

# CUBA CONFERENCE REPORT

## OPENING CEREMONY

November 13, 2000

**Lic. Arnel Medina Cuenca**, President, Unión Nacional de Juristas de Cuba, opened the Cuba Conference with a presentation of the political and legal situation in Cuba. He stated that humanity is undergoing changes that require collective solutions and that the Rule of Law must be an instrument used in developing economic systems.

The collapse of the USSR has had a profound effect on the world's economy. Additionally, this collapse has furthered the disappearance of ideologies. These changes are thought to be bringing with them opportunities for the people of the world. However, many people are not benefiting from the liberal economic system. Pres. Medina stated that the efforts to dismantle the state system and build market-based economies in developing nations has only brought ferocious liberalism that has left pockets of tension throughout the world. State power is withdrawing, but problems of economic underdevelopment still persist. Pres. Medina stated that the neo-liberal economic model is only increasing the gap between the rich and the poor.

Pres. Medina indicated that by focusing on trade and investment, we could improve things. But as developed countries only consider the effects of trade and investment within their own territories, other countries are becoming "toxic wastelands." He stated that the powerful nations are using the international system as an instrument to build upon their own imperial designs instead of promoting harmony in world development. Pres. Medina cited the example of the Balkans, as the situation remains alarming in a world that continues to globalize. As science and technology improve, these improvements are provoking ailments in the world economy.

Referring to the Cuban example, Pres. Medina described the substantial reduction in foreign trade since the collapse of the Soviet Union. He said that socialism in Cuba has been quite closed. However, he stated that the Cuban economy is beginning to improve as capital investment in Cuba increases. He said that there have been problems related to this increased investment, but that the overall situation is satisfactory.

With regard to the US embargo against Cuba, Pres. Medina referred to the embargo as the most brutal blockade imposed by the biggest power in the world. He stressed Cuba's difficulty in improving its economy under these circumstances. Pres. Medina stressed the fact that the United Nations passed a resolution to end the embargo against Cuba, with 167 nations in favor of ending the embargo and only a few countries voting against it. Yet, the "big power" continues the embargo. Pres. Medina emphasized that Cuba values friendship with all nations of the world and that Cuba appreciated the presence of so many international lawyers and jurists in Havana. He asked the participants to share their expertise with Cuban jurists.

Pres. Medina then passed the floor to **Mr. Daniel Monaco**, President of the World Jurist Association (USA). Mr. Monaco began his presentation by thanking the officers of the Unión Nacional de Juristas de Cuba and all those responsible for making the conference possible.

Mr. Monaco focused his remarks on globalization, its significance, and the role of the World Jurist Association in the development of the Rule of Law within a globalized world economy. He asked the participants to imagine a three-legged stool. Without all three legs, the stool is useless. The seat of the stool signifies world peace. The first of the three legs signifies globalization and free trade, the second signifies the Rule of Law, and the third signifies people-power. Without all three, world peace is impossible.

Mr. Monaco then proceeded to outline the importance of the WJA. In an effort to break the cycle of violence, Lucio Ghia, Past President of the WJA, and Paul Edelman have been appointed to research and draft a treaty establishing the rules to be applied following wars or conflicts. The purpose of the draft treaty is to establish guidelines as to the intensity, duration, and punishment that would follow a conflict. Mr. Monaco also spoke about the principle of noninterference within the framework of international law. He explained how Amnesty International has brought about important changes in the application of this principle. Nations are now aware that it has become acceptable to interfere in the internal affairs of nations

when the interference is undertaken to stop genocide, war crimes, unjustified aggression, or egregious human rights violations.

**Dr. Rubén Remigio Ferro**, President of the Supreme Court of Cuba, addressed the delegates next by providing the participants with an analysis of access to justice in Cuba. He thought that some of the participants who are subjected to the mass media of opponents of Cuban socialism would be shocked to know that Cuba is organized in accordance with and operates under the Rule of Law. He stated that the Cuban revolution established equal rights for all Cubans and the Court of Justice ensures the equal application of the Rule of Law.

The Supreme Court of Cuba operates in a collegial way. Judges are independent and professional elected officials. Judges also serve with nonprofessional judges so that any citizen who is nominated to serve on the court may participate for up to 30 days per year. Dr. Remigio stated that this system has proven effective, provided transparency and generated trust.

Dr. Remigio spoke about the establishment of Economic Courts in Cuba in accordance with the Foreign Investment Act of 1990. These courts have jurisdiction over environmental damage issues and commercial matters. Dr. Remigio also emphasized that in Cuba, parties to a contract are free to select the law that will apply and the jurisdiction where disputes may be settled.

Dr. Remigio concluded by stating that Cuba has a system of access to justice that protects the rights of its citizens. He stated that it is not a perfect system and that there are aspects of the system that require further development. Lawyers in Cuba are currently working to draft laws that will strengthen the system.

