

Annex E

Teco Guatemala Holdings LLC v. Republic of Guatemala, ICSID Case No.
ARB/10/23, Oral Submission of the United States of America,
Hearing Transcript, Vol. 5, Mar. 4, 2013

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES

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In the Matter of Arbitration :
Between: :
TECO GUATEMALA HOLDINGS, LLC, :
Claimant, :
and : Case No. ARB/10/23
THE REPUBLIC OF GUATEMALA, :
Respondent. :
- - - - - x Volume 5

HEARING ON JURISDICTION AND MERITS

Monday, March 4, 2013

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

The hearing in the above-entitled matter came on, pursuant to notice, at 8:17 a.m. before:

- MR. ALEXIS MOURRE, President of the Tribunal
- PROFESSOR WILLIAM W. PARK, Arbitrator
- DR. CLAUS von WOBESER, Arbitrator

<p>Sheet 2</p> <p style="text-align: right;">800</p> <p>Also Present:</p> <p>MS. ANNELIESE FLECKENSTEIN, Secretary to the Tribunal</p> <p>MR. BINGEN AMEZAGA, Assistant to the President of the Tribunal</p> <p>Court Reporters:</p> <p>MR. DAVID A. KASDAN, RDR-CRR B&B Reporters 529 14th Street, S.E. Washington, D.C. 20003 (202) 544-1903</p> <p>SR. VIRGILIO DANTE RINALDI, S.H. (via video) D.R. Esteno Colombes 566 Buenos Aires 1218ABE Argentina (5411) 4957-0083</p> <p>Interpreters:</p> <p>MS. SILVIA COLLA</p> <p>MR. CHARLES ROBERTS</p> <p>MR. DANIEL GIGLIO</p>	<p style="text-align: right;">802</p> <p>APPEARANCES: (Continued)</p> <p>On behalf of the Respondent:</p> <p>MR. NIGEL BLACKABY MR. LLUÍS PARADELL MS. NOIANA MARIGO MR. JEAN PAUL DECHAMPS MS. LAUREN FRIEDMAN MS. GISELA PARIS MS. GUADALUPE LOPEZ MS. KATHERINE IBARRA MS. ALLISON GILCHRIST Freshfields Bruckhaus Deringer U.S. LLP 701 Pennsylvania Avenue, N.W. Suite 600 Washington, DC 20004 (202) 777-4500</p> <p>On behalf of the Republic of Guatemala:</p> <p>MR. VLADIMIR OSMAN AGUILAR MR. SAÚL OLIVA MR. EVER OBDULIO BARRIENTOS PADILLA</p> <p>On behalf of Arenales & Skinner-Klée:</p> <p>MR. ALEJANDRO ARENALES MR. ALFREDO SKINNER-KLÉE MR. RODOLFO SALAZAR</p>
<p style="text-align: right;">801</p> <p>APPEARANCES:</p> <p>On behalf of the Claimant:</p> <p>MS. ANDREA J. MENAKER MR. JAIME M. CROWE MR. PETR POLASEK MS. KRISTEN M. YOUNG MS. SARA SARGEANTSON MS. ERIN VACCARO White & Case, LLP 701 Thirteenth Street, NW Washington, DC 20005-3807 (202) 626-3617</p> <p>Representing the Claimant:</p> <p>MR. CHARLES A. ATTAL, III</p> <p>MR. JAVIER CUEBAS</p>	<p style="text-align: right;">803</p> <p>APPEARANCES: (Continued)</p> <p>Non-Disputing Parties' Representatives:</p> <p>On behalf of the Republic of El Salvador:</p> <p>MR. LUIS PARADA MR. MARK CLODFELTER MR. DEREK SMITH Foley Hoag, LLP</p> <p>On behalf of the Dominican Republic:</p> <p>MS. KATRINA NAUT Directora General de Comercio Exterior Administración de Tratados Comerciales Ministerio de Industria y Comercio</p> <p>MR. ARIEL GAUTREAUX Analista Legal Ministerio de Industria y Comercio</p> <p>MS. LEIDLILIN CONTRERAS Abogado Ayudante Consultoría del Poder Ejecutivo</p> <p>On behalf of the United States of America:</p> <p>MR. JEREMY K. SHARPE Chief, Investment Arbitration, Office of International Claims and Investment Disputes</p> <p>MR. JOHN DALEY Deputy Assistant Legal Adviser</p> <p>MS. ALICIA CATE Attorney Adviser United States Department of State</p>

