premiums, increases in the eligibility age for Medicare and the elimination of important senior protections that have long been part of this program.

Mr. President, this legislation presents seniors with a series of bad choices—and bad choices are no choices at all. And these bad choices are created in the name of benefits and tax breaks to those who do not need them. We can do better than this. We can do better than backroom deals. We need to open up this legislative process, allow the light of day to shine on our decisionmaking, allow the details of this bill to be examined and carefully considered as it must ultimately be, if this legislation is going to become law. We can do better. And I hope we begin sooner rather than later.

I yield the floor and I note the absence of—I withhold for just a moment.

## RECESS UNTIL 7:30 P.M.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate stand in recess until 7:30 this evening, and that when the Senate reconvenes, the time between 7:30 and 8:30 be equally divided in the usual form.

There being no objection, at 6:38 p.m., the Senate recessed until 7:29 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BENNETT).

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Utah, suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I rise to address the vote for cloture on the Dole-Helms amendment to the Sanctions Act.

I will be voting for cloture because I wish to see this process move along. This bill has been pending all year, and it is time we addressed it and moved on. In voting for cloture, however, I want to make clear that I do not support this legislation. I think it is a mistake, and I do not believe it will achieve the intended results.

First, this bill will impose trade sanctions on many of our closest allies and trading partners throughout the world. That is not going to help the people of Cuba in any way, but it is going to hurt American companies doing business around the world.

Second, the bill creates an unprecedented right of action for legal claims of former property owners in Cuba. Not only will that impose a severe burden on our court system, it will do so without, in anyway helping the people who need it most—families and small property owners who lost their homes and businesses to the Castro regime. This new right of action will also put us into conflict with some companies headquartered in some of our closest allies who are now operating plants in Cuba.

As a result of both of these problems, the United States will find itself under immediate attack in the World Trade Organization.

This legislation will only add to the already overwhelming misery of the Cuban people. I don't want to do that, and I know none of my colleagues do either. Certainly, we all want to see an end to the Castro regime—a cold war relic whose time has passed. I believe, however, that Castro's days are numbered. Communism has fallen around the world, and it will fall in Cuba as well. We should let it fall of its own weight, and then be there to assist the Cuban people in developing and nurturing a new democratic successor. This bill will not achieve that goal—in fact, it will move in the other direction. I urge Senators to oppose it.

Mr. PELL. I would like to speak for 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. PELL. Thank you.

As I have stated on previous occasions, my usual practice is to always vote for cloture as a matter of principle. Indeed, in my more than 34 years in the Senate, I have cast over 330 votes in favor of cloture and have only voted otherwise very rarely.

The vote tonight is one of those rare occasions, because I feel so strongly about the issue at hand. I believe the best American policy in Cuba will be one of openness and regular relations. My several visits to that island over the years have only fortified my belief that the Communist regime there will wither under the light of expanded contact with the United States.

Having in other periods of life lived under communism, I know that when exposed to freedom and the market economy it dies of its own ineptitude.

The bill before us has just the opposite effect, and extended debate is warranted to make the case against it. So I shall be casting my vote, with some reluctance, against cloture.

Mr. President, I ask unanimous consent that material I have here be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF STATE,
*Washington, DC.*

LEGAL CONSIDERATIONS REGARDING TITLE III OF THE LIBERTAD BILL

The U.S. Government has long condemned as a violation of international law the confiscation by the Cuban Government of properties taken from U.S. nationals without compensation, and has taken steps to ensure future satisfaction of those claims consistent with international law. Congress recognized the key role of international law in this respect. Title V of the International Claims Settlement Act of 1949, as amended, pursuant to which the Foreign Claims Settlement Commission (FCSC) certified the claims against Cuba of 5,911 U.S. nationals, accordingly applies to claims ''arising out of violations of international law.''

The State Department, however, opposes the creation of a civil remedy of the type included in Title III of the ''Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995'' (the ''LIBERTAD bill'') currently under consideration by the Congress. The LIBERTAD bill would be very difficult to defend under international law, harm U.S. businesses exposed to copy-cat legislation in other countries, create friction with our allies, fail to provide an effective remedy for U.S. claimants and seriously damage the interests of FCSC certified claimants. It would do so by making U.S. law applicable to, and U.S. courts forums in which to adjudicate claims for, properties located in Cuba as to which there is no United States connection other than the current nationality of the owner of a claim to the property. Specifically, the LIBERTAD bill would create a civil damages remedy against those who, in the language of the bill, ''traffic'' in property of a U.S. national. The bill defines so-called ''trafficking'' as including, among other things, the sale, purchase, possession, use, or ownership of property the claim to which is owned by a person who is now a U.S. national.

The civil remedy created by the LIBERTAD bill would represent an unprecedented extra-territorial application of U.S. law that flies in the face of important U.S. interests. Under international law and established state practice, there are widely-accepted limits on the jurisdictional authority of a state to ''prescribe,'' i.e., to make its law applicable to the conduct of persons, as well as to the interests of persons in things. In certain circumstances a state may apply its law to extra-territorial conduct and property interests. For example, a state may do so in limited circumstances when the conduct has or is intended to have a ''substantial effect'' within its territory. The Senate version of the bill appears to imply that so-called ''trafficking'' in confiscated property has a ''substantial effect'' within the United States. Some have explicitly defended the LIBERTAD bill on this ground.

Asserting jurisdiction over property located in a foreign country and expropriated in violation of international law would not readily meet the international law requirement of prescription because it is difficult to imagine how subsequent ''trafficking'' in such property has a ''substantial effect'' within the territory of the United States. It is well established that under international law ''trafficking'' in these confiscated properties cannot affect Cuba's legal obligation to compensate U.S. claimants for their losses. The actual effects of an illegal expropriation of property are experienced at the time of the taking itself, not at any subsequent point. An argument that subsequent use or transfer of expropriated property may interfere with the prospects for the return of the property would be hard to characterize as a ''substantial effect'' under international law. Under international law, the obligation with respect to the property is owed by the expropriating state, which may satisfy that obligation through the payment of appropriate compensation in lieu of restitution.

As a general rule, even when conduct has a ''substantial effect'' in the territory of a state, international law also requires a state to apply its laws to extra-territorial conduct only when doing so would be reasonable in view of certain customary factors. Very serious questions would arise in defending the reasonableness under international law of many lawsuits permitted by Title III of the LIBERTAD bill. The customary factors for judging the reasonableness of extra-territorial assertions of jurisdiction measure primarily connections between the regulating

state, on one hand, and the person and conduct being regulated, on the other. Title III would cover acts of foreign entities and non-U.S. nationals abroad involving real or immovable property located in another country with no direct connection to the United States other than the current nationality of the person who holds an expropriation claim to that property. Moreover, the actual conduct for which liability is created—private transactions involving the property—violates no established principle of international law. Another customary measure of reasonableness is the extent to which the exercise of jurisdiction fits with international practice. The principles behind Title III are not consistent with the traditions of the international system and other states have not adopted similar laws.

International law also requires a state assessing the reasonableness of an exercise of prescriptive jurisdiction to balance its interest against those of other states, and refrain from asserting jurisdiction when the interests of other states are greater. It would be very problematic to argue that U.S. interests in discouraging ''trafficking'' outweigh those of the state in which the property is located, be it Cuba or elsewhere, International law recognizes as compelling a state's interests in regulating property present within its own borders. The United States guards jealously this right as an essential attribute of sovereignty. In contrast, discouraging transactions relating to formerly expropriated property has little basis in state practice.