Immediately prior to the first panel session, **Iris Jones**, President of the International Municipal Lawyers Association (USA), offered her welcoming remarks on behalf of the lawyers of the world. She outlined how the WJA, based on the principles of its founder, Mr. Charles Rhyne, has fought for racial equality and the Rule of Law. She said that our presence in Cuba, and especially the presence of US citizens, is right and fair, no matter what pressures would keep us from attending this conference. She stated that all of us attending this conference should think like Mr. Rhyne and apply his vision as we work to develop the Rule of Law. She invited the participants to learn all that they could from the various panel sessions and to take advantage of the fantastic networking opportunities available.

## **DOING BUSINESS IN CUBA**

### **November 13, 2000**

The first panel session of the conference dealt with the major issue of Doing Business in Cuba. The panel was co-chaired by **Lic. Sara Martha Diaz**, Secretaria de la Cámara de Comercio de la República de Cuba, and **Mr. Garry Hunter**, Director of Law, City of Athens, Ohio (USA).

**Ms. Diaz** began her remarks by stating that Cuba is open to foreign investment. She presented an outline of the current situation of the foreign investment situation in Cuba, stating that 162 countries have established relationships with Cuba. Cuban laws have developed in a way that allows foreign investors to easily enter Cuba. She said that Cuba has many storage facilities and is well prepared to distribute foreign products. She added that Cuba has trade agreements with many countries and hosts more than fifteen trade fairs annually. From a Caribbean perspective, Cuba also plays an important role as an export and distribution center for this region.

**Mr. Hunter** presented his paper entitled “The Internet as a vehicle for doing business in Cuba.” He began by presenting a detailed history of the development of the Internet from 1968 through the present. However, Mr. Hunter pointed out that not everybody has been able to take advantage of this digital revolution and that those without access are becoming second-class citizens in their respective countries.

Mr. Hunter explained how the Internet provides a means of doing business, allowing its users to communicate with their clients, undertake research, and implement marketing strategies. He stated that the design of a company’s web page is becoming very important as more and more people seek to do business on the Internet. The Internet is a digital marketplace without the traditional barriers to doing business. A place where physical presence is not necessary, customer needs are met instantly, and where businesses are able to quickly respond to customer desires.

With regard to the legal framework within which this digital marketplace is developing, Mr. Hunter stressed that countries must work to draft and implement electronic commerce laws. He explained that there are no treaties regulating the development of e-commerce and that nations have only issued joint statements about its development.

According to Mr. Hunter, the development of the law governing e-commerce must include transparency, be based on the principle of nondiscrimination, provide for the elimination of trade barriers and the mutual recognition of other countries' rights. Mr. Hunter explained that businesses should seek to develop a web business plan and went on to describe three types of a web-based marketplace lifecycle. The first and the most simple is the see, buy, and get cycle. The second and more developed cycle includes information, negotiation, fulfillment, and satisfaction. The third and most highly developed lifecycle includes discovery, evaluation, negotiation, order placement, scheduling, fulfillment, payment, receiving, billing, and customer support services.

Mr. Hunter concluded that customer relationships remain important in the web-based environment. The key features to any Internet business are to use two-way communication and to mimic the way people have traditionally shopped.

The next speaker was **Dr. Rodolfo Dávalos Fernández**, Presidente de la Sociedad Cubana de Derecho Mercantil. Dr. Dávalos described the legal framework of foreign investment in Cuba. He explained how the Cuban laws on investment of 1982 and the Foreign Investment Act of 1995 have opened the doors to investment in Cuba. In past practice, almost all foreign firms held only up to 50% of Cuban firms. Now, however, the new laws allow for any percentage to be held by a foreign investor. He explained how the new laws have also expanded the sectors within which new investment is permitted.

Dr. Dávalos stated that the new laws guarantee full protection of investments in Cuba and that expropriation is not allowed unless compensation is provided. He discussed how foreign investors could benefit from special tax systems. He also described how new laws provide for the settlement of disputes and protect the freedom of the parties to a contract to select the applicable law and the forum within which disputes may be settled.

Concerning joint ventures in Cuba, this type of structure usually takes the form of a corporation with registered shares. Dr. Dávalos emphasized that the joint venture in Cuba is more than just a foreign investment in Cuba with a Cuban partner. It is a common effort by two or more parties to develop a joint action. The Cuban partner would usually request that the foreign investor provide a contribution of markets, technology, and know-how. The foreign investor and the Cuban partner share the risks and the benefits of the joint venture in accordance with their agreement.

Dr. Dávalos described the laws that allow for incorporation of joint venture companies in Cuba. The process usually begins with the drafting of a letter of intent describing the foreign partner's intentions. He emphasized that while this letter provides a legal basis to proceed, the agreement between the parties remains the essential element to a successful joint venture company. He said that the agreement should provide for the method of accounting, the global and daily operation of the business and a financial policy. Finally, he mentioned that the new company should respect the laws of the country in which it is created.

**Mr. Sebastian A.C. Berger**, Director of Berger, Young & Associates Ltd. (Holland/Cuba), then took the podium and described the investment climate in Cuba in connection with the Mariel free trade zone established under the Foreign Investment Act of 1995. The purpose of the free trade zone was to create employment and to start a motor for export from Cuba to the world. Mr. Berger stated that the problem with the development of the zone is that Cuba's northern neighbor refuses to import Cuban products thereby preventing the Cuban people from benefiting from the establishment of the free trade zone. But when the embargo ends, Cuba is set to prosper from this zone.

