PREPARED STATEMENT OF
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BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE
SUBCOMMITTEE ON WESTERN HEMISPHERE AND PEACE CORPS AFFAIRS
LEGAL AND PRACTICAL IMPLICATIONS OF TITLE III OF THE HELMS-BURTON LAW

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Body

I. THE NATURE OF TITLE III'**s** POTENTIAL LITIGANTS

A. Background

The property confiscations at issue under Title III of the Helms- Burton Act involved, at time of taking, the properties of two distinct groups of corporations and individuals - those of ***U. S.*** citizens, and those of Cuban citizens. In assessing the impact and legal implications of an activated Title III it is necessary that each of these groups be examined carefully.

A. The Certified Claimant Potential Litigants

With ***respect*** to the first group (***U. S.*** corporate and individual citizens) the Foreign Claims Settlement Commission has certified a total of 5,911 claims with a principal value of $1.8 billion. However, few of these certified claims are, standing alone, of significant value. (For example, the properties of only ten corporate claimants including the electric and phone companies, two oil refineries, one nickel mine and five sugar producers - were ultimately certified to be worth a little over $1 billion out of the $1.6 billion in total corporate claims). Of the nearly 6,000 certified claimants, only a few hundred will even be eligible to file a Title III suit. (1)

So why should a possible future implementation of Title III be viewed with concern? To answer this question we must look to the second group of companies and individuals to lose properties in Cuba to governmental action - that is, Cuban citizens at the time their properties were taken.

B. The Cuban American Potential Litigants

According to a Department of the Army publication, 800,000 Cubans settled in the ***United States*** between January 1, 1959 and September 30, 1980.(2) Approximately 200,000 have arrived in the past 15 years. Therefore, about 1 million Cubans in total have come to reside in the ***U.S.*** since Fidel Castro came to power. The majority of these Cubans have become naturalized ***U.S.*** citizens and are therefore eligible to file Title III lawsuits with ***respect*** to Cuban properties they assert claims to.(3) Moreover, these 1 million ***Cuban Americans*** (and their descendants) are disproportionately likely to have been of the property owning classes of pre-revolutionary Cuba and, therefore, are likely to assert claims to most of the properties of any value on the island(4)

C. Number of Cuban-American Suits to be Expected If Title III is Implemented

Of the 1 million Cubans that have settled in this country in the past thirty-seven years, how many of them (or, more particularly how many of their descendants) may sue under Title III? In August, 1995 I wrote a lengthy letter to the Director of the Congressional Budget Office on this subject. (5)

I employed, in my letter, the following methodology in estimating a total of 300,000-430,000 Cuban American lawsuits to be expected under Title III: I broke the pre-revolutionary Cuban economy into service, industrial, manufacturing and agricultural sectors and estimated the number of business enterprises that existed in each sector.(6) I then calculated the likely number of owners of properties in those sectors that had settled in the ***U.S.***, and were therefore capable of filing a Title III lawsuit. Additional calculations were then made, (i) for the claims of multiple descendants instead of original sole owners and (ii) for the variety of property interests capable of supporting a Title III lawsuit.(7) On this basis, my estimate of 300,000-430,000 lawsuits was made. To this day, there has been no reply to that figure.

1I. THE PURPOSES OF TITLE III

A. An Overview

Title III of the Helms-Burton Act has two purposes. First, it will serve as a mechanism for ***Cuban Americans*** to assert claims directly against the nation of Cuba with ***respect*** to property expropriations in that country. Title III is therefore a federal courthouse version of the ***U.S.*** Foreign Claims Settlement Commission'***s*** programs that have hitherto been authorized by Congress, in conformity with international ***law***, so/ely on behalf of those occupying the status of ***U.S.*** nationals at the time of foreign property expropriations.

Quite apart, however, from constituting a claims program for ***Cuban Americans***, Title III also puts ***U.S.*** federal courts to the task of effectuating a foreign policy objective with ***respect*** to Cuba - that is, the transformation of that country into a nation that conforms to the over 20 specific "requirements" of the Helms-Burton Act for what constitutes a "democratically elected" government in Cuba. Among those requirements are such things as the cessation by the government of Cuba of interference with ***U.S.*** government sponsored radio and TV signals; the dissolution of various Cuban government agencies; the reinstatement of Cuban citizenship in certain cases; a public commitment from the Cuban government "assuring the right to private property"; foreign supervised elections "with the participation of multiple independent political parties that have full access to the media on an equal basis," and so on.