That international law limits the United States' exercise of extra-territorial prescriptive jurisdiction does not imply that U.S. courts must condone property expropriations in cases validly within the jurisdiction of the United States. Our courts may refuse to give affect to an expropriation where either (i) the expropriation violated international law and the property is present in the United States or (ii) in certain cases, the property has a legal nexus to a cause of action created by a permissible exercise of prescriptive jurisdiction. In fact, generally speaking, our laws prohibit our courts from applying the ''Act of State'' doctrine with respect to disputes about properties expropriated in violation of international law. If applied the doctrine might otherwise shield the conduct of the foreign state from scrutiny. Indeed, in a number of important cases the Department of State has actively and affirmatively supported these propositions in cases before U.S. courts to the benefit of U.S. claimants, including with respect to claims against Cuba. The difficulty with Title III of the LIBERTAD bill stems not from its willingness to disaffirm expropriations that violate international law, but from its potentially indefensible exercise of extra-territorial prescriptive jurisdiction.

Some supporters of the LIBERTAD bill have advanced seriously flawed arguments in defending the extra-territorial exercise of jurisdiction contemplated by Title III. Some have defended Title III on the deeply mistaken assumption that international law recognizes the wrongful nature of so-called ''trafficking'' in confiscated property. No support in state practice exists for this proposition, particularly with regard to property either held by a party other than the confiscator or not confiscated in violation of international claims law (if, for example, the original owners were nationals of Cuba at the time of loss.) Many of the suits allowed by Title III would involve ''trafficking'' in properties of this type, where an internationally wrongful act would seem extremely difficult to establish.

Regrettably, the support in international state practice offered by some for viewing so-called ''trafficking'' as wrongful has generally confused a state's power to assert jurisdiction over conduct with the ''Act of State'' doctrine, discussed previously. The unwillingness of our courts to give effect to foreign state expropriations violative of international law in matters over which they have valid jurisdiction under international law, however, does not imply that international law recognizes as wrongful any subsequent entanglement with the property. Others have suggested that general acceptance of domestic laws relating to conversion of ill-gotten property makes ''trafficking'' wrongful under international law. This argument is extremely unpersuasive as many universally accepted domestic laws, including for example most criminal laws, have no international law status. So-called ''trafficking'' has no readily identifiable international law status. International law does condemn a state's confiscation of property belonging to a foreign national without the payment of prompt, adequate and effective compensation. In such circumstances the U.S. Government has been largely successful in assuring that U.S. claimants obtain appropriate compensation, precisely because of the protection afforded by international law.

Some supporters have maintained incorrectly, in addition, that Title III is similar to prior extra-territorial exercises of jurisdiction by the United States over torts committed outside the United States. The Alien Tort Statute (ATS) and the Torture Victim Protection Act of 1991 (TVPA) have been cited as examples in this context. The assertion is plainly false and the LIBERTAD bill differs significantly from the examples cited. While the ATS and TVPA do empower U.S. courts to adjudicate certain tortious acts committed outside the United States, they do so only with respect to acts that violate international law. The ATS covers only torts ''committed in violation of the law of nations or a treaty of the United States.'' Similarly, the TVPA creates liability for certain conduct violating fundamental international norms of human rights (i.e. torture and extra-judicial killing). In contrast, as explained previously, supporters of the LIBERTAD bill have failed to identify any basis in international law permitting the use of U.S. courts for the adjudication of suits regarding extra-territorial ''trafficking.''

Title III of the LIBERTAD bill also deviates substantially from accepted principles of law related to the immunity of foreign sovereign states, as well as their agencies and instrumentalities. Although much of the discussion of the bill has focussed on suits against certain foreign corporations and individuals, in its current form the Senate version of the bill would allow a suit to be brought against ''any person or entity, including any agency or instrumentality of a foreign state in the conduct of commercial activity'' that ''traffics'' in confiscated property. Since ''trafficking'' is defined to include such things as possessing, managing, obtaining control of, or using property, it would appear at a minimum that Title III authorizes suits against many Cuban or other foreign governmental agencies or instrumentalities. To the extent Title III provides for such suits, they would be highly problematic and difficult to defend.

The Foreign Sovereign Immunities Act (FSIA), enacted in 1976 after careful deliberation, is consistent with international law principles of foreign sovereign immunity. To the extent the LIBERTAD bill would permit suits against agencies and instrumentalities of foreign governments it would go far beyond current exemptions in the FSIA. The LIBERTAD bill, unlike the FSIA, would not require the agency or instrumentality to be ''engaged in commercial activity in the United States.'' Moreover, the LIBERTAD bill contemplates suits against agencies or instrumentalities of foreign states for any conduct that constitutes so-called ''trafficking''; as defined in the LIBERTAD bill this notion is broader than owning or operating property, the FSIA standard.

Similarly, to the extent the provisions of the LIBERTAD bill permitting suits against ''entities'' is construed to authorize suits against foreign governments as well, it would go well beyond current exemptions in the FSIA and under international law for claims involving rights in property. Under the FSIA, a foreign state (as distinguished from its agencies and instrumentalities) is not immune only when the ''property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state.'' The LIBERTAD bill would appear not to impose those requirements. In addition, suits against ''entities'' would in these circumstances include those brought against foreign governments other than Cuba that may have acquired confiscated property in violation of no principle of international claims law. These potential expansions of the exceptions from the immunity of foreign states, as well as their agencies and instrumentalities, from the jurisdiction of U.S. courts and their implications for U.S. liability in other countries represent matters of great concern.

Some have suggested that even though the creation of a cause of action such as that contemplated in Title III of the LIBERTAD bill is not currently defensible under international law, the United States should enact these provisions of the bill to promote the development of new international law principles in this area. Suggestions of this sort in this context rest on a dubious premise of how state practice contributes to international law. While the practice of states represents a source of international law, state practice makes law only when it is widespread, consistent and followed out of a sense of legal obligation. The enactment of Title III in the face of serious questions about its consistency with international law, and without the support of the international community, would not contribute positively to international law relating to the expropriation of property.

In addition to being very difficult to defend under international law, enactment of Title III would also undermine a number of important U.S. interests connected to these significant international law concerns. General acceptance of the principles reflected in Title III would harm U.S. business interests around the world. At present and in general, the laws of the country in which the property lies govern the rights to that property, particularly with respect to real property. United States businesses investing all over the world benefit from their ability to rely on local law concerning ownership and control of property. Under the precedent that would be set by Title III, a U.S. business investing in property abroad could find itself hailed into court in any other country whose nationals have an unresolved claim to that property. Such a precedent could increase uncertainties for U.S. companies throughout the world. Perversely, Title III would hurt U.S. businesses most directly in Cuba. U.S. businesses seeking to rebuild a free Cuba once a transition to democracy begins will find themselves easy targets of Title III suits, as U.S. corporations generally are subject to the jurisdiction of our courts.

Congress should expect that the enactment of Title III of the LIBERTAD bill, with its broad extra-territorial application of U.S. law, significant departures from established claims practice and possible contravention

of international law, will create serious disputes with our closest allies, many of whom have already voiced their objections. The United States must expect the friction created by Title III to hurt efforts to obtain support in pressing for change in Cuba. Moreover, once the transition to democracy does begin, Title III will greatly hamper economic reforms and slow economic recovery as it will cloud further title to confiscated property.

Perhaps most importantly, Title III of the LIBERTAD bill would not benefit U.S. claimants. The private right of action created by Title III, furthermore, would likely prove ineffective to U.S. claimants. Past experience suggests that countries objecting to the extra-territorial application of U.S. law reflected in Title III, most likely some of our closest allies and trading partners, could be expected to take legal steps under their own laws to block adjudication or enforcement of civil suits instituted against their nationals. Moreover, many foreign entities subject to suit would deem U.S. jurisdiction illegitimate and fail to appear in our courts. Title III would in those circumstances merely produce unenforceable default judgements. In addition, some commentators have estimated potential law suits to number in the hundreds of thousands, so the LIBERTAD bill would also clog our courts and result in enormous administrative costs to the United States. As the lawsuits created under Title III might not result in any increase in or acceleration of compensation for U.S. claimants, these costs would be unjustifiable.