The Mariel free trade zone is located nearby big Cuban businesses, an airport, and much available land. Mr. Berger described it as the Rotterdam of Cuba. He said that in order to preserve the benefits of this zone, it must attract finance, an aspect that is difficult given Cuba's inability to obtain loans from the International Monetary Fund and the World Bank.

Mr. Berger described the favorable tax climate in Cuba based on special tax holidays that the Cuban government allows for foreign investors. When a joint venture company is approved, the Cuban government will usually immediately inform an investor about the tax holidays that will apply, what the investor can import, and what licenses the investor will need to begin doing business; thereby allowing the new company to quickly begin operations.

Mr. Berger described the difficulties in evaluating the dissolution and liquidation values of companies in Cuba. He advised investors to make rules about the commercial value of the company and a procedure for agreeing on the value of the company as well as a procedure to follow in case the parties are unable to agree. Mr. Berger said that the joint venture agreement should provide for the settlement of disputes and explained that arbitration is commonly used. The parties may choose international arbitration or, in the case of a small venture, they may use the Cuban Chamber of Commerce.

Mr. Berger then described how foreign investors in Cuba could transfer their shares. In a joint venture situation, parties may usually transfer their shares only with the approval of the other shareholders. The Council of Ministers is also required to approve a share transfer. Since liquidity is difficult in Cuba, Mr. Berger stated that parties sometimes create special purpose vehicles to purchase shares.

Overall, Mr. Berger stated that doing business in Cuba is exciting and challenging. He has been living in Cuba since 1996 and said that innovative thinking, flexibility, and a good sense of humor as well as a sound knowledge of Cuban laws and legislative history are the keys to a successful venture in Cuba. His final word of advice was that foreign investors should let their Cuban partners undertake the initial draft of the joint venture agreement or other contract and let the foreign lawyers supervise the work.

**Prof. Andrea Johnson** of the California Western School of Law (USA), presented an analysis of privatization within the telecommunications industry. She undertook a comparison of several countries' approaches to privatization by considering various criteria, including liberalization - the extent to which a regulatory framework exists to foster competition; competition - the level of competition in the local and long distance sectors; and growth - the level of expansion of basic services.

Prof. Johnson explained that the privatization or liberalization of the telecommunications market refers to a process of transferring existing state-run monopoly enterprises that provide voice, data, and video services to a competitive private sector. The process may be viewed in three steps: first, a country agrees to enact legislation authorizing the transfer of ownership from their monopoly to a stock; second, a country agrees to introduce limited competition through a public offering or solicitation of domestic and foreign investors; and third, the country agrees to allow actual or full competition in all areas.

In Cuba and in other developing countries, the technology required for the development of the telecommunications market is new. Prof. Johnson said that there is a need to educate the population to use this technology and to allow developing countries to have access to these technologies at affordable prices. Unfortunately in Cuba, access is difficult due to the embargo. Therefore, this requires Cuba to depend on expensive short-term loans rather than fresh capital inversions to acquire the technologies necessary to develop its telecommunications sector.

The final speaker on this panel, **Avv. Corrado Verna**, Attorney-at-Law, Andersen Legal (Italy), dealt with the issue of project financing for infrastructures in the industrial and tourist sectors. He described how project financing could be accomplished through project companies or through special purpose vehicles that have the advantage of carrying out the operation, isolating the risks, and complying with local laws and regulations.

Avv. Verna also presented some innovative ideas about how various projects could be financed. He explained some techniques for project financing that could be applied in a wide variety of sectors including the electric and transportation sectors.

Avv. Verna pointed out that there are risks that are inherent in project financing, including the devaluation of currencies as well as political risks. He emphasized the importance of calculating the benefits of financing a particular project against the inherent risks.

Avv. Verna continued with an outline of the types of contracts that may be used when financing a project. He mentioned that the "take and pay" method is commonly used in public financing. He explained how this method contains conditional guarantees to pay for goods or services even if they are not delivered. He added that these contracts are often subject to the laws of the United Kingdom, as the laws of other countries do not allow this method.

In conclusion, Avv. Verna stated that companies must work with local authorities in order to cut through the sophisticated and complex issues involved with project financing.

## **WORLD TRADE AND SETTLEMENT OF INTERNATIONAL CLAIMS**

### **November 14, 2000**

Tuesday's sessions opened with the topic of World Trade & Settlement of International Claims. **Lic. Narcisco Cobo Roura**, Presidente de la Sociedad Cubana de Derecho Económico y Financero, opened the panel with an overview of the topics the panelists would discuss. He then passed the microphone to **Prof. William Slomanson** of Thomas Jefferson School of Law (USA) who presented his paper about global Internet developments.

Prof. Slomanson prefaced his remarks with a description of the pervasive effect the Internet has had on world events. He used the example of the war in Kosovo and how ethnic minorities used the

Internet to chronicle human rights abuses. He stated that law and technology have become interwoven and their relationship is symbiotic.

