

Professor Nicolas Boeglin of Public International Law Faculty of Law University of Costa Rica wrote the above published article on the CAFTA case arbitration ruling. Vinicio Chacón wrote an article based on Professor Boeglin publication.

What comes through very clearly in the Professor Boeglin article, when one is familiar with the key facts and evidence in the case, is that the professor and Mr. Chacon repeated the false narratives of the State. This is evidence of the failure of the Vinson and Elkins Solicitors to use the truthful facts and evidence in the hearing effectively so that the Tribunal would correctly understand what the facts and evidence were. If that would have happened the case would have been won and the Costa Rica article writers would have understood the same as the Tribunal. Below is the glaring number of misstated facts in this case.

In these articles there are NO MENTION OF:

1. the Bribery attempt of David Aven twice, no mention of the assassination attempt;
2. the INTERPOL RED NOTICE;
3. the April 2, 2018 MINAE letter for SETENA all saying NO WETLANDS;
4. all the SETENA Resolutions having the force of law behind them;
5. the MINAE reports that all said there were NO WETLANDS;
6. the INTA reports conclusion of NO WETLANDS;
7. all the above reports that said there were NO WETLANDS!

VE attorneys failed to mention anything about the relevant evidence and then hid the truth of the existence of the Bribery recording after Christian Leathley in his opening statement said it was inexplicably missing. Here is what Professor Boeglin got wrong:

Professor Boeglin comments: “Both the Claimants and the Respondent have distanced themselves from its origin, and many discussions have arisen between them as to who had motives for preparing and presenting it, but the Tribunal is still unclear who actually produced it.”

Aven Comment: This belies the fact that on the back of that alleged forged document that was filed with SETENA it clearly stated that the document was submitted by Mr. Steve Bucelato, a fierce competitor of David Aven who lived right next to the Las Olas project.

Professor Boeglin comments: "It was confirmed that this document was a forgery - although this was not until November 2010. In the meantime, it seems that SETENA trusted the document"

Aven Comment: THE ALLEGED FORGED DOCUMENT WAS NEVER TRUSTED OR RELIED UPON BY SETENA IN ISSUING THEIR ENVIRONMENTAL PERMIT IN JUNE OF 2008. It was never legally confirmed that it was a forgery. In a letter from MINAE to Hazel Melendez, it stated that this document is in the MINAE file. If it was a forgery, how did it get into a MINAE file with no one noticing it was forged until David Aven refused to pay a bribe? The allegation that it was forged was Hearsay Evidence. There was no police investigation, although David Aven told the Criminal prosecutor he should call the police and report it. There was no ruling by a Judge saying that it was forged, and no statements or direct testimony saying it was forged. It was all hearsay testimony from Costa Rica's Attorney and the Criminal prosecutor.

There was never any objection from any of Vinson and Elkins attorneys about any of the critical info above.

Professor Boeglin comments: Professor Boeglin quotes from Paragraph 763 that says the following: *“The Claimants, on the other hand, lacked transparency in their development of Las Olas. They acted to prevent the display of terrain features that could disrupt their business. They omitted the disclosure of the Protti Report (paragraph 111 supra) and also subdivided the land to avoid the requirement to file a DI Application to obtain a VA permit for easements (section X.D.1 (f) supra). These kinds of actions not only undermined the Claimants' argument, but obscured their understanding.”*

Aven Comment: The Protti report was a cornerstone piece of evidence in Costa Rica’s defense strategy. It was the document they used to falsely allege that there were wetlands, and proving that David Aven duped SETENA. This was stated by Christian Leathley during his opening statement. David Aven categorically denied these false allegations during his testimony. Aven stated clearly that he never duped SETENA or anyone else and said that the report never said there were no wetlands, and that was not a report that SETENA required. None of that was ever mentioned by George Burn or any other VE solicitors.

During Mr. Burn’s redirect of Mr. Aven, he asked him about the Protti report and Mr. Aven restated what he had said earlier in the hearing. He added that the Protti Report became a key trial strategy for Costa Rica to get around the fact that Costa Rica had issued all the permits for the project and the developers were already doing the infrastructure construction when the project was shut down after Mr. Aven refused to pay a bribe. Mr. Aven also said that the criminal prosecutor, in Mr. Aven’s criminal trial in Costa Rica, never stated that Mr. Aven duped SETENA. Mr. Aven also said that the Protti Report duping allegation was fabricated by the state for the CAFTA trial and was like the fake news you hear about on TV. Instead of taking the opportunity to debunk the Protti report after Mr. Aven made that statement, Mr. Burn said, “Well anyone that knows Donald Trump knows about fake news.” That statement goes way beyond incompetence and gross negligence and violates a major tenet in the court room--Don’t mention religion or politics, or anything else that can hurt your client in the eyes of the Tribunal. Mr. Burn’s statement should be grounds for disbarment.