In so far as it departs from widely accepted international claims law, Title III of the LIBERTAD bill undermines widely-established principles vital to the United States' ability to assure that foreign governments fulfill their international obligations for economic injury to U.S. nationals. In doing so, Title III hurts all U.S. citizens with claims against another government. With respect to claims against Cuba specifically, the cause of action contemplated in Title III of the LIBERTAD bill will hamper the ability of the U.S. Government to obtain meaningful compensation for certified claimants. Consistent with our longstanding and successful claims practice, at an appropriate time when a transition to democracy begins in Cuba, the United States will seek to conclude a claims settlement agreement with the Cuban government covering certified claimants, or possibly create some other mechanism to assure satisfaction of their claims. If Title III is enacted into law and U.S. claimants have an opportunity, at least on paper, to receive compensation for claimed properties from third party ''traffickers,'' the Cuban Government may simply refuse to address the claims on the grounds that the claimants must pursue alternative remedies in U.S. courts. Yet, as indicated previously the prospects for broad recoveries in this manner are very poor.

Even if Cuba accepts its international law responsibilities with respect to U.S. claims, the United States can expect that a large quantity of private suits would profoundly complicate claim-related negotiations, as well as subsequent claims payment procedures. Cuba might easily demand that the United States demonstrate that each person holding an interest in any of the nearly 6,000 certified claims, and possibly the tens of thousands of uncertified claims, has not already received compensation via a lawsuit or private settlement. As the United States will not have records of private suits, let alone non-public out of court settlements, doing so would be extremely difficult. In addition, dealing with unpaid judgments in this context would likely prove particularly difficult.

Finally, the Castro regime has already used, and if enacted into law would continue to use, the civil cause of action contemplated by Title III of the LIBERTAD bill to play on the fears of ordinary citizens that their homes or work places would be seized by Cuban-Americans if the regime falls. The United States must make it clear to the Cuban people that U.S. policy toward Cuban property claims reflects established international law and practice, and that the future transition and democratic governments of the Cuban people will decide how best to resolve outstanding property claims consistent with international law.

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EXECUTIVE OFFICE
OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
*Washington, DC, September 20, 1995.*

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies.)

H.R. 927—CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT—(BURTON (R) IN AND 43 COSPONSORS)

The Administration supports the central objective of H.R. 927, i.e., to promote a peaceful transition to democracy in Cuba. However, H.R. 927 contains a number of seriously objectionable provisions that would not advance U.S. interests in Cuba and would damage other U.S. interests. Therefore, the President's senior advisers would recommend that H.R. 927 be vetoed unless the following provisions are deleted or amended:

The bill would encroach upon the President's exclusive authority under the Constitution to conduct foreign affairs, or otherwise unduly limit the President's flexibility, by purporting to require the President or the Executive branch to pursue certain courses of action regarding Cuba. Mandatory provisions should be replaced with precatory language in the following sections: 102(b); 104(a); 110(b); 112, 201; 202(e); 203(c)(1); and 203(c)(3).

The exemption in section 102(d) from civil penalty authority for activities related to research, education and certain other purposes, and the burdensome requirement for an agency hearing for civil penalties in other cases, greatly limits the effectiveness of civil penalties as a tool for improving embargo enforcement. Section 102(d) should be amended to address this shortcoming.

Section 103 should be amended to make the prohibition of certain financing transactions subject to the discretion of the President.

Section 104(a) should be amended to urge U.S. opposition to Cuban membership or participation in International Financial Institutions (IFIs) only until a transition government is in power to enable the IFIs to support a rapid transition to democracy in Cuba. Section 104(b), which would require withholding U.S. payments to IFIs, could place the U.S. in violation of international commitments and undermine their effective functioning. This section should be deleted.

Sections 106 and 110(b), which would deny foreign assistance to countries, if they, or in the case of section 110(b), private entities in these countries, provide certain support to Cuba, should be deleted. Section 106 would undermine important U.S. support for reform in Russia. Section 110(b) is cast so broadly as to have a profoundly adverse affect on a wide range of U.S. Government activities.

Section 202(b)(2)(iii), which would bar transactions related to family travel and remittances from relatives of Cubans in the United States until a transition government is in power, is too inflexible and should be deleted.

Sections 205 and 206 would establish overly-rigid requirements for transition and democratic governments in Cuba that could leave the United States on the sidelines, unable to support clearly positive developments in Cuba when such support might be essential. The criteria should be ''factors to be considered'' rather than requirements.

By failing to provide stand-alone authority for assistance to a transition or democratic government in Cuba, Title II signals a lack of U.S. resolve to support a transition to democracy in Cuba.

Title III, which create a private cause of action for U.S. nationals to sue foreigners who invest in property located entirely outside the United States, should be deleted. Applying U.S. law extra-territorially in this fashion would create friction with our allies, be difficult to defend under international law, and would create a precedent that would increase litigation risks for U.S. companies abroad. It would also diminish the prospects of settlement of the claims of the nearly 6,000 U.S. nationals whose claims have been certified by the Foreign Claims Settlement Commission. Because U.S. as well as foreign persons may be sued under section 302, this provision could create a major legal barrier to the participation of U.S. businesses in the rebuilding of Cuba once a transition begins.

Title IV, which would require the Federal Government to exclude from the United States any person who has confiscated, or ''traffics'' in, property to which a U.S. citizen has a claim, should be deleted. It would apply not only to Cuba, but world-wide, and would apply to foreign nationals who are not themselves responsible for any illegal expropriation of property, and thus would create friction with our allies. It would require the State Department to make difficult and burdensome determinations about property claims and investment in property abroad which are outside the Department's traditional area of expertise.

PAY-AS-YOU-GO SCORING

H.R. 927 would affect receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. OMB's preliminary scoring estimate is that receipts would be insignificant. Final scoring of this proposal may deviate from this estimate.

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THE SECRETARY OF STATE
*Washington, DC, September 20, 1995.*

Hon. NEWT GINGRICH,
*Speaker, House of Representatives.*

DEAR MR. SPEAKER: I am deeply concerned about H.R. 927, the Cuban Liberty and Democratic Solidarity Act, which the House is scheduled to consider this week. The Department of State believes that in its current form this legislation would damage prospects for a peaceful transition in Cuba and jeopardize a number of key U.S. interests around the world. For these reasons, I would recommend that the President veto the bill if passed by the Congress in its current form.

As you know, we share with the sponsors of the bill the goal of promoting a peaceful transition to democracy in Cuba. We have pursued that goal by maintaining a tough, comprehensive economic embargo against the Cuban government while reaching out to the Cuban people through licensing private humanitarian aid and improved telecommunications. This policy, guided by the Cuban Democracy Act, has helped to force the limited but positive economic changes that are taking place in Cuba.

We believe that H.R. 927 would actual damage prospects for a peaceful transition. We have consistently objected to the overly rigid list of more than a dozen ''requirements'' for determining when a transition or a democratic government is in power. These inflexible standards for responding to what

may be a rapidly evolving situation could leave the United States on the sidelines during a transition. Moreover, by failing to provide clear authority to assist even a transition or democratic government that meets the bill's certification requirements, the legislation fails to signal to the Cuban people that the United States is prepared to assist them once the inevitable transition to democracy in Cuba begins.