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P R O C E E D I N G S

1
2 PRESIDENT MOURRE: So, good morning,
3 everyone. I apologize this hearing in ICSID case
4 10/23.
5 We will start today as agreed with hearing
6 presentations from non-disputing parties. I don't
7 know whether the distinguished representatives of the
8 non-disputing parties are here in the room.
9 Good morning.
10 Are you for?
11 MR. PARADA: El Salvador.
12 PRESIDENT MOURRE: And do we have someone
13 from Dominicana?
14 MS. NAUT: Good morning.
15 PRESIDENT MOURRE: Good morning.
16 And I think the United States would like to
17 make a very short presentation as well. That's what I
18 heard today. Is anyone in the room from the United
19 States?
20 MR. SHARPE: Yes.
21 PRESIDENT MOURRE: Good morning. I
22 understand that your presentation will be very short.

08:28:56 1 MR. SHARPE: A couple of minutes.
2 PRESIDENT MOURRE: Okay. So, they're going
3 to be very short. Okay, thank you.
4 No objection from the Parties?
5 And after that we will hear from
6 Mr. Giacchino, Mr. Moller, and Mr. Colom. And after
7 that we have the legal experts.
8 We really need to go through the legal
9 experts today, so I will be grateful if the Parties
10 could arrange--I believe the remaining time allocation
11 is far too long for two days of hearing. It doesn't
12 take into account the fact Mr. Mate was not heard, but
13 I think the goal today is to go through the legal
14 experts, and I would be grateful if the Parties could
15 at some point during the day confer and arrange, agree
16 on their allocation of time so that we would be able
17 to terminate today with the legal experts at a
18 reasonable time, maybe 7:00 p.m., so.
19 MR. BLACKABY: That will be fine,
20 Mr. President.
21 Just one brief comment with regard to the
22 non-disputing parties. I mean, it was agreed between