However, Law Professor Boeglin did pick up on a few salient points. Here they are the highlights of what the Professor GOT RIGHT:

1. **Professor Boeglin comments from paragraph 129:** “Interestingly, the same day that Ms. Vargas publicly announced her concerns, the Municipality issued seven construction permits for the Easement Sector of the Las Olas Project. A few days later, on June 22, 2010, DEPPAT — the Environmental Regent hired by Mr. Aven — presented an earthworks plan and a planned works program with respect to the Easement Sector.”
Aven Comment: None of the above was every mentioned during Burn’s cross of Vargas.
2. **Professor Boeglin comments from paragraph 181:** *“As emerges from the description of the facts supra, many questions arise from confusing and complex facts, and apparently contradictory or incongruous reports, resolutions and measures by the Costa*

Rican authorities, which this Court will analyze below. Some of these questions are: were there wetlands and forests at the Las Olas Project site? What is the body in charge of determining the existence of wetlands? Is it a different organism from the forest? What is the body responsible for issuing an environmental viability permit? What are the investor's rights after receiving a permit? Who has the authority to revoke? Lastly, what is the relationship between the municipal and central governments regarding the granting of permits for the development of real estate? »

Aven Comment: All of the above questions of the Tribunal had clear answers for the Professor that never were given. This was clearly due to VE's failure to use the facts and evidence to prove up the Claimant's case in chief. The Tribunal didn't get it and that's why the professor didn't get it as well. If you don't ring the bell no one will hear it.

3. **Professor Boeglin comments from paragraph 762:** *“Costa Rica also presented before this Tribunal some illegal assumptions of the Claimants with respect to the Concession and the development of the Las Olas Project itself, but the State failed to apply domestic law to these situations. Furthermore, the complexity of environmental law and the number of bodies empowered to enforce it may explain the contradictions mentioned above, although they may also mislead people dealing with issues of an environmental nature. All this confusion has been, to some extent, an invitation to litigate.”*

Aven Comment: Again, this is proof of VE's failure to make this clear for the Tribunal and the professor repeats it in his writings. You can't win in court if you don't have a strategy to use your facts and evidence to prove up your case!

4. **Professor Boeglin comments from paragraph 116:** *“On March 27, 2008, just days before the statement from the SINAC mentioned above confirming that **“the Condominium Sector was not within an ASP”** was issued, a SINAC Report No. 67389RNVS-2008 was presented to SETENA as part of the Las Olas Project file which has been referred to during the procedure as the **“Forged Document”**”*

Aven's Comment: This by far is the one of the most egregious failures on the part of VE in not making the truth known on a key fact. On March 27, this alleged forged document was written by a SINAC agent in a MINAE office. This report stating there were NO WETLANDS, had nothing to do with the SETENA Environmental permitting process that SETENA was engaged in with David Aven and Las Olas. SETENA never required that report, nor was it a report that was even known to David Aven when it was written. On April 2, 2008, just days later, a MINAE agent from a completely different office wrote the letter that SETENA was waiting to receive from MINAE as part of their permitting process, that would state there were NO WETLANDS. The April 2, 2008 letter stated that in saying **“the Condominium Sector was not within an ASP”**. The above is what Professor Boeglin was referring to in his above comment.

What happened next was outrageous. In March of 2011 MINAE lied to SETENA and said that the March 27, 2008, the alleged forged document, was the one that SETENA relied upon in 2008 to issue their EV Permit. Why MINAE and SETENA didn't just check their

files to verify the above is inexplicable. If they would have checked their files, they would have seen that the April 2, 2008 letter was the one that SETENA relied upon, and not the March 27, 2008 letter.

Mr. Aven immediately filed an appeal and told SETENA the truth that the April 2, 2008 report was the letter that SETENA relied upon and not the March 27, letter. Once SETENA confirmed that truth with MINAE, they wrote a stinging condemnation Resolution on November 11, 2010 calling MINAE employees incompetent. They rescinded, reinstated and reconfirmed their EV permit of June 2, 2008 for Las Olas Project. Here is some of what SETENA said in that November 15, 2011 Resolution.

"Uphold this MOTION FOR REVOCATION and, as a consequence, ORDER THE REVOCATION AND SUSPENSION OF THE EFFECTS OF THE RULING THAT IS BEING APPEALED, ITS SERVICE OF NOTIFICATION AND ALL ASSOCIATED ACTIONS THAT ARE DERIVED FROM IT OR THAT ARE CONNECTED TO IT, ASSOCIATED WITH IT OR DIRECTLY OR INDIRECTLY RELATED TO IT THAT HAVE SURVIVED DUE TO BEING LEGALLY NULL AND VOID, ILLEGAL, AND LACKING IN STANDING, AND THAT WERE ISSUED BY AN INCOMPETENT EMPLOYEE."

“WHEREAS: **1:** Mr. David Richard Aven has been held to be legitimate to appeal Ruling number 839-20111- SETENA on behalf of the Inversiones Cotsco C&T S.A. development company.