In addition to damaging prospects for a rapid, peaceful transition to democracy, H.R. 927 would jeopardize other key U.S. interests around the globe. For example, it would interfere with U.S. assistance to Russia and other nations of the former Soviet Union. Other provisions would condition assistance to any country if it — or even a private entity in its territory — participates in the completion of a nuclear power plant in Cuba. This kind of rigid conditioning of assistance can have far-reaching consequences and may interfere with our ability to advance the national interest.

While we are firmly committed to seeking the resolution of U.S. property claims by a future Cuban government, the right created by the bill to sue in U.S. courts persons who buy or invest in expropriated U.S. properties in Cuba, (''traffickers'') is a misguided attempt to address this problem. Encumbering property in Cuba with litigation in U.S. courts is likely to impede our own efforts to negotiate a successful resolution of U.S.-citizen claims against Cuba and could hamper economic reform efforts by a transitional government in Cuba. U.S. citizens and corporations with certified claims have publicly opposed these provisions. In addition, these provisions would create tensions in our relations with our allies who do not agree with the premises underlying such a cause of action. This stance would be hard to defend under international law. Furthermore, we know that this provision is already being used by the Castro regime to play on the fears of ordinary citizens that their homes and work places would be seized by Cuban-Americans if the regime were to fall.

Title III will also ultimately prove harmful to U.S. business. First, it sets a precedent that, if followed by other countries, would increase litigation risks for U.S. companies abroad. Second, it will create a barrier to participation by U.S. businesses in the Cuban market once the transition to democracy begins. Because the lawsuits contemplated by the bill may be brought against the United States as well as foreign companies and are not terminated until the rigid requirements for a democratic Cuban government are satisfied, the bill erects an enormous legal hurdle to participation by U.S. business in the rebuilding of a free and independent Cuba.

Finally, the provisions of the bill that would deny visas to ''traffickers'' in expropriated property, which are global in scope and not limited to Cuba, will create enormous frictions with our allies and be both burdensome and difficult to administer.

In sum, the Department of State believes that while the goals of H.R. 927 are laudable, its specific provisions are objectionable and in some cases contrary to broader U.S. interests, even to the goal of establishing democracy and a free market in the country with active U.S. involvement. Given these considerations, the Department of State can not support the bill and, if it were presented to the President, would urge a veto.

Sincerely,

WARREN CHRISTOPHER.

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JOINT CORPORATE COMMITTEE
ON CUBAN CLAIMS,
*Stamford, CT, October 10, 1995.*

DEAR SENATOR: I recently wrote to urge you to oppose Title III of legislation, the ''Cuban Liberty and Democratic Solidarity Act,'' that purports to protect the property rights of U.S. nationals against the confiscatory takings by the Castro regime. At that time, Senator Helms was planning to attach this legislation as an amendment to the then-pending Foreign Operations Appropriations Bill. It is my understanding that this legislation now may be brought to the Senate floor as a free-standing bill as early as Wednesday of this week. I am writing once again to urge you to oppose this legislation insofar as it contains Title III in its present form because it poses the most serious threat to the property rights of U.S. certified claimants since the Castro regime's unlawful expropriations more than three decades ago.

In the rush to pass this legislation and thereby demonstrate our firm resolve against Fidel Castro, the far-reaching domestic consequences of this legislation have received far too little attention. In my letter of September 20th, I wrote of the irreparable harm certified claimants would suffer if Title III of this legislation is passed. For the first time ever and contrary to international law, this legislation would permit a specified national origin group, Cuban-Americans, who were not U.S. citizens at the time their property was confiscated, to file Title III lawsuits against the Government of Cuba for the property losses they suffered as Cuban nationals. Indeed, this legislation even permits Cuban exiles abroad to file lawsuits in U.S. federal courts if they establish a corporation in the United States for the purpose of pursuing any claim they may have against Cuba. The creation of a new right to sue is never an inconsequential matter yet the careful scrutiny such a provision deserves has been disturbingly lacking to date.

We can reasonably expect plaintiffs' attorneys to exploit this newly created lawsuit right to the fullest extent possible, creating a tide of litigation that will all but sweep away the value of the claims currently held by U.S. certified claimants. Each time one of those lawsuits is reduced to a final judgment against Cuba, the injury to U.S. certified claimants increases. Ultimately, the cumulative weight of those judgments will extinguish any possibility the certified claimants ever had of being compensated. A virtually bankrupt Cuba cannot be expected to compensate the U.S. certified claimants, who hold claims valued today at nearly $6 billion, when it is also facing the prospect of satisfying potentially tens of billions of dollars in federal court judgments held by Cuban-Americans, whose claims have been valued as high as $94 billion.

Our already overburdened federal courts will have to deal with the daunting task of adjudicating some 300,000 to 430,000 lawsuits, according to one estimate that has never been refuted. (And that does not even take into account the number of additional claims that we can anticipate will be brought on equal protection grounds by Vietnamese-Americans, Polish-Americans, Chinese-Americans and other national origin groups.) Indeed, a litigation explosion appears to be exactly what the bill's sponsors intend: They hope to enlist an army of lawyers to launch a barrage of federal court lawsuits against Cuba in order to hopelessly entangle the island in lawsuits. In so doing, title to property in Cuba will be clouded for years to come, thus ensuring that every effort at privatization or market-oriented economic reform will be doomed to failure. In a classic case of overkill, however, this endless litigation will not only encumber the current regime, but will impose an onerous burden on a future democratic government that will make normalization of relations with the United States virtually impossible.

Faced with this prospect, the president, as an exercise of executive prerogative in the conduct of foreign affairs, may elect to dismiss those federal court judgments pending against a friendly government in Cuba. However, dismissing those lawsuits may not turn out to be such a simple matter because the U.S. Government may very well find itself liable for tens of billions of dollars in property takings claims to this large class of citizens who were non-U.S. nationals at the time they lost properties in Cuba. In short, if Title III is enacted, we will be left either with the prospect of protracted litigation against Cuba, which will indefinitely delay normalization of relations with a post-Castro Cuban government, or enormous liability to possibly hundreds of thousands of Cuban-Americans should those federal court judgments be dismissed as an incident of normalization.

Amazingly, the Senate is poised to vote on this legislation without the benefit of the Judiciary Committee's views on these and other critical issues that fall within its purview. The Judiciary Committee has held no hearings on Title III, has not reviewed it, nor has it, or the Foreign Relations Committee for that mater, issued any reports on it. It is astonishing that we may be so casually headed toward putting our government, and ultimately U.S. taxpayers, on the line for tens of billions of dollars worth of Cuban-American claims in a foreign land. The only conclusion that can be drawn is that this legislation is being rushed to a vote before these serious issues can be thoroughly considered by the Senate through its normal procedures. Given the profound domestic implications of this legislation beyond the obvious and immediate injury to U.S. certified claimants, I urge you to oppose Title III of this legislation if for no other reason than to ensure that these concerns receive the careful deliberation they warrant.

Sincerely,

DAVID W. WALLACE,
*Chairman.*

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NATIONAL COUNCIL OF THE
CHURCHES OF CHRIST IN THE USA,
*September 19, 1995.*

DEAR REPRESENTATIVE: I write on behalf of the National Council of Churches of Christ in the USA (NCC) to urge your opposition to the Cuban Liberty and Democratic Solidarity bill, H.R. 927, which is scheduled to be considered on the House floor this week. We believe strongly that contrary to its stated objectives, the bill is likely to provoke a negative response that will harm efforts to achieve peaceful social, economic, and political change in Cuba.

