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Cuban Legal Evolution: Encouraging Foreign Trade and Investment

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DEAN JEFFREY LEWIS:

Thank you and good morning. I too would like to extend my welcome to you. We appreciate your attendance at the Third Annual Symposium on International Trade sponsored by our international law journal. We are proud of the work of the *Journal*. As mentioned, this is the tenth year for the *Journal*, and it represents an important focus of the College of Law, that is, a focus on international and comparative law. Again, we are very grateful to all of you for being here. We know that you will have an interesting day.

III. CUBAN LEGAL EVOLUTION: ENCOURAGING FOREIGN TRADE AND INVESTMENT

PROFESSOR MICHAEL GORDON:

Thank you. I have been in Havana twice, first in 1957 and a second time in 1994. I saw two very different Havanas. The physical appearance of Old Havana had changed dramatically and disappointingly in the intervening thirty-seven years. Few in either of our countries, and I suspect no one on this panel, denies the existence of a present Cuban economy in need of help and hope. Casting blame and allocating responsibility for the current conditions has led to debate and animosity but little advance in understanding or resolving the issues of Cuban underdevelopment. I hope you all share my dream. A dream of future times when the corrugated steel shutters of La Maravilla on the corner of Calles Viegas and Aumagura in Old Havana will be open, and this group will sit there in friendship to enjoy Kingfish Escaveche and other repasts.

The Cuban patriot, Jose Martí, said in his famous poem "The White Rose" that "grief is life that man needs to suffer."¹ We ought to seek to lessen the suffering that has occurred among Cubans on both sides of the Florida Straits during the past four decades. As a university, our role is to expose and be exposed to ideas — ideas but not threats. While the United States has been a harbor for many refugees, including Cubans, this room is an academic harbor for those who seek to promote a free exchange of ideas. However, ideas ought to be freely presented and debated with an absence of the rhetoric and emotional appeal we associate with, and hopefully limit to, legislative chambers, political campaigns, and editorial pages of newspapers.

There have been misconceptions regarding our motives in organizing this symposium. I arrived at this law school in 1968. In the early 1970s, we began to host a series of visitors from foreign law faculties to present lectures no different than the one we are hosting today — the nature of laws in transition. The participants were law faculty from Poland, the former USSR,

1. *The White Rose*, in JOSE MARTÍ: MAJOR POEMS (Philip S. Fouer ed. & Elinor Randall trans., 1982).

Yugoslavia, and the People's Republic of China. I visited Yugoslavia, Hungary, and Czechoslovakia in 1972 to study joint venture laws. At about the same time, I published my first book, *The Cuban Expropriations: The Demise of Foreign Private Property*. The premise of that book was that the Cuban expropriations were unlawful under international law. I studied the conditions in Cuba a dozen years after the expropriations in such areas as infrastructure, medicine, education, and Cuba's role in the international community. All the evidence supported the view that the expropriations could not be justified under the public purpose theory of international law.

While that book attracted the blessings of the Cuban-American community in this country, I now stand condemned by one part of that community for my organization of this symposium. Since my visit to Cuba last summer, I have expressed the view in lectures both in the United States and Europe that a full-market economy cannot occur under the current Cuban leadership of Mr. Castro. However, in the past two years that same Cuban leadership has made changes in the legal structure of Cuba regarding trade and investment. I view these changes as part of a transition away from a nearly total non-market economy to one with visible, although somewhat limited, market economy characteristics. I believe that the ideas behind that movement are a topic most worthy of debate in this state's universities because such a debate will enable us to better understand it.

The southern border of Florida is the northern border of Cuba. If we cannot deal with and understand our immediate neighbors, Cuba, Mexico, and Canada, we will not be able to effectively deal with more distant nations. On a wall in the back corner of my office is an etching of Culloden Moor, piled with bodies of the members of the Clan Gordon; a moor where several centuries ago my Scottish ancestors came close to being eliminated. I am named for one of those Scottish ancestors who was captured by the British and drawn and quartered, with his parts placed on the gates of several cities throughout England. Most of us in this room have ancestors who came to this nation to escape oppression. My wife's family fled Europe in the 1870s to escape Prussian terror. I am fully aware of the suffering of a people displaced from an island of extraordinary beauty and of great importance in the development of this hemisphere, including Florida. I also am aware that while several centuries separate my ancestors' dislocations, less than four decades separate many of yours.

