

Helms-Burton Act Meant to Re-colonize Cuba

The Trump administration is dusting off the law's Title III to tighten the blockade and dissuade foreign investors in Cuba

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This law is more interventionist than the Platt Amendment of 1901 and the Reciprocity Treaty Cuba was forced to sign to be granted fictitious independence, at the beginning of the 20th century.

It is an attack on the independence and dignity of Cuba, with openly annexationist, colonialist intentions.

The Helms-Burton Act was approved to provoke a change in Cuba's political and economic system.

Its Titles I and II include a series of requirements defining a transition government, and what constitutes a democratically elected government, according to the U.S.

It constitutes intervention in the internal affairs of a sovereign country, in violation of international law.

It is also an affront to the sovereignty of other countries of the world, given its intention to enforce U.S. jurisdiction extraterritorially.

This law expresses, in all its amplitude, the Monroe Doctrine, proclaimed more than a century and a half ago.

Given the fears the law creates in some businesspeople, it harms both Cuba and U.S. citizens, preventing or delaying investment and further complicating economic relations.

The law rules out the possibility of the two countries resolving claims on nationalized properties in a rational way; setting a serious precedent for international standards on the resolution of these types of disputes, which may turn against the United States itself when facing property claims in other countries.

It seeks to resurrect the issue of U.S. property confiscated in Cuba, the owners of which did not negotiate compensation, and which are being offered to foreign investors by the Cuban government.

The arguments put forth are false, in fact the United States was never willing to negotiate the issue of nationalized properties, nor did they allow affected companies to negotiate, which, therefore, have not been able to receive compensation.

The Claims Commission, at the time, accepted 5,911 compensation requests. But no

conciliation was conducted to verify the validity of requests and their value, to determine if they were inflated or duplicated, or if falsified documents were used.

The law grants the right to submit claims to individuals who were not citizens of the United States at the time their properties were nationalized or abandoned.

It is absurd that a law allows citizens of another country to file claims in U.S. courts against companies from third countries, for alleged properties whose value, in addition, can be calculated at the convenience of the plaintiff.

The U.S. government has adopted the position of supporting claims on properties of certain U.S. citizens of Cuban origin, who accumulated wealth before 1959 using fraudulent methods and under the protection of corrupt governments.

Nationalization and Indemnification Process

On May 17, 1959, the Agrarian Reform Law was enacted, which set the maximum amount of land per proprietor to 30 caballerias (402.6 hectares), which was to be under cultivation. If not, within two years, the land was to be expropriated. This provision was actually implemented when the second Agrarian Reform Law was established, reducing the limit to 5 caballerias (67.1 hectares).

This Law was applicable to both Cubans and foreign landowners, although exceptions to the limit were allowed in some cases. Sugar cane plantations, cattle ranches, and high yield rice farms, for example, were allowed up to 100 caballerias.

Article 29 of the Agrarian Reform Law recognized the constitutional right of expropriated owners to compensation. The amount awarded was based on the owner's previous declarations in municipal assessment records, and buildings, animals, etc, were evaluated by appraisal.

The issuance of government bonds, called "Agrarian Reform Bonds" that would earn an annual interest of no more than 4.5%, was established. These would be redeemed within 20 years and each year funds would be included in the budget, set aside for this purpose. Also granted was a ten years exemption from taxes on personal income and other benefits.

Sharecroppers, squatters, and other campesinos who worked land owned by others, were granted, free of charge, the so called "vital minimum" of two caballerias of land.

July 6, 1960, Law 851 was approved, complementary to Article 24 of the Fundamental Law of 1959, reaffirming the principle of expropriation for reasons of public utility.

Law 851 authorized the President of the Republic and the Prime Minister (the government structure at that time) to nationalize U.S. property in Cuba through a Joint Resolution.

Article 24: The confiscation of property is prohibited, but that of property held by the dictator deposed on December 31, 1958, and his collaborators is authorized, including that of individuals and legal bodies responsible for crimes committed against the national economy or public finances, illicitly attained under the protection of public authority, and that of persons who were sanctioned for committing crimes categorized by law as counterrevolutionary, or who, in order to evade the justice of Revolutionary Courts, left the

country by any means, or who, having left, carried out conspiratorial activities abroad against the Revolutionary Government.

No other individual or legal body may be deprived of property, except by competent authorities, for reasons of public or social utility, or national interest. The law will establish expropriation procedures, along with the ways and means of payment, as well as the competent authority to declare the public utility, social, or national interest in a given property, and the need for expropriation.

