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THE HELMS-BURTON ACT, TITLE III: ANOTHER EXAMPLE OF U.S. HYPOCRISY

La Ley Helms-Burton, Título III: otro ejemplo de hipocresía estadounidense

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Abstract

While it has been condemned by most U.N. member states, the U.S. continues to expand its illegal blockade against Cuba. Title III of the Helms-Burton Act of 1996 authorizes U.S. nationals to sue in U.S. courts "any person" who "traffics" in property nationalized by Cuba on or after January 1, 1959. Past U.S. Presidents suspended Title III due to international opposition, but in 2019 President Trump lifted the suspension (continued by President Biden) to allow Title III lawsuits to proceed. Forty-four lawsuits have been filed in U.S. courts. Most suits have targeted U.S. corporations. In 2022, a U.S. court in Florida awarded $439 million to Havana Docks Corporation against four cruise lines for using the Havana port 2016-2019. Expropriation and nationalization are permitted by international law with compensation. Cuba negotiated compensation settlements with all but the U.S., which refused Cuba's attempts to negotiate. In the U.S., expropriation is a regular occurrence called "eminent domain". The U.S. Constitution's allows the government to take private property, with just compensation, for "public use," now expanded by U.S. courts to include taking of *private* property for *private* use. U.S. examples abound where persons are forced from homes, land and small business, without just compensation, to allow corporate development. Rather than continue a policy of hypocrisy, the U.S. government should honor the U.N. Charter and cease ignoring the General Assembly's three-decade demand for an end to the illegal blockade against Cuba.

Keywords: blockade; eminent domain; Havana Docks decision; Helms-Burton Act Title III; nationalization.

Resumen

Si bien ha sido condenado por la mayoría de la ONU, Estados Unidos continúa expandiendo su bloqueo ilegal contra Cuba. El Título III de la Ley Helms-Burton de 1996 autoriza a los nacionales estadounidenses a demandar en los tribunales estadounidenses a "cualquier persona" que "trafique" con bienes nacionalizados por Cuba a partir del 1 de enero de 1959. Los anteriores presidentes de Estados Unidos suspendieron el Título III debido a la oposición internacional, pero en 2019 el presidente Trump levantó la suspensión (continuada por el presidente Biden) para permitir que procedieran las demandas del Título III. Se han presentado cuarenta y cuatro demandas en los tribunales estadounidenses. La mayoría de las demandas se han dirigido a corporaciones estadounidenses. En 2022, un tribunal estadounidense en Florida otorgó 439 millones de dólares a Havana Docks Corporation contra cuatro líneas de cruceros por utilizar el puerto de La Habana entre 2016 y 2019. La expropiación y la nacionalización están permitidas por el Derecho internacional con compensación. Cuba negoció acuerdos de compensación con todos menos con Estados Unidos, que rechazó los intentos de negociación de Cuba. En Estados Unidos, la expropiación es un hecho habitual llamado "dominio eminente". La Constitución de Estados Unidos permite al gobierno apropiarse de propiedad privada, con una compensación justa, para "uso público", ahora ampliada por los tribunales estadounidenses para incluir la apropiación de propiedad privada para uso privado. En Estados Unidos abundan los ejemplos de personas que se ven obligadas a abandonar sus hogares, sus tierras y sus pequeños negocios, sin una compensación justa, para permitir el desarrollo corporativo privado. En lugar de continuar con una política de hipocresía, el gobierno de Estados Unidos debería honrar la Carta de la ONU y dejar de ignorar la exigencia de tres décadas de la Asamblea General de poner fin al bloqueo ilegal contra Cuba.

Palabras claves: bloqueo; dominio eminente; decisión de Havana Docks; nationalización; Título III de la Ley Helms-Burton.

Summary

While the Cuban government, with direct popular participation, constructed a new and innovative Constitution, overwhelmingly approved by Cuban voters

in 2019 to reflect societal changes over the past decade, the United States has implemented draconian measures under Title III of the Helms-Burton Act to tighten the illegal U.S. blockade in an attempt to strangle the Cuban economy and provoke a change in government.

