Legal Secretary of the President of Colombia on behalf of Jack Harbeston acting as the representative of Sea Search-Armada headquartered in Delaware. It was very clear that this is who they were dealing with. There are several--and this is just a smattering of them. Obviously I don't expect you to read those. But just for your reference--

PRESIDENT DRYMER: We have them.

MR. MOLOO: I'm sure you have read those.

PRESIDENT DRYMER: There's a lot of correspondence addressed by the government to SSA.

MR. MOLOO: And vice versa.

PRESIDENT DRYMER: And vice versa.

MR. MOLOO: And vice versa. Making it very clear that they knew that they were dealing with SSA. In fact, and I'll give you a couple of the highlight reels, in June 2016, the Minister of Culture writes this. It refers to the possible rights over the possible shipwreck that may exist in the coordinates reported by you and which are established by the Confidential Report. They're writing to SSA.

Even more clear, letter from the Ministry of Culture, January 2018, they're talking about Glocca--shipwreck reported by Glocca Morra Company and subsequently assigned to Sea Search-Armada. They are acknowledging--they're saying we're--this is what we're talking about. We're talking about the reported--shipwreck reported to Glocca Morra Company and subsequently assigned. They're not contesting that it was validly assigned to Sea Search-Armada.

The Vice-President in the June letter that was referred to this morning, June 17, 2019, they rely on it when it's helpful, but what they don't rely on is the part where they talk about the judgment of July 5th, 2007 issued

by the Supreme Court limited the right of Sea Search-Armada--limited the right of Sea Search-Armada to those goods that have the nature of treasure.

So the Vice-President of Colombia is recognizing and acknowledging that these rights belong to Sea Search-Armada.

And I'm going to show you a quote that I'm sure all three of you have seen many times from Mr. Bin Cheng. It is a principle of good faith that a man shall not be allowed to blow hot and cold to affirm at one time and deny at another. I think that may in fact be the most quoted quote of any secondary source in investment treaty law. In fact, I think someone did a study on this and it comes only second to a quote from Schreuer I think from his treatise on--

But, of course, part of the reason for that is because this is a principle of international law. You can't affirm at one time and deny at another, and that's exactly what you have here. That is what Colombia is doing. They have always recognized that Sea Search-Armada possessed these rights, and only in this arbitration for the first time are contesting it.

It's not just correspondence with the various arms of the executive branch. I'll come back to the 2019 injunction from the Superior Court where the superior--who

was suing--who was granted standing to bring that petition? It was, of course, Sea Search-Armada and that was what was recognized by the court.

They were granting their declaratory process pursued by the company Sea Search-Armada. There was never any objection raised by Colombia that Sea Search-Armada does not have standing. And by the way, not only did they not raise this in these domestic proceedings ever, they didn't raise it in the D.C. court proceedings, in the Inter-American Court of Human Rights, in any correspondence ever, ever, ever until this arbitration.

And that's because DIMAR was not required to authorize that transfer of crystallized rights. Their rights, their authority is limited to authorizing underwater exploration.

PRESIDENT DRYMER: Again, to be clear, DIMAR--DIMAR you would say has no authority to authorize the transfer of exploration rights, if it were exploration rights. It's only the exploration itself that it needs to authorize?

MR. MOLOO: It needs to authorize--yes, I agree with that. It authorizes the exploration, yes.

PRESIDENT DRYMER: It needs to authorize the exploration. That's not contentious. But if I understand your position, the simple assignment of rights to explore

by one party to another do not need to be--does not need to be authorized by DIMAR. The assignment of the rights.

MR. MOLOO: Yes. I think--I would answer to your question, yes.

PRESIDENT DRYMER: Okay. Would Ms. Ritwick answer yes? I don't know.

MR. MOLOO: That's a good question.

PRESIDENT DRYMER: Well...

MR. MOLOO: No. But what I would say in addition to answering yes to that question, what was being transferred here was something different.

PRESIDENT DRYMER: Understood.

MR. MOLOO: Was rights that would have crystallized to the treasure itself--

PRESIDENT DRYMER: I get it.

MR. MOLOO: --that had been located.

PRESIDENT DRYMER: I get it. Okay. Thank you.

MR. MOLOO: To the extent that's helpful.

PRESIDENT DRYMER: It is.

MR. MOLOO: The next point I think is one I can deal with very quickly, because I don't think it's being maintained. I'll be corrected if I'm wrong about that.

We are not arguing as Colombia suggested in its preliminary objections that--because I think in their preliminary objections they say we can only rely on the

2007 Decision, which is not a protected investment. We're not saying that that's the protected investment. It's what I showed you earlier.

The 2007 Decision merely confirms what our investment was and our crystallized rights were. But it, in and of itself doesn't give rise to the rights. It merely confirms them. And that's what we said in the Notice of Arbitration at Paragraph 39. We talked about the Supreme Court Decision confirming our rights. And you can see that in Paragraph 52, Paragraph 67. We've always maintained that position, that the 2007 decision does not create rights. It merely confirms the rights that already existed.

I turn to the temporal arguments that are raised by Colombia. The first of the temporal arguments relates to the issue of whether or not--well, they're intertwined. But they say that this dispute arose prior to the TPA coming into force. And we all agree that the basis of this objection is 10.1. The language of 10.1 is not disputes. It is measures. 10.1.1 talks about this chapter applies to measures adopted or maintained by a party. And 10.1.3 says, For greater certainty, this chapter does not bind any party in relation to any after fact that took place or any situation that ceased to exist before the date of entry into force of this agreement. That's reflective of

customary international law.

