

INTRODUCTION AND DEDICATION TO LIBER AMICORUM JOSÉ MARÍA ABASCAL

There are several reasons for this tribute. The first is to recognize a colleague who has distinguished himself with the excellence of his career. The second is to take this opportunity to contribute to the analysis of various subjects that serve as a reference point for the life of our colleague. Unsurprisingly, the editorial committee received a number of enthusiastic responses from the international arbitration community when it sought submissions for this tribute. Eventually, many renowned and distinguished authors have become a part to it.

José María Abascal Zamora has always had ties with academia, which has for years complemented his private professional practice. He has been a part-time professor for more than 30 years, teaching at a number of institutions. The *Universidad Iberoamericana*, where he lectured for decades, has recognized him as Emeritus Professor. Always involved in university activities, José María has been instrumental in the formation of many lawyers in and outside of university classrooms. He has trained and taught many outstanding international attorneys.

Young practicing attorneys often reach out to him, and he always generously shares his knowledge and experience, not only in areas of the law, but in other fields as well. Attorneys who have been mentored by José María have learned the law, and have also received important advice about, for instance, listening to good music or reading good literature. These are only two of his pastimes. Some would say that they are two of his techniques to living fully. He confirms how the wonders of music can only be expressed when a sensitive mind receives them, as well as the enjoyment of a novel is only possible when fictions – the imagined event that has not really happened, the character who has never been alive – show up close by to the daily reality.

Great literary classics have always been his inseparable companions, and he recommends them to his students. Jose María often says – and rightly so – that we lawyers are preoccupied with human problems, and human problems are illuminated precisely by the great classics. He has also been a

student of philosophy, following the example of his mentor, Professor Roberto Mantilla Molina.

José María is very careful when it comes to the very strict exercise that is scholarly writing. He does not write simply to expand his bibliography. Rather, he writes about concrete practical problems, and with a view towards proposing a solution. His writing advice has also formed a great number of lawyers. Those who have received his careful and intense advice know that among his many recommendations are those of the economical use of words, of avoiding Latin phrases unless the reader is a Latin speaker (that is, of avoiding false aspirations of classism), and of never losing sight of the fact that, when writing as a lawyer, one is setting forth an argument, not narrating a suspense story (as might otherwise appear in many briefs in which, ten pages in, the reader has hardly an idea about the subject matter of the submission).

José María is considered one of the great arbitration lawyers. He has participated in many disputes, as a party's counsel, as an arbitrator, or as an expert. Those who have experienced his work as an arbitrator describe him as someone who knows how to listen, who studies the issues in great depth, and who has patience – a virtue that he balances with authority – particularly when the latter is necessary so that the process moves forward. These were among the qualities that many admired in him when he acted as Chairman of the UNCITRAL Arbitration Working Group.

Under his chairmanship, UNCITRAL prepared the Model Law on International Commercial Conciliation and amendments to the Model Law on International Commercial Arbitration. Still under his leadership, UNCITRAL issued the recommendation regarding the interpretation of the 1958 New York Convention concerning the form of the arbitration agreement.

His chairmanship of the UNCITRAL Working Group will serve as future reference for exemplary leadership. It was known that Jose María was well-versed on the issues the Working Group would discuss, but he had only modest interventions as a Chairman who listened more than he spoke. He knew how to bring out the best of the group he chaired, and knew how to let

the debate flow so that, at the right moment, after having heard from all – and after sitting down for a cup of coffee with the delegates – he would neatly draw the proposal that had been built by one or more participants. He was careful never to preach from the Chairman's seat, and would contribute only small doses of his wisdom. But when the debate became stagnant, then he would very tactfully move away from his role of moderator and become a skillful and effective director.

His legacy at UNCITRAL is notable. He has been a delegate since 1985, and has been part of an impressive number of projects.¹ From 1986 to 2003, he was commissioner in the United Nations Security Council Compensation Commission (UNCC) E2 panel of neutrals. The primary mission of the E2 panel was to establish the case law for the rest of the "E" panels, in the resolution of the claims from corporations, other private legal entities and public sector enterprises against Iraq for damages caused by the invasion and occupation of Kuwait and the Gulf War.

José María is truly a lawyer of the world, as reflected by his presence in arbitral institutions around the globe.² He has lived a

¹ His trajectory at the United Nations includes the following: United Nations Convention on International Bills of Exchange and International Promissory Notes, Mexican Delegate. Chairman of the Group of Experts that recommended to the UN General Assembly the adoption of the United Nations Convention on the Liability of Transport Terminals in International Trade. President of the Diplomatic Conference of the UNCITRAL Model Law on International Credit Transfers. Chairman of the working group that drafted the UNCITRAL Model Law on Electronic Commerce and the Commission Session that adopted it. Chairman of and Mexican delegate to the working group that drafted the UNCITRAL Model Law on Electronic Signatures. Chairman of the UNCITRAL Committee of the Hall that adopted UNCITRAL Legal Guide on International Counter trade Transactions. Chairman of the Commission Session that the 2006 amendment of the UNCITRAL Arbitration Rules, as well as Chairman of the Working Group. Other participations as Mexican delegate to the *travaux préparatoires*: UNCITRAL Notes on Organizing Arbitral Proceedings and UNCITRAL Model Law on Cross-Border Insolvency.

