

Note from the General Editor

Francisco Orrego Vicuña (1942–2018): A Life of Service to International Law and Diplomacy

This is the first of two issues on conflicts of interest in international arbitration, both of which are dedicated to the memory of Francisco Orrego Vicuña. A leading international lawyer, academic, and diplomat from Chile, Francisco Orrego Vicuña's breadth of vision stretched far beyond his native Latin America, transcending the cultural divides in the international arbitration and legal communities.

The son of a diplomat, Francisco Orrego Vicuña was born in Santiago and spent periods of his childhood in Buenos Aires, Madrid, and Cairo, as well as in Santiago. He later studied law at the University of Chile and earned a PhD in international law from the London School of Economics and Political Science.

Francisco Orrego Vicuña left his mark in almost all areas of international law. He was equally at ease in public international law (including the delimitation of land and maritime boundaries), investment law, commercial law, trade law, environmental law, and international administrative law. He occupied prominent positions as a scholar, international arbitrator, international judge, and president of the Institute of International Law.

Francisco Orrego Vicuña had an international academic career. He was a professor of law at the University of Chile and director of its Institute of International Studies, as well as a visiting professor of law in Paris, Stanford, Miami and at the Hague Academy of International Law. He was the founder and first president of the Chilean Council on Foreign Relations and president of Chile's Academy of Social, Political and Moral Sciences. Over the years, his teachings encompassed numerous fields, including trade and investment law, dispute settlement, environmental law, international economic law, and the law of the sea.

He was also a leading international arbitrator, having acted as tribunal chair or co-arbitrator in a multitude of international arbitration proceedings under a wide range of rules, including those of ICSID, ICC, UNCITRAL (in cases administered by the PCA), and LCIA. He was appointed arbitrator by the Governments of Chile and Mexico for the resolution of controversies under the Free Trade Agreement between those two countries, and he presided over a case

brought by a United States enterprise, Merrill & Ring Forestry L.P., against the Government of Canada under NAFTA Chapter 11. He was a member of a WTO dispute resolution panel in a case between the European Union and the United States concerning subsidies to the aviation industry. He was also a vice-president of the LCIA Court and a member of the governing board of ICCA.

As an arbitrator, Francisco Orrego Vicuña was principled in his approach to investment treaty arbitration. His name will long be associated with a decision rendered in January 2000 by a tribunal he was chairing in a case brought by an Argentinian national, Emilio Agustín Maffezini, against the Kingdom of Spain on the basis of the Argentina/Spain BIT. The tribunal found that the most-favored-nation clause in the BIT entitled Mr. Maffezini to rely on the more favorable arrangements concerning dispute resolution contained in the Chile/Spain BIT.

The *Maffezini* decision was considered by some to favor the interests of investors. However, a careful look at Francisco Orrego Vicuña's track record shows not only that he was a member of many arbitration tribunals that rendered awards in favor of respondent states, but also that in one award, *Siag v. Arab Republic of Egypt*, he even rendered a dissenting opinion in favor of the respondent state taking issue with the asserted nationality of the claimant, which he considered too remote to establish jurisdiction.

As an international administrative judge, Francisco Orrego Vicuña was associated with two administrative tribunals, the IMF Administrative Tribunal and the World Bank Administrative Tribunal. After serving as a member and a vice-president of the World Bank Administrative Tribunal, he went on to become its president. One of the most important policy areas he dealt with as president was that of due process, particularly with regard to World Bank investigations into possible misconduct by staff members.

He was a judge ad hoc at the International Court of Justice in the maritime delimitation case between Peru and Chile, and at the International Tribunal for the Law of the Sea in the case between Chile and the European Union concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean. He was also an arbitrator in the first-ever UNCLOS case to be administered by the PCA, which concerned a maritime boundary dispute between Barbados and Trinidad and Tobago.

Francisco Orrego Vicuña's truly global perspective on law gave him a deep understanding of cultural and political differences. The MENA region always occupied a special place in his heart. He lived in Egypt as a young child and developed a close attachment to the region. Later in his life he acted as arbitrator in several landmark cases involving states from the region, including *Joy Mining v. Egypt*, *Wena Hotels v. Egypt*, *Siag and Vecchi v. Egypt*, and *PSEG v. Turkey*. He also

chaired a panel of commissioners at the United Nations Compensation Commission, whose purpose was to process claims and pay compensation for losses and damages suffered as a direct result of Iraq's 1990–1991 invasion and occupation of Kuwait. And more recently, he served on the board of trustees of the Dubai International Arbitration Centre and the advisory board of the *BCDR International Arbitration Review*.

Francisco Orrego Vicuña had an astute legal mind, an exceptional ability to identify issues, and a keen sensitivity to politics. He had the wisdom of a consummate diplomat, having been Chile's ambassador to the United Kingdom between 1983 and 1985, and possessed an academic's philosophical turn of mind.

His legal and diplomatic skills were put to good effect between 1979 and 1985 when he was a member of the Chilean delegation to the Beagle Channel maritime boundary mediation between Argentina and Chile successfully headed by the late Pope John Paul II. This combination of skills also proved invaluable in his role as Chile's appointee to the five-member Bryan Commission tasked with the resolution of a dispute between Chile and the United States in the *Letelier-Moffit* case. He joined the other members of the Commission in finding Chile liable and ordering it to pay compensation.

Francisco Orrego Vicuña was vice-president of the Chilean delegation at the Third United Nations Conference on the Law of the Sea between 1974 and 1982. He had a strong interest in the legal issues posed by the Antarctic, including with respect to environmental matters, and served as a member of the panel of arbitrators created by the 1995 Antarctic Treaty Protocol on Environmental Protection.

Yet Francisco Orrego Vicuña's many professional talents pale alongside his immense human qualities. He was a true gentleman, with considerable kindness and humility. He was unfailingly courteous and treated everyone with equal warmth. Whenever he entered an office, he would address everyone present, including receptionists and security staff, with the same friendly regard and gentle sense of humor. He was devoted to his family, remained loyal to his friends, always ready to assist, advise, and to mentor young talent. He was a most gracious person by nature, always ready to forgive his critics.

Francisco Orrego Vicuña's personal passions included books of spiritual wisdom and Tagore's poetry. I remember him praising Kahlil Gibran's *The Prophet*, a book of poetic prose that recounts the story of a prophet who lived for many years in the imaginary city of Orphalese waiting to board a ship that would carry him home. How fitting the following extract from *The Prophet* seems at this time of Francisco Orrego Vicuña's departure:

Then he descended the steps of the Temple and all the people followed him. And he reached his ship and stood upon the deck.

And facing the people again, he raised his voice and said:

People of Orphalese, the wind bids me leave you.

Less hasty am I than the wind, yet I must go.

We wanderers, ever seeking the lonelier way, begin no day where we have ended another day; and no sunrise finds us where sunset left us.

Even while the earth sleeps we travel.

We are the seeds of the tenacious plant, and it is in our ripeness and our fullness of heart that we are given to the wind and are scattered.

These two issues of the *BCDR International Arbitration Review* are dedicated to the memory of Professor Francisco Orrego Vicuña as a mark of immense esteem and respect for his outstanding legacy in the fields of international law and diplomacy, which will continue to inspire many generations of practitioners and scholars.

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