What we are arguing, obviously, is that the measure at issue here happened and occurred, obviously, after the entry of the TPA, and, as I'll come on to, within the last three years. But first let's deal with this distinction between dispute and measure. Because Colombia's preliminary objection is this. They say, The Tribunal lacks jurisdiction over the pre-treaty acts invoked by Claimant, which are in fact its basis to the alleged breaches of the TPA. As a corollary, the Tribunal lacks jurisdiction over any dispute arising over such pre-treaty acts.

So they're talking about disputes. Now, it's been made very clear in a number of cases, including Gramercy Funds vs. Peru, which I'll take you back to, which says, The relevant date for establishing temporal jurisdiction under, again, the U.S.-Peru FTA, which uses the same language as the FTA before this Tribunal, is not the date when an investment dispute arose, but the date when an impugned law, regulation, procedure, requirement, or practice was adopted or maintained by the host State.

Astrida vs. Colombia. Sorry. I think it's referred to as Carrizosa v. Colombia, same FTA as the one at issue here. The Tribunal expressly found, April 19, 2021, the fact that the broader dispute concerning the

alleged mistreatment of Claimant's purported investment in Colombia may have arisen before the TPA's effective date does not mean that the TPA condoned Colombia's repeated mistreatment after its entry into force.

These awards do not support the proposition that the principle of treaty non-retroactivity excludes pre-treaty disputes from the treaty's scope of application, especially in cases where the disputed conduct continues after the entry into force. And it says at Paragraph 143, if the post-treaty conduct can constitute an independent cause of action, it will come within the Tribunal's jurisdiction. And what we say here is that this is indeed an independent cause of action. I'll come on to that in a moment.

But the key question for this Tribunal as the Grammercy vs. Peru Tribunal also put it, is whether or not the impugned measures that are the basis of our claim occur after the entry into force, and ultimately what we say is within the last three years.

We're not asking this Tribunal to rule on the conformity of pre-treaty acts or even acts that happened longer than three years ago. Those facts are here because they're relevant factual background to the dispute that's before this Tribunal. But ultimately the dispute and what we are alleging is the measure that breached the TPA in

this particular case is, of course, Resolution No. 85, because that is the measure that for the first time--if you go to the next slide--for the first time says it doesn't matter if you found the San José. Because even if you found it, it is cultural patrimony. It--you don't--none of it is treasure. So you get 50 percent of zero.

That's the first time that they say even if it's the San José, you get zero. It's the first time that the government takes a measure that eviscerates our legal rights.

And that's consistent with everything we've argued since the beginning of this case and the Notice of Arbitration throughout. We have only argued that that 2020 measure was the evisceration of our rights.

And I'm going to come on to this. It's clear why. Because the question I think this Tribunal has to ask itself is the day before that measure, the day before the January 23, 2020 resolution, did we think we had rights? And the answer is: Of course we did. And I'll explain to you the evidence in the record that shows that that's in fact the case.

In our submission, this is not a continuation of a situation that was already crystallized as Colombia puts it. Because never before had our legal rights been eviscerated. Never before had Colombia said, You--if you

found the San José, if that's what was at--they said you didn't find the San José. But that's a different point. That's a factual dispute.

They never said that the legal rights to which you had, whatever it is that's at that--at the reported coordinates.

PRESIDENT DRYMER: Whatever was recognized in Resolution 354--

MR. MOLOO: Correct.

PRESIDENT DRYMER: --you're saying this is the first time?

MR. MOLOO: Yes, that they're saying if what you found was the San José.

PRESIDENT DRYMER: In those coordinates.

MR. MOLOO: In those coordinates, you get zero of it because it's all cultural patrimony. So there may have been a factual dispute about did we find it, did we not find it. But this is the first time where even if we did find it, we get zero.

It's now eviscerated. It's affected our legal entitlement to the San José, if that's the treasure within the area that we designated.

ARBITRATOR JAGUSCH: The point--one of the points taken against you is that you had previously considered your rights to have been eviscerated by other measures.

Now, I understand the distinction you're now drawing. But is it a distinction without a difference? Are you just being a clever lawyer here?

MR. MOLOO: Let me jump to this right now and then I'll come back to these cases. Let's go to 144.

In my submission, the question that's critical for this Tribunal is to ask--and as I think we all agreed is when is it that we knew that we lost our rights? And when is it that we knew that we had definitively suffered the loss that we are claiming in this arbitration as a result of the measure that is being impugned? No matter all of the stuff that happens in the courts is moot in my submission, because ultimately after that we have discussions with the Colombian Government, but critically, critically, in March 2019, the Superior Court reinstates an injunction that confirms our rights.

And in correspondence, it's clear that we understands--understand that our rights had not been permanently deprived, which is under international law the test for expropriation. Not only are we saying that we don't think our light--our rights had been permanently deprived, but the Colombian courts are saying that. Right? It's interesting because they say, Oh, well, we said you didn't find the San José, which I think is the two ships passing each other in the middle of the night because

that's not the issue. That's beside the point.

But what they don't deal with at all, what they don't deal with at all on that side is what the courts are saying contemporaneously at the same time as what the executive branch. The executive branch can say whatever--they can say what they want. And, ultimately, when we, then, go to the court and say, Hey, wait a minute, we think we have certain rights and we want you to protect them. And the court says, Yes, you're right. And let's--if you look at 144, I think this is really important.