The National Council of Churches and many of its member denominations have maintained a decades-long relationship of pastoral accompaniment with the Protestant churches of Cuba. Through Church World Service (CWS)—our relief, refugee, and development program—the NCC has assisted for more than thirty years in the resettlement in the U.S. of Cuban asylum seekers and refugees. Over the past four years CWS has carried out regular shipments of humanitarian assistance that is administered through the Cuban Ecumenical Council for use in nursing homes and childrens' hospitals.

On numerous occasions the NCC has called on the U.S. and Cuban governments to engage in dialogue aimed at resolving the long-standing conflict between our countries. In particular, we have urged measures that would foster greater communication and understanding between people in the U.S. and

Cuba, which we view as key to achieving a more normal relationship.

Our deep concerns about the Cuban Liberty and Democratic Solidarity Act include the following:

1. By incorporating in U.S. policy recognition of property claims of Cubans who became U.S. citizens subsequent to the expropriation of their property, and by subjecting to sanctions anyone who ''traffics'' in such property, the bill is likely to strengthen hard-liners within the Cuban government and fuel renewed anti-U.S. sentiment among the Cuban population. This provision is likely to be interpreted within Cuba as a move to return to the economic and social situation that existed there prior to the 1959 revolution. There is little or no support for such a move within Cuba, even among the most vehement critics of the current regime.

2. The bill specifies conditions for the expansion of U.S. assistance that are likely to undermine diplomatic efforts to achieve a peaceful resolution of the conflict between the U.S. and Cuba. By linking broader U.S. assistance to Cuba to a highly specific set of conditions, the bill reduces significantly the diplomatic tools available to the Administration. At the same time, the bill fails to broaden humanitarian or exchange programs that foster stronger people-to-people relationships.

3. The bill reinforces regulations promulgated in August 1994 that restrict travel and shipment of goods to family members. These new restrictions have led to serious delays in efforts to secure licenses for travel to Cuba. The ability to travel to Cuba on short notice is particularly important to the pastoral accompaniment of the Protestant churches during this difficult period of transition. [Oscar: other problems resulting from the new regulations?]

The NCC believes that a new approach to U.S.-Cuban relations is long overdue. The Cuban Liberty and Democratic Solidarity Act represents a further deepening of an anachronistic policy in serious need of change. I strongly urge you to oppose H.R. 927 and to support efforts to bring about more normal relations between the U.S. and Cuba.

Sincerely,

JOAN BROWN CAMPBELL,
*General Secretary*.

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MANSFIELD & MUSE,
*Washington, DC, September 20, 1995.*

Senator W. COHEN,
*United States Senate, Washington, DC.*

Re ''The Cuba Liberty and Democratic Solidarity Act''

DEAR SENATOR: My client Amstar, along with thousands of other U.S. citizen holders of claims certified against Cuba in the 1960's by the Foreign Claims Settlement Commission, will suffer devastating economic injury if Title III of Senator Helm's bill (formerly S. 381) is passed as an amendment to the Foreign Operations Appropriations Bill. It is for this reason that I am writing.

It is absolutely false that Title III has been revised in ways that make it no longer violative of both international law and the rights and interests of U.S. citizens holding claims certified against Cuba pursuant to the 1964 Cuba Claims Act. As you know, Title III allows lawsuits to be brought in the federal courts against Cuba and private individuals either living in or doing business in that country with respect to properties taken from their owners for the most part thirty-five years ago. Damages are recoverable against Cuba and others foreseeable the current value of those properties. Contrary to international law, it makes no difference under Title III whether a litigant was a U.S. citizen at the time the property in Cuba was taken. Indeed Title III is specifically designed to give subsequently naturalized Cuban Americans statutory lawsuit rights against Cuba of a type that we as a nation have never been before given anyone else—even those who were U.S. citizens at the time of their foreign property losses.

Title III of Senator Helm's amendment will produce the following consequences if enacted in its present form:

Our federal courts will be deluged in Cuba-related litigation. On August 28, 1995 the National Law Journal (attached) reported that 300,000–430,000 lawsuits are to be expected from Cuban Americans if Title III is enacted. According to judicial impact analysts at the Administrative Office of the U.S. Courts each of these suits will average $4,500 in costs, whether they go to trial or not. Therefore the administrative costs to the courts alone of Title III will reach nearly $2 billion.

If we enact Title III those 5,911 claimants certified under the 1964 Cuban Claims Act will see their prospects of recovering compensation from an impoverished Cuba diluted to virtually nothing in a sea of Cuban American claims (To put this matter into context, the Department of State has estimated Cuban American property claims at nearly $95 billion). It is critical that it be understood that a claim certified by the Foreign Claims Settlement Commission constitutes a property interest. If Congress enacts Title III with the foreseeable effect of destroying the value of the $6 billion (according to State Department figures) in claims held by American citizens, it should expect to indemnify those citizens someday, under the Fifth Amendment's ''takings clause'', to the full amount of their economic injury. If Title III is made law, the American taxpayer will quite probably someday demand an explanation as to how on earth he or she has been forced to step into the shoes of the Cuban government and compensate U.S. companies and individuals for their property losses in Cuba over thirty-five years ago.

If we violate international law and long-standing U.S. adherence to that law by enacting Title III and conferring retroactive rights upon non-U.S. nationals at time of foreign property losses, history tells us that we will not be permitted to stop with Cuban Americans. The equal protection provisions of the Constitution will not tolerate limiting the conferral of such an important benefit as a federal right of action on only one of our many national origin groups whose members have suffered past foreign property losses if, as will surely happen, a former South Vietnamese army officer who is now a U.S. citizen sues in order to gain the same right accorded Cuban Americans to recover damages for property expropriations he suffered, who, if Title III is enacted is prepared to say he should not have such a night? On what principled basis would such a night be denied him if given by Congress to Cuban Americans? What about Chinese Americans, Hungarian Americans, Iranian Americans, Greek Americans, Palestinian Americans, Russian Americans, Polish Americans? Are we going to claim surprise when the courts tell us that the equal protection of laws requirement of the Constitution mandates that each of these national-origin groups receive the same right of action against their former governments that we are proposing to give Cuban Americans by virtue of Title III? How many such suits might we then expect from these others national-origin groups and at what cost to both the national treasury and our relations with the many countries that will end up being sued in our federal courts? It must also be kept in mind that U.S. companies that have invested in various countries where our naturalized citizens have property claims (e.g. Vietnam) will be held liable for so-called ''trafficking'' in those claimed properties if Title III is enacted and extended constitutionally to other national-origin groups.

The multitude of lawsuits that will be filed pursuant to Title III will over time be converted to final judgments against Cuba, and as such will constitute a running sore problem for the United States. Title III lawsuits are explicitly made nondismissible. The fact of hundreds of thousands of Cuban American judgment creditors against Cuba will make it impossible for us to normalize relations with a friendly government in that country. Aircraft and ships would be seized. Cuban assets in the U.S. banking system would be attached, goods produced in Cuba would be executed upon when they arrive in U.S. ports—all in pursuit of recovery of billions of dollars in federal court awards. The population of Cuba (the majority of whom were not even born when the properties of the Cuban American judgment creditors were taken) will be indentured for decades to come to the judgments entered against their country on our federal court dockets. How is such a state of affairs conducive to a reconciliation between Cubans on the island and the Cuban community of the United States?

The alternative to the permanent estrangement Title III lawsuits will produce between Cuba and the United States would of course be for a U.S. president to dismiss the judgments entered against Cuba. Notwithstanding the prohibition against such executive branch action contained in Title III, it is probable that the courts will ultimately uphold the dismissals as a legitimate exercise of the presidential prerogative to conduct foreign affairs.[2] What then?

