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NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 9 July 1993 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a study prepared by a group of experts at the request of the Cuban Government (see annex) concerning the economic embargo imposed by the United States of America against Cuba and the efforts of the United States Government to present the nationalization of foreign property in Cuba as a pretext for the embargo, which I feel should be brought to your attention and that of the representatives of Member States.

I would therefore request that this letter and its annex be circulated as a document of the General Assembly under item 30 of the preliminary list.

(Signed) Alcibíades HIDALGO BASULTO
Permanent Representative of Cuba

* A/48/50.

Annex

THE HISTORICAL TRUTH CONCERNING THE ILLEGAL ECONOMIC EMBARGO IMPOSED BY THE UNITED STATES AGAINST CUBA AND THE CUBAN NATIONALIZATIONS

At the plenary meeting of the General Assembly of 24 November 1992, the United States attempted to justify the economic embargo it has maintained for more than 30 years against Cuba on the ground that it is essentially a response to the nationalization of property belonging to United States companies carried out by the Government of the Republic of Cuba 33 years ago (A/47/PV.70, 24 November 1992). This argument did not succeed in sidetracking the General Assembly, which adopted the draft resolution condemning the embargo submitted by the Cuban delegation by an overwhelming vote of 59 for and only 3 against, with 71 abstentions (A/RES/47/19).

The purpose of this study is to make a number of observations concerning the resurrection by the United States of the pretext of the nationalizations so long after the event. Although the purpose of this United States ploy was to confuse the international community as to the origins and nature of the embargo, the argument had the opposite effect, since it exposed clearly the deficiencies of this act of aggression with regard to the requirements of international law and the principles contained in the Charter of the United Nations.

To begin with, mention need only be made of the fact that, in the so-called "Cuban democracy Act of 1992" (Torricelli Act) and on many other occasions, the United States has made it clear that its aims are very different from that of securing compensation for the nationalized property. Indeed, it has explained clearly and unequivocally that it is maintaining and strengthening the embargo in order to enforce Cuba, a sovereign State, to undertake changes in its domestic political and economic system which are to the liking of the United States.

Furthermore, the fact that the United States referred to the pretext of the nationalizations in the above-mentioned General Assembly debate, rather than to the repeatedly stated objective mentioned above, is tantamount to recognition by the United States that its programme of economic coercion and intervention in Cuba is indefensible and illegitimate.

In the second place, the question of the nationalizations cannot in itself explain or justify the measures taken by the United States against Cuba. Although the political and economic system of Cuba - or any other country - is not a matter for negotiation, there is clearly scope for negotiation or agreement on the question of nationalized property. Indeed, Cuba has reached agreements with the countries of origin of the owners of other property nationalized during the early years of the revolution, and has repeatedly indicated its willingness over the past 30 years to open similar discussions with the United States. The United States authorities, on the other hand, have ruled out any possibility of negotiations and have instead waged an economic war against Cuba, the real objective of which is not to secure compensation for legitimately nationalized property, but to overthrow the existing political and economic system in Cuba.

Thirdly, the argument put forward by the United States at the above-mentioned meeting of the General Assembly is clearly a transparent pretext which the United States authorities were seeking to foist on the international community and is also in violation of international law. In numerous resolutions dating back many years the General Assembly has established that any State is entitled to determine whether or not compensation should be provided for nationalized property and, if so, what sum should be paid. In the light of these decisions, which constitute a source of law, the United States is not entitled to take action in reprisal for the Cuban nationalizations, still less to impose an economic, commercial and financial embargo of such a stringent and disproportionate nature. Although it was not obliged to do so under international law, Cuba has offered to provide compensation for the nationalized property in accordance with standard practice, and is still negotiating on this matter.

I

One of the documents before the General Assembly at its meeting of 24 November 1992 was the "Cuban Democracy Act of 1992", which had been passed by the United States Congress and signed into law by the President only one month earlier (Title XVII, Sec. 1701 et seq., 106 STAT.2575). This law considerably expanded the already extensive embargo, inter alia by prohibiting third country companies owned or controlled by United States nationals from trading with Cuba, closing United States ports to third country vessels trading with Cuba, and threatening other kinds of economic reprisals against third countries maintaining commercial relations with Cuba.