The court says at that time the exercise of the injunctive relief measure was conditional upon access to the goods that are the object thereof once they were removed or salvaged.

So they're saying you have rights once they're salvaged to 50 percent of the treasure. It is clear that the purpose of the seizure measure--that's the injunction--that was ordered has not yet been fulfilled; and therefore, it should not have been lifted due to the existence of the enforceable judgment, the 2007 judgment.

Because as I told you initially it was lifted, because in 2016, Colombia, for whatever reason, decided they needed to have it lifted.

They said, Despite the fact that 25 years have

elapsed since the injunction was ordered, this does not mean that it is indefinite in time. But if we examine the case, the thing that has hindered the seizure from happening is the removal or salve of the goods that are the object of such seizure has not taken place. An act that does not depend on the appellant, that was SSA; and therefore, such measure should not have been lifted under those assumptions.

They're saying, It's not our fault that this hasn't been salvaged. So even though it's been 25 years, you are entitled to this injunction because your rights to what you found in the reported area, you still have them. And, in fact, it would disregard and violate the provisions for the protection of your rights if we lifted this injunction. Thus, maintaining the injunction in this particular situation is reasonable, proportional, necessary and adequate given that it seeks to achieve a legitimate objective. Thus, not only is it not feasible to revoke--to revoke it, it is not feasible to even modify it.

And so the Court confirms at that point in time, if there's a question as to whether or not Colombia had eviscerated our rights before, that question is definitively answered by the--by Colombia--by the Colombian courts in 2019.

PRESIDENT DRYMER: And if I understand what

you're saying, this is a complete answer--

MR. MOLOO: Complete answer.

PRESIDENT DRYMER: --to any act or conduct or statement by SSA in the other proceedings that could be construed as a sense or a feeling or a belief that it had about it been completely expropriated.

MR. MOLOO: Yes. In my submission, yes. Because at that point in time--

PRESIDENT DRYMER: You were wrong.

MR. MOLOO: We could have been wrong. I will say this. I'm going to come on to this. I think it's much more nuanced what was being alleged in those proceedings.

PRESIDENT DRYMER: Fair enough.

MR. MOLOO: So I think it's not accurate what you heard today. I'm actually going to address that now.

PRESIDENT DRYMER: I'm just taking it to its highest.

MR. MOLOO: I would say at its highest, if we thought we had been expropriated from Colombia--

PRESIDENT DRYMER: And it sued on that basis.

MR. MOLOO: --and we sued on that basis, if we prevailed, that's a different question. But if we sued on that basis, that alone is insufficient. Especially since, by the way, we later clearly had a different impression.

And, therefore, it is obvious--as a matter of

international law, it cannot be that we understood our rights to be permanently deprived. Because in 2019, I showed you the letters we're writing to the Vice-President saying, Hey, by the way, we now have this injunction. We're going to enforce it. We have now sought to have under court supervision the salvage. That was the July 2019 letter that we wrote to the Vice-President where we say, We have now applied to the court under court supervision to have these goods salvaged. They're going to be deposited into the bank of Cartagena, and we're going to decide how much is treasure and is not treasure, and that's where you get Resolution 85, after that letter, after that exchange with the Vice-President.

PRESIDENT DRYMER: I don't know what your friends will say tomorrow, but presumably it will be something along the lines that the prescription clock started to tick--the three-year clock started to tick the moment you said we believe we've been permanently deprived.

MR. MOLOO: And I would say as of 2019, we did not think we were permanently deprived.

PRESIDENT DRYMER: No, but beforehand you did.

MR. MOLOO: Yeah, and--

PRESIDENT DRYMER: That's my point. Whatever happened afterwards, the clock had started to tick four years earlier.

MR. MOLOO: And I think it is--again, as I say, I think it's somewhat irrelevant. Because if you go and say: "Hey, I've been permanently deprived," and later on the court said--which is an organ of the state--says: "No, no, no, you haven't been." Then you go: "Oh, okay. Good. I haven't been. Vice-President, I'm going to now enforce my rights"; right?

So, I don't see--because then, what that basically means is--if you have recognized rights by the State, they can now expropriate them without any recourse. Because I thought I had been expropriated ten years ago, and I'd made a mistake, but you know what? They're saying: "No, you now have these rights"--but, forever and always, I can never now enforce those rights that the Court is recognizing ever again.

So, that just can't be, in my view. But in any event, I do want to take a moment--what were these D.C. and Inter-American court of human rights proceedings about? If we look at slide 145--

PRESIDENT DRYMER: Use your time judiciously. I assure you we've read these pleadings.

MR. MOLOO: I will.

PRESIDENT DRYMER: So, I'm not saying don't address them orally now.

MR. MOLOO: I'll address them very briefly, but--

PRESIDENT DRYMER: But we have about 25 minutes.

MR. MOLOO: Yes. I think it's important just to--what we were complaining about at that time was an alleged right to salvage, which is different than the right to the actual treasure. We argued a breach of contract that there was a contractual right to salvage. You can--I mean, it's in the pleadings.

The conversion claim was likewise about the inability to access because we had the right to salvage. We--and then we had a Recognition and Enforcement action which was seeking to recognize and enforce a non-monetary judgment, which under U.S. law is not an easy thing to do. But none of these things were saying that we thought, at that time, that our legal right to the treasure had in any way been affected. What we were saying is our right to salvage. Whether or not that existed is a different question, which I don't think is actually even relevant for the present purposes.