1. BACKGROUND OF U.S. LAWS ESTABLISHING THE U.S. BLOCKADE OF CUBA

Signed into law in 1996, the Cuban Liberty and Democratic Solidarity (Libertad) Act, also known as the Helms-Burton Act,[1] codified and expanded the now more than 60-year financial, commercial and economic blockade against Cuba, which is illegal under international law. The blockade has been opposed by a minimum of 96% of UN member nations for the past 30 years when the vote to abolish it has come up annually in the General Assembly. In 2023, for example, 187 nations voted overwhelmingly in favor of the draft resolution entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba".[2] Nonetheless, during the first 14 months of the Biden administration, the U.S. government not only continued, but escalated sanctions against Cuba, resulting in estimated damages to the island nation of $6.36 billion or more than $15 million per day. According to the Report of the UN Secretary General,[3] between August 2021 and February 2022, Cuban losses from U.S. sanctions amounted to more than $3.8 billion, a record figure for seven months. At current prices, the report continues, accumulated losses to Cuba over the 60 years of the blockade are estimated at $154.22 billion.[4]

The far-reaching Helms-Burton Act is only one part of a vast, complex network of U.S. laws and administrative provisions designed to hold the blockade in place,

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1 Helms-Burton Act, 22 U.S.C. Chapter 69a, §§6021–6091, Pub. L 104-114, 110 Stat. 785, March 12, 1996.

2 "General Assembly votes overwhelmingly against US Cuba embargo", UN News, *Global Perspective Human stories*, 2 November 2023, https://news.un.org/en/story/2023/11/1143112#:~:text=The%20UN%20General%20Assembly%20on,voting%20against%20and%20Ukraine%20abstaining

3 "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", A/77/358, Seventy-seventh session, Report of the Secretary-General, Agenda item 36, 21 September 2022.

4 Adopting Annual Resolution, Delegates in General Assembly Urge Immediate Repeal of Embargo on Cuba, Especially amid Mounting Food, Fuel Crisis, GA/12465, Seventy-seventh Session, 28th Meeting (AM), 3 November 2022.

including the Trading with the Enemy Act of 1917;[5] the Foreign Assistance Act of 1961;[6] Presidential Proclamation 3447 of 1962[7] (signed by President Kennedy to ban all trade with Cuba after he obtained 1200 Cuban cigars for his personal humidor); the Cuban Democracy (Torricelli) Act of 1992;[8] the Antiterrorism and Effective Death Penalty Act of 1996;[9] the Export Control Act of 2018;[10] the Trade Sanctions Reform and Export Enhancement Act of 2000[11] and the Cuban Assets Control Regulations.[12]

The Helms-Burton Act seeks "international sanctions" and requires that Cuba "transition to a democratically elected government," specifically without "a Castro government", before the blockade can be lifted. The Act imposed extraterritorial sanctions on foreign companies doing business in Cuba and denied entry into the United States of executives of foreign investors in Cuba.

2. TITLE III OF THE HELMS-BURTON ACT

Title III of the Act authorizes U.S. nationals to file private lawsuits in U.S. courts against "any person" who "traffics" in property subject to Cuban nationalization between January 1, 1959, and March 12, 1996. The action must be brought against persons who have trafficked or are trafficking in the nationalized property, and the suit must be filed no later than two years after the trafficking giving rise to the action has ended. "Traffic" is broadly defined to include not only owners of the property, but any person or company that derives a benefit from it. Title III also allows U.S. citizens to sue for three times the current value of any nationalized property worth more than $50,000. The law even

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5 Trading with the Enemy Act, 50 U.S.C. Chapter 53, §§95a-95b, 40 Stat. 411, 6 October 1917.

6 Foreign Assistance Act of 1961, 22 U.S.C. §§2151 et seq., Pub. L 87-195, Approved 4 September 1961, As Amended Through Pub. L 117-263, Enacted 23 December 2022.

