

Enrique Cury
Law Report
Executive Summary

Mister Enrique Cury Urzúa is a former Supreme Court Judge and a professor of criminal law at Universidad Católica de Chile and Universidad Nacional de Colombia. He holds a *Doctor Honoris Causa* degree from Universidad de Valparaíso. Mister Cury is an extensively published author on criminal law. He is a lawyer from Universidad de Chile.

The main conclusions of his report are the following:

1° *"[...] what CODELCO did or did not do before the 1st January 2012 did not have any effect on Anglo American. If CODELCO managed to achieve the financing or not, or if the Directors of the state mine decided to exercise their right before the date stipulated in the agreement or not, Anglo American is not tied or paralyzed, as during these actions they did not exercise any right to a purchase option agreed in the manner stipulated in the contracts that established it and thus such extemporary maneuvers do not have any general effect at all [...]"*.

2° *"The uncertain eventuality that the shares might exist in the future on the date that the right to purchase is exercised does not in any way give CODELCO the right to demand the fulfillment of the option before the date agreed in the contract, as before this there was only the mere expectation that it might be exercised. Furthermore, what CODELCO does unilaterally with regard to "anticipating" its purchase option has no effect of any kind on Anglo American, which enjoys complete freedom in the administration of their goods as they are the owners of them."*

3° *"[...] the progressive change in Codelco still seems worrying -at the least- with respect to contract content, which tends to alter the opinion held by the public and, even more seriously, that held by the Courts of Justice. Indeed, in this report, there are references to a series of past events which show the importance that CODELCO gives to certain clauses of the contracts, an importance which has varied in an obvious manner over time and - without wishing to seem suspicious - has carried out a very convenient turnabout for the basis of the defense of the state mining company".*

4° *"Also, never before has there been a reference to exercise in 'stages' of the right of option, a 'classification' which is only carried out as a protection action, recently deduced. On this same occasion Codelco took advantage and deliberately*

omitted certain parts of contracts from the report which are essential in order to understand them completely. It seems worrying, then, that the reference to the Third Clause number FIVE of the 2002 agreement, should be done without even mentioning the phrase 'and not in any other way' which is so fundamental for the understanding of said clause.

The alleged changes in editing introduced to the contract references of the state mining company over time is evident and does not seem innocent given the current aspirations of the same.

5° *"The right of option which CODELCO claims due to the contracts of 1978 and 2002, clearly refers to 'up to 49%' of the social interest in La Disputada and not, as CODELCO implies, 'at 49%'.*

6° *"Up to the date from which the time limit begins to run within which CODELCO can exercise its option, the national mining company only avails of a mere expectation. The right of ownership to Disputada still belongs entirely to Anglo American which, therefore, has been able to avail of it completely or in part. It is not deduced from the contracts that there is even an implicit transfer prohibition that could impede them from doing so. Therefore, the company has done all in its power to sell 24.5% of its social interest in Disputada to MITSUBISHI and, consequently, the protection resource imposed by CODELCO to cancel that operation has no basis. I have no doubt that our courts will finally reject it."*