But that's what we were arguing about. If you read the D.C. Court--the reason why they found that we--that there was a statute of limitations a valid statute of limitations defense, is because they were saying: You're arguing that in 1984 you had a right to salvage, because there was an agreement between you guys.

And if you had a right to go and salvage in 1984,

then your statute of limitations should have started to kick in then. But it was all about--did we or did we not have a right to salvage? It was a completely different--than the allegation that's before you here, which is our legal entitlement to the treasure itself is at issue.

And by the way, I think it's telling that in the Inter-American court of human rights proceeding, the language makes it clear that we weren't permanently deprived of that legal right. But we were--what we said there in our pleadings was the reason that the ruling is not respected--the 2007 ruling is not respected, is because we started this federal court action. We knew when we started the Inter-American Court of Human Rights action that the reason why they were not respecting the 2007 Decision was because we had started the federal court proceeding. And that was borne out to be true as you saw on the next slide where they say: "I would like to reiterate the position established for several years."

For several years we've told you, you have to put a definitive end to litigation, and then we'll talk. And that's what we do. We ultimately--so nobody thought we had been permanently deprived of the legal entitlement to the treasure at the reported area. It was a completely different dispute about whether or not we had the right to

salvage.

Again, I think there's a nuance--again, I don't think it's actually--the complete answer to make hopefully your three job a little easier. I think, in my submission, all you need to look to is the 2019 Decision that makes very clear that we clearly had legal rights that had been unaffected.

As a matter of Colombian law stated by Colombia. Now, they rely on a couple of other cases, which perhaps we'll address tomorrow if it becomes necessary. But none of those relate to the kind of factual situation that we're dealing with here. For example, in Carrizosa, you were dealing with a situation where you had a judgment that had been passed prior to entry into force of the treaty. And then what the Claimant had sought to do after entry and enforcement of the treaty, was they sought to annul that judgment. So, they went to the same court and said we think you got it wrong. Annul that decision. And the Tribunal in that case said: "No, no, no. Wait a minute. That's really the same action. You're just complaining about the court's original decision."

The fact that you went and sought to have the same court annul its prior decision is not a different complaint. So, completely different. There it was the same legal rights that had already been affected.

The same is true of their other case, which deals with the expropriation that had happened prior to the--that case is the Berkowitz case. That's right. Where an expropriation had already occurred prior to entry into force of the BIT. And the only question was about compensation that was still to be--left to be determined by the Court. The Court decided the compensation issue after, and the Court--what the Tribunal said, is: "The only thing that we can't have jurisdiction over is whether or not that there was manifest arbitrariness with respect to the compensation decision" because the expropriation happened before the TPA came into force.

So, the cases they rely on are completely inapposite when it comes to the factual matrix that you have before you.

So, you know, I'll end this piece of the argument on coming back to Slide 151, which is that letter of July 12th, 2019. Which, if there was any doubt, makes it crystal clear that SSA understood prior to the 2020 Resolution that it had rights. And not only did it have rights, it makes it crystal clear that it has gone to the Superior Court to enforce those rights.

It's saying it--that the Superior Court ordered the prior same advantage of the shipwreck and the deposit of what was recovered in the Banco de la República de

Cartegena, or a similar entity, under the orders of the judge. And the injunction proceeding is the only action over which the Judge retains competence, and the judge has already been requested to initiate the procedure established for its implementation.

And what would that entail? They're saying this will be--and if you have any issues, they're saying, you can deal with the judge. But we have already petitioned the Judge to now implement that injunction which is to, under court supervision, salvage the property and give us what we're entitled to, and the court has maintained jurisdiction over that.

Unfortunately, we never got to that.

ARBITRATOR JAGUSCH: Let me ask: what is the status of the injunction today?

MR. MOLOO: As I understand it, it remains in place.

As I understand it, it maintains in place. But it's, in our submission, moot. Because we're going to go and bring up all the remnants of the San José. And they're going to say, well, we--they've already declared 100 percent of it cultural patrimony. So, zero percent--zero of it is treasure. So, they deem that injunction moot.

Why would we now seek to enforce it as a result

of their 2020 resolution? That's why we haven't gone to enforce it. Because it would be pointless.

ARBITRATOR JAGUSCH: What about your rights under the 2007 judgment? The Supreme Court judgment.

MR. MOLOO: Well, I would say--well, this will be a question for the merits as to whether or not this was permitted. But Colombia has purported to essentially eviscerate the rights that we have confirmed by the Supreme Court of Colombia over the San José.

Now, their response is: "Well, you didn't find the San José. You had no rights to the San José because that's not within the vicinity. But that's a factual dispute that you three gentlemen are going to have to decide hopefully at the merits phase." But that's a question for the merits; right? Did this or did this not expropriate our rights? And, Mr. Jagusch, I actually think you hit the nail on the head in this regard--maybe that is another pun, maybe not--a stretch.

But, with respect to the question that you asked, which is: If the San José is not within the vicinity, then do we lose on the merits? I think if I were Colombia, I would be saying yes; right? We lose on the merits. But that's a merits question. That's a merits question.

ARBITRATOR JAGUSCH: Yeah, no. I was just looking at this from the point of view of whether you have

rights that survive Resolution 85, whether they be rights under the Supreme Court judgment or under the so-called injunction, and how they--because facially, they would be in contradiction, I guess, with each other.