Section 1702 of the "Cuban Democracy Act of 1992" contains a detailed statement of the United States objections to the present Government of Cuba, while section 1703 gives an equally detailed exposition of the United States objectives in maintaining and tightening its programme of economic sanctions against Cuba. However, this extensive statement of aims and objectives makes no mention whatsoever of the nationalizations. Instead, the United States affirms that the aim of the embargo is the fundamental transformation of the political and economic system of Cuba and that acceptance by Cuba of these changes is a condition sine qua non for the lifting of the embargo.

Section 1708 (a) specifies the conditions under which the President of the United States may waive the restrictions on trade by third countries with Cuba contained in the "Cuban Democracy Act". Section 1708 (b) specifies the conditions under which the President may completely lift the United States trade embargo. Compensation for the nationalizations is not one of the conditions specified in either of the above-mentioned sections, which refer only to changes in Cuba's domestic political and economic system.

The then President of the United States conceived the "Cuban Democracy Act" as a true expression of United States policy, without any reference to the question of the nationalizations. This is clear, for example, from the Remarks on Signing the Cuban Democracy Act of 1992 (28 Weekly Comp. Pres. Doc. 2071, 23 October 1992). In its testimony to Congress on the Act, the Department of State gave lengthy consideration to United States policy and objectives with regard to Cuba and also failed to make any mention of the nationalizations (statement by Robert S. Gelbard, First Assistant Under-Secretary of State for

Inter-American Affairs, to the Foreign Relations Committee of the House of Representatives, 8 April 1992, reproduced in Krinsky and Golove, eds., United States Economic Measures Against Cuba: Proceedings in the United Nations and International Law Issues, 137-147, Aletheia Press, 1993). It is clear from these official documents that, in the view of the President and the Department of State of the United States, the central aim of United States policy towards Cuba was to put an end to the country's current political and economic system.

Just as the subject of the nationalizations was omitted from the explanations of the causes of the embargo given before the General Assembly debate, so it has also failed to feature in the explanations given by the United States since that time. In March 1993, for example, the United States Secretary of State was obliged to explain why the United States had imposed economic sanctions against Cuba but not against other countries whose political systems and human rights record it considered equally, or even more, objectionable. In his reply, the Secretary of State made no mention of the nationalizations by Cuba of property belonging to the United States, referring only to the fact that Cuba was not moving towards establishing a free-market economy (testimony of the Secretary of State to the Foreign Relations Committee of the House of Representatives, 25 March 1993).

Until recently, the United States refrained from stating quite as bluntly that the purpose of its economic embargo was to force Cuba to abandon its political and economic system. But neither the explanations it formerly offered for the embargo nor the current ones are based on the issue of the nationalizations. Rather, for three decades, the United States has justified its economic measures against Cuba by a combination of references to Cuba's alliance with a hostile Soviet Union, its alleged support for insurgencies in third countries and the presence of its troops abroad exerting an influence in regional conflicts. (See Krinsky and Golove, United States Economic Measures Against Cuba, 158-163.) In fact, only these three reasons, and not the nationalizations, were cited by senior officials of the Department of State, testifying under oath, when they were asked to justify the economic embargo during proceedings before United States courts (Regan v. Wald, 468 U.S. 222 (1984). See also Krinsky and Golove, 159-160).

In their testimony under oath, the officials of the Department of State explained that national security and foreign policy concerns had motivated United States policy towards Cuba since the establishment of the embargo. The President of the United States justified the imposition of a total trade embargo on 3 February 1962 by referring to Cuba's alignment with the Soviet Union and its alleged involvement in aggression against other countries in the hemisphere. ("President Proclaims Embargo on Trade with Cuba", Department of State Bulletin, p. 283 (19 February 1962); Pres. Proc. 3447, 27 Fed. Reg. 1085 (3 February 1962).) A year and a half later, on instituting additional restrictions such as the freezing of Cuban assets, a ban on tourism and the prohibition of trade by foreign subsidiaries, the Secretary of State announced that the purpose of the expanded measures was "to counteract Castro-Cuban subversion in the hemisphere". ("United States Blocks Cuban Assets to Counter Communist Subversion", Department of State Bulletin, p. 160 (29 July 1963).)