The creation of a cause of action by Congress is obviously not a trivial matter. Hundreds of thousands of Cuban Americans will quite properly avail themselves of the right of action to be given them by Title III. These cases will proceed inexorably to final judgments. (There are really no defenses available to Cuba under Title III. It is a strict liability statute). As final federal court judgments they will carry the faith and credit of the United States government, with all the rights and remedies of execution set out in our laws. What will be the consequence of the president extinguishing these judgments and their concomitant rights of execution?

Again, as in the case of certified claimants, a federal court judgment is a property interest protected by the Constitution. If that interest is extinguished by presidential order, the Fifth Amendment ''takings clause'' with its duty of full compensation will be triggered. If Title III is enacted it should be with full knowledge that Congress may someday be asked by the public to explain how the American people came ultimately to be liable for tens of billions of dollars of damages in recompense to a group of non-U.S. nationals at the time they lost properties in Cuba.[3] In a period of heightened concern for potential governmental liability under the takings clause of the Fifth Amendment,

[2] See, Dames & Moore v. Regan, 453 U.S. 654 (1981).

[3] See, Dames & Moore v. Regan, supra, at 688: ''Though we conclude that the President has settled petitioner's claims against Iran, we do not suggest that the settlement has terminated petitioner's possible taking claim against the United States.'' (Emphasis added). Justice Powell, concurring in part and dissenting in part, had this to say: ''The Government must pay just compensation when it furthers the nation's foreign policy goals by using as 'bargaining chips' claims lawfully held by a relatively few persons and subject to the jurisdiction of our courts.'' Id. at 691.

Title III should be approached with the greatest caution and seen for the liability time bomb it is.

A troubling aspect of Title III is its contemptuous disregard of international law. As a nation we and our citizens benefit from international law in a myriad of forms, such as overseas investment and intellectual property protection, the safety of our diplomats and sovereignty over our marine resources. Many other examples of the benefits to the United States of an international rule of law could be given. How can we in the future demand compliance with international law by other nations if we are prepared to violate that very law by enacting Title III? The proponents of this legislation have never satisfactorily answered that fundamental question.

To conclude, certain proponents of Title III from outside the Senate have engaged in a campaign to minimize its significance. Boiled down, their message is that a vote for Title III is an inconsequential thing. For example, they will say that a litigant cannot or will not sue Cuba itself, but rather any actions are limited to ''third party traffickers'' in confiscated properties. Let there be no mistake on this point. Title III is an unprecedented federal court claims program against the nation of Cuba. Section 302 of Title III is plain and unambiguous in its meaning. It is the inescapable consequences of that meaning that the Senate must address.

JOINT CORPORATE COMMITTEE
ON CUBAN CLAIMS,
*September 20, 1995.*

DEAR SENATOR: The Joint Corporate Committee on Cuban Claims represents more than thirty U.S. corporations with certified claims against the Government of Cuba stemming from the Castro regime's unlawful confiscation of U.S. property without just compensation. Our member corporations hold more than one-half of the $1.6 billion in outstanding certified corporate claims. On behalf of the Joint Corporate Committee, I am writing to urge you to oppose Title III of legislation Sen. Helms will offer as an amendment to the Foreign Operations Appropriations Bill because it poses the most serious threat to the property rights of the certified claimants since the Castro regime's confiscations more than thirty years ago.

The centerpiece of the Helms legislation is Title III, which creates a right of action that for the first time will allow U.S. citizens—regardless of whether they were U.S. citizens at the time their property was confiscated in Cuba—to file lawsuits in U.S. courts against persons or entities that ''traffic'' in that property, including the Government of Cuba. In effect, this provision creates within the federal court system a separate Cuban claims program available to Cuban-Americans who were not U.S. nationals as of the date of their injury. This unprecedented conferral of retroactive rights upon naturalized citizens is not only contrary to international law, but raises serious implications with respect to the Cuban Government's ability to satisfy the certified claims.

Allowing Cuban-Americans to make potentially tens if not hundreds of thousands of claims against Cuba in our federal courts may prevent the U.S. certified claimants from ever receiving the compensation due them under international legal standards. After all, Cuba hardly has the means to compensate simultaneously both the certified claimants and hundreds of thousands of Cuban-Americans, who collectively hold claims valued as high as $94 billion, according to a State Department estimate. In addition, this avalanche of lawsuits undoubtedly will cloud title to property in Cuba for years, thereby lessening the prospects for restitutionary approaches in satisfaction of some of the certified claims.

Apart from the injury to the interests of U.S. certified claimants, we can reasonably anticipate that this legislation, by opening our courts to such an expansive new class of claimants, will unleash a veritable explosion of litigation that will place an enormous if not overwhelming burden on our courts. Moreover, the legislation even would allow Cuban exiles abroad to avail themselves of this lawsuit right simply by forming a corporation in the United States, transferring any claim they may have against Cuba into that U.S. corporate entity, and bringing suit in U.S. federal courts. In addition, other similarly situated U.S. nationals of various ethnic origins who have suffered property losses under similar circumstances can be expected to pursue this lawsuit right on equal protection grounds. While it is difficult to predict with any precision the number of lawsuits that will be filed under this legislation, it is not unreasonable to conclude that they will number in the hundreds of thousands.

Finally, we must consider the impact of this lawsuit right on the ability of a post-Castro Cuban government to successfully implement market-oriented reforms. There can be little doubt that the multitude of unresolved legal proceedings engendered by this legislation will all but preclude such reform, which must be the foundation of a free and prosperous Cuba. Even should the President, as an incident of normalizing relations with a democratic Cuban government, ultimately extinguish these claims, if history is a guide, our government could assume tremendous liability to this newly created class of claimants.

In light of the pernicious implications of this legislation for the legal rights of certified claimants, an already overburdened court system, the claims settlement process and the orderly disposition of claims, and the post-Castro investment environment, we urge you to oppose the Helms amendment insofar as it contains Title III in its present form.

Sincerely,

DAVID W. WALLACE,
*Chairman.*

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## STATEMENT OF DAVID W. WALLACE, CHAIRMAN, JOINT CORPORATE COMMITTEE ON CUBAN CLAIMS ON S. 381, THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT OF 1995

(Submitted to the Subcommittee on Western Hemisphere and Peace Corps Affairs, the Committee on Foreign Relations, United States Senate, June 14, 1995)

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to submit this statement expressing the views of the Joint Corporate Committee on Cuban Claims with respect to S. 381, the ''Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.''

The Joint Corporate Committee on Cuban Claims, of which I serve as Chairman, represents more than thirty U.S. corporations with certified claims against the Government of Cuba stemming from the Castro regime's unlawful confiscation of U.S. property without just compensation. Our member corporations hold more than one-half of the $1.6 billion in outstanding certified corporate claims. Since its formation in 1975, the Committee has vigorously supported the proposition that before our government takes any steps to resume normal trade and diplomatic relations with Cuba, the Government of Cuba must provide adequate compensation for the U.S. properties it unlawfully seized.

Although I am submitting this statement in my capacity as Chairman of the Joint Corporate Committee, I would like to note parenthetically that I also serve as Chairman and Chief Executive Officer of Lone Star Industries, Inc. Lone Star is a certified claim holder whose cement plant at Mariel was seized by the Cuban Government in 1960. Lone Star's claim is valued at $24.9 million plus 6 percent interest since the date of seizure.

On behalf of our Committee, I want to commend the significant contribution you have made to the debate on U.S.-Cuba policy by focusing renewed attention on the Castro regime's unlawful expropriation of U.S. property—an issue that all too often gets lost in the debate over the wisdom of the embargo policy. Recognizing the important role that trade and investment by U.S. businesses will have in Cuba's economic reconstruction and its eventual return to the international community, evidence of concrete steps by the Government of Cuba towards the satisfactory resolution of the property claims issue must be an essential condition for the resumption of economic and diplomatic ties between our nations.