7 John F. Kennedy, Presidential Proclamation 3447, Embargo on All Trade with Cuba, 27 FR 1085, 3 CFR 1959-1863, Comp., p. 157, 3 February 1962.

8 Cuban Democracy (Torricelli) Act of 1992, Chapter 69, 22 U.S.C. §§6001 et seq., 3 October 1992.

9 Anti-terrorism and Effective Death Penalty Act, Pub. L 104-132, 110 Stat. 1214, (codified as amended at 8 U.S.C. § 1189 (Supp. II 1996)), 4 April 1996.

10 Export Control Act of 2018, 50 U.S.C. Chapter 58, §§ 4801 et seq., Pub. L 115-132, 17 April 2018.

11 Trade Sanctions Reform and Export Enhancement Act, Title IX of Pub. L 106-387, 28 October 2000.

12 Cuban Assets Control Regulations 31 C.F.R. Part 515, 8 July 1963.

permits lawsuits by former owners who were not U.S. citizens at the time their properties were nationalized or abandoned.

Presidents William Clinton, George W. Bush and Barack Obama exercised the authority provided in the Act to suspend application of Title III throughout their administrations, in part due to international opposition to its provisions. In 1996 the European Union challenged Title III at the World Trade Organization, of which the U.S. is a member, and withdrew the case only after the U.S. agreed to continue Title III suspension. On May 2, 2019, however, President Trump lifted the suspension to allow Title III lawsuits to proceed; a policy continued by President Biden.

Title III was originally designed to target and deter foreign, not U.S., companies from investing in Cuba, since, at the time the law was passed, U.S. companies were prohibited from doing business on the island. Starting in 1990, to boost its economy, the Cuban government instituted regulated market reforms, including steps to encourage foreign investment, by easing restrictions on foreign ownership, permitting joint ventures and allowing 100% repatriation of profits. Companies from Canada, Mexico and the European Union began to invest in Cuba. By 1994, the Cuban government had negotiated 185 joint ventures in a multiplicity of areas, including energy, technology, tourism and agriculture. By 1998, the number of joint ventures increased to 322. By 1998, 15 foreign banks were also operating in Cuba. These successes did not go unnoticed by the U.S. government.

At the same time, with the loosening of some restrictions under President Clinton and the temporary resumption of diplomatic relations in 2015 under President Obama, many U.S. companies eagerly sought opportunities to do business with or in Cuba. Some of those same U.S. companies now find themselves targets of Title III lawsuits. Indeed, most Title III lawsuits thus far have targeted U.S. companies which, ironically, were engaged in business activities licensed and even encouraged by the U.S. government. In 2016, for example, after President Obama relaxed travel restrictions to Cuba, more than 140,000 people traveled from the U.S. to Cuba on cruise ships. In 2017 alone, more than 300 cruises docked at Havana Harbor, with 145 docking at the Cuban city of Cienfuegos. It is estimated that cruise lines made at least $1.1 billion from the short-lived period of travel to Cuban ports from 2016-2019, which also added more than $130 million to the Cuban tourist industry.

On June 4, 2019, however, the Trump administration announced new travel restrictions which included a ban on cruise ships from the U.S. docking at

Cuban ports, which reportedly impacted 800,000 bookings, since no grace period was allowed. In at least two cases in the Southern District of Florida, "García-Bengochea vs. Carnival Corporation"[13] and "Havana Docks Corporation vs. Carnival Corporation",[14] the court found that previous reliance on a license from the U.S. Office of Foreign Assets Control (OFAC) was insufficient to support a motion to dismiss, although, at the same time, U.S. District Judge Beth Bloom determined that Carnival cruises were promoting "tourism", which, incredibly, remains against the law for U.S. visitors to Cuba, even travelers on cruise ships, which the U.S. government well knew are designed for vacationers. Judge Bloom stated, "The fact that OFAC promulgated licenses for traveling to Cuba, and executive branch officials, including the president, encouraged defendants to do so, does not automatically immunize defendants from liability if they engaged in statutorily prohibited tourism".[15]