This transformation of Cuba is to be achieved (as the Act'***s*** proponents have often said) through "cutting off hard currency" to that country. I will return to this aspect of Title III in a moment.

B. Potential Defendants Under Title III Who then may Cuban American litigants actually sue under Title III? Again, they may sue "persons" who "traffic" in properties that - in the curious locution of the Act they "own a claim" to. (8)

The word "person" is defined to include "any agency or instrumentality of a foreign state." Cuba is of course a foreign state, and it is therefore explicitly suable - via its agencies and instrumentalities - under Section 302 of Title III. Moreover, on the eve of passage, Title III was amended to delete the requirement that an agency or instrumentality of Cuba necessarily be using the property "in the conduct of a commercial activity," in order to be sued. Therefore, as matters now stand, all properties on the island with which the government of Cuba is involved in some way are subject to potential suit, regardless of whether they are being used commercially or not.

Section 4(13) defines "traffics" to include: "managing, possessing, controlling, using or otherwise holding an interest in confiscated property." This means, I must emphasize, that all formerly private premises (with the limited exception of residential properties in some cases) that are now being used, managed or controlled by an agency or instrumentality of the government of Cuba are potentially subject to suit in ***U.S.*** federal courts.

It is no longer, therefore, only sugar mills, cattle ranches, factories, tobacco farms and rum distilleries that are subject to suit, (i.e. properties that are being operated in a commercial vein by the government of Cuba) - but, rather, Title III litigants may now also sue agencies and instrumentalities of the Cuban government that are "using" or "controlling" properties such as schools, hospitals, administrative offices, military installations or undeveloped real property.

Finally, it is noteworthy that shortly before conference on February 28 this provision was removed from the Senate version of Title Ill: "For all actions brought under Section 302 … no judgment by default shall be entered by a court of the ***U.S.*** against the government of Cuba ..." So, default judgments are now available in suits filed against agencies and instrumentalities of the government of Cuba.

C. Title III as a Court-Administered Claims Program for ***Cuban Americans***

It is for precisely the reasons given immediately above that opponents of Title III have described it as a massive claims program against Cuba created for ***Cuban Americans*** - a program that is to be administered, in unprecedented fashion, by the judicial branch of the ***U.S.*** government.(9)

D. Title lll As An Instrument of Coercion of ***U.S.*** Trading Partners

As alluded to earlier in these remarks, the other principal purpose of Title III is to achieve a foreign policy objective in Cuba; that is, the political and economic transformation of that country by cutting off hard currency to it. The means of effectuating this objective is the infliction of deterrent economic injury (via Title III lawsuits) on foreign companies that invest in or trade with Cuba. So, Title III has harnessed the judicial branch of the ***U.S.*** tripartite system of government to the political objectives I described earlier. Instead, therefore, of adjudicating causes and controversies arising from legitimate jurisprudential bases, ***U.S.*** courts are now put - by virtue of Title III'***s*** conferral of a fight of suit on ***Cuban Americans*** - to the achievement of the political goal of transforming Cuba politically and economically. (10)

Several ***U.S.*** trading partners have taken the view that enhanced trade and investment in Cuba by their corporate nationals is a good thing. In short they believe economic liberalization ought to be encouraged in Cuba in order to facilitate their policy objectives with ***respect*** to that country.(11) (Believe me, I am not asking proponents of Title III to share the view, I am only saying certain ***U.S.*** trading partners are of this opinion and, moreover, believe that it is a matter of national sovereignty that they be allowed to both reach and give practical effect to such a policy determination). As it happens the only means those nations have of effectuating the policy decisions they have reached with ***respect*** to Cuba is via their private sector companies - which Title III takes direct aim at. (12)

HI. TITLE III AND "THE NATIONALITY OF CLAIMS PRINCIPLE" OF INTERNATIONAL ***LAW***

What is wrong with Congress bestowing a ***U.S.*** federal lawsuit right on individuals and companies who, it must be emphasized, were Cuban citizens that had properties in Cuba taken by the government of Cuba pursuant to the ***laws***- of Cuba? The short answer is that international ***law*** forbids it. The ***U.S.*** Foreign Claims Settlement Commission over thirty years ago put it this way: "The principle of international ***law*** that eligibility for compensation requires American nationality at the time of loss is so widely understood and universally accepted that citation of authority is scarcely necessary."(13)

