

INTERNATIONAL CLAIMS PROCEDURES AND THE HELMS/BURTON BILL

The U.S. Congress is currently considering legislation (generally known as the Helms/Burton bill) that will tighten the U.S. embargo of Cuba.

The bill has many provisions that raise international law issues, but one part in particular has implications for generally accepted principles. That is the section of the bill dealing with international claims. Under international law, it is recognized that states are entitled to expropriate property for public purposes, including the property of foreigners. Such owners are entitled to full, fair and prompt compensation. If such compensation is not paid, states may espouse the claims of their nationals and negotiate a settlement on behalf of those nationals.

The drafters of the bill are dissatisfied with this process, at least as regards property expropriated from Americans. Their solution is unilateral assertion of jurisdiction by U.S. Courts. Underlying the views of the drafters of the legislation is the premise that sovereign states have no right to expropriate property of foreign nationals, hence the definition used of "confiscation" for expropriation. The bill then define "traffickers" in the expropriated property, most of whom we would otherwise consider subsequent purchasers for value. These "traffickers" would be subject to suit in a U.S. District Court by the owner of a claim to the expropriated property.

The effect of these provisions of the bill would put at risk the U.S. assets of foreign investors. Such investors who acquired valid title under domestic law of the expropriating state, could find their U.S. assets hostage to a dispute over compensation between the expropriating state and the former property owner.

The pool of potential claimants is also increased under the provisions of the bill. The customary practice at international is that states only espouse the claims of persons who were nationals of the state at the time off the expropriation of their property. The bill provides that, in the case of Cuba, persons who are now American citizens can bring actions in U.S. Courts. It is not only individuals who face losses if the bill becomes law - the bill takes away any defence of sovereign immunity, exposing sovereign states to the jurisdiction of U.S. Courts.

It must be emphasised that this bill has not yet, and may never, become law. Nevertheless, we think it significant that U.S. legislators are contemplating such a fundamental and unilateral change to customary international practice in claims matters.