In a 1972 report, the Foreign Claims Settlement Commission (FCSC), a U.S. government agency that adjudicates claims of U.S. nationals against foreign governments, certified 5913 claims by U.S. nationals against the Cuban government totaling almost $2 billion.[16] According to the U.S.-Cuba Trade and Economic Council, the FCSC permitted simple interest of 6% per annum (approximately $114,132,137.10 USD); with the approximate current value of the 5,913 certified claims being $8,750,130,510.77 (USD).[17] However, in a press briefing on April 17, 2019, a U.S. Department of State official stated that Title III provisions were not focused solely on the FCSC-certified claims and estimated that there could be as many as 200,000 potential claims under Title III, worth tens of billions of dollars.[18]

While some expected a rush of lawsuits after the lifting of the Title III suspension, the U.S.-Cuba Trade and Economic Council reports that only 44 suits have been

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13 "García-Bengochea *vs*. Carnival Cruise Line", No. 19-cv-21725-JLK (U.S.D.C., S.D. Fla. August 26, 2019).

14 "Havana Docks Corp *vs*. Carnival Cruise Line, *et al.*", No. 19-cv-23591 Bloom/McAliley (U.S.D.C., S.D. Fla. Dec. 30, 2022).

15 *Ibidem*.

16 U.S. Department of Justice, Foreign Claims Settlement Commission, Completed Programs-Cuba, updated April 21, 2022 https://www.justice.gov/fcsc/claims-against-cuba

17 *Ibidem*.

18 U.S. Embassy in Cuba, Telephonic Press Briefing with Senior State Department Official on the U.S. Policy toward Cuba, April 17, 2023, https://cu.usembassy.gov/telephonic-press-briefing-with-senior-state-department-official-on-the-u-s-policy-towards-cuba/

filed against 82 companies and their subsidiaries since 2019 (15 FCSC-certified claimants and 29 non-certified claimants): one case was settled in 2021, six have been dismissed by the U.S. Court of Appeals and ten are being appealed to the Court of Appeals, with the remainder at other stages of litigation. The same report appears to indicate that while the number of lawsuits is small, the effect is massive. More than 16 countries have been impacted, including Canada, Chile, China, Denmark, France, Germany, Netherlands, Panama, Republic of Cuba, Singapore, Spain, Switzerland, Thailand, United Kingdom and the United States. More than 90 law firms have been retained, with tens of millions of dollars in attorneys' fees and the involvement of numerous U.S. federal courts. Defendants run the gamut from Amazon.com, Expedia, Booking.com, Kayak, Melia Hotels, Orbitz, Trivago, Tripadvisor, American Airlines and Iberia Airlines, to Mastercard, Visa, Young & Rubicam, the advertising agency, and Société Générale S.A, the French bank, to name a few. [19]

Title III's impact on the Cuban economy is devastating. Foreign corporations have cancelled contracts rather than face the potential risk of Title III litigation. National Society of French Railways canceled its contract with the Cuban Railway for a modernization project worth $46.7 million. The French company Bouygues Batiment International, which managed Havana's José Martí Airport and constructed 50% of the hotel rooms offered in Cuba, also cancelled construction contracts. These are two examples among many. The stunning verdict in the "Havana Docks" cases will certainly contribute substantially to disincentivizing any foreign company considering investment in Cuba.

3. HAVANA DOCKS DECISION

On December 30, 2022, in "Havana Docks Corp. *vs*. Carnival Corp., *et al*" (19-cv-23591[S.D. Fla.]),[20] Judge Beth Bloom granted the first windfall verdict under Title III to plaintiff Havana Docks Corporation, ordering Entry of Final Judgment against four defendants: $109,671,180.90 against Carnival Cruise Line; $109,848,747.87 against MSC Cruises; $109,848,747.87 against Royal Caribbean Cruises and $109,848,747.87 against Norwegian Cruise Line, for a staggering total of $439,217,424.51 to compensate Havana Docks for