In the Palacio case (which involved Cuban former owners of cigar manufacturing enterprises in Cuba) the ***U.S.*** federal court for the southern district of New York put the matter in these unequivocal terms: "… confiscations by a state of the property of its own nationals. no matter how flagrant and regardless of whether compensation has been provided, do not constitute violations of international ***law***."(14)

In de Sanchez v. Banco Central de Nicaragua the ***U.S.*** FitCh Circuit Court of Appeals not long ago put it this way: "...international ***law*** delineates minimum standards for the protection only of aliens; it does not purport to interfere with the relations between a nation and its own citizens." (15) ***Let*** me cite only one treatise authority of the literally dozens that address this point: "… It may be stated as a general principle that from the time of the occurrence of the injury until the making of the award the claim must without interruption have belonged to a person who (a) has the nationality of the state by whom it is put forward and (b) does not have the nationality of the state against whom it is put forward."(16)

The position under international ***law***, as demonstrated above, could hardly be clearer. (Many of you probably noticed that every citation of authority given in this portion of my remarks is a ***U.S.*** authority, notwithstanding the plethora of supporting authority available from foreign sources on this topic. The significance of this choice of ***U.S.*** authority ought to be obvious. In enacting Helms-Burton the ***U.S.*** has violated its own explicit statements of

adherence to the nationality of claims principle of international ***law***). It is simply unlawful under established international jurisprudence for the ***U.S.***, pursuant to Title III of the Helms-Burton ***law***, to lend support and assistance to the claims of ***Cuban Americans*** with ***respect*** to properties taken from them while they were Cuban citizens. It would be equally unlawful for a foreign nation to pass a ***law*** allowing ***U.S.*** nationals to sue the ***United States*** in another country'***s*** courts for property losses that occurred while those individuals were ***U.S.*** citizens. (17)

IV. INTERNATIONAL ***LAW*** AND THE ***UNITED STATES***

International ***law*** is, "part of [***U.S.***] ***law*** and must be ascertained and administered by the courts as often as questions depending upon it are duly presented." (See, the Supreme Court'***s*** opinion in The Pacquette Habana. 175 ***U.S.*** 677, 700 (1900)).

However, Congress may legislate in violation of international ***law*** and ***U.S.*** courts, for the most part, are powerless to strike such legislation solely upon that basis. (I will make a small prophecy at this point. Helms-Burton, if ever implemented, will prove the death- knell of such conventional legal wisdom).

But ***let*** us, as ***U.S.*** citizens, be honest about what we have done in enacting Title III in a form that gives rights of suit to non-US. nationals at time of property loss: We have violated international ***law***. For proponents of the Helms-Burton Act to cite, as they have, The Restatement (Third) of the Foreign Relations ***Law***, of the ***United States*** in support of Title III is genuinely disheartening. (18) ***Let*** me remind you how this argument of the title'***s*** proponents runs: A state may, in keeping with international ***law***, legislate with ***respect*** to conduct outside its territory that has substantial effect within its borders (Section 402, of the Restatement).

It is both bizarre and troubling at the same time to hear a ***U.S.*** compendium of international ***law*** cited for the proposition that a nation may legislate in direct violation of that same system of ***law***. ***Let*** me repeat: The lawsuit rights accorded ***Cuban Americans*** under Title III violate the nationality of claims principle of public international ***law***. A type of reasoning which cites a compendium of international ***law*** for the proposition that a nation may legislate in violation of that ***law*** is analogous to claiming that a traffic regulation permitting curbside parking allows a motorist to reverse over any pedestrian that happens to be standing in an available parking space. It is elementary that our motorist may avail himself of the traffic ***law***'***s*** parking provision only so long as he does not violate any other ***law*** in the process. The same is true with ***respect*** to a permissible exercise of ***U.S.*** extraterritorial jurisdiction.

V. THE CONSEQUENCES OF AN ACTIVATED TITLE III

I said earlier that the ***U.S.*** Congress may legislate in violation of international ***law***, but that is hardly the end of the matter - certain consequences flow from such an action.

First, constitutional arguments will be advanced by other national- origin groups (such as Vietnamese-Americans, Palestinian-Americans, Iranian-Americans, ChineseAmericans, Polish-Americans, etc.,) demanding - via our courts - that they receive the benefit of Title III with ***respect*** to suits against their native countries and anyone (including ***U.S.*** companies) that may be "trafficking" in their "claimed" properties. I have been waiting for over one year to see a rebuttal of any kind by the Act'***s*** proponents of this "equal protection" concern.