<p>Sheet 4</p> <p style="text-align: center;">808</p> <p>08:30:01 1 the Parties as we indicated in the letter to the 2 Tribunal that each of us reserved the right to make 3 brief submissions after the non-disputing parties had 4 made their representations.</p> <p>5 PRESIDENT MOURRE: Yes, this is noted. 6 Do we have any further matter before hearing 7 El Salvador?</p> <p>8 MS. MENAKER: No, not from Claimant. 9 MR. BLACKABY: Nor from Respondent.</p> <p>10 PRESIDENT MOURRE: Can I then invite the 11 representative for San Salvador to take the floor. 12 I would be very grateful, sir, if you could 13 really not exceed 15 minutes. We agreed that you 14 would have a maximum of 15 minutes. We have a very 15 tight schedule, as you heard, so we will need to limit 16 your presentations to what was agreed. You have the 17 floor. Thank you very much.</p> <p>18 OPENING STATEMENT BY COUNSEL FOR EL SALVADOR 19 MR. PARADA: Thank you, Mr. President, 20 Members of the Tribunal. Good morning. 21 The most important decision this Tribunal 22 will make in this proceeding is an interpretation of</p>	<p style="text-align: right;">810</p> <p>08:32:31 1 important as the Minimum Standard of Treatment in 2 Article 10.5. And to interpret Article 10.5, El 3 Salvador believes it is important to begin with the 4 text of the article; and, in that regard, I would like 5 to make a few observations regarding the most relevant 6 provisions of this Article.</p> <p>7 The first observation is that the title of 8 Article 10.5 is, "Minimum Standard of Treatment." 9 This term, "Minimum Standard of Treatment," is 10 repeated twice in the text of Article 10.5 as an 11 umbrella concept that includes and informs the 12 interpretation of the entire article.</p> <p>13 Moving on, Paragraph 1 of Article 10.5 states 14 that each State Party to CAFTA has an obligation to 15 treat covered investments in accordance with customary 16 international law, including Fair and Equitable 17 Treatment and Full Protection and Security. This is 18 the first time that we see the term customary 19 international law, which will be repeated also several 20 times in this Article. 21 Paragraph 2 brings together these two terms 22 and starts by explaining that when Paragraph 1 is</p>
<p style="text-align: center;">809</p> <p>08:31:15 1 Article 10.5 of the Free Trade Agreement between the 2 United States, Dominican Republic, and Central 3 America, known as DR-CAFTA or CAFTA.</p> <p>4 Four non-disputing parties of CAFTA have 5 already exercised their right under the Treaty to make 6 written submissions to this Tribunal regarding the 7 interpretation of Article 10.5; and today it is my 8 privilege to address the Tribunal on behalf of the 9 Republic of El Salvador to further explain El 10 Salvador's written submission.</p> <p>11 I would like to begin by emphasizing that the 12 CAFTA non-disputing parties do not have an interest in 13 the outcome of a particular case. They're here, 14 though, because they do have a long-term interest in 15 preserving the integrity and viability of the Treaty, 16 and they know and understand that an important part of 17 preserving the integrity of the Treaty involves 18 assisting arbitral tribunals that are called to 19 interpret the provisions of the Treaty that the State 20 Parties to CAFTA negotiated, signed, and ratified.</p> <p>21 This is particularly important when a 22 tribunal is called to interpret the provision as</p>	<p style="text-align: right;">811</p> <p>08:33:46 1 referring to treatment in accordance with customary 2 international law, it is referring to the Minimum 3 Standard of Treatment under customary international 4 law.</p> <p>5 Paragraph 2 also explains that the concept of 6 Fair and Equitable Treatment and the concept of Full 7 Protection and Security, which are the two concepts 8 that are included under the umbrella of the Minimum 9 Standard of Treatment, do not require treatment in 10 addition to or beyond what is required under that 11 standard and do not create additional substantive 12 rights.</p> <p>13 So the CAFTA Parties went to great lengths to 14 define and limit the concepts included in Article 10.5 15 under the umbrella of the Minimum Standard of 16 Treatment under customary international law.</p> <p>17 And the final observation that I have this 18 morning regarding the text of Article 10.5 is 19 particularly relevant for the task before this 20 Tribunal. Paragraph 2 says that the concept of Fair 21 and Equitable Treatment includes the obligation not to 22 deny justice, and this is one of the most important</p>