² José María is chairman of the Mediation and Arbitration Commission of the Mexican Chamber of Commerce of Mexico City (CANACO), member of the Board and the Executive Committee of the American Arbitration Association that granted him the Outstanding Director Award in 2006. Member of the ICC Latin American Council. He was a member of the Court of the LCIA, Vice-president of the Interamerican Commission on International Commercial

significant part of his professional life outside Mexico, his country of origin. Nonetheless, as can be expected, his influence in the field of arbitration has also left a profound legacy in the Mexican legal framework. He played a critical role when Mexico adopted the UNCITRAL Model Law on International Commercial Arbitration into its domestic law, as well as in the legislative amendments to perfect the system of judicial intervention and collaboration in arbitration. He has an impressive history of legislative achievements in Mexico.³

José María enjoys a high regard and prestige among international law practitioners, which he has earned during his more than 50 years of practice. He has been recognized by the Mexican Bar Association, where he has served in important and outstanding capacities.⁴ He has been an active litigant, as attested to by several generations of lawyers who have seen him fight difficult legal battles. He is recognized as a gentleman by judges, arbitrators and adversaries, but at the same as a tireless and ingenious advocate always eager to put forth the best legal representation on behalf of his clients. Those who have seen him in action are continually surprised at his incredible ability to untangle complex issues and present them with the simplicity that only comes from a deep understanding of a discipline, and from a religious study of the case; all of which bears the seal of a great strategist, of him who knows that at the chess board, a piece should not be moved before considering, with great care, the move that the adversary might make next.

Arbitration (IACAC), Executive Committee member and Vice-president of the Institute for Transnational Arbitration (ITA). He is member, and was chairman, of the Mexican Arbitration Institute.

³ His contribution to the Mexican legislation includes in the following areas: Implementation in the Mexican Code of Commerce of the UNCITRAL Model Law on International Commercial Arbitration (Draft in 1991, in force since July 1993); First draft of the *Ley de Concursos Mercantiles* (Mexican Insolvency Law; Draft in 1999, in force since May, 2000); Draft amendment of the Code of Commerce on the court control and assistance on arbitration (Draft in 2009, in force since January, 2011).

⁴ At the Mexican Bar Association, he served as First Vice-President, and chaired the Commercial Law Commission and the Ethics Commission. He also chaired the Insolvency Committee.

One of his collaborators tells the following anecdote. There was a very complex financial dispute. Several attorneys had been consulted and had expressed their opinion. They all had presented their recommendation in long, extensive documents. One day, José María received several boxes, containing many documents, with the request to, *urgently*, meet with the individuals who were seeking to consult him on the case. He attended the meeting, where he was invited to sit in an imposing conference room, and immediately he was requested to present his opinion on the case. He commented on the key issues that supported favorable arguments, and explained his ideas and how they could be set forth in the dispute. The meeting did not take longer than 10 minutes. But thereafter, the attendees engaged in an informal chat, where José María shared a few anecdotes. His anecdotes led to an extended conversation that took up the better part of the meeting – far beyond the initial 10 minutes. José María was eventually retained for the case and, months later, he won the dispute based on his original proposal.

José María himself remembers with special affection a separate anecdote, which he has shared with several of his colleagues. His mentor, Roberto Mantilla Molina, always had a first answer handy whenever a young apprentice reached out to him seeking guidance on a particular problem. Mantilla expected that any question posed by a student or young attorney would always be preceded by a study of the subject matter in question. Professor Mantilla would always respond, quickly, "*You must study first!*" Those of us who have heard this anecdote know that this piece of advice from Professor Mantilla has always been put into practice by our honoree. The actions that best describe the professional career of José María Abascal are, precisely, studying, studying, and studying.

José María's talent and discipline could not be explained without understanding first his devotion for his family. His family has always been a priority above his professional career. As he has shared with some of his closest collaborators, a family creates the most appropriate environment in which to develop and mature human values.

Walking is another of his passions. It is his preferred activity to reflect, solve problems, and stop to consider the important

things. The thinking process of one who walks recognizes small details in their proper dimensions, and in their being part of a greater whole. All of the contributors to this Tribute hope that it may have the heightened quality of a conversation during a long, slow walk with José María Abascal.

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