Prof. Slomanson discussed the evolution of law and information technology from biblical times to the present. He compared the passage of the Oral Law through time until it was codified in books to the development of electronic signature laws.

Focusing on the present, Prof. Slomanson discussed how the Internet has permitted buyers and sellers across the globe to enter into electronic contracts with authenticated electronic signatures. As a result, world markets are changing and the manner in which people do business is undergoing substantial change.

Prof. Slomanson also spoke about what he refers to as the “digital divide” where not all buyers and sellers throughout the world have access to the Internet. He provided examples of how the Rule of Law could improve once this divide is eliminated. Examples included the reduction of stateless peoples due to a shortage of documents distributed by governments. Once we succeed in eliminating the need for papers and allow persons to have electronic papers, we can work to reduce the number of stateless persons and refugees without documents. Additionally, Prof. Slomanson showed how access to international markets will increase as a result of increased Internet access.

In the field of learning, Prof. Slomanson discussed how long distance learning will dominate the way people are educated. Outstanding lecturers will no longer be confined to the classrooms and their lectures may be heard around the world.

Prof. Slomanson then explained the importance of the Internet in avoiding the catastrophes of the past. For example, if the Internet had been available in the 1940s, the Nazi final solution could not have remained a secret. Electronic mail and the World Wide Web now effectively check government activity. Using the Internet, associations such as Amnesty International are able to increase pressure on governments that do not respect the basic rights of their indigenous populations.

Prof. Slomanson concluded with an analysis of the future where state sovereignty would be eclipsed by a new political reality consequent to the development of an interconnected global village.

The next speaker, **Mr. Robert Muse**, an attorney with the law firm of Muse & Associates in the United States, provided an eloquent and detailed analysis of Cuban property expropriation and US law, focusing on the Helms-Burton Act of 1996.

Mr. Muse explained that the Helms-Burton Act is controversial due to its extraterritorial nature. Before going into detail, he presented a short history of Cuban-US relations from the time Fidel Castro took power in Cuba. Mr. Muse stated that after the revolution, US property was confiscated by the new government. Following the confiscation, a US foreign claims settlement commission recorded evidence of property loss by US citizens. Now over 900 cases have been certified. The largest claims were filed by US multinationals, including Texaco Oil and IT&T.

Following the confiscation, the Bay of Pigs and the Cuban missile crisis prevented advancement of the foreign claims. Since then, the embargo has prevented resolution of the claims. Mr. Muse stated that the claims could be resolved only after Cuba and the United States normalize their relations.

In the 1990s, following the dissolution of the USSR and its trade relationship with Cuba, Cuba's economy faltered. The response of the Cuban government was to seek private foreign investment. In 1994, Cuba received two important investments: a Canadian investment in nickel mines and a French investment in Havana Club Rum.

Mr. Muse explained that following these investments and the shooting down of a small US aircraft by the Cuban government, the US Congress enacted the Helms-Burton Act concerning any property in Cuba that is subject to claims in the US. The Act, among other things, allows non-US companies to be sued in the US for investing in Cuban property under claim in the US. Mr. Muse explained that by doing this, the US government was seeking to cut off Cuba's access to hard currency.

Mr. Muse made it clear that the Helms-Burton Act violates international law. He argued that the US is acting like the world's legislator. International law allows States to support claims of its nationals in the case of economic injury - as the United States is doing in the case of the Cuban embargo. However, the internationally-accepted principle of state sovereignty ensures the equality of nations without regard to size or population. This principle provides that nations may not interfere with the internal affairs of other nations. Mr. Muse posited that it is this principle on which Cuba may base its arguments that the US is violating international law.

The next speaker, **Dr. Luis Eduardo Boffi Carri Perez** of Buenos Aires University (Argentina), provided an analysis of jurisdiction, applicable law, and public order in the international legal system. He

described the evolution of law from pre-classical Roman law to the development of contemporary legal systems models. With regard to contractual obligations in Argentina, he said that one should consider the validity, the nature, and the obligations involved in the relationship. He specifically made reference to an article of the Argentine law applicable to international agreements as well as the article of the Argentine civil code relative to public order. He was sure to point out that international agreements that are considered immoral under Argentine law may not be enforced in Argentina. Article 1207 further provides that even if the obligations are to be executed outside Argentina, the agreement would be considered null and void in Argentina. Additionally, Article 1208 provides that agreements that are to be executed in Argentina, but that are in violation of the laws of the foreign contracting party will also be considered null and void in Argentina.

Dr. Boffi stated that judges in Argentina are empowered to hear matters of international law. He made reference to Articles 16 and 17 of the Argentine Constitution establishing the Supreme Court and other Courts that are empowered to hear cases of an international nature.

Finally, Dr. Boffi made reference to the development of the law in the 1920s under the influence of Bustamante, a famous Cuban jurist. The theories promulgated under his influence provided that contracting parties to an international agreement are free to decide the law that would apply and what would happen if the contract failed to state the applicable law. In Argentina today, the drafts of pending legislation refer to the codes promulgated under the influence of Bustamante.