Second, the Fifth Amendment "takings clause" implications of Title III are palpable - first, with ***respect*** to the 5,9! 1 certified claimants who will see their claims (which constitute a recognized property interest) diluted to meaninglessness by virtue of thousands of Cuban American judgments entered against Cuba in ***U.S.*** federal courts. There is also the enormous potential liability under the Fifth Amendment to a newly created Cuban American Title III judgment creditor class if their suits are ever dismissed (either in actuality or constructively) in the course of a normalization of relations between Cuba and the ***U.S.*** - as they must inevitably be. The mere possibility this enormous potential liability is bound to have an inhibiting effect within the ***U.S.*** on any attempted rapprochement with Cuba.

Any resolution of the issue of claims of ***Cuban Americans*** must, in the end, be a matter of Cuban ***laws*** that have the support of the Cuban people. A recent example of a, seemingly, successful national reconciliation on the question of property expropriations is provided by Nicaragua, where the National Assembly passed a ***law*** that allowed for compensation to Nicaraguans for property losses arising from actions of the Sandinista government.

(Basically, payment for such losses will be in the form of government bonds backed by ***U.S.*** treasury bonds purchased with a portion of the proceeds of the privatization of the Nicaraguan state telecommunications company).

Finally, speaking as an American attorney I can say with rueful authority that the legal system of the ***United States*** is rarely facilitative of a harmonious resolution of differences between aggrieved parties - indeed, as a system, it most often serves to exacerbate any pre-existing animosity between litigants. I can think of no better formula for a permanent estrangement between ***Cuban Americans*** and their island compatriots than the interposition between them of the contentious processes of the ***United States*** litigation system. The resultant bitterness is far more likely to retard than to advance a long-needed reconciliation between those populations.

VI. CONCLUSION

I will conclude with a question: What are the foreseeable consequences to the ***United States*** the attitude of contempt for international ***law*** that is evidenced by Title III? In my opinion, it is this that is perhaps the most important question to arise from the Helms-Burton Act.

I need not describe at any length the multiple ways in which the ***United States*** and its citizens are beneficiaries of an international rule of ***law***, whether it be in the form of multilateral treaties or customary international ***law***.

I wish to quote the eminent jurist, ***S***.M. Schwebel, as he explains why nations comply with international ***law***:

States generally feel impelled to conform to [international ***law***] standards because usually they appreciate the mutuality of the ***law's*** benefits.

States understand and count upon reciprocity of obligation and of performance within treaty relations and in the application of customary international ***law***. They see that it is in their self- interest to do so. (19)

Can a nation which violates an established principle of public international ***law*** argive convincingly for other nations' adherence to that same body of ***law***? To take but one example, for many years the ***United States*** maintained that full compensation was the standard required by international ***law*** in the event of a foreign expropriation of alienowned property. Today it is not a subject of dispute, in no small part because of the consistent leadership provided by the ***United States*** on the point. But if the ***United States*** elects to violate the nationality of claims provision of international ***law*** today, can it tomorrow condemn with any moral authority a nation which chooses to violate, with ***respect*** to ***U.S.*** citizens, the full compensation standard of that same body of ***law***? (20)

Again, the ***United States*** and its citizens, both corporate and individual, have a great stake in an effective international rule of ***law***. To be effective this ***law*** must be adhered to by all nations of the world - it is neither right nor ultimately very wise for the ***United States*** to do otherwise. The price, in the end, will prove too great - for everyone.

NOTES:

1 The Helms-Burton Act requires that property a litigant "owns the claim to" be worth a minimum of $50,000 in order to be the subject of a Title III lawsuit. Approximately 800 claims are certified in that minimum amount, but because the claims may reflect such things as confiscated inventories. bank deposits, vehicles. etc. (that is, property. long since dissipated and. therefore. incapable of being "trafficked" in) the actual number of certified claims that would qualify. for suit under Title III is probably. at be:st, no more than 300-500. The matter is complicated somewhat by the fact that a litigant may proceed on the "current value" of the property., in issue. Nevertheless. at most only a few hundred suits may realistically be expected from certified claimants. 2 See, Cuba, A Country Study (1985) at pg. 69-70, citing a National Research Council report.