<p>Sheet 5</p> <p style="text-align: center;">812</p> <p>08:34:55 1 observations of Article 10.5 because the only 2 obligation that the text of this Article expressly 3 recognizes as being included in the concept of Fair 4 and Equitable Treatment is the obligation not to deny 5 justice. 6 Now, this is not to say that the reference to 7 denial of justice is meant to be exhaustive. As the 8 United States of America explained the term "Minimum 9 Standard of Treatment" in Paragraph 3 of its written 10 submission, and I quote, "The Minimum Standard of 11 Treatment is an umbrella concept reflecting a set of 12 rules, a set of rules, that over time has crystallized 13 in customary international law in specific contexts. 14 So, it would be possible that another rule or 15 obligation in addition to the obligation not to deny 16 justice could also be recognized as included in the 17 Minimum Standard of Treatment under the concept of 18 Fair and Equitable Treatment in Article 10.5. 19 However, the existence of a rule of customary 20 international law cannot be presumed. In a CAFTA 21 arbitration, a claimant that alleges the existence of 22 an obligation under this umbrella of the Minimum</p>	<p style="text-align: center;">814</p> <p>08:37:26 1 to the obligation not to deny justice. A claimant 2 would have to prove that a rule of customary 3 international law exists by proving two things: 4 One, that there is a general and consistent 5 practice of States; 6 And, two, that such practice is followed from 7 a sense of legal obligation. In other words, El 8 Salvador understands that, in the absence of evidence 9 based on general and consistent practice of States 10 follows from a sense of legal obligation, the concept 11 of Fair and Equitable Treatment as part of the Minimum 12 Standard of Treatment under customary international 13 law, as it is required in Article 10.5 of CAFTA can 14 only be applied in the context of denial of justice. 15 This understanding is not just El Salvador's 16 interpretation. This is what the text of the Treaty 17 provides for. Is this a harsh or extreme 18 interpretation? Absolutely not. Article 10.5 was 19 always intended to offer a very limited protection--a 20 floor, if you will--in the acceptable level of 21 treatment to covered investments. This is why it is 22 called "Minimum Standard of Treatment."</p>
<p style="text-align: center;">813</p> <p>08:36:11 1 Standard of Treatment has the burden to prove that 2 this alleged obligation exists as an obligation under 3 customary international law. 4 And how can a claimant establish the 5 existence of a rule or obligation under customary 6 international law? The text of the CAFTA itself 7 provides the answer because CAFTA defines with 8 precision the only source that may be used to prove 9 the existence of a rule of customary international 10 law. 11 Article 10.5 directs us to Annex 10 B in 12 Footnote 1 that says Article 10.5 shall be interpreted 13 in accordance with Annex 10 B. 14 And Annex 10 B explains the understanding of 15 the CAFTA Parties that customary international law 16 generally and specifically referenced in Article 10.5 17 results from a general and consistent practice of 18 States that they follow from a sense of legal 19 obligation. 20 So, it follows that to establish that the 21 concept of Fair and Equitable Treatment in 22 Article 10.5 includes a rule or obligation in addition</p>	<p style="text-align: center;">815</p> <p>08:38:44 1 But a Claimant that invokes protection under 2 Article 10.5 always has the opportunity to prove the 3 existence of another rule or obligation under 4 customary international law. The only requirement is 5 that that Claimant must prove the existence of such 6 rule with evidence from general and consistent 7 practice of States followed from a sense of legal 8 obligation as it is required in Annex 10 B. 9 We should also keep in mind that Article 10.5 10 is not the only protection that CAFTA affords to 11 covered investments. CAFTA includes protections 12 related to national treatment, most favored nation 13 treatment, and expropriation. CAFTA even allows an 14 investor to bring claims to international arbitration 15 for alleged breaches of investment agreements, and 16 investment authorizations; that is, for alleged 17 breaches of contracts with the State. So, 18 Article 10.5 is not the only protection available to a 19 CAFTA investor. However, if an investor chooses to 20 bring a claim for an alleged breach of Article 10.5 in 21 areas other than denial of justice and Full Protection 22 and Security, that Claimant has the burden to prove</p>

