

# **P.R.I.M.E. Finance**

## **Panel of Recognized International Market Experts in Finance**

### **Judicial Panel**



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Francisco Orrego Vicuña

**P.R.I.M.E. Finance Annual Conference 2018**  
**22 & 23 January, Peace Palace, The Hague**

# CASES ON WHICH MY LIMITED EXPERIENCE ORIGINATES

- A PUBLIC LAW PERSPECTIVE SUPPLEMENTING PRIVATE LAW
- FEDAX V. VENEZUELA, THE FIRST CONTEMPORARY DISPUTE. NATURE OF FINANCIAL INSTRUMENTS
- CMS, ENRON, SEMPRA V. ARGENTINA. NATURE OF REGULATORY POWERS
- KARDASSOPOULOS V. GEORGIA. MULTIPLE CLAIMS, FEW CLAIMANTS
- MAFFEZINI V. SPAIN. STATE RESPONSIBILITY
- WTO PANEL EU-US LARGE CIVIL AIRCRAFT. SUBSIDIES.
- ADAMAKOPOULOS V. CYPRUS. CURRENTLY ONGOING



# WHAT IS AN INVESTMENT

- MEANING: DIRECT AND INDIRECT INVESTMENTS (SIEMENS)
- BROAD CONTEMPORARY APPROACH: BITS AND OTHER. CONSENT OF PARTIES (CSOB)
- DEATH KNEEL OF SALINI TEST
  - AMOUNT/ DURATION/ PROFITS/ RISK/ CONTRIBUTION TO HOST STATE DEVELOPMENT
  - AMBIENTE UFFICIO: NOT STRICT SENSE
  - DIMINISHED CONTEMPORARY APPLICATION
- BONDS, DEPOSITS AS INVESTMENTS (PROMISSORY NOTES IN FEDAX)
- JOY MINING V. EGYPT: DISTINCTION BETWEEN INVESTMENTS AND ORDINARY COMMERCIAL ACTS



# INTRIGUING ISSUES IN MASS CLAIMS

- ARGUMENTS FOR AND AGAINST
- ABACLAT: ENORMITY OF CLAIMS
- DUE PROCESS RIGHTS V. HOMOGENEITY OF CLAIMS, FACTS AND RIGHT TO COMPENSATION
- ABACLAT, ALEMANNI, AMBIENTE UFFICIO: SIMILAR CONCLUSIONS ON JURISDICTION, BIFURCATION
- DISSENTING OPINIONS



# PENDING DECISIONS

- CONSENT TO MASS CLAIMS PROCEDURES
- WHAT IS HOMOGENEITY (DIFFERENT BITS, COMPATIBILITY ICSID PROCEEDINGS)
- AMBIENT UFFICIO: DO SIMILAR CLAIMS NEED TO BE IDENTICAL? (CONTRACTUAL UNRELATED CLAIMANTS)
- DOES EU LAW PREVAIL OVER INTRA EU DISPUTES
- MASS CLAIMS, BIFURCATION, RELATION TO MERITS
- ADMISSIBILITY OF CLAIMS INTRODUCED AFTER REQUEST FOR ARBITRATION?
- INTERPLAY OF DIFFERENT NATIONALITIES
- TIMING OF DOCUMENT PRODUCTION



# DISCRIMINATION AND ARBITRARINESS

- CONSENSUS ON NEED TO AVOID DISPROPORTIONALITY.
- PROPORTIONALITY AS GENERAL INTERNATIONAL LAW (Opec v. Ecuador-2012)
- LIMITED CONSIDERATION OF WTO CASES
- COLLECTIVE ACTION CLAUSES (PARI PASSU, NML). NEW APPROACHES TO ENFORCEMENT. USELESSNESS OF GENERAL ASSEMBLY RESOLUTIONS
- LAWFUL AND UNLAWFUL EXPROPRIATION (CHORZOW, EL PASO). UNSETTLED ANSWERS
- AMICABLE, LOCAL SOLUTIONS: IN CASE OF FUTILITY IS IT STILL A JURISDICTIONAL REQUIREMENT OF ARBITRATION?



# NEW ISSUES IN BREXIT

- EXTENT OF FINANCIAL COMMITMENTS AND LIABILITIES. LIMITS UNDER EU OR INTERNATIONAL LAW
- INSTITUTIONS CALLED TO SETTLE DISPUTES:
- JURISDICTION OF ECJ? / ICJ/ PCA /E.Ct HUMAN RIGHTS
- FINANCIAL MATTERS AT HEART OF DISPUTES (EU BUDGET, REBATES, PENSION RIGHTS). MILLIONS OF MASS CLAIMANTS?



# AN AD-HOC TRIBUNAL

- ABSENT AGREEMENT, ESTABLISH AD-HOC ARBITRATION TRIUNAL?
- FINANCIAL QUESTIONS AND INTERNATIONAL LEGAL MATTERS
- UK PAID OFF SOUTH SEA BUBBLE,
- STILL STRUGGLING WITH DEBT ORIGINATING IN NAPOLEONIC WARS AND WORLD WARS
- NOT A GOOD IDEA TO ADD AN EU BREXIT BUBBLE