3 It should be noted that, as a practical matter, most Title III lawsuits will be brought by the descendants of the original owners. Cuban life expectancy was 64 years in 1960, by the mid-1980's it had risen to 74. Even using the latter figure, a Cuban who was as young as 40 in 1960 is today 76 - as a purely actuarial matter, he is therefore dead. So, descendants of original owners will simply aver ownership of a "claim", by right of inheritance, to their parent's or even their grandparents' Cuban-located properties and proceed to file a Title III lawsuit. The fact of, for

the most part, descendants rather than original owners filing Title III lawsuits will obviously increase the number of suits that may be expected.

4 The 800,000 Cubans that arrived in the ***U.S.*** in the early years of the revolution came from a total island population of approximately 6 million at that time. According to one study, Cuba in 1958 had 1.3 million people in the upper and middle income strata. (Thomas. Cuba. The Pursuit of Freedom at pg. 1110 where a UNESCO study is cited to that effect). It was the upper reaches of that prosperous strata that came to the ***United States*** in the 1960'***s***. (See, Perez, Cuba: Between Reform and Revolution. at pg. 344. where he makes the point that Cubans entering the ***U.S.*** in the years 1959-62 were four times more likely to have been of the professional, semiprofessional and managerial classes than the general Cuban population). 5 Congressional Record, October 11, 1995 at ***S***. 150 13.

6 At the time I wrote to the CBO, a property was required to be used in a "commercial activity" in order to be the subject of a Title III lawsuit. This is no longer the case, as will be explained in a moment. The fact of undeveloped real property as well as such governmental enterprises as military installations, schools. hospitals, municipal offices, etc., being subject to suit will obviously serve to increase the number of Title III court actions.

7 Section 4 (1 2)(A) defines the word property to include "any property… whether real, personal, or mixed, and any present, future, or contingent right, security or other interest therein, including a leasehold interest."

8 I would point out that the Act does not require a showing that a property was taken in violation of any provision of ***law*** - international or otherwise. It is enough that a Title III litigant assert that he or she owns a "claim" to the property at issue in order to recover strict liability damages under the Act. (Certified claimants' properties, according to the ***U.S.*** Supreme Court, were taken in violation of international ***law*** insofar as the takings were retaliatory, discriminatory and without compensation: See, e.g., First National Bank v. Banco Para El Comercio, 412 ***U.S.*** 611,634 (1983)).

9 One sector of opposition to Title III is the certified claimants. The opposition of certified claimant corporations to Title III arises from two sources. First, certified claimants' prospects of receiving recompense for their property losses in Cuba are made considerably more remote by, at the least. an approximately sixteen-fold expansion of liability of the government of Cuba. (This expansion of liability will of course occur when the claims of ***Cuban Americans*** are added in the form of final court judgments to those of the certified claimants).

Second, the certified claimants that have proved most staunch in their opposition to Title III are ***U.S.*** corporations with a considerable investment in a settled rule of international ***law***. These corporations are acutely aware of the fact that if the ***U.S.*** violates international ***law*** it loses a significant degree of its moral authority to demand that other nations adhere to that same body of ***law***.

10 Proponents of Title III have emphasized from the outset that inclusion of ***Cuban Americans*** in Title III is necessary, to accomplish the purpose of deterring foreign investment in Cuba. On June 14, 1995 Mr. Ignacio Sanchez appeared before the Subcommittee to argue that. "Inclusion of ***Cuban Americans*** Title Ill … is imperative to accomplish the foreign policy goals [of the Helms-Burton legislation]. According to Mr. Sanchez, certified claimants "represent at most 5 percent of the productive properties in Cuba." Mr. Sanchez went on to say: "Including the ***Cuban Americans*** provides a much greater coverage of property and therefore creates a more limited pool for potential investments m Cuba. By limiting the scope of the properties available for investment, this bill would discourage foreign investment in Cuba. By limiting foreign investment in Cuba the bill detrimentally impacts upon the regime'***s*** chances to prolong its stay in power and therefore the foreign policy objective is accomplished."

11 See, e.g., Declaration of the European Union, October 11, 1995, protesting passage of the HelmsBurton bill in the ***U.S.*** House of Representatives on September 2 I, 1995: "It [the European Union] takes the view that maintaining the political dialogue and encouraging economic relations are the means most suited to promote evolution towards democracy and Cuba'***s*** return to the international community."

12 In the case of the confiscated properties of certified claimants. the ***U.S.*** government has periodically issued cables requesting that foreign companies desist from investing in properties subject to claims on file with the ***U.S.***

Foreign Claims Settlement Commission. As pointed out earlier, the certified claimants are, under international ***law***, entitled to an assertion of their claims against Cuba by their government because they were ***U.S.*** nationals at time of property loss.