Lastly, it must be remembered that the United States claimed that it imposed a total economic embargo against Cuba with the authorization of the

Organization of American States. (See Department of State Bulletin, p. 283 (19 February 1962) and Department of State Bulletin, p. 160 (29 July 1963).) In 1962 and 1964, OAS, acting by virtue of the Inter-American Treaty of Reciprocal Assistance (62 Stat. 1681, TIAR 1838, 21 UNTS 77 (2 September 1947)) ("Treaty of Rio"), had authorized individual and collective sanctions against Cuba in order to confront alleged Cuban "aggression" against third countries in the hemisphere and the threat to security posed by Cuba's relations with the Soviet Union, without any reference whatever to reprisals against Cuba for the nationalization of property belonging to the United States. (Final Act of the Eighth Meeting of Consultation of Ministers of Foreign Affairs on the Application of the Inter-American Treaty of Reciprocal Assistance, OAS/Ser.C/II.9, Doc. 48, Rev.2 1964).) (OAS revoked this authorization in 1975, Final Act of the Sixteenth Meeting of Consultation of Ministers of Foreign Affairs on the Application of the Inter-American Treaty of Reciprocal Assistance, OAS/Ser.F/II.Doc. 9/7 Rev. 2 (29 July 1975)). Cuba now enjoys diplomatic relations with practically every country in the hemisphere, although not with the United States.)

Evidently, therefore, United States recourse to the issue of the nationalizations in its defence of the embargo on 24 November 1992 merely represented a pretext. The question then arises of why the United States, when obliged to defend its embargo before the international community gathered at the United Nations, would resort to a pretext so difficult to sustain.

The answer is obvious. The United States cannot defend the true motives for the embargo before the General Assembly, since it knows that its programme of intervention in the internal affairs of Cuba, so clearly articulated in the Cuban Democracy Act of 1992 and other recent statements, is indefensible in the light of international law, the principles of the Charter and the principles affirmed and reaffirmed by the General Assembly on many occasions. By resorting to such a transparent pretext, the United States was, in practice, accepting that reality.

II

Current and past events demonstrate clearly that the use by the United States of the issue of the nationalizations does not accurately reflect the historical situation. Nevertheless, the question of the nationalizations itself merits proper consideration.

In contrast to its unimpugnable decision concerning its economic and political system, Cuba has always considered that the question of compensation for nationalized property is a suitable matter for negotiation and compromise. Consequently, Cuba has often indicated its willingness to enter into negotiations with the United States on this and other matters, the only condition being that the negotiations should be conducted on the basis of the sovereign equality of States.

Cuba has provided practical evidence of its willingness to settle the disputes caused by the nationalizations, having successfully negotiated agreements with other countries whose nationals suffered losses in that connection. The satisfactory nature of these arrangements is demonstrated by the fact that nationals of these countries, like nationals of many others, are

today making substantial investments in Cuba, together with Cuban partners, in joint ventures and in other types of partnership embracing practically every sector of the Cuban economy, as well as in schemes to promote the expansion of trade.

Moreover the United States has recognized in its relations with other countries that compensation for nationalized property is a suitable and proper matter for negotiation and settlement. Since the Second World War alone the United States has negotiated 10 lump sum agreements in settlement of claims arising from the widespread nationalization of United States-owned property (see, for example, Lillich and Weston, International Claims: Their Settlement By Lump Sum Agreements (1975)). In these settlements the United States has, in fact, demonstrated its readiness to compromise, having accepted an average of somewhat less than 50 per cent of the stated value of the nationalized property, without any provision for interest, notwithstanding that on average more than 20 years elapsed between nationalization and payment.

Accordingly there is no reason whatsoever, either in terms of Cuba's attitude or past practice, to exclude negotiation and settlement. The question then arises of why the United States has not embarked on potentially fruitful negotiations, but has preferred to apply, and, in recent years, to intensify, an economic embargo without precedent. It is absolutely clear and incontrovertible that the aim of the United States in applying and intensifying its economic embargo against Cuba is not to obtain compensation for nationalized properties but to attain quite different objectives.