MR. MOLOO: Right.

ARBITRATOR JAGUSCH: Which just makes me wonder, well, what is the status of those rights now and what is your position in relation to that? And again, I don't expect an answer now. But it makes me wonder also what rights you might have to challenge the Resolution 85, rather than accept it and claim expropriation. I'm not asking because I have an answer in mind. I'm curious.

MR. MOLOO: Well, consider--my position is, as a matter of international law, the executive branch bypassing the resolution has expropriated our rights. And, you know, could I go to Colombian courts? Maybe. But we've chosen to come to this Tribunal and have our rights vindicated under international law.

ARBITRATOR JAGUSCH: Understood. Thank you.

MR. MOLOO: A lot of what I have just said answers this next argument, which is: Has the breach occurred within the last three years? And so, I'll very briefly just touch on the legal standard here, which will not be lost on this Tribunal, and I think we're on the same page. We all agree that there's a three-year limitation

period and the critical date is 18 December, 2019. The measure that has--was contested must have happened after that 18 of December, 2019 date.

Two cumulative facts must be established. The breach allegedly committed by the host State must be known. A breach, which we're alleging is the 2020 Resolution, which eviscerated any rights to the San José as a legal matter, did not--did not happen before 2020.

And the existence of loss or damage also could not have happened--they're cumulative, by the way. But that loss or damage could not have happened until the breach itself happened. And, by the way, to suspect that something will happen is not the same as knowing it will do so. That's Mobil at CLA-48.

And Colombia agrees. They say arbitral tribunals have recognized that it is not enough that the Claimant suspects it might suffer a loss, since a degree of certainty is required.

And at 382 they say the investor must be certain that the loss will occur.

That's important. Must be certain that the loss will occur.

We were not certain that we had lost our rights to any treasure, definitively forever, until January 23rd, 2020 when Colombia issued Resolution 85. For all the

reasons I've said.

Now I'll come back to where I started on the standard. The Tribunal must accept the facts that we've alleged on a prima facie basis. That we're saying that we've been expropriated by this 2020 Resolution--unless it's a frivolous claim. Unless it's capable of being dismissed out of hand in the words of the Tenant Tribunal or not even arguable. That arguable language is the Nasid Hassana (phonetic) Tribunal, CLA-77.

And the only way that you cannot accept those prima facie facts is if they've been definitively proven to the contrary. And Colombia could have said: "The San José is not here. It's in a completely different part. It's not within--anywhere near this place", but they have not taken that position. They have not demonstrably shown you that we are wrong. And in fact, I would say all the evidence shows that we are right. And for those reasons, I submit to you that we have met our prima facie standard at the very least for purposes of establishing jurisdiction.

My colleague, Ms. Ritwick, will very briefly address you on security for costs to--and then I'll come back to you at the end.

MS. RITWICK: Thank you, Mr. Moloo. I will as, Mr. Moloo suggested, try to go through this as quickly as possible. Now, we all know that Colombia has applied for

security for costs in these proceedings. Their initial application provided no basis to provide security for costs at all. In their--in their reply brief, once Claimants had disclosed that their counsel were acting on a contingency fee basis, Colombia seized on that fact to supplement or enhance its security for costs application.

Its first application was for 300,000 dollars. Its second, with its reply, this is increased, to a sum of 800,000 dollars. Colombia has not explained the source of the increase or otherwise justified its request.

In any event, Colombia's position has no support in the law at all. The Parties are in agreement that Article 26(3) of the use trailer arbitration rules apply here. Those are the rules that set out the grounds on which the Tribunal may award interim measures.

And in order to be granted interim measures, the party, the applicant, has to prove three things cumulatively. It has to prove that irreparable harm is likely to occur. A lot of tribunals have interpreted this to require a showing that the measure is necessary and urgent.

Number 2, the harm has to substantially outweigh the harm of the other party, i.e., that the measure is proportional. And 3, that there is a reasonable possibility of success on the merits by the moving party.

We, of course, disagree that there is a reasonable possibility of success there.

But moving on to the next slide, tribunals have uniformly interpreted Article 26 and the three cumulative requirements that it outlines to require the Respondent to establish that there are exceptional circumstances warranting an order for security of costs. This was highlighted, for example, by the Pugachev Tribunal, which in turn, was relying on the South American Silver Tribunal, both of which were also interpreting Article 26 of the UNCITRAL Rules.

Those tribunals confirmed that to grant security for costs, exceptional circumstances must exist that demonstrate either a high, real economic risk or evidence of bad faith by the Claimant. Colombia has, of course, demonstrated neither.

Next slide. And Pugachev is not the only Tribunal--and neither is the South American Silver Tribunal the only one to have upheld the exceptionality standard. Here, you can see a number of tribunals, including Herzig, on which Colombia relies. Herzig is found in RLA-50, all confirming that the standard is one of extreme or exceptional circumstances. Next slide.

So, what has Colombia argued here? As I mentioned before, absolutely nothing with its first

request. With its second request, Colombia's entire application is based on a single email from Claimant announcing that their counsel were acting on a contingency fee basis and that they would not volunteer disclosure in the--given that there were no--there was no requirement for disclosure at--they were not--due additional disclosure given there was no requirement for additional disclosure at that time. Colombia seized on this to invent an argument for security--for security for costs. It has contended that this arrangement is somehow indicative of third-party funding. That is wrong. Claimant is not third-party funded. It simply has a contingency fee arrangement with its counsel. But even if Colombia was correct and Claimant could be considered to be third-party funded, that would not be enough to warrant security for costs.