The following speaker, **Dr. Julio Fernández Cossio**, President of Cuba's arbitration court within the Chamber of Commerce, spoke about international arbitration in the global economy. He began by pointing out that the GATT accords signed by most nations, include procedures for the settlement of disputes between member nations. In fact, in 1999, more than 500 cases had been submitted and heard by the World Trade Organization arbitration panel.

Dr. Fernández emphasized the advantages of the settlement of disputes in arbitration. He said that parties often agreed upon procedures for settlement in arbitration before disputes arise. This gives the parties control over the manner in which potential disputes are settled. Additionally, the parties may also agree on the procedure for selecting members of the arbitration panel. By doing this, the parties are assured that the persons responsible for deciding the outcome of a dispute are specialized in the area of law governing the dispute. Dr. Fernández added that arbitration is often less expensive than bringing cases before a court, more rapid, and guarantees confidentiality as no records of the settlement are available to the public. Dr. Fernández stated that while many centers for arbitration exist throughout the world, the developing countries are not playing a large enough role in the creation of arbitration centers and the development of rules governing the arbitration process.

## **THE LAW APPLICABLE TO INTERNATIONAL DEVELOPMENT AID** **November 14, 2000**

The first speaker on this panel, **Dr. Rubén Muñíz Griñán** (Cuba), presented his paper about the legal framework of international law and the relationship between states concerning international aid.

Dr. Muñíz explained that some governments seek to disconnect trade and development aid, but development aid proves that trade has always been a source of development and has created favorable conditions for growth. Trade today, as it is conducted in the developed world, is "protected trade." Fighting for equal rights and obligations for all will only have the effect of perpetuating the status quo.

Dr. Muñíz presented an analysis of the status quo showing that the gap between the rich and the poor continues to grow. This gap is also apparent with regard to access to technology and the Internet. The response to this problem, according to Dr. Muñíz, is that governments must treat differently those that are not equal. If we do not do this, the gap will continue to widen.

Finally, Dr. Muñíz asserted that sovereignty must be respected as a basis for equality among states. He stated the free trade must be "freer trade" with less restrictions, thereby allowing equal opportunities for all. While making reference to the World Trade Organization, Dr. Muñíz said that the technical assistance budget within the WTO was too low to meet the needs of the developing world.

The second speaker, **Mr. Gonzalo Capriles**, an attorney from Venezuela, presented his paper on international development aid and the regulation of commerce. He stated that the international commerce of goods and services and international development aid are closely related in many ways. The export credits, the preferential treatment granted by nations, and the policy regarding importation or concerning government purchasing examples of the close relationship between the two. In fact, in some cases,

international aid is provided through the granting of preferential treatment or other forms of an international trade advantage.

Mr. Capriles provided details concerning the many ways in which international development aid is provided and the international institutions that provide it, including the development assistance committee of the OCDE.

With regard to the WTO, Mr. Capriles said that the agreement creating the WTO provided many improvements on the manner in which trade is undertaken, but did not provide specifics regarding international development aid. However, in some agreements and in legal acts relating to the WTO, international development aid has been considered

Specifically, he referenced Part IV, Article XXXVI, paragraph 5 of the GATT 1994 accords that form the normative basis for the WTO. This paragraph states that there is an important relationship between trade and financial development aid and that the contracting parties and international institutions agree to provide assistance to the economic development of underdeveloped countries.

Finally, Mr. Capriles stated that the practical application of the norms contained in various agreements and other legal instruments of the WTO, in connection with international development aid, should be revised so that the WTO's objective can be accomplished. He emphasized that any future meetings or "rounds" between member nations should include negotiations concerning the regulation of the relationship between international development aid and international trade, the basis of which is found in part IV of the GATT.

The third speaker, **Ms. Encarnación Omogo Yembi** (Equatorial Guinea) began her remarks with a statement that the living standards in many parts of the world are very low. She then focused her remarks on the norms applicable to international development aid.

Ms. Omogo Yembi sought to define the terms of the discussion. She said that "development" is a process of world growth for all rather than for some parts of the population. She explained how borders are coming down and as a result, all people should be able to benefit from the growth in world trade. However, as Ms. Omogo Yembi explained, this was not the case in many places, including Equatorial Guinea.

She said that developed countries must attempt to expand application of GATT preferences to developing countries so that the sort of economic development we see in many parts of the world could reach these countries as well. Ms. Omogo Yembi stated that we must also seek to promote social and cultural development alongside economic development.

Ms. Omogo Yembi then continued her presentation with an analysis of recent developments with the GATT and the WTO. She stressed the principles of nondiscrimination in trade relationships and stated that many of the international trade agreements that have been signed in the areas of textiles and agriculture have been based on this principle. The WTO is working to integrate all countries into a single economic structure designed by the developed countries. Ms. Omogo Yembi argued that further consideration must be given to the right to establish long-term subsidies, the principle of equal treatment, the removal of obstacles to trade, the amount of compensation in the event of a government seizure or transfer of assets, and the alternative dispute resolution system.