III

When the United States sought international support in the imposition of its economic embargo against Cuba shortly after the triumph of the Cuban revolution in 1959, it did not base its action on the argument that United States property had been nationalized (see the proceedings of the Organization of American States, narrated in Krinsky and Golove, 301-308). The United States recognized that any attempt to explain the embargo as a response to the nationalizations would simply not be credible, and it also recognized implicitly that the Latin American States and the international community as a whole would not accept such a position under international law. Even the United States Supreme Court itself was obliged to recognize that "there are few if any issues in international law today on which opinion seems to be so divided as the limitations on a State's power to expropriate the property of aliens" (Banco Nacional de Cuba v. Sabbatino, 376 US 398, 428 (1964)).

Events since the nationalizations have further weakened the United States position. The General Assembly and other United Nations organs, in a series of what have become historical resolutions, have confirmed that countries engaged in a process of social transformation, such as that carried out by Cuba in 1959 and 1960 and thereafter, have the right, in accordance with international law, to nationalize foreign property, and that the question of compensation should be subject to the sovereign decision of the nationalizing country. Further, the General Assembly has expressly condemned the use of economic coercion against the nationalizing State as a means of resolving disputes over nationalizations and compensation.

In 1973 the General Assembly adopted its resolution 3171 (XXVIII), in which it:

> "Affirms that the application of the principle of nationalization carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation of each State carrying out such measures."

In 1974 the General Assembly adopted without a vote resolution 3201 (S-VI), entitled "Declaration on the Establishment of a New International Economic Order". Paragraph 4 (e) of the resolution provides as follows:

> "Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right."

Shortly thereafter the General Assembly, in its resolution 3281 (XXIX), adopted the Charter of Economic Rights and Duties of States. Article 2, paragraph 2 (c), of the Charter reads as follows:

> "2. Each State has the right:
>
> ...
>
> "(c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means."

The Second Committee of the General Assembly adopted this clause of the Charter by 104 votes to 16, with 6 abstentions, and rejected an amendment submitted by the United States and other countries which would have replaced the text of paragraph 2 (c) by a clause providing that "each State has the right ... to nationalize, expropriate or requisition foreign property for a public purpose, provided that just compensation in the light of all relevant circumstances shall be paid" (14. Int'l Legal Materials 262 (1975)).

With these resolutions the General Assembly supported the position long maintained by the Latin American States. In a historic exchange, the Minister

for Foreign Affairs of Mexico wrote to the Secretary of State of the United States in 1938, stating that:

> "My Government maintains ... that there is in international law no rule universally accepted in theory nor carried out in practice, which makes obligatory the payment of immediate compensation nor even of deferred compensation, for expropriations of a general and impersonal character like those which Mexico has carried out for the purpose of redistribution of the land." ([1938] 5 For. Rel. U.S. 679-702.)

The views and practice of States are consistent with these General Assembly resolutions. Many States in Asia, Africa, Latin America and Eastern Europe have carried out extensive nationalizations of property belonging to foreigners without acknowledging the existence of any requirement under international law relating to the payment of compensation. Frequently, but not always, nationalizing States have agreed to pay some fraction of the value of the property nationalized years after the event pursuant to freely concluded international settlements. (See passim Lillich and Weston, International Claims: Their Settlement by Lump Sum Agreements (1975).) As Judge Baxter wrote, "The practice of States with respect to compensation for nationalized property is so diverse that one cannot speak of any international custom, as evidence of a general practice accepted in law, as these Statutes (of the International Court of Justice, Article 38, para. 2) refer to customary international law" (Baxter, RR., in Lillich, ed., Vol. II, The Valuation of Nationalized Property in International Law ix (1973).)

The resolutions of the General Assembly give equal weight to the legitimate aspirations and historical circumstances of many members of the international community. As the Mexican Minister wrote in 1938:

> "The political, social and economic stability, and the peace of Mexico, depend on the land being placed anew in the hands of the country people who work it; a transformation of the country, that is to say, the future of the nation, could not be halted by the impossibility of paying immediately the value of the properties belonging to a small number of foreigners who seek only a lucrative end."