Tribunals have consistently held that simply the presence of third-party funding does not constitute the type of extreme and exceptional circumstances that warrant a security for costs award. I will leave you to read these excerpts given timing. Suffice to say, this--these kinds of findings are consistent among arbitral tribunals. Next slide.

And where tribunals have awarded security for costs, they have generally required evidence of bad faith or procedural misconduct. That was, for example, what

happened in the RSM v. St. Lucia case, where the Tribunal, in fact noted that financial limitation by itself may not be sufficient to award security. But in that case, the Claimant's consistent procedural history where it failed to pay multiple cost awards and requests for advances in prior and present ICSID proceedings warranted a security for costs award. Next slide.

Claimant here, of course, has paid all of its advances in full and on time. Accordingly, Colombia's application is sorely deficient and we request that this Tribunal deny it summarily. I'll give it back.

ARBITRATOR JAGUSCH: One question. Were the Tribunal to be satisfied that this is an appropriate case for security? Are you saying that 800,000 dollars is not a reasonable sum to ask for?

MS. RITWICK: Our position is simply that Respondent has to justify the amount that it has asked for, which it has not done so yet.

ARBITRATOR JAGUSCH: Okay. We're all aware that the average costs incurred by Parties to investor-state arbitrations routinely incur many millions in fees and lawyers' fees alone.

If you accept that, then it seems to me that 800,000 is not an unreasonable sum to ask for, which is why I put the question to you.

I understand you say that they don't support it with any calculation. But that surely doesn't mean it's not a reasonable sum to seek.

MS. RITWICK: Yes. No, thank you, Mr. Jagusch.

We agree in that we do not think 800,000 dollars is not necessarily an unreasonable sum. Where we were coming from is it was unsupported the fact it increased from 300 to 800 without any explanation, and we are not entirely sure, frankly, what it will be after this hearing or, you know, after subsequent proceedings from here on onwards.

ARBITRATOR JAGUSCH: Understood. Thank you.

PRESIDENT DRYMER: If we consider that security is warranted, do we have the discretion to select an amount?

MR. MOLOO: Well, I think--I don't think you can go higher than what's being requested, but I think you have the discretion, if you will.

PRESIDENT DRYMER: Thank you. Thank you.

MR. MOLOO: And let me take two more minutes of your time, if you'll indulge me.

You've seen our request for relief. But I would end by saying again that it is true that this has ban long saga. It's probably true that, in fact, we haven't always been treated fairly over the course of this saga. That

doesn't mean that our--we were permanently deprived our legal rights. We weren't permanently deprived of our legal rights until 2020. And so, yes, it has been exhausting. But you can't blame our client for having gone through the legal court system over years and the Executive Branch, yes, continuously telling us: "No, you know we don't want you to do this. We're to the going to allow you to do this." But us being continually vindicated by the domestic courts as recently as 2019, all culminating in the expropriation.

We have been left no choice, unfortunately, to come to this Tribunal. I think the Tribunal should ask itself the question: if we didn't have any rights, then why have they not salvaged the ship since 2015 over the last eight years? Why has it gone unsalvaged? Why did they think they needed to lift the injunction that was 22 years old? Why did they need to do that? Why are they not willing to give here under attorneys' eyes only, or whatever protection we need, the coordinates of where they found the ship? Why are they not willing to even confirm that the coordinates--that the article that we rely on is or is not where we found it if it's not where they found it? Why did they, ultimately in 2020, declare the entire galleon cultural patrimony if they didn't need to? After everything that we had done, and after the Court had

confirmed our rights, and we were on the precipice of having the Court supervise a salvage of the ship.

Those are all questions that I think you would know how I would answer them. But with respect to jurisdiction, I think we've certainly established that this Tribunal has jurisdiction so that it can consider those questions in further detail on the merits.

PRESIDENT DRYMER: Thank you. Does that conclude your opening submissions?

MR. MOLOO: It does conclude our opening submissions.

PRESIDENT DRYMER: Very good. Now, earlier I said that we would roll immediately into the submissions of the United States. But I don't want to do that unless and until the court reporter and the interpreters tell me that they're happy to do so without taking a five-minute break. Because if they tell me that a five-minute break would be helpful, then that's what I'll do. So, court reporter, let me start with you.

DANTE: We'll take the five minutes, please.

PRESIDENT DRYMER: You'll--yeah, yeah. Smart. So, let us adjourn please. I said earlier, one of my maxims is, there's no such thing as a five-minute break. I was unfortunately proved right earlier. Let's please try to keep this to five minutes. I want to be sure the

non-disputing party has a full opportunity to present its submissions and that we're able to respect other people's schedules. So five-minute adjournment. Let's come back at 5 after 6:00 please.

(Brief recess.)

PRESIDENT DRYMER: Thank you, Nick.

I now and finally turn to Mr. Bigge on behalf of the United States to make its--his/their non-disputing party submissions. Let me simply state that I am--I'm grateful to you and Ms. Grosh and your colleagues' patience throughout this long day. The floor is now yours.

MR. BIGGE: Thank you, Mr. President, Members of the Tribunal. It is certainly--we appreciate the opportunity to attend this virtually and to present our views at the close of this proceeding, or at least this hearing day. My name is David Bigge. I'm the Chief of Investment Arbitration in the Office of International Claims and Investment Disputes within the Legal Advisor's Office at the U.S. Department of State.