She concluded by saying that developing countries must receive additional aid so that they are able to compete effectively in international markets. Only through development aid can this happen. As examples, Ms. Omogo Yembi referred to the Barcelona declaration that provided the basis for a free trade zone between the European Union and the Southern Mediterranean countries, the Andean Pact whereby preferences are offered to South American nations, and other cooperation agreements that further the principles of international development within the framework of GATT.

## **THE INTERNATIONAL LAW OF FINANCIAL TRANSACTIONS** **November 15, 2000**

This panel was chaired by **Dr. Julio Fernández de Cossio** (Cuba) and **Prof. Samuel Jay Levine** (USA). It comprised four speakers addressing two hundred WJA participants at the Melia Havana Hotel main conference room. The speakers tackled a broad range of issues all directly or indirectly related to the current embargo between Cuba and the United States.

**Prof. Levine**, an immigration law specialist, began his remarks by emphasizing the "ridiculousness" of the US embargo against Cuba. In seeking to understand the current situation, Prof. Levine sought to define the embargo and its application in international trade. He explained that in international trade, an embargo refers to government actions limiting or prohibiting imports and/or exports

of goods and/or services from or to a country. He termed it a deliberate government-inspired withdrawal of a customary trade or financial relationship.

Prof. Levine then provided an overview of the application of human rights and the importance of international dialogue to avoid conflicts in which human rights are violated. He also provided an analysis of Cuban - US relations regarding the international agreements that have come into existence in the twentieth century. His analysis began with the Spanish-American War of 1898 and the ensuing Platt amendments to the Cuban Constitution that were adopted allowing for US intervention.

Prof. Levine then focused on the developments since Castro's revolution in the late 1950s and the United States' imposition of a unilateral embargo against the island nation in October of 1960. After Cuba expropriated almost all foreign-owned farmland, most of which was owned by US companies, political friction between the two nations escalated. As a result of this tension, the US implemented its unilateral embargo.

With the increase in tensions and a desire by elements within the US Congress to force democratic change in Cuba, the Cuban Liberty and Democratic Solidarity Act (known as the Helms-Burton Act) was adopted in order to bring additional pressure on Cuba's economy. Prof. Levine explained that the Act authorizes US nationals with claims regarding confiscated property in Cuba to file suit in US courts against persons that may be "trafficking" in that property. Prof. Levine pointed out that the international reaction to the Act was a disaster for the US.

Unfortunately, due to time constraints, Prof. Levine was not able to fully describe the effects of the embargo on Cuba. However, he did say that the US embargo has been particularly devastating for the Cuban economy as well as for the great majority of its people.

Prof. Levine then gave the floor to **Dr. Olga Miranda Bravo**, the Vice President of the Cuban Association of International Law. Dr. Bravo described how large portions of the Cuban enterprise prior to Castro's revolution were owned by US monopolies. She said that the embargo imposed by the US has made life in Cuba very difficult.

Dr. Bravo spoke specifically about Cuba's history in the 1940s when farmers were dependant on landowners. During that time, the Land Reform Act established a constitutional right to compensation for the expropriations that took place upon implementation of the Act. In 1960, Dr. Bravo spoke about the process of Cuba's land nationalization and the ensuing US embargo where the US targeted the sugar and oil markets in order to paralyze Cuba.

Dr. Bravo pointed out that all nations had been able to negotiate a compensation package with the new Cuban government following the nationalization, except the US government. She said that the nationalization was undertaken in accordance with Law 851 and Article 24 of the Cuban Constitution that allows for expropriation for public use in defense of the national interest.

Dr. Bravo estimated that the value of the nationalization of US-held properties to be about \$1.8 billion. However, she stated that the embargo that followed is not justified and that it hurts not only Cubans, but also US nationals.

Dr. Bravo emphasized that the expropriations were undertaken in accordance with the principle of non-discrimination. She stated that if there still is no agreement with the US concerning the nationalizations of the 1960s, the fault lies with the US for it was the US that refused the offer of compensation presented to it by the Cuban government.

**Dr. Miguel A. D'Estéfano Pisani**, the President of the Cuban Association of International Law, spoke next and dealt almost exclusively with the issue of the US embargo against Cuba. According to Dr. D'Estéfano Pisani, the US embargo against Cuba is not really an embargo, but rather, a blockade. He argued that the embargo is illegal as a great majority of nations voted in the United Nations against the continuation of the embargo. Dr. D'Estéfano Pisani then proceeded to provide an international and a Cuban response to the embargo. He discussed the Cuban Dignity and Sovereignty Act and Act 88, which is based on the duty, he explained, to respond to US legislation that is considered a permanent aggression against Cuba and its people. He defended these laws in the face of additional US legislation (the Helms-Burton Act) passed in 1996 to further US economic warfare against Cuba.

Dr. D'Estéfano Pisani argued further that the economic warfare directed at Cuba by the United States is a form of international crime that he equated with the internationally recognized crime of genocide. He concluded that the world's response to the US embargo must be based on the convention prohibiting genocide. He stressed that the embargo is a violation of international law and that the United States violates many norms of international law without any intention to repent.