Law 851 established the ways and means to award compensation for nationalized property through government bonds issued for that purpose, and the appointment of experts to assess the value of property to be paid through bonds, which would be redeemed at maturity via the National Bank of Cuba where established was a "Fund for the payment of expropriated assets and companies owned by nationals of the United States of North America."

The aforementioned fund would be financed annually with 25% of the foreign currency obtained from U.S. purchases of sugar over three million Spanish long tons at 5.75 cents, the British pound FAS.

The bonds would earn 2% annual interest and begin to be paid within a period of no less than 30 years.

If the blockade had not existed, beginning in 1990, U.S. citizens would have begun to collect their due compensation.

On August 6, 1960, Joint Resolution No. 1 was issued, in accordance with Law 851, and nationalization was ordered through the expropriation procedure and consequent compensation for the 26 most important U.S. companies. The Cuban electric and telephone companies, which had exploited the people with high rates and poor service, were the first to be nationalized, followed by three refineries – which had mounted a slow-down, leaving the population without fuel – and 21 sugar companies.

On September 17, 1960, Joint Resolution No. 2 was issued, through which three U.S. banks operating in Cuba were nationalized: First National City Bank of New York, First National Bank of Boston, and Chase Manhattan, in accordance with Law 851.

On October 24, 1960, Joint Resolution No. 3 was issued, which ordered the nationalization of remaining U.S. assets, just over 160 companies.

After the First Law of Agrarian Reform, the Cuban government reaffirmed its willingness to discuss, without reservation and on the basis of mutual respect, the differences arising with the government of the United States, regarding compensation for assets and the damage their nationalization may have meant for individuals and legal persons.

In a note dated February 22, 1960, the Cuban government, with a view toward resuming talks with the United States, insisted that, during the negotiations, no action be taken to prejudice the outcome of the talks.

It is not true that the Cuban government refused to negotiate its differences with the United States.

Aware that the form of payment was tied to U.S. purchases of Cuban sugar, the U.S. government cut Cuba's quota of sugar imports, thus harming its own citizens, since it made Law 851 impractical. The full blockade would come later, in February of 1962, continuing by Presidential edict until the arrival of the Helms-Burton Act.

Nationalization Laws

Law 891, dated October 13, 1960, declared banking public and provided in Article 5 the right to compensation of partners or shareholders of dissolved and extinguished banking entities, an issue that would be made effective through subsequent payments after the closing of operations of the Cuban National Bank, December 31, 1960. This Act nationalized the country's banking system and established a compensatory procedure through bonds redeemable within 15 years. Canadian banking entities established in Cuba were exempted, and a procedure for the purchase of their assets was carried out.

Law of Urban Reform, October 14, 1960, awarded houses to tenants and paid compensation to the former owners – Cuban or foreign – including life annuities after having recovered the value of the affected property.

Law No. 1076, December 5, 1962, nationalized certain types of retail or small businesses, also regardless of the nationality of their former owners.

Characteristics of Cuban Nationalizations

They were not discriminatory; Cubans and foreign proprietors were treated the same.

All were for public purposes, not private gain.

Appropriate compensation was provided for affected.

Nationalizations were conducted in accordance with provisions of a constitutional nature, through legal procedures established for expropriation for reasons of public utility and national interest.

Cuba, respectful of international law and its obligations, has signed among others, the following agreements:

- Agreement between the Revolutionary Government of the Republic of Cuba and the government of the French Republic, concerning the compensation of French property, rights, and interests affected by the laws and measures adopted by the Revolutionary Government of the Republic of Cuba as of January 1, 1959, signed on March 16, 1967.
- Agreement between the Revolutionary Government of the Republic of Cuba and the government of the Swiss Confederation, concerning compensation for the effects of laws enacted by the Revolutionary Government of the Republic of Cuba as of the January 1, 1959, signed on March 2, 1967.
- Exchange of Notes, dated October 18, 1978, between the government of the Republic of Cuba and the government of the United Kingdom of Great Britain and Northern Ireland, on compensation to British nationals as a result of the application of nationalizations, expropriations, and other similar laws and measures adopted by the Revolutionary Government of the Republic of Cuba since January 1, 1959.

- Agreement between the government of the Republic of Cuba and the government of Canada, regarding the liquidation of Canadian claims, signed on November 7, 1980.
- Agreement between the Republic of Cuba and the Kingdom of Spain, on compensation for Spanish property affected by the laws, provisions, and measures adopted by the government of the Republic of Cuba as of January 1, 1959, signed on January 26, 1988.

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