I think it is important to recall the essential reason for which the U.S. government first imposed a partial trade embargo against Cuba in 1960, followed by the suspension of diplomatic relations in 1961 and the imposition of a total trade embargo in 1962. These actions were taken in direct response to the Castro regime's expropriation of properties held by American citizens and companies without payment of prompt, adequate and effective compensation as required under U.S. and international law. This illegal confiscation of private assets was the largest uncompensated taking of American property in the history of our country, affecting scores of individual companies and investors in Cuban enterprises.

These citizens and companies whose property was confiscated have a legal right recognized in long-established international law to receive adequate compensation or the return of their property. Indeed, Cuba's Constitution of 1940 and even the decrees issued by the Castro regime since it came to power in 1959 recognized the principle of compensation for confiscated properties. Pursuant to Title V of the International Claims Settlement Act, the claims of U.S. citizens and corporations against the Cuban government have been adjudicated and certified by the Foreign Claims Settlement Commission of the United States. Yet to this day, these certified claims remain unsatisfied.

It is our position that lifting the embargo prior to resolution of the claims issue would be unwise as a matter of policy and damaging to our settlement negotiations posture. First, it would set a bad precedent by signaling a willingness on the part of our nation to tolerate Cuba's failure to abide by precepts of international law. Other foreign nations, consequently, may draw the conclusion that unlawful seizures of property can occur without consequence, thereby leading to future unlawful confiscations of American properties without compensation. Second, lifting the embargo would remove the best leverage we have in compelling the Cuban government to address the claims of U.S. nationals and would place our negotiators at a terrible disadvantage in seeking just compensation and restitution. We depend on our government to protect the rights of its citizens when they are harmed by the unlawful actions of a foreign agent. The Joint Corporate Committee greatly appreciates the steadfast support our State Department has provided over the years on the claims issue. However, we recognize that the powerful tool of sanctions will be crucial to the Department's ability ultimately to effect a just resolution of this issue.

Apart from the need to redress the legitimate grievances of U.S. claimants, we also should not overlook the contribution these citizens and companies made to the economy of pre-revolutionary Cuba, helping to make it one of the top ranking Latin American countries in terms of living standards and economic growth. Many of these companies and individuals look forward to returning to Cuba to work with its people to help rebuild the nation and invest in its future. As was the case in pre-revolutionary Cuba, the ability of the Cuban government to attract foreign investment once again will be key to the success of any national policy of economic revitalization.

However, unless and until potential investors can be assured of their right to own property free from the threat of confiscation without compensation, many U.S. companies simply will not be willing to take the risk of doing business with Cuba. It is only by fairly and reasonably addressing the claims issue that the Cuban Government can demonstrate to the satisfaction of the business community its recognition of and respect for property rights.

We are pleased that S. 381 does not waver from the core principle, firmly embodied in U.S. law, which requires the adequate resolution of the certified claims before trade and diplomatic relations between the U.S. and Cuban governments are normalized. However, we are concerned with provisions of Section 207 of the revised bill that condition the resumption of U.S. assistance to Cuba on the adoption of steps leading to the satisfaction of claims of both the certified claimants and Cuban-American citizens who were not U.S. nationals at the time their property was confiscated. Notwithstanding the modifying provisions which accord priority to the settlement of the certified claims and give the President authority to resume aid upon a showing that the Cuban Government has taken sufficient steps to satisfy the certified claims, this dramatic expansion of the claimant pool, as a practical matter, would necessarily impinge upon the property interests of the certified claimants.

Even though the claimants who were not U.S. nationals at the time of the property loss would not enjoy the espousal rights that the certified claimants enjoy, the recognition of a second tier of claimants by the U.S. Government at a minimum would necessarily color, and likely make more complicated, any settlement negotiations with Cuba to the detriment of the certified claimants.

Moreover, the fact that the legislation gives priority for the settlement of certified property claims is of little consequence within the context of such a vastly expanded pool of claimants that seemingly defies a prompt, adequate and effective settlement of claims. In addition, once this second tier of claimants is recognized, it would be exceedingly difficult politically for the President to exercise his waiver authority. Finally, this dramatic expansion of the claimant pool would serve as a significant disincentive for a post-Castro Cuban Government to enter into meaningful settlement negotiations with the United States given the sheer enormity of the outstanding claims and the practical impossibility of satisfying all those claims.

In short, while we are sympathetic to the position of those individuals and entities who were not U.S. nationals at the time their property was seized, we believe that U.S. Government recognition and representation of this group of claimants—even falling short of espousal of their claims with a post-Castro Government in Cuba—would harm the interests of the already certified claimants. We believe that the recognition of a second tier of claimants will delay and complicate the settlement of certified claims, and may undermine the prospects for serious settlement negotiations with the Cuban Government.

It is our view, based on well-established principles of international law, that individuals and entities who were Cuban nationals at the time their property was confiscated must seek resolution of their claims in Cuban courts under Cuban law under a future Cuban Government whereby the respective property rights of former and current Cuban nationals may be fairly determined. In taking that position, we categorically reject any notion that a naturalized American has any lesser degree of right than a native-born American. That objectionable and irrelevant notion serves only to cloud the real issue here, and that is simply the question of what rights are pertinent to a non-national as of the date of injury. Simply put, international law does not confer retroactive rights upon naturalized citizens.

Many of the same objections noted above also apply to Section 302 of the revised bill, which allows U.S. nationals, including hundreds of thousands of naturalized Cuban-Americans, to file suit in U.S. courts against persons or entities that traffic in expropriated property. We believe this unrestricted provision also will adversely affect the rights of certified claimants. By effectively moving claims settlement out of the venue of the Foreign Claims Settlement Commission and into the federal judiciary, this provision can be expected to invite hundreds of thousands of commercial and residential property lawsuits. Apart from the enormous, if not overwhelming, burden these lawsuits will place on our courts, this provision raises serious implications with respect to the Cuban Government's ability to satisfy certified claims.

First, allowing Cuba to become liable by way of federal court judgments for monetary damages on a non-dismissible basis necessarily will reduce whatever monetary means Cuba might have to satisfy the certified claims. Second, this expected multiplicity of lawsuits undoubtedly will cloud title to property in Cuba for years, thereby lessening the prospects for restitutionary approaches in satisfaction of some of these claims. Moreover, under this provision, the President would have no power to dismiss these suits as an incident of normalizing relations with a democratically elected government in Cuba once they are commenced. Consequently, the foreign investment that will be crucial to Cuba's successful implementation of market-oriented reforms will be all but precluded by these unresolved legal proceedings.

In conclusion, we want to commend you for your efforts in raising the profile of the property claims issue and focusing attention on the importance of resolving these claims to the full restoration of democracy and free enterprise in Cuba. We also recognize and appreciate the effort you have made to modify this legislation in response to the concerns expressed by the certified claimant community; however, we hope that you will further consider our continuing concerns regarding the implications of this legislation for the legal rights of certified claimants, an already overburdened court system, the claims settlement process and the orderly disposition of claims, and the post-Castro investment environment.

Mr. PELL. I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me first of all commend my dear friend and distinguished colleague from Rhode Island. As all of my colleagues are aware, our friend from Rhode Island has announced he will not be seeking reelection almost a year from now. He has been a wonderful U.S. Senator over these many years representing his State and always keeping in mind the national interest.

He has had a longstanding view on cloture, and it has to be a very unique set of circumstances that would cause someone with more than 30 years of having maintained a very strong philosophical position—much to the chagrin, I might point out, of his colleagues from time to time who have wanted his vote or not wanted his vote on a particular matter—to take this position. So, I respect immensely his decision.