The next speaker, **Dr. Rodolfo Dávalos Fernández**, the President of the Cuban Association of Commercial Law, presented an analysis of the law applicable to international contracts in relation to the Helms-Burton Act. He said that Cuba has accepted foreign imperative laws. He defined the application of such laws as one state applying the laws of another to a contract dispute when the other state's law is deemed imperative. He said that under certain conditions, the courts in Cuba apply foreign imperative laws. These conditions, he said, relate to *jus cogens* norms where the judge assesses the nature of the dispute and the effects of the application of the foreign law.

Dr. Dávalos used the example of a Paris court refusing to enforce a contract because the contract was null under US law, even though it would have been enforceable under French law. The United States, however, does not do this. Dr. Dávalos stated that, in the case of the Helms-Burton Act, the US is seeking to enforce contracts that are not enforceable under Cuban law. In this way he argued, the Helms-Burton Act is contrary to international law.

Following Dr. Dávalos' presentation, the Chairmen opened the panel for questions. Prof. Ved Nanda, Immediate Past President of the WJA, agreed that the Helms-Burton Act is a direct violation of international law. He disagreed, however, with the application of the internationally-accepted Genocide Convention preventing and punishing genocide as a basis for striking the Act. According to the Genocide Convention, any of the following actions, when committed with the intent to eliminate a particular national, ethnic, racial, or religious group, constitutes genocide: (1) killing members of the group, (2) causing serious bodily or mental harm to members of the group, (3) deliberately inflicting on the group conditions of life calculated to kill, (4) imposing measures intended to prevent births within the group, and (5) forcibly transferring children out of a group.

Prof. Nanda emphasized that the term genocide should be used sparingly when applied to acts of economic coercion such as the Helms-Burton Act and the laws instituting the embargo against Cuba. He stressed that punishment for acts of genocide should be reserved for the kinds of aggressions the world witnessed during the Hutu's attempted elimination of the Tutsi in Rwanda in 1994, in the Nazi Holocaust, the Armenian massacres, and the Cambodian genocide. In these examples, Professor Nanda stated that millions of people were brutally killed.

Dr. Dávalos and Dr. Bravo responded, with the support of many of the Cuban participants, that the Genocide Convention should be applied to the US embargo against Cuba because the embargo prevents Cubans from having access to life-saving medicines.

Prof. Nanda countered that while the extraterritorial nature of the Helms-Burton Act violates international law and while its effects are indeed tragic, the application of the Genocide Convention to acts of economic coercion would only serve to weaken implementation of this critically important convention. He pointed out that in 1993, the United Nations established a War Crimes Tribunal to investigate and prosecute people involved in war crimes and crimes against humanity, including genocide, in the former Yugoslavia. Additionally, in late 1994, the UN established a similar tribunal to investigate war crimes in Rwanda. Prof. Nanda expressed concern that this work would not succeed if the definition of genocide, as provided above, were extended to acts of economic coercion.

## **LAW AND TOURISM IN THE INTERNATIONAL SOCIETY**

### **November 15, 2000**

The law and tourism panel discussed the use of tourist development as a tool for economic development. The first speaker, **Mr. José Nieto** from Puerto Rico, presented a thought-provoking discussion of how tourism could bring economic development and wealth to underdeveloped countries. He said that his vision regarding tourist development in the Caribbean region is that all nations within a particular region work together to promote their region rather than to compete against each other.

Mr. Nieto considered the role of hotel management companies in tourist development. For example, he said that the Hilton Hotel Corporation has played an important role in the industry's development. Hilton currently has over 1800 hotels in more than fifty countries providing about 300,000 rooms. He said brand names such as Hilton or Embassy Suites are important in attracting additional investment.

Mr. Nieto then proceeded to explain how countries could attract tourism and how they could communicate the existence of high value brand names to the public. Mr. Nieto stated that Puerto Rico, for example, began to use tourism as a strategy for the island's development in the 1940s. Through the use of tax exemptions and other incentives, Puerto Rico has succeeded in attracting large corporations operating

within the tourist industry to the island. Additionally, the island has had much success in using joint ventures as a mechanism for providing investors with a means of entering Puerto Rico.

Mr. Nieto then gave the floor to **Lic. Abelardo Fernández Falero** from Cuba. Mr. Fernández explained how the Cuban government has passed rules to guide and control the development of the tourist industry in Cuba. He provided examples including the establishment of zoning rules that represent the ideas of Cuban legislators as to how and where in Cuba the industry should develop.

Mr. Fernández said that at times, the beautiful natural environment of Cuba is being transformed in ways that are not desirable. He pointed out that legislation is being used to prevent this and to provide a vehicle for the development of Cuba's tourist industry.

Mr. Fernández then presented an overview of the historic development of Cuba's tourist industry, divided into three parts: pre-revolutionary, revolutionary, and from 1994 to the present. According to Mr. Fernández, prior to 1994, Cuba's communist government did not do much to develop the tourist industry and the development of the pre-1994 period. After 1994 and the passage of a new law governing the development of the tourist industry, the establishment of joint venture companies with foreign investors was favored. Additionally, the new law reorganized government structures governing tourism. The island was divided into areas where tourism would be favored. Mr. Fernández spoke about the Varadero cluster in the north and the eastern beach cluster. Special laws have been passed governing the lease of houses and apartments in these areas as well as in the other areas where tourism is being promoted. He stated that there are over 2000 rooms available for lease in these areas.