[19] U.S.-Cuba Trade Economic Council, "After 43 Months, Florida District Court Judge Hands First Cuba Libertad Act Verdict-Four Cruise Lines Must Pay US $439,217,424.51 plus US $11,707,484.31 in Legal Fees". Appeals Probable, December 30, 2022, https://static1.squarespace.com/static/563a4585e4b00d0211e8dd7e/t/63b013f09cd8f9321bb299ea/1672483824437/Libertad+Act+Filing+Statistics.pdf

[20] "Havana Docks Corp *vs*. Carnival Cruise Line, *et al*.", 19-cv-23591, *supra* at n. 13.

defendants' use of the Havana Port for three short years, 2016-2019, and to punish the cruise lines for carrying tourists. All four cruise lines have filed appeals with the 11th Circuit Court of Appeals, with Judge Bloom denying defendants' motion for a stay of execution of judgment without bond or with a reduced bond; instead, she required the companies to purchase supersedeas bonds of 110% of the judgment to obtain stays pending appeal.[21]

Havana Docks Corporation is a 1917 U.S. company that currently exists solely to pursue Title III claims. Havana Docks' main actors are board members Mickael Behn and his mother Aphra Behn, descendants of Sosthenes Behn, who purchased the land and built the Havana Dock in 1920. Sosthenes Behn was an American businessman and founder of International Telephone and Telegraph (ITT), which supported Cuban dictator Fulgencio Batista and exploited the Cuban people, supported Dictator Francisco Franco's military takeover in Spain and funded the 1973 U.S.-backed coup in Chile, resulting in the murder of duly elected President Salvador Allende and installation of Dictator Augusto Pinochet. An ITT subsidiary supported the German Nazi war machine by producing airplanes for the Luftwaffe and radar equipment for the Wehrmacht (while also supplying the Allies), starting in 1933 when Sosthenes Behn personally met with Adolf Hitler. Incredibly, after World War II, ITT, as a "victim", was awarded $27 million in compensation from the U.S. government for damage from Allied bombing to its factory in Germany. The Cuban government nationalized the Havana Dock as an asset of the Cuban people in 1960.

4. INTERNATIONAL RESISTANCE

The extraterritorial applications of U.S. sanctions, such as Helms-Burton and its Title III, do not enjoy universal approval, even among close U.S. allies, including Canada and the European Union. Countries that do not impose economic sanctions on Cuba viewed the enactment of Helms-Burton, particularly Title III, as forcing a "secondary boycott" (which are notably illegal on U.S. soil under the Taft-Hartley Amendments to the National Labor Relations Act[22]) of Cuba by third countries who merely wish to engage in lawful commercial activity. Title III permits suits against foreign companies whose investments in Cuba are legal in their home countries and under international law.

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[21] "Havana Docks Corp *vs*. Carnival Cruise Line, *et al*.", 19-cv-21724 Bloom/McAliley (U.S.D.C., S.D. Fla. Mar. 13, 2023).

[22] Labor Management Relations Act, also known as Taft-Hartley, 29 U.S.C. §141 et seq., Pub. L 104-320, June 23, 1947.

The European Union has stated through a spokesperson that "the European Union reiterates its strong opposition to the extraterritorial application of unilateral Cuba-related measures that are contrary to international law".[23] The EU has said it may again challenge Title III in the World Trade Organization or impose retaliatory sanctions to protect its Cuban investments. On December 21, 2021, for the first time, the Court of Justice of the European Union (CJEU), issued the first-ever judgment on the European Union Blocking Regulation,[24] which it interpreted broadly to prohibit EU operators from compliance with foreign sanctions; any such compliance can be considered a breach of the EU Blocking Regulation and could be challenged in civil proceedings. The particular case involved an Iranian state-owned bank, but the principles are applicable to the U.S. sanctions against Cuba. EU operators, therefore, are forced to choose between compliance with U.S. sanctions and compliance with the EU Blocking Regulation.

