

Settlement of Outstanding United States Claims to Confiscated Property in Cuba

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SOLIDARITY (LIBERTAD)  
ACT OF 1996

SPEAKER: Mr. HELMS

TEXT: [\*S12441]

I wish to bring to my colleagues' attention a report submitted by the Secretary of State on "The Settlement of Outstanding United States Claims to Confiscated Property in Cuba" as mandated by Public Law 104-114, the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, and I ask that it be printed in the Record.

The report follows:

Department of State,

Washington, DC, September 27, 1996.

Hon. Jesse Helms,  
Chairman, Foreign Relations Committee, U.S. Senate.

Dear Mr. Chairman: In accordance with the provisions of the Cuban Liberty and Democratic Solidarity Act of 1996, we are filing with the Senate Foreign Relations Committee the report entitled the Settlement of Outstanding United States Claims to Confiscated Property in Cuba, required by Section 207 of the Act.

Copies of this document are also being filed with the House International Relations Committee, the Senate Appropriations Committee and the House Appropriations Committee.

Please do not hesitate to contact us if you have any questions on this issue or on any other matter.

Sincerely,

Barbara Larkin,

Assistant Secretary,

Legislative Affairs.

Enclosure: Section 207 report.

Settlement of Outstanding United States Claims to Confiscated Property

in Cuba

(Report to Congress Under Section 207 of the Cuban Liberty and Democratic Solidarity Act of 1996)

Section 207 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 requires the Secretary of State to "provide a report to the appropriate congressional committees containing an assessment of the property dispute question in Cuba." Pursuant to section 207(a), included in this report are the following areas of review:

An estimate of the number and amount of claims to property confiscated by the Cuban government that are held by United States nationals in addition to those claims certified under section 507 of the International Claims Settlement Act of 1949, 22 U.S.C. 1643f;

An assessment of the significance of promptly resolving confiscated property claims to the revitalization of the Cuban economy;

A review and evaluation of technical and other assistance

that the United States could provide to help either a transition government in Cuba or a democratically elected government in Cuba establish mechanisms to resolve property questions;

An assessment of the role and types of support the United States could provide to help resolve claims to property confiscated by the Cuban government that are held by United States nationals who did not receive or qualify for certification under section 507 of the International Claims Settlement Act of 1949; and

An assessment of any areas requiring legislative review or action regarding the resolution of property claims in Cuba prior to a change of government in Cuba.

#### estimate of claims

Under the Cuban Claims Program, established by Title V of the International Claims Settlement Act of 1949, as amended in 1964, 8,816 claims were filed with the Foreign Claims Settlement Commission (FCSC). In 1972, the FCSC completed its Cuban claims program and certified 5,911 claims against the Cuban Government. The value of these claims was originally \$1.8 billion, but is now estimated with interest to be approximately \$6 billion.

No systematic accounting has ever been done for claims of U.S. nationals in addition to those claims certified under the FCSC's Cuban Claims Program. Virtually all such claims are held by individuals and companies that were not U.S. nationals or entities at the time of the loss. Based on the approximately 1.5 million Cuban-Americans in the United States and the U.S. government's previous experience with claims resolution, we would estimate that there may be from 75,000 to 200,000 such claims. It is more difficult still to estimate the value of these claims, but it could run easily into the tens of billions of dollars.

#### significance of prompt resolution to the Cuban economy

The prompt resolution of confiscated property claims is essential to the revitalization of the Cuban economy under a

transition or democratic government. Cuba's recovery from decades of economic mismanagement will require the creation of a climate friendly to investment, and a clear commitment to property rights is indispensable for creating such a climate. Progress in resolving uncompensated claims will serve as a signal to new investors, foreign and domestic, that transition and democratic governments understand and respect the importance of private property.

It will also be particularly critical to clear up questions concerning title to commercial properties that play, or could play, major roles in Cuba's economy. Delays in doing so will almost certainly delay investment necessary to continue, restore and/or upgrade operations at commercial facilities. Delays of this kind would constitute serious setbacks to a new government's efforts to increase employment and restore the country's fiscal health.

Beyond building confidence in Cuba among potential new investors, the process of claims resolution, if carried out creatively and effectively, may itself generate investment in Cuba by the holders of claims. Negotiating a resolution of certified claims will be an important step. Holders of certified U.S. claims in Cuba include some of the United States' largest and most successful corporations, many of which may be interested in renewing their involvement in Cuba under the right conditions. Resolution of non-certified claims will also be important to attracting new investment.