Foreign Relations of the United States, vol. 5, p. 679.

Generally speaking, these remarks can be viewed as applicable to Cuba in the early years of the revolution. As it had done with Mexico in 1938, the United States demanded of Cuba the payment of "prompt, adequate and effective compensation" - in other words, prompt payment of the total value of all nationalized property plus interest (Diplomatic note No. 397, 16 July 1960, reproduced in the Department of State bulletin, p. 171, 1 August 1960). Cuba's right to nationalize foreign property would have been rendered meaningless if the prerequisite for the exercise of that right had been the prompt payment of $1.8 million plus interest, the value of the nationalized property as declared by the United States in 1960.

The General Assembly has not only affirmed the right of countries to carry out nationalization programmes and decide questions relating to compensation, but has also specifically condemned the use of economic embargoes and other forms of economic coercion to settle any resulting dispute. In its resolution 3201 (S-VI), paragraph 4 (e), the Assembly unequivocally stated: "no State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right".

Since that time, the General Assembly has reaffirmed in no less than seven resolutions the unacceptability of the application by developed countries of economic blockades and embargoes to coerce developing countries in connection with sovereign decisions of particular importance to them, such as those taken pursuant to their right to determine questions relating to compensation. The Assembly has condemned such measures as violations of the Charter of the United Nations and the Charter of Economic Rights and Duties of States, and has called upon developed countries to refrain from making use of "their predominant position in the international economy" for such coercive purposes. Yet this is precisely what the United States, in its statement of 24 November 1992, has blatantly claimed that it is doing.

Accordingly, in seeking to use the nationalizations to justify its massive economic embargo, the United States has not only used a false pretext but has once again displayed its indifference to the fundamental norms of international law and its disregard for the opinions and views of the international community as expressed by the General Assembly.

IV

A closer examination of the nationalizations carried out by Cuba in 1960 further illustrates why the United States reference to the nationalizations is unacceptable not only as a pretext for justifying the embargo but in the context of historical truth.

In the first place, the fundamental act of nationalization was actually a response to United States economic aggression against Cuba. The Cuban revolution triumphed in 1959; immediately thereafter a fundamental transformation of Cuban society was begun which was not to the liking of the United States. In July 1960, the President of the United States threatened to force Cuba out of the United States sugar market, which had long been Cuba's principal source of foreign currency and the mainstay of its economy. Calling the elimination of the sugar quota "an act of aggression, for political ends, against the basic interests of the Cuban economy", Cuba's Act No. 851 of 1960 authorized the nationalization of the major corporate interests of the United States in the event that the President of that country made good on his threat. When the President did so, Cuba responded by nationalizing the major corporate interests of the United States. United States courts have recognized that the elimination of Cuba's sugar quota was indeed the "basic reason" for the nationalizations (Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845, 865 (2d Cir., 1962), rev'd on other grounds, 376 U.S. 398 (1964)).

At the time, the United States publicly sought to defend the elimination of Cuba's sugar quota by saying that it was simply an economic measure designed to prevent the United States sugar supply from being dependent on a potentially

unreliable source. However, even the United States courts felt compelled to acknowledge that this explanation was nothing more than a pretext. (Banco Nacional de Cuba v. Sabbatino, 193 F. Supp. 375, 384 (SDNY 1961), aff'd 307, F.2d 845 (2d Cir., 1962), rev'd on other grounds, 376 U.S. 398 (1964)).

Secondly, while not required to do so under international law, Cuba in fact offered compensation for nationalized properties under terms that were fully consistent with international practices.

Act No. 851 of 1960 provided for compensation for the total estimated value of nationalized properties in the form of 30-year Cuban Government bonds, meaning that the total payment would be completed in 1990. The rate of amortization of the principal has to be determined at a later date. The Nationalization Act sought to ensure the discharge of the obligation to pay the face value of the bonds on schedule by means of an amortization fund, which has to be established in the event of a resumption of sugar sales by Cuba to the United States.