Mr. President, we are going to vote in a couple minutes on this matter. We have had a good opportunity to talk about it over the last day or so. I just want to reiterate, if I could, the underlying concern I have about this bill and why I think that cloture should not be invoked.

True of all matters that we consider in this body, but particularly when it comes to matters affecting the international relations of this Nation, the first test ought to be whether or not what we are going to do is in the best interests of our country; and, secondly, whether or not it is going to help or hinder, depending upon the purpose of the legislation, the country involved.

Before we even get to the second question, the first question must be answered positively. And my concern about this bill that is before us is that, in the first instance, it is not in the self-interest of this country to adopt this bill for the reason that it creates unprecedented new opportunities for a group of people that we have never provided access to the U.S. courts to on claims matters involving the expropriation of property where there has been a lack of compensation.

As my colleagues no doubt are aware, under U.S. claims court rules for the last four decades, more than four decades, in order to sue in a U.S. claims court, you must have been a U.S. citizen that was doing business or had property in the country where there is an expropriation of property at the time. As has been pointed out in the case of Cuba, there were some 6,000 individuals or corporations that held that status in 1959 when the expropriations took place across the board.

What we are doing with this bill, and why I ask my colleagues to read it, look at it, is for the first time in more than four decades we are now saying, in addition to that group, anyone who was a national of Cuba but who subsequently became a U.S. citizen, or even went to some other country, can now file in the U.S. claims court for compensation under the expropriation actions.

That is unprecedented. There are some 37 other countries in the world

that have matters of expropriation of properties pending. Were we to apply the same standard we are going to apply, or could apply with this legislation, it would open up in the case of Americans of Polish ancestry, Vietnamese, Chinese, German—the countries, 37 in number—then one could only begin to imagine the kind of overwhelming amount of work that would fall on our United States courts.

It is estimated that each claims action costs some $4,500 to process. Just with the passage of this legislation, we will expand the workload of that court from 6,000 cases, legitimate cases of expropriation, to some 430,000 cases. That is what we have been told is the estimate of the claims. Who is going to pay for that, and what happens to the claimants who have a consistent legitimate right? Yet, that is what we are doing with this bill.

So regardless of how one feels about the government in Cuba, how angry they may be, I just beseech my colleagues to read title III of this bill and then ask themselves whether or not this is something we ought to be doing to ourselves.

This is an unfunded mandate, in effect, for the claims that come before the court. There is another reason, in my view, why it should be rejected. We never voted on it in committee, never had a single vote. The bill is brought to the floor by the chairman of the Foreign Relations Committee who chairs the committee which has jurisdiction.

I hope we do not invoke cloture and that the bill be sent back for further work so it comes back with the kind of provisions in title III that are not, I think, so threatening and dangerous to the country.

Mr. President, I heard the gavel come down. Is there a time limitation?

The PRESIDING OFFICER. The time has been divided and the time on the Democratic side has expired.

Mr. DODD. I ask unanimous consent that my colleague be able to respond.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I was only going to ask a question of the Senator from Connecticut. I am not on the relevant committee. My understanding was this was not subject to a committee markup, and this legislation came to the floor without a markup; is that correct?

Mr. DODD. That is correct. Again, I can understand someone who was in the minority trying to pull that, but if you are in the majority and the chair of the committee and bring a bill out that you did not have a markup on in your own committee, I do not understand the precedent for that, it seems to me.

We had hearings on this issue, in fairness to the chairman of the committee. There are hearings we had about the situation in Cuba, but no markup of this legislation at all.

Mr. DORGAN. This is not an unimportant issue, I agree with the Senator. Since I am not involved in this committee's actions, it seems to me that the approach that would best serve the search for the right policy would be an approach where you have a committee process, where they mark up the bill, debate the bill during markup, write the best bill and then bring it to the floor. This appears not to be the regular order to get the legislation to the floor. I appreciate the Senator's response.

Mr. DODD. Just for the benefit of my colleagues, I point out, as I mentioned earlier, this expands the definition of who is a U.S. claimant to include ''any Cuban national presently a United States citizen regardless of citizenship at the time of the expropriation, as well as any person who incorporates himself or herself as a business entity under U.S. law prior to this bill becoming law.''

That is, you do not have to be a U.S. citizen today, you can be a foreign national, but if you incorporate yourself as any person, then you can bring an action in U.S. claims court. That is unprecedented, as far as the law has stood for the past 4 decades.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, there will be a vote momentarily. That will be the last vote of the day. It could be the last vote of the week, depending on whether or not we get to appoint conferees to S. 652, the telecommunications bill, tomorrow. I understand there may be an instruction on the other side. If there is an instruction, that could require a vote tomorrow. And we hope to appoint conferees to welfare reform, H.R. 4. The President has asked about expediting that. Others have asked about expediting that. We are prepared to appoint conferees. We hope we can do that tomorrow.

As to Monday, I hope to have an announcement tomorrow whether or not we will be in session at all on Monday, and if we are in session, what we will be about, because as I understand, there is going to be a massive traffic jam on Monday. They tell me thousands of buses are going to be in town, so it might not be possible to get to the Capitol, or, if you get here, it might not be possible to get anywhere else.

I will try to accommodate my colleagues and make that announcement as early as I can tomorrow.

## CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the substitute amendment to Calendar No. 202, H.R. 927, an act to seek international sanctions against the Castro government.

Bob Dole, Jesse Helms, Bob Smith, Bill Frist, John Ashcroft, Jim Inhofe, Paul D. Coverdell, Spencer Abraham, Larry E. Craig, Trent Lott, Rod Grams, Frank H. Murkowski, Fred Thompson, Mike DeWine, Hank Brown, Chuck Grassley.

## CALL OF THE ROLL

The PRESIDING OFFICER. Under the previous order, the quorum call has been waived.

## VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the substitute amendment No. 2898 to H.R. 927, the Cuban Liberty and Solidarity Act, shall be brought to a close?

The yeas and nays are required under the rules. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Utah [Mr. HATCH] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

I also announce that the Senator from Maine [Mr. COHEN] is absent due to a death in the family.

Mr. FORD. I announce that the Senator from Nebraska [Mr. EXON], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Nevada [Mr. REID] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 56, nays 37, as follows:

[Rollcall Vote No. 488 Leg.]

YEAS—56

| | | |
|---|---|---|
| Abraham | Frist | Mack |
| Ashcroft | Gorton | McCain |
| Bennett | Graham | McConnell |
| Bond | Gramm | Murkowski |
| Bradley | Grams | Nickles |
| Brown | Grassley | Pressler |
| Bryan | Gregg | Roth |
| Burns | Helms | Santorum |
| Campbell | Hollings | Shelby |
| Chafee | Hutchison | Simpson |
| Coats | Inhofe | Smith |
| Cochran | Jeffords | Snowe |
| Coverdell | Kassebaum | Specter |
| Craig | Kempthorne | Stevens |
| D'Amato | Kyl | Thomas |
| DeWine | Lautenberg | Thompson |
| Dole | Lieberman | Thurmond |
| Domenici | Lott | Warner |
| Faircloth | Lugar | |

NAYS—37

| | | |
|---|---|---|
| Akaka | Dodd | Kerrey |
| Baucus | Dorgan | Kerry |
| Biden | Feingold | Kohl |
| Bingaman | Feinstein | Leahy |
| Boxer | Ford | Levin |
| Breaux | Glenn | Mikulski |
| Bumpers | Harkin | Moseley-Braun |
| Byrd | Heflin | Moynihan |
| Conrad | Inouye | Murray |
| Daschle | Johnston | Nunn |