New laws have also been passed governing how travel agencies are to operate in Cuba whereby the President of the Chamber of Commerce in the various regions is responsible for registering tourist agencies. Additionally, Mr. Fernández pointed out that new laws are pending in connection with time-sharing plans in Cuba.

Mr. Fernández concluded his presentation with a slide show illustrating the development of the tourist industry in Cuba and emphasizing the seven strong points of tourism in Cuba: (1) hospitality and quality, (2) natural attractions, (3) cultural and social heritage, (4) the artistic and cultural life, (5) the development of public sanitation systems, (6) political stability, and (7) security for tourists.

## **THE INDEPENDENCE OF LAWYERS & THE RISK OF INCOMPATIBILITY WITH OTHER PROFESSIONS**

**November 15, 2000**

A Cuban representative opened the panel session by stating that judiciaries must be independent in all countries for legal systems to work properly. To encourage transparency, the United Nations has supported the creation of independent judiciaries around the world through the use of seminars. Emphasis was also placed on the independence of law faculties, allowing for the system of tenure to take root; and thereby preventing the dismissal of faculty members for ideological reasons.

The floor was then passed to **Mr. Gonzalo Capriles** who presented the paper of **Dr. Franklin Hoet-Linares**, WJA Past President (Venezuela) who could not be present at the conference. Dr. Hoet's paper focused on the need for lawyers to continually update their ethical conduct rules as changes in technology occur.

All of the national and international laws that regulate the legal profession recognize the principal of the lawyer's independence. The norms that provide the basis for the independence of the lawyer may be found in various documents, including the Interior Rules of the Order of Lawyers of the Paris Court, the Spanish Legal Profession's General Statutes of 1982, and the Common Code of Legal Conduct of 1988 that is recognized by the European Union. These norms are also found in the Ethical Code of the International Bar Association.

With regard to multidisciplinary practices (MDPs), in November 1993, the Consejo de Colegios y Sociedades de Derecho de la Comunidad Economica Europea (CCBE) declared that MDPs between lawyers and non-lawyers should not be permitted based on the need to preserve the independence and confidentiality of lawyers.

The final speaker, **Ms. Piñeda** (Cuba), spoke about the importance of the independence of lawyers. Confidentiality, loyalty and truthfulness are the basic rules respected by Cuban lawyers as well as the requirement to provide the best solutions to their clients.

Ms. Piñeda then expanded on the topic of MDPs as discussed in Dr. Hoet's paper. Ms. Piñeda outlined some of the developed countries' responses to this type of operation. She said that these types of

practices are currently not permitted in the US because of the feeling that the independence of the lawyer would be jeopardized. In the European Union, there has not been a final ruling, but some European member states such as Germany are allowing MDPs to operate. Ms. Piñeda concluded by stating that the Barcelona bar has objected to multidisciplinary practice due to the conflicting confidentiality requirements of accountants and lawyers.

## **FINAL RESOLUTION**

The conference concluded with the adoption of the following resolution:

“The World Jurist Association, having co-sponsored with the Unión Nacional de Juristas de Cuba a special conference to discuss the important subject of ‘The Law of International Trade and Investment in a Global Economy,’ in the beautiful city of Havana, Cuba from November 12-15, 2000;

Having deliberated in depth on various topics, including Doing Business in Cuba; World Trade and Settlement of International Claims; The Law Applicable to International Development Aid; The International Law of Financial Transactions; Law and Tourism in the International Community; and the Independence of Lawyers;

Deeply appreciates the grace, efficiency and skills of our esteemed colleagues from Cuba, especially President of the Supreme Court of Cuba, Dr. Rubén Remigio Ferro; and President of the Unión Nacional de Juristas de Cuba, Lic. Arnel Medina Cuenca, in hosting this conference and providing the delegates with such warm hospitality, wonderful facilities, brilliant speakers, active and enthusiastic participants, and hosts of activities introducing us to the very rich culture and traditions of Cuba; and

Expresses its deep gratitude to the gracious and hospitable people of Cuba for the candor, friendship and warmth with which they received the delegates from eighteen countries.

The conference was most successful in initiating a dialogue between the World Jurist Association and the jurists of Cuba on issues of mutual interest and concern, and the WJA eagerly anticipates further conversations, especially on matters impacting global peace, equity and justice.”

## **SPECIAL APPRECIATION**

The WJA would like to conclude this report by expressing its sincerest appreciation to all of the individuals who have dedicated their time and energy to ensure the success of the Cuba Conference.

We would especially like to thank Lic. Arnel Medina Cuenca, President of the Unión Nacional de Juristas de Cuba, and his staff for their assistance with the details of the program. We also thank the Cuban Interests Section in Washington, DC for their patience and cooperation. In addition, we owe great thanks to Andrew Gareleck who provided the final report of the Cuba Conference. Finally, a special thanks goes to Manuel Alonso and Margaret Diaz of Conference Travel International for their tireless efforts over the years.