The aforementioned Act provided for an interest rate of not less than 2 per cent per annum. Unlike principal payments, interest payments were contingent on the generation of funds from a resumption of sugar sales to the United States.

The United States rejected the nationalizations, which it described as illegal, and the compensation, which it considered inadequate (Diplomatic note No. 397 of 16 July 1960, reproduced in the Department of State Bulletin, p. 171, 1 August 1960). However, it is not generally agreed that international law requires the payment of compensation, much less "prompt, adequate and effective compensation" - in other words, the payment of the total value of the property in question soon after its acquisition, plus interest, as the United States demanded. The position taken by the United States was referred to as the "Hull Doctrine", by analogy with the 1938 communication from Secretary of State Hull to the Mexican Government, which was rejected by that Government in the same year and has not accepted as customary international law, as State practice has since shown. The "Hull Doctrine" runs totally counter to the will of the General Assembly as expressed in the aforementioned resolutions.

Furthermore, the compensation offered by Act No. 851 was fully consistent with international practice. A study of 139 bilateral lump sum agreements concluded since the Second World War and involving 37 countries, shows that, with few exceptions, only a small portion of the total value of the nationalized property was paid; that on average a period of 20 years elapsed between the nationalization and the payment; and that, with only one exception, no interest was paid (Lillich and Weston, International Claims: Their Settlement by Lump Sum Agreements, 210, 239). Even the 10 lump sum agreements concluded by the United States fall completely within these parameters: as a rule, the compensation has ranged between 40 and 60 per cent of the value as estimated by the United States; the time elapsing between the nationalization and the payment was on average 20 years, and in some cases 30 years; and, except in one case, no interest was paid, although a substantial period of time elapsed before the payment was made.

Act No. 851 did not make the resumption of sugar exports to the United States a condition for payment of the value of the nationalized property; it established such a condition only in connection with Cuba's almost unprecedented willingness to pay interest. Nevertheless, such conditionality would have been acceptable in the light of international practice. The conclusion of agreements that constitute the "principal source of foreign exchange to meet compensation payments" is a "common" element in the settlement of disputes relating to nationalizations and is frequently the sine qua non of settlement (Lillich and Weston, International Claims: Their Settlement by Lump Sum Agreements, 233-234; see also Foighel, Nationalization and Compensation, 115 (1964)). In addition, "provisions in Settlement Agreements specifying that the compensation to be paid by the respondent State shall come from its earnings from the export of goods to the claimant State, also are common". Agreements of this type often provide that a percentage of export earnings, or a percentage of such earnings in excess of a fixed sum, should be earmarked for that purpose (Lillich and Weston, 234-235). Linking compensation to the resumption of sugar exports to the United States would have been perfectly appropriate in the case of Cuba, taking into account, of course, the fact that such exports were, to a large extent, the main source of foreign income, and that the elimination of the Cuban sugar quota by the United States led to the nationalizations.

Thirdly, the total economic embargo maintained by the United States for more than 30 years, with the resulting harm to the health and well-being of the Cuban people, is completely disproportionate to any prejudice which the nationalizations might have caused to United States interests. In a 1992 statement, the Department of State made it clear that the United States was seeking nothing less than the "economic collapse of Cuba" (statement by Robert S. Gelbard before the Subcommittee for Western Hemisphere and Peace Corps Affairs of the Senate Foreign Relations Committee, 5 August 1992). With this extreme goal, the United States has for three decades been waging a ferocious world-wide economic warfare campaign against Cuba.

When recent events in the former socialist countries put an end to the type of trade relations that Cuba had built up over three decades with the aim, among other things, of facing up to the United States economic embargo, the United States Government prepared to intensify its efforts even further. It raised the embargo to unprecedented levels and, more than 30 years after the 1960 nationalizations, it prohibited foreign subsidiaries of United States corporations from trading with Cuba, despite the fact that most of that trade consisted of food and medicines. It closed United States ports to third country vessels trading with Cuba. It strengthened even further the already extreme measures prohibiting any person subject to the broad jurisdiction which the United States has arrogated to itself from concluding any type of financial, commercial or property transaction with Cuban nationals, and even went so far as to reduce by some 40 per cent the amount of family assistance that people in the United States may send to their relatives in Cuba. The United States has resorted to illegal measures in order to threaten and pressure third country firms with a view to preventing them from establishing trade and investment relations with Cuba. (For a description of these and other similar efforts by the United States to intensify the embargo in the period 1988-1992, see Krinsky and Golove, United States Economic Measures Against Cuba, 97-107, 120-127, 147-169.)