<p>Sheet 6</p> <p style="text-align: right;">816</p> <p>08:39:58 1 the existence of such obligation under customary 2 international law in accordance with Annex 10(b). 3 In conclusion, El Salvador invites the 4 Tribunal to focus on the text of the Treaty as the 5 Tribunal decides on the correct interpretation of 6 Article 10.5. This provision, which was negotiated, 7 signed, and ratified by all the seven States Parties 8 to CAPTA, all of these States have a long-term 9 interest in preserving the integrity and viability of 10 the Treaty not just for their own benefit, but the 11 benefit of their nationals that invest and other CAPTA 12 Parties. 13 This concludes El Salvador's oral 14 submissions. Thank you very much. 15 PRESIDENT MOURRE: Thank you very much. 16 I propose, if there are comments from the 17 Parties, we will take them after we hear the 18 representative from the Dominican Republic and the 19 United States, if that's okay. 20 So, thank you very much. This is much 21 appreciated. 22 Can I now invite the representative from</p>	<p style="text-align: right;">818</p> <p>08:42:43 1 foreigners based on customary international law is the 2 Minimum Standard of Treatment to be afforded to the 3 covered State investments. The concepts of Fair and 4 Equitable Treatment and legal certainty have no need 5 for further understanding more than the level 6 expressed there, and it does not create any 7 substantive right, and the determination that there 8 has been breach of another provision of this Treaty or 9 any other international agreement does not state that 10 there was a breach of this Article. 11 From this, we can say that Fair and Equitable 12 Treatment established in the Treaty should be 13 understood as part of the Minimum Standard of 14 Treatment that is to be afforded to foreigners based 15 on customary international law. This is quite 16 different from the Fair and Equitable principle that 17 has been independently included in many investment 18 protection agreements and that do not have any 19 connection with the Minimum Standard of Treatment 20 under the customary international law. 21 Therefore, the Dominican Republic reiterates 22 that the purpose and the objective of Article 10.5 of</p>
<p style="text-align: right;">817</p> <p>08:41:04 1 Republica Dominicana. 2 OPENING STATEMENT BY COUNSEL FOR DOMINICAN REPUBLIC 3 MS. NAUT: First of all, I would like to say 4 good morning to all of you. And also I would like to 5 say good morning to the distinguished members of the 6 Tribunal: Mr. Alexis Mourre, President; Professor 7 William Park, Arbitrator; Mr. Claus von Wobeser, 8 Arbitrator. 9 The Dominican Republic, based on the 10 provisions in Article 10.20.2 of the Treaty between 11 the Dominican Republic, Central America, and the 12 United States, would like to state the following in 13 connection with the application of Article 10.5 of the 14 Treaty. 15 In this sense, the Article establishes that 16 each of the Parties shall grant or afford the covered 17 investments treatment that is in accordance with 18 customary international law, including Fair and 19 Equitable Treatment as well as Full Protection and 20 Security; and it continues to establish that for 21 greater certainty, Paragraph 1 prescribes that the 22 minimum level of treatment that has been granted to</p>	<p style="text-align: right;">819</p> <p>08:44:05 1 the Treaty should limit itself to the minimum level of 2 treatment to be afforded to foreigners based on 3 customary international law rather than Fair and 4 Equitable Treatment as an isolated concept. 5 As for the minimum level of stand of 6 treatment to be afforded to foreigners based on 7 customary international law, jurisprudence in this 8 subject has also verified that a breach comprises the 9 following elements: Denial, gross and severe denial 10 of justice, arbitrary treatment, are also--are 11 inconsistent--arbitrary treatment that has to do with 12 judicial policies as well as proceedings, and it 13 becomes a denial of the purpose and the policies and 14 absence of due process that has an impact on the 15 administration of justice, also flagrant injustice. 16 And, finally, but not less important, clear 17 discrimination or the absence of justification for a 18 decision. 19 Based on this, the origin of the Minimum 20 Standard of Treatment under customary international 21 law is an absolute floor, or it is considered by many 22 to include actions that are extreme by a State that</p>