13 Claim No. IT-10,252, Dec. No. It-62. The Foreign Claims Settlement Commission of the ***United States*** is an agency of the ***U.S.*** government established to validate the claims of ***U.S.*** nationals who have suffered foreign property losses, often through expropriation. The commission is, by statutory. directive. to employ international ***law*** in reaching its decisions. (See Section 503(a) of the Cuba Claims Act of 1964).

14 F. Palacio v Cornpania, ***S***.A.v. Brush, 256 F. Supp. 481 (SD.N.Y. 1966) affd. 375 f. 2d 1011 (2nd Cir. 1967), cert. denied389 ***U.S.*** 830 (1967).

15 770 F.2d, 1385, 1395 (5th Cir. 1985).

16 Hyde, INTERNATIONAL ***LAW*** CHIEFLY AS INTERPRETED AND APPLIED BY THE ***UNITED STATES*** (1945).

17 There are at least three bases for the "nationality of claims" rule which holds that only the expropriation claims of non-nationals are recognized in international ***law***. First, aliens are accorded greater protection because they are less able to participate effectively in the political life of a host nation. On this point, see the decision of the European Court of Human Rights in the Lithgow case: "Non- nationals are more vulnerable to domestic legislation: unlike nationals, they will generally have played no part in the election or designation of its authors nor have been consulted on its adoption." 102 Eur. Ct. HR. (Ser. A)(1986). Second, the protection of international ***law*** is afforded alien investment in order to encourage it. In this regard it is instructive to note that Article 110 1 of the North American Free Trade Agreement ("NAFTA") accords a higher degree of protection to investments of signatory countries' nationals (Canadian. Mexican and ***U.S.***) than is available to those citizens of such NAFTA countries in the event their governments should take their properties. Third. there is the classical basis articulated by the World Court in 1924 in the Mavrommatis Palestine Concessions Case PCI J. Ser. A. No. 2 (1924): "It is an elementary principle of international ***law*** that a state is entitled to protect its subjects when injured by acts contrary to international ***law*** committed by another state. By taking up the case of one of its subjects...a state is in reality asserting its own rights - its rights to ensure, in the person of its subjects, ***respect*** for the rules of international ***law***." A nation of course has no right to assert any claims vis-a-vis foreign nations except those recognized in international ***law***. Quite apart from the above-cited jurisprudential and pragmatic reasons for the rule that a nation may under international ***law*** only support the claims of its nationals at time of property loss, there is another equally sound reason for refraining from lending support to the claims of non- nationals at time of injury - that is the avoidance of offense to other nations by meddling in their affairs. As ***U.S.*** Secretary of State Hamilton Fisk said in 1874: "It would be a monstrous doctrine, which this government would not tolerate for a moment, that a citizen of the ***United States*** might deem himself injured by the authorities of the ***United States*** or any state, and could by transferring his allegiance to another power, confer upon that power the right to inquire into the legality of the proceedings by which he may have been injured while a citizen." A related aspect of this line of reasoning is that of ***respect*** for the sovereignty of other nations. Speaking as a ***U.S.*** citizen. I would suggest that while we may agree or disagree with radical economic measures in foreign countries such as nationalizations of key industries or agrarian reform. we simply have no right to lend legal support to claims of nationals of the expropriating country, for compensation arising from such measures. That is, unless, of course, we as Americans are prepared to tolerate foreign countries legislating with ***respect*** to our government'***s*** treatment of its nationals. A useful way to test a theoretical tolerance in this area is to imagine a foreign ***law*** that denominates any involvement. by the ***U.S.*** government or private entities, with lands taken from American Indian tribes as "trafficking" and holds the ***U.S.*** government and those entities liable in damages to individual members of those tribes.

18 The, Restatement is meant to serve as an impartial recitation of international ***law***. Compiled by the American ***Law*** Institute, it represents the opinion of that institute as to. "the rules that an impartial tribunal would apply if charged with deciding a controversy in accordance with international ***law***."

19 JUSTICE IN INTERNATIONAL ***LAW*** (1994).

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20 No one should doubt that there will be such a tomorrow. For example. Boris Yeltsin'**s** chief opponent in the recent Russian presidential elections. the Communist Party., candidate Gennady Zyuganov promised a return to "state ownership" of recently privatized industries.

END

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