Pursuant to Article 10.20.2 of the U.S.-Colombia Trade Promotion Agreement, or TPA, I will make a brief submission addressing questions of treaty interpretation arising out of the Claimant's and Respondent's submissions.

I will address first the claim's burden with respect to facts necessary to establish jurisdiction.

Second, the three-year limitations period under the TPA. And third, the weight to be given to the views of the treaty Parties.

As is always the case with our non-disputing party submissions, the United States does not take the position here on how the interpretations offered apply to the facts of this case. And no inference should be drawn from the absence of comments on any issue. I will begin with the Claimant's burden to prove the facts necessary to establish jurisdiction.

As we stated in our written submissions: "In the context of an objection to jurisdiction, the burden is on the Claimant to prove the necessary and relevant facts to establish that a Tribunal has jurisdiction to its claim. Further, it is well established that where jurisdiction rests on the existence of certain facts, they have to be proven at the jurisdictional stage." We would point the Tribunal to Paragraphs 2 through 4 of our written submissions and the accompanying footnotes. TPA Article 10.20.5, under which the respondent's objection arises in this case, is different on this issue from an objection under Article 10.20.4. Under Article 10.20.4, a Respondent may request a preliminary decision from the Tribunal that, quote: "As a matter of law, a claim submitted is not a claim for which an award in favor of the Claimant may be

made under Article 10.26."

For such requests, "the Tribunal shall assume to be true Claimant's factual allegations."

Under Article 10.20.5, on the other hand, "the Tribunal shall decide on an expedited basis any objection"--and there's an ellipses here that I'm adding, but it closes with "that the dispute is not within the Tribunal's competence."

That is that the Tribunal lacks jurisdiction.

Article 10.20.5 further states that "the Tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection within the specified period."

Thus, this Tribunal is tasked with determining whether as a jurisdiction in this phase of the proceeding. The Tribunal may not presume Claimant's allegations to be true for the purposes of deciding the jurisdictional objections. Rather, the Claimant bears the burden of demonstrating any facts necessary to establish jurisdiction at this phase. And these facts must be proven for the Tribunal to find that it has jurisdiction, even if those facts also relate to the merits of the claim.

Now, the United States understands from earlier today that the Parties to the dispute agree that the Tribunal has discretion under the 2021 UNCITRAL Rules to

join its determination of jurisdiction to the merits, if appropriate.

The United States has not examined whether the exercise of such discretion is permitted or appropriate given the express terms of Article 10.20.5, and, therefore, reserves its position on this question. We note in this regard that we submitted a Non-Disputing Party submission in the Bridgestone matter, which was discussed earlier by the Tribunal, but we did not opine on this particular issue.

In any event, the exercise of discretion to join jurisdiction to the merits is not the same as accepting the Claimant's facts as true for the purposes of making jurisdictional determinations. Whenever the jurisdictional determination is made, the Claimant bears the burden to prove the facts necessary to establish jurisdiction, whether that jurisdictional determination is now, in accordance with Article 10.20.5, or later on the basis of a deferral for the merits.

The Tribunal cannot find that it has jurisdiction unless the Claimant has met its burden. I will next address the three-year limitation period in the TPA. As we emphasized in our written submissions, subsequent transgressions by a Party arising from a continuing course of conduct do not renew the limitations period once an

investor knows, or should have known, of the alleged breach and lost or damage incurred thereby. Where a series of similar and related actions by a Respondent State is at issue, a Claimant cannot evade the limitations period by basing its claim on the most recent transgression in that series. To allow Claimant to do so would render the limitations provisions ineffective.

As we further indicated in our written submission, an ineffective limitations period would fail to promote the goals of ensuring the availability of sufficient and reliable evidence, as well as providing legal stability and predictability for potential Respondents and third Parties.

To underline the point, legal certainty is one of the key benefits of the three-year limitations period. It is for this reason that it is not sufficient to merely consider the breach as asserted by the Claimant and determine whether it is within the three-year limitations period. To do so would deny the State the legal certainty to which it is entitled under the treaty. Particularly where there is a public policy meeting take a measure or measures with respect to the relevant investment, subsequent to prior measures that fall within the three-year period.

Finally, Mr. President, and Members of the

Tribunal, I will address the weight accorded to the views of the United States on matters addressed in a Non-Disputing Party submission. State's Parties are well placed to explain the meaning of their treaties, including in proceedings before investor-State tribunals like this one.

The United States consistently includes Non-Disputing Party provisions in its investment agreements, including the U.S.-Colombia TPA, to reinforce the importance of these submissions in the interpretation of the provisions of these agreements, and we routinely make such submissions.

Article 31 of the Vienna Convention on the Law of Treaties recognizes the important role that states' Parties play in the interpretation of their agreement. Although the United States is not a party to the Vienna Convention, we consider that Article 31 reflects customary international law on treaty interpretation. Article 31, Paragraph 3 states that in interpreting a treaty: "there shall be taken into account, together with the context: (A) any subsequent agreement between the Parties regarding the interpretation of the treaty or application of its provisions; and (B) any subsequent practice in the application of the treaty which establishes the agreement of the Parties regarding its interpretation.