<p>Sheet 7</p> <p style="text-align: right;">820</p> <p>08:45:35 1 could constitute the elements, the key elements, to 2 breach the minimum standards of treatment. 3 As a consequence, this is the opinion of the 4 Dominican Republic. To breach the minimum standard of 5 treatment under customary international laws included 6 in Article 10.5 of the DR-CAFTA, a measure to be 7 attributed to the State should be extreme enough to be 8 below the standards that had been internationally 9 accepted. 10 Therefore, only conducts that are clearly of 11 an arbitrary nature and that are very severe, conduct 12 could be claimed under 10.5 of the DR-CAFTA rather 13 than the mere breach or arbitrary nature. 14 And taking into account what the focus should 15 be and that the focus should be on the conduct of the 16 State, the Dominican Republic indicates that it is a 17 mistake to include the expectations of the investors 18 vis-à-vis the treatment that they expect to receive 19 based on what they had been offered to decide whether 20 the State has complied with the Minimum Standard of 21 Treatment. 22 The conduct of the State is the key element</p>	<p style="text-align: right;">822</p> <p>08:48:18 1 States of America. Please, you have the floor. 2 OPENING STATEMENT BY COUNSEL FOR THE UNITED STATES 3 MR. SHARPE: Thank you, Mr. President, and 4 Members of the Tribunal. I'm Jerry Sharpe, the Chief 5 of Investment Arbitration at the U.S. Department of 6 State. 7 The United States thanks the Tribunal and the 8 disputing parties for the opportunity to make two 9 brief remarks this morning. 10 First, we wish to reiterate that the United 11 States takes no position on the merits of this case. 12 In accordance with CAFTA-DR Article 10.20.2, the 13 United States exercises its right as a non-disputing 14 party to make submissions on questions of treaty 15 interpretation, whether or not the investor is a 16 United States investor. 17 We thus would reject any suggestion that our 18 written submission in this case somehow reflects a 19 failure by the United States to, "protect," a U.S. 20 investor. 21 Rather, we exercised our right under the 22 Treaty to draw the Tribunal's attention to the Treaty</p>
<p style="text-align: right;">821</p> <p>08:46:59 1 as the only factor to take into account, since the 2 Minimum Standard of Treatment should be an objective 3 concept to assess the conduct and also the treatment 4 afforded by the State in connection with an 5 investment. And this is different from the subjective 6 view of the investor and the expected treatment that 7 this investor expects to receive, and this would have 8 a negative effect on the States. 9 To conclude, the Dominican Republic considers 10 that the Parties to the Treaty have clearly stated and 11 concretely stated their intention to include the 12 Minimum Standard of Treatment afforded to foreigners 13 under customary international law, and that is the 14 Minimum Standard of Treatment as stated in 15 Article 10.5 of the agreement, and this is the reason 16 why the Dominican Republic is here today, because the 17 Dominican Republic believes that this Tribunal shall 18 implement the right application or the right 19 interpretation of Article 10.5 under CAFTA. 20 Thank you very much. 21 PRESIDENT MOURRE: Thank you very much. 22 We call on the representative for the United</p>	<p style="text-align: right;">823</p> <p>08:49:15 1 Parties' shared understanding that the customary 2 international law Minimum Standard of Treatment in 3 Article 10.5 results from a general and consistent 4 practice of States that they follow from a sense of 5 legal obligation. The burden, we noted, rests with 6 the Claimant to establish the existence and 7 applicability of a relevant obligation. 8 Second, the disputing parties have discussed 9 the non-disputing parties' views on the question of 10 legitimate expectations. As the United States 11 observed in its written submission, in our view, 12 States may modify or amend their Regulations to 13 achieve legitimate public welfare objectives and will 14 not incur liability under customary international law 15 merely because such changes interfere with an 16 investor's expectations about the State of Regulation 17 in a particular sector. 18 Regulatory action violates Fair and Equitable 19 Treatment under the Minimum Standard of Treatment 20 where, for example, it amounts to a denial of justice 21 or manifest arbitrariness falling below international 22 minimum standards. Should it be helpful, a more</p>

