
ECONOMICS, LABOR & BUSINESS

The Marcona Settlement

"The Marcona Settlement: New Forms of Negotiation and Compensation for Nationalized Property" by David A. Gantz, in *American Journal of International Law* (July 1977), 2223 Massachusetts Ave., N.W., Washington, D.C. 20008.

In 1974, Peru's revolutionary Velasco government expropriated the local assets of the Utah-based Marcona Mining Company, a large iron ore shipping and sales concern. No compensation was offered; the company was vilified as the epitome of the "evil multinational"; and U.S.-Peruvian relations quickly sank to a new low.

Nevertheless, writes Gantz, a State Department lawyer, within two years a settlement acceptable to both Peru and Marcona was negotiated by the U.S. government. With both nations exhibiting imagination and restraint (Velasco had been ousted in 1975), the Marcona case may serve as precedent in future negotiations.

After nationalizing Marcona, Peru could no longer find foreign buyers for its ore. Prospective customers feared Marcona lawsuits. Moreover, the country faced a mandatory cutoff of U.S. aid. For its part, Marcona could not realistically demand "market value" compensation because of Peru's poor economic situation. The country was losing \$8 million a month on Marcona operations alone.

While Washington, says Gantz, is generally reluctant to mediate in expropriation negotiations, the Marcona case was seen as ripe for a new approach. And between the "cost" to Peru of expropriation and Marcona's desire for a "continuing relationship" with Peru, the United States found a solution.

Instead of insisting on a \$100 million "market value" compensation, U.S. negotiators accepted \$37 million in "book value" remuneration from the money-short Peruvians. However, Marcona retained shipping rights to the iron ore, as well as an option to buy ore (for resale) at prevailing prices. The deal allowed Peru to resume foreign sales while retaining Marcona's "expertise." But it also gave Marcona the lucrative shipping and resale rights—the equivalent of full market value compensation.

This "book value plus continuing relationship" approach, writes Gantz, may offer the United States its best opportunity for obtaining the "prompt, adequate, and effective compensation" required in such cases by the 1961 Hickenlooper Amendment and the 1974 Trade Act. At the same time, it eases political pressures on economically shaky (and expropriation-prone) Third World nations, gives them continued access to sophisticated corporate techniques, and helps preserve incentives for overseas investment by U.S. firms.