5. NATIONALIZATION SANCTIONED BY INTERNATIONAL LAW

Nationalization, however, is a principle sanctioned by international law, authorized by the United Nations Charter and affirmed in multiple UN Resolutions and Declarations. It must be "based on grounds of public utility, security or the national interest, which are recognized as overriding purely individual or private interests, both domestic and foreign".[25] Cuba incorporated these principles into its legislation and on January 1, 1959, nationalized property in Cuba that had belonged to U.S. owners, as well as owners from other countries, including electric and phone utility companies, like ITT, which were considered after 1959 to be assets of the Cuban people.

The U.S. Supreme Court recognized Cuba's right to nationalize in the famous case of "Banco Nacional de Cuba vs. Sabbatino",[26] in which a U.S. commodity

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[23] European Commission, Joint Statement by High Representative/Vice President Federica Mogherini and Commissioner for Trade Cecila Malmström on the decision of the United States further activate Title III of Helms-Burton (Libertad) Act, 17 April 2019, Brussels, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_19_2171

[24] Council Regulation (EC) No 2271/96, 22 November 1996, otherwise known as the "Blocking Regulation".

[25] General Assembly Resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources", https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/resources.pdf

[26] 376 U.S. 398 (1964).

broker contracted to purchase Cuban sugar destined for the U.S. After the sugar was loaded on a ship, but still in Cuban waters, the Cuban government issued a decree under Executive Power Resolution 1 pursuant to Law 851 of July 6, 1960,[27] which authorized nationalization of U.S. properties, and took possession of the sugar. The Cuban government refused to release the sugar until the U.S. broker entered a new contract with Banco Nacional de Cuba. Cuba's Executive Power Resolution 1 cited the injustice of the U.S. reduction of the Cuban sugar quota after 1959 and emphasized the importance of Cuba serving as an example to other countries to follow "in their struggle to free themselves from the brutal claws of imperialism".[28] The U.S. broker received payment for the sugar, but refused to deliver the payment to the Cuban bank's agent in the U.S., which led to the dispute in court. The U.S. Supreme Court, in a nearly unanimous decision, found for Cuba, citing the Act of State doctrine, a U.S. common law principle that a nation is sovereign within its own borders and that a U.S. court will not sit in judgment on an act of a foreign government that takes place in that foreign government's territory.

The outraged U.S. Congress responded by passing 22 U.S.C. §2370, the Second Hickenlooper Amendment to the Foreign Assistance Act, in 1964. Section (e) (2) expressly prohibited U.S. Courts from invoking the Act of State doctrine to refuse to hear claims against foreign nationalizations that "violate international law", the U.S. being the arbiter of what violates international law. This amendment was a legislative reversal of *Sabbatino* and specifically applied to takings after January 1, 1959, so its target was clear.

The United States, however, itself has a long history of nationalizations, the process of taking privately controlled property and placing it under public authority. In 1917, as the U.S. entered World War I, the U.S. government temporarily nationalized all railroads under the Army Expropriations Act of 1916, as well as the telegraph and telephone networks and the radio industry and arms manufacturer Smith and Wesson. The U.S. government also nationalized U.S. subsidiaries of several German companies under the Trading with the Enemy Act, most notably the pharmaceutical company Merck and the U.S. subsidiary of Bayer, which was later sold by the government at auction.

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[27] "Cuba, Nationalization Law, 1960", *The American Journal of International Law*, Vol. 55, No 3, July 1961, https://www.jstor.org/stable/2195928?seq=1, accessed 26 November 2023.

[28] *Idem* at fn 7.

The U.S. nationalized industries and companies during World War II, including railroads, trucking companies and briefly, the retailer Montgomery Ward, on the grounds of a national emergency. It also nationalized coal mines, largely to stop 500,000 low-paid coal miners from striking for higher wages.

Although almost all U.S. nationalizations have occurred during wartime, financial crises have generated nationalizations, generally at an exorbitant cost to the U.S. taxpayer.