The inevitable result, as was intended by the United States, has been privation and suffering for the Cuban people. Cuba, a third world country, now lacks adequate food supplies for the first time since the triumph of the revolution. Cuba, a third world country which has been successful in its efforts to offer total health care to all its people and has built up one of the most complete and modern medical care systems in the world, is now facing a lack of adequate supplies of medicines and medical instruments for the first time since the triumph of the revolution. Cuba, a third world country which has eradicated illiteracy and guaranteed a high level of education to all its people, is now, for the first time since the triumph of the revolution, facing difficulties in providing adequate supplies of basic educational materials such as books and pencils for its children. The resolute decision of the Cuban people to preserve their revolution in the face of such aggression is unalterable, but their privations are real and tangible. More than ever, the United States economic embargo constitutes a war against the health and well-being of the Cuban people.

It is, of course, obviously absurd to imagine that the United States would be involved in an economic war of such intensity, scope and consequences, so long after the event, simply to obtain compensation for the property nationalized 33 years ago. The actions of the United States are so disproportionate to the alleged reason for them that such a suggestion lacks all credibility. Similarly, this obvious disproportion would constitute a further violation of international law, even if the actions were taken in response to the nationalizations and even if those nationalizations themselves constituted a violation of international law, which is not the case. Unilateral countermeasures may not be disproportionate to the violation or the harm suffered. (See, for example, Special Rapporteur Riphagen, fifth report on the content, forms and degrees of international responsibility, Yearbook of the International Law Commission, 1984, vol. II (Part One) (A/CN.4/SER.A/1984/Add.1 (Part I)) and second report, Yearbook of the International Law Commission, 1981, vol. II (Part One) (A/CN.4/SER.A/1981/Add.1 (Part I)); Oppenheim, International Law, 141 (seventh edition, H. Lauterpacht, 1952); J. Starke, Introduction to International Law, 494-496 (ninth edition, 1984).)

There is no practice in interrelations between States nor any opinion which supports the application by a State of countermeasures of such duration and consequences with the aim of obtaining compensation for the nationalization of the property of its nationals or for any other comparable type of economic harm. Furthermore, it should be remembered that the loss of property, although substantial, in no way threatened the well-being of the United States or caused its people to suffer from any shortages.

In fact, the nationalizations did not even cause severe harm to United States business interests. The United States asserts that the losses suffered by its nationals amount to some $1,800 million. Of this amount, a mere 10 corporations account for $1,021 million, that is, 56 per cent of the losses claimed, and 38 corporations for $1,400 million, that is, 76 per cent of the said losses. Corporate interests as a whole account for $1,556 million, that is, 86 per cent of the losses claimed. Furthermore, the United States assertions relating to the value of the nationalized properties are grossly exaggerated; even the United States courts, when given the opportunity to

determine the value of the nationalized properties, concluded that the United States valuation was more than 25 per cent too high (compare Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F.2d 875 (2nd Cir. 1981) with Foreign Claims Settlement Commission of the United States, In the Matter of the Claim of Chase Manhattan Bank, decision No. CU 6296).

In addition to the proportionality requirement, countermeasures are necessary, and can be taken only when the possibility of negotiations aimed at resolving the matter at issue has been rejected. This is recognized by the United States authorities on international law, in accordance with general international opinion (American Law Institute, Restatement, Third, The Foreign Relations Law of the United States, section 905 (1987)). Nevertheless, the United States has shown no sign either now or in the past, that it is prepared to hold negotiations on the nationalization dispute, but has, on the contrary, refused to respond to the repeated proposals for such negotiations made by Cuba, as well as by other States, on the basis of the principle of the sovereign security of States. Consequently, the nationalizations cannot be used to justify the embargo against Cuba.
