

José Luis Cea
Law Report
Executive Summary

Mister José Luis Cea Egaña is former President of the Constitutional Court. He holds a Master in Law and a Master in Political Science from Wisconsin University. He further obtained a Ph.D. from the same university. Mister Cea has developed his academic life as a constitutional law professor at Universidad de Chile and Pontificia Universidad Católica de Chile. José Luis Cea was also Dean of Law at Universidad San Sebastián. He obtained his law degree from Pontificia Universidad Católica de Chile.

The main conclusions of his report are the following:

1° *“Anglo American is the sole owner of rights and is under no obligation, impediment or prohibition of any kind with regards to the point analyzed. This legal situation is not changed by CODELCO’s legal statements, given that these lack all legal merit. It is Anglo American whom, with the ostensible infringement of the Constitution, has been temporarily displaced from its property, with no compensation at all, due to the allegation of non-existent fundamental rights in favor of CODELCO, to its disadvantage.”*

2° *“It unequivocally follows that the Court lacks the power to waive a fundamental right, supposing that it has been legitimately exercised and incorporated by the appellant’s estate, under circumstances involving a challenge containing interpretations or pretensions which, according to the contract, do not have an iota of law within them.”*

3° *“To support an inexistent right is to leave defenseless the subjective public attributes of Anglo American which are part of the appellant’s estate. The error of the Judge has already had the effect on the appellant of waiving a legitimate title to be compensated for the harm that this unconstitutional action has caused, an impeccable title which can be invoked before national or international courts.”*

In this sense, the sentence of the Court of Santiago, far from protecting the public good, has infringed article 1, section 4 of the Constitution, which must be applied by state bodies with full respect for the rights enshrined within it."

4° *"[...] The no innovation order decreed as part of the protection motion presented by CODELCO must be lifted immediately as it is a conservative measure which seeks to preserve the situation existing at the moment it was decreed, under circumstances in which the measure set out in the action, far from preserving the status quo, has altered it substantially with the removal of Anglo American's property and rights."*

5° *"[...] before the measure was ordered, the owner of the property could use their shares as they wished and CODELCO had no right at all, according to the contract, to prevent them from their legitimate exercise. After the adoption of the measure, on the contrary, it can be seen that the owner has been temporarily prevented from access to their property and the state company appears as a de facto owner of property which it has the sole pretension or intention to own in the future. This is an incredible transgression of the constitutional order, as has already been stated, arbitrarily and fundamentally distorting the text, context and spirit of the motion for protection."*