For example, in 1989, the U.S. government created the Resolution Trust Corporation to nationalize more than 1,000 failing Savings and Loan banks to address the collapse of the privately held Savings and Loan industry due to speculation, deregulation and fraud. The Savings and Loan industry had once been the most secure source of home mortgages for working people. During the banks' heyday, many private speculators became extremely wealthy, but government nationalization to wind down these failing banks cost the U.S. taxpayers $132 billion.[29]

In another form of nationalization that transmitted public funds to the private sector, the U.S. government's bailout to purchase toxic assets from the nation's largest privately held banks and other institutions in 2008 cost the U.S. taxpayers $700 billion. This nationalization, however, did not prevent the recession that followed or the loss of 8.6 million U.S. jobs.[30]

U.S. law also has a mechanism for the expropriation, or taking, of individual private property for public use. In the United States, we call this expropriation "eminent domain", and it is a nationwide, regular occurrence. Eminent domain "appertains to every independent government". The U.S. Supreme Court held in 1879 that eminent domain requires no constitutional recognition; it is an attribute of sovereignty. "*Boom Co. vs. Patterson*".[31]

Indeed, the "takings" clause of the Fifth Amendment of the United States Constitution allows the government to take private property for "public use",

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[29] Hannah, Thomas M., "A History of Nationalization in the United States, 1917-2009", *The Next System Project*, p. 36, https://thenextsystem.org/sites/default/files/2019-09/A_History_of_Nationalization_in_the_US-Hanna-NSP.pdf

[30] Cunningham, Evan, "Great Recession, great recovery? Trends from the Current Population Survey", *Monthly Labor Review*, April 2018.

[31] 98 U.S. 403, 406 (1879).

expanded by the U.S. Supreme Court in the controversial case of "Kelo *vs.* City of New London"[32] to mean "public purpose", which can include the taking of private property for *private use* under the guise of economic development. In "Kelo", the beneficiary was a private developer, who then never built anything on the land, while taxpayers were out $80 million and the homeowners lost their family homes to the government for a fraction of what they were worth. Since the "Kelo" decision, instances of eminent domain abuse, where private property is taken for private real estate developers, abound throughout the U.S.

Moreover, the U.S. government and state governments routinely seize and sell private real estate for tax deficiencies. Until the U.S. Supreme Court finally ruled "home equity theft" unconstitutional on May 25, 2023 ("Tyler *vs.* Hennepin County, Minnesota"),[33] thirteen states, including New York, allowed their governments to seize and liquidate private real estate to satisfy tax bills (sometimes very small ones) and then retain the surplus money (representing a portion of a homeowner's equity), rather than returning it to the property owners. The Pacific Legal Foundation estimates that more than $780 million has been lost to homeowners by the government's practice of home equity theft.[34]

Nationalization and expropriation require compensation, *"in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law"*.[35] Accordingly, Cuba decades ago negotiated settlements of compensation claims with Switzerland, Spain, France, Great Britain and Canada. Cuba has repeatedly announced its willingness to negotiate a lump-sum settlement with the United States. The United States government, however, has never been willing to negotiate, nor has it allowed affected companies to negotiate, creating the situation where the U.S. can claim that the takings were uncompensated.

6. CONCLUSION

The Helms-Burton Act in specific and the U.S. blockade in general contravene international law, harm both the Cuban people and those in the U.S., and tarnish further the already tarnished reputation of the U.S. around the world. Rather

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[32] 545 U.S. 469 (2005).

[33] No. 22-166 (U.S. Supreme Court, May 25, 2023).

[34] When Taxation Really is Theft, Pacific Legal Foundation, https://homeequitytheft.org/

[35] U.N Resolution 1803, *supra*, at note 22.

than continue a policy of hypocrisy, the U.S. government should honor the UN Charter and cease ignoring the General Assembly's three-decade demand for an end to the illegal blockade against Cuba. Lifting the blockade is not only essential to achieving the progress the Cuban people need and deserve, but it would also benefit the people of the U.S. and the rest of the world.

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