Article 31 is framed in mandatory terms. It is unequivocal that subsequent agreements between the Parties and subsequent practice between the Parties shall be taken into account. Thus, where the submissions by the two state Parties to the TPA demonstrate that they agree on the proper interpretation of a given provision, the Tribunal must, in accordance with Article 31, Paragraph 3A, take the subsequent agreement into account.

The TPA Parties' concordant interpretations may also constitute subsequent practice under Article 31, Paragraph B. The International Law Commission has commented that subsequent practice may include "statements in the course of a legal dispute."

Accordingly, where the treaty Parties submission in an arbitration evidence a common understanding of a given provision. This constitutes subsequent practice which establishes an agreement of the Parties that must be taken into account by the Tribunal under Article 31 Paragraph 3B.

Investment tribunals have agreed, in the context of non-disputing party submissions, that submissions by Treaty Parties may serve to form subsequent practice. Specifically, I would point you to Paragraph 158 of the Mobil v. Canada Decision on jurisdiction and admissibility dated July 13th, 2018, as well as Paragraphs 103, 104, and

158 to 160 of that Decision for context.

I also refer you to Paragraphs 188 and 189 of the award on jurisdiction in Canadian Cattlemen for Fair Trade dated January 28th, 2008.

To sum up this point, whether the Tribunal considers that the interpretations presented by the TPA parties are subsequent agreements under Article 31, Paragraph 3A, subsequent practice under Article 31, Paragraph 3B, or both, the outcome is the same: the Tribunal must take the treaty Parties' common understanding of the provisions into account.

Mr. President, Members of the Tribunal, in conclusion, I would emphasize that the United States stands by the interpretation as set forth in its written submission, although we did not address all of those issues today. With that final observation, I close my remarks. I thank the Tribunal and the Parties as well as the PCA, again, for the opportunity to present the views of the United States from afar on these important interpretative issues.

PRESIDENT DRYMER: Mr. Biggie, thank you very much for your clear and very concise comments. I can assure you that the views of the United States are very relevant to this Tribunal and will be taken into account accordingly.

A quick question for you, if I may: Have you provided any illustrations of concordant practice by the Parties to the treaty in this case that we should be considering?

MR. BIGGE: Thank you, Mr. President. We have not provided specific examples. We trust the Tribunal to compare the U.S. submission and the Colombian submissions and determine whether they are not--whether they are concordant.

PRESIDENT DRYMER: Very good. Colleagues, any questions for Mr. Bigge?

ARBITRATOR JAGUSCH: No.

PRESIDENT DRYMER: Sir, I can only thank you again for your patience. It's been a long day. And this Tribunal is very grateful to you and your colleagues for your written submissions, which we've read, and for your oral submissions today.

Thanks very much.

MR. BIGGE: You're welcome. Thank you.

PRESIDENT DRYMER: Very well. Ladies and gentlemen, I think that concludes our day. The Tribunal is going to revert to you later on this evening with some quick issues that they would--that we would like you to address tomorrow. It won't be a comprehensive list. It's not meant to substitute for your own plans. But there will

be some issues which I suggest will come as no surprise based on the questioning today.

I encourage you as well, as I know you will, being good advocates, all, to consult your notes, maybe look at the transcript, and address, to the extent you can, and have not already done so, some of the issues that the Tribunal has raised in the course of today's pleadings.

We did so, not only to get answers, but to alert you to the fact that these are issues that are on our mind and to give you an opportunity tomorrow. Very good. Anything further from counsel before we adjourn?

MR. MOLOO: Not from Claimant's.

PRESIDENT DRYMER: Thank you.

MS. ORDÓÑEZ PUENTES: Yes, actually.

PRESIDENT DRYMER: Señora, please proceed.

MS. ORDÓÑEZ PUENTES: Colombia has a request. Because Claimant revealed the coordinates of the exploration area and the Tribunal has shown some interest on understanding the graphic identification of those coordinates, and the comparison within those and the 1982 Confidential Report, respondent, with the Tribunal's permission, would like to offer some maps produced by DIMAR that allow for a graphic interpretation of those coordinates. Nothing new, just the graphic interpretation, and we would make sure that Claimant would get those maps

within the next couple of hours.

PRESIDENT DRYMER: Before I ask Claimant's counsel for a comment--these are maps that exist, or maps that are--graphics that are being created for this proceeding on the basis of today's questions?

MR. VEGA-BARBOSA: They will be created to the illustrate the vicinity area on the basis of the exploration area Number 1 Resolution 48. But I'm going to create it for these proceedings only.

PRESIDENT DRYMER: Right. Mr. Moloo, any comment? Do you want to wait and see what's produced before you--

MR. MOLOO: Yes. I was going to suggest that. Perhaps we can confer and see.

PRESIDENT DRYMER: That would be excellent. Maps would be helpful. Speak a thousand words if not 10,000 with wounds.

So thank you, Counsel. We will rely on your habitual professionalism and cooperation to get this done.

And you can tell us what the outcome is tomorrow morning when we resume at 9:00 o'clock.

Very well, we are adjourned.

(Whereupon, at 6:21 p.m., the Hearing was adjourned until 9:00 a.m. the following day.)

POST-HEARING REVISIONS

CERTIFICATE OF REPORTER

I, Margie R. Dauster, RMR-CRR, Court Reporter, do hereby attest that the foregoing English-speaking proceedings, after agreed-upon revisions submitted by the Parties, were revised and re-submitted to the Parties per their instructions.

I further certify that I am neither counsel for, related to, nor employed by any of the Parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

MARGIE R. DAUSTER