While prompt resolution of property claims is essential, it will not be easy. Experience in other countries making the transition from Marxist to market economies has shown that resolution of most expropriation claims can take several years, even when governments move expeditiously to set up the proper mechanisms to do so. While they are engaged in these efforts, these new governments have also been faced with a myriad of other political and economic challenges. The United States' goal in these transitions has been--as it will be in Cuba--to help the new governments maintain stability, overcome these many challenges and firmly establish democratic governments and market economies. Within this broader context, and balancing objectives when necessary, prompt resolution of property claims is a priority for the U.S. government, both in order to protect the interests of U.S. claimants and to stimulate investment in a new Cuba.

assistance and support for resolving property claims

Consistent with long-standing practice and international law, the United States would expect to assist U.S. nationals with claims against the Government of Cuba. One aspect of such assistance may be the negotiation of a lump-sum settlement of certified claims, as foreseen by the FCSC's Cuban Claims Program under Title V of the International Claims Settlement Act. The timing of any such negotiation cannot be predicted now.

Resolution of non-certified property claims and disputes in Cuba could be facilitated by technical and other assistance from the U.S. government. Programs of this kind could assist officials of a transition or democratic Cuban government in the development of policy alternatives, formulation of legal and administrative mechanisms, public education campaigns and institution-building. Such assistance may enhance the government's ability to resolve claims and thereby improve claimants' prospects of obtaining compensation or restitution for confiscated property. Assistance in this area could include help in interpreting and evaluating the experience of other countries in resolving property issues, assessing the potential impact of various alternatives, and training officials in consensus-building processes in Cuba. In one instance, a U.S. technical adviser worked with a government's ministry of finance to develop a compensation program based on indemnification bonds.

American assistance would reflect the lessons learned from major property disputes with respect to governments in transition to democracy. Elements of a successful claims resolution strategy include:

Rapid establishment of a legal framework for property ownership.

An administrative process for claims resolution that is centralized, transparent and simple.

A credible and fair system for payment of compensation to legitimate prior owners where restitution is not provided.

Effective enforcement of both restitution and the payment of compensation from national treasury reserves.

U.S. assistance and support for resolving property claims might therefore include the following elements:

U.S. technical advisers could assist in the drafting of legislation and supporting regulations which are essential to creating a functioning compensation program. Some elements of a program might include establishing legal bases for arbitration mechanisms, creating financial instruments and other reforms to underpin compensation schemes, and suggesting property titling or registration reforms related to providing secure and transferable ownership rights of both claimants and individuals in Cuba.

U.S. experts could review for a democratic or transitional government in Cuba the institutional support required for resolving

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property disputes. This could include an assessment of the best institutional practices developed elsewhere, and development of the information and administrative systems necessary for effective implementation. Key to getting such a program started could be various sorts of training, advice regarding information systems, hardware and software, property surveying and registration systems, and assessing operational, management and staffing costs for administration.

U.S. advisers could help in the development of a plan for educating the Cuban public about the nature and basis of such a system. Such a program could require a significant commitment of effort and resources by a future Cuban government and the U.S. government. This effort could focus on gauging public opinion and identifying concerns and issues of potential stake holders in the reconciliation process to ensure policy and legal solutions are responsive.

International financial institutions could develop and carry out programs with similar goals and along these lines.

Various agencies of the U.S. government may be available to provide such assistance. For instance, the FCSC may be able to offer technical assistance to a transition or democratic government in Cuba, as well as to interested NGOs and independent organizations, in the efforts to resolve property

disputes. Such assistance could include advice on structuring a claims adjudication or arbitration mechanism in Cuba, assistance in devising procedures for collecting, hearing and disposing of the claims, and advice on principles to follow in resolving claims involving property that has been substantially altered subsequent to being taken.

assisting u.s. nationals without certified claims

Assisting a democratic or transition government in its efforts to establish an efficient property resolution mechanism will directly support the efforts of non-certified claimants to obtain compensation in Cuba. In addition, the U.S. government may provide various forms of support to U.S. nationals wishing to present claims to such a domestic Cuban body. Such support could include ensuring that interested persons obtain the necessary papers to file their claims; encouraging a transition or democratic government to resolve such claims promptly and effectively; monitoring the progress of claims settlement and, where necessary, offering creative solutions to difficult problems; and providing informal assistance to claimants seeking to understand the process and present a claim. In the case of Central and Eastern Europe, for instance, the U.S. government--principally through the special envoy for property claims in the region--has actively promoted the resolution of claims arising from both Nazi confiscations and Communist nationalizations.

legislative review

At this time, there are no areas requiring further legislative action regarding the resolution of property claims in Cuba prior to a change of government in Cuba. Once a transition or democratic government comes to power in Cuba, however, it will be important for the Administration and Congress to consult closely as conditions change in Cuba to assist in the resolution of property claims in Cuba in a manner that contributes both to the development of a strong bilateral relationship with a democratic Cuba and to Cuba's economic recovery.<bullet>

SUBJECT: LEGISLATIVE  
BODIES (59%); LEGISLATION (59%); APPROPRIATIONS (59%); US

FEDERAL GOVERNMENT (59%);