<p>Sheet 8</p> <p style="text-align: center;">824</p> <p>08:50:19 1 complete statement of the United States's views can be 2 found in the U.S. Counter-Memorial in Grand River 3 Enterprises versus the United States, beginning at 4 Page 96, which is available on-line, including on the 5 State Department's Web site. 6 Thank you very much, Mr. President, Members 7 of the Tribunal. 8 PRESIDENT MOURRE: Thank you very much. 9 Do the Parties wish to make any comments on 10 the non-disputing parties' presentations? 11 Claimant? 12 MS. MENAKER: Claimant doesn't believe it's 13 necessary and is prepared to just respond in the 14 Post-Hearing Submissions. 15 PRESIDENT MOURRE: Thank you. 16 Respondent? 17 MR. BLACKABY: I think we can also, in the 18 absence of any response from Claimant, I think we can 19 also reserve any observations for the Post-Hearing 20 Brief. 21 PRESIDENT MOURRE: Very well. Thank you very 22 much.</p>	<p style="text-align: center;">826</p> <p>08:55:39 1 honor and conscience that I shall speak the truth, the 2 whole truth, and nothing but the truth. 3 PRESIDENT MOURRE: Thank you very much. 4 Will you testify in Spanish or English? 5 THE WITNESS: English. 6 PRESIDENT MOURRE: In English, very well. 7 We have in front of us two statements that 8 you signed. The first for the record is CWS-4 and 9 dated 23 September 2011, and the second one is CWS-10 10 and is dated 24 May 2012. 11 Do you have a copy of those declarations with 12 you? 13 THE WITNESS: Yes, I do. 14 PRESIDENT MOURRE: Do you confirm those 15 declarations? 16 THE WITNESS: Yes. 17 PRESIDENT MOURRE: Is there any corrections 18 or amendments you would like to make? 19 THE WITNESS: No. 20 PRESIDENT MOURRE: Thank you very much. 21 Ms. Menaker, do you have any question on 22 direct?</p>
<p style="text-align: center;">825</p> <p>08:51:12 1 So, shall we now start hearing Mr. Giacchino? 2 Is Mr. Giacchino in the room? 3 MR. BLACKABY: We need a little bit of 4 organization of the witness stand. 5 PRESIDENT MOURRE: No problem. 6 LEONARDO GIACCHINO, CLAIMANT'S WITNESS, CALLED 7 MR. BLACKABY: Just for the record, we are 8 distributing the Core Bundle that was distributed in 9 New York. We appreciate with all the documents in 10 this case and that we have extra copies of the Core 11 Bundle and the bundle which is being distributed for 12 the cross-examination of Mr. Giacchino. 13 PRESIDENT MOURRE: Good morning, 14 Mr. Giacchino. 15 THE WITNESS: Good morning. 16 PRESIDENT MOURRE: You have been called to 17 testify in this arbitration by the Claimant, as you 18 know. 19 You should have in front of you the text of 20 the Declaration which I would be grateful if you could 21 read for the record. 22 THE WITNESS: I solemnly declare upon my</p>	<p style="text-align: center;">827</p> <p>08:56:33 1 MS. MENAKER: Mr. Polasek will be doming the 2 direct. 3 MR. POLASEK: Good morning, Mr. President and 4 Members of the Tribunal. I'm Petr Polasek, counsel 5 for Claimant, and we just have a few quick questions 6 for Mr. Giacchino. 7 DIRECT EXAMINATION 8 BY MR. POLASEK: 9 Q. Mr. Giacchino, Guatemala asserts in the 10 Rejoinder that the CNEE's technical team involved in 11 EEGSA's 2003 Tariff Review was understaffed and that 12 its ability to analyze information received from EEGSA 13 was limited. How competent did the CNEE's technical 14 team involved in the 2003 review appear to you? 15 A. The 2003 team that CNEE assembled, it was 16 highly qualified on a technical side. They have the 17 person in charge, Ricardo Bialus from the CNEE, who 18 was very knowledgeable of the network. When he 19 presented the initial results, he surprised us because 20 he knew the location of the feeders, you know, the 21 streets where the lines went through and everything on 22 a great deal of detail. The person seconded him was</p>