1- According to the ruling appealed in section 3 of the Recitals, the project was stopped because Ms. Guiselle Méndez Vega, the Executive Director of the National Conservation Area System, requested, in Official Document SINAC-DE-1786 dated November 30, 2010, at page 358, the suspension of the Environmental Viability permit based on the questioning related to the supposed forgery of Official Document SINAC 67389RNVS-2008, which was used as input to issue the Environmental Viability permit for the project in question.

2- It was verified that page 272 of Ruling number 1597-2008-SETENA issuing the Environmental Viability permit, in the third paragraph of the Recitals, mentions that information is received on April 3, 2008 that includes pronouncement ACOPAC-MINAE requested by this Secretary in Official Document S.G.P.-D.G.I. 098-2008.

3- Page 259 contains Official Document ACOPAC-OSRAP-00282-08, dated April 2, 2008, addressed to architect Edgardo Madrigal Mora, Inversiones Cotsco C&T S.A., where it indicates that the project located in West Esterillos, the Parrita District, the Canton of Parrita, Puntarenas Province, plan number P-1244761-2007, is not in a protected area.

7- On page 388 of Ruling 839i IN the Recitals, point 7, dated February 9, 2011 the answer from Mr. David Aven is received. It indicates that he has no relationship with report SINAC 67389RNVS-2008, submitted on April 3, 2008.

5: Page 259 of Official Document ACOPAC-OSRAP-00282-08, mentioned in point 3 and also provided by the developer as proof in his motion, which is dated April 2, 2008, states that, according to the contents of point 8 of the third paragraph of the Recitals, it was

actually issued in the Aguirre - Parrita Sub-regional Office (OSRAP), which is also the office that issues the pronouncement based on the project's locations (Puntarenas, Parrita, West Esterillos) while the head was Gerardo Chavarria Amador, Esq., as proven in the same document.

RECOMMENDATIONS: Revoke Ruling 839-2011-SETENA issued at 8:40 a.m. on April 13, 2011, in full according to all of the above and the proof requested to better issue a ruling as the Administrative File since there is no reason or defect of nullity in the Environmental Viability permit that was issued. Based on Article 153 of the General Public Administration Law.

**NOW,
THE PLENARY COMMISSION RULES AS FOLLOWS:**

THEREFORE

In regular meeting number **0120-2011** of this Secretary, held on **November 15, 2011**, in Article number **10**, the Plenary Commission passed the following motion:

1: The Motion for Revocation with Subsidiary Appeal and the Motion for Invalidation submitted by David Richard Aven, the bearer of a general power of attorney for the development company, Inversiones Cotsco C&T S.A. against Ruling number 839-2011-SETENA dated 8:40 a.m. on April 13, 2001, **IS HEREBY UPHELD** and said Ruling will be revoked in full taking into account the different sections of this Ruling.

Sincerely,

**ENGINEER URIEL JUAREZ BALTODANO SECRETARY GENERAL IN
REPRESENTATION OF THE PLENARY COMMISSION**

Why is this resolution one of the most important documents in the CAFTA Hearing? Because it shows David Aven is right and Costa Rica is wrong. What was the CAFTA case all about? **Proving David Aven being right and Costa Rica being wrong.** However, the incompetence and gross negligence by VE Attorneys turned this around and made Costa Rica right and David Aven wrong.

Any competent Solicitor, or even a person off the street, with no legal training but a little common sense would have known the importance of using this key piece of evidence to prove up the case. They would have known to have shown every State witness this key piece of evidence, along with all the other key pieces of evidence, and grilled them on the facts in the documents.

SO WHY DIDN'T THE VE ATTORNEYS DO THAT? WHY DIDN'T THEY DO THAT WITH EVERY SETENA RESOLUTION, EVERY MINAE REPORT AND THE INTA REPORT AND JUST REPEAT IT OVER AND OVER AGAIN? THERE ARE NO WETLANDS ON THE PROJECT SITE. THEN THERE WOULD BE NO WAY FOR THE TRIBUNAL AND THE PROFESSOR NOT TO GET IT, BUT THE BELL WAS NEVER RUNG AND WAS NEVER HEARD! YES, I AM PUTTING THIS IN CAPS AND SCREAMING ABOUT THIS ABJECT

DERILCTION OF DUTY AND I NEED AN SOLICITOR THAT CAN DO THE SAME.

Although George Burn and the VE attorneys had all the documents, and knew them well, they failed to reveal the truthful facts. In the hearing, they didn't mention it one time during their cross examination of any Costa Rica State witnesses. HOW IS THAT EXPLICABLE? This is why you are hearing the incorrect story by the both the Tribunal and the Professor in relating the facts 100% wrong, once again. It was the state that kept saying the forged document was the one that SETENA relied upon. Once again it begs the question how could competent Solicitors get things wrong 100% of the time? A first year law student could have done a better job. Another question to consider, who were the VE Solicitors really advocating for?