While I do not suggest that we forget such incidents, I do suggest that such incidents ought not obscure the foundations of the kind of society to which we all aspire, one in which freedoms exist. One of those most important freedoms is the ability to listen to a vast range of ideas, however dissonant to our own beliefs. The focus today is limited; it is not on United States trade with Cuba. The prohibition of that trade was the subject of the *Journal's* symposium last year. Nor is it directed toward U.S.-Cuban

relations. It is addressed exclusively to the way in which Cuban law is in a state of transition towards a form of economy that will encourage more trade and investment by those nations that, by law, are permitted to trade and invest in Cuba. They include essentially all nations other than the United States.

Let me briefly introduce the members of our panel and the program. We have with us three professors from Cuba. Professor Pedro Monreale is a research associate at the Center of American Studies in Havana and the Deputy Chair of the Department of InterAmerican Relations. He is a familiar face here at the College of Law. He was here in residence for three weeks earlier this year and has spoken frequently over the last few years at various U.S. universities. Second is Dr. Tatiana Camacho. Dr. Camacho is a Professor of Commercial Law and a graduate of the University of Havana. Finally, we have Dr. Luis M. Santana, a Professor of International Law at the Institute of Foreign Trade in Havana.

We also are privileged to have with us two faculty members from Florida International University. They are Professor Raul Moncarz and Professor Leonardo Rodriguez, Professors of Economics and Management, respectively. Finally, a distinguished member of the House of Representatives of the State of Florida will speak to us before the end of the symposium. He is Representative Jorge Rodriguez-Chomat. He was born in Havana, Cuba and has a law practice in Miami. He was elected to the House of Representatives, I believe last year, and we are pleased with his presence.

The hypothetical upon which this symposium is based deals with a German corporation called EUROTECH, which has three subsidiaries. It is incorporated in Germany and is a conglomerate having numerous functions. The subsidiaries, which we will discuss individually, deal with transoceanic shipping, soft drinks, and hotels, and they will be discussed separately.

The first subsidiary with which we will deal is called HAMBURGBOOT, A.G. It is a corporation based in Hamburg, Germany and is engaged in international shipping. It owns a number of vessels outright, as well as several in a joint venture with some foreign equity participation, which is probably irrelevant to this issue. We have a series of questions, and the format that we have followed in each of the past few years is to raise these questions and let each of the panelists respond to them.

The first question centers on carrier liability, that is, the liability of the owners of a ship and the application of laws affecting the carriage of goods at sea. Obviously, if there is shipping between Cuba and another country, one of the possible forums for the resolution of disputes would be a Cuban court. Therefore, we would be interested in the kind of rules that Cuba follows when dealing with the carriage of goods at sea.

PROFESSOR SANTANA:

I will try to make every effort to speak in your language, but please excuse my English, it is not very good. The first question is what rules does Cuba follow, such as the Hague, the Hague-Visby, or the Hamburg rules? Cuba acceded to the Hague Rules on July 25, 1977, and the Rules entered into force on January 25, 1978. The Cuban Rules contain the following reservation: The government of Cuba reserves the right not to apply the terms of the Rules to the transport of goods within national coastal straits. Neither the Hague-Visby Rules nor the Hamburg Rules have been accepted by the Republic of Cuba.

The second question asks whether an issue involving the carriage of goods can be the subject of arbitration or would it be characterized as mandatory law and excluded from arbitration? In Cuba, the parties to a contract of affreightment, covered by a bill of lading or a similar document, have complete freedom to negotiate their own terms. In this respect, it is common for charter partners to agree to refer any disputes arising out of the charter to arbitration in London. There is no mandatory law in Cuba that either hinders or limits the freedom to submit an issue involving the carriage of goods covered by a bill of lading or a similar document to arbitration.

PROFESSOR GORDON:

Let me comment on that in the context of how the rules apply in other nations. More nations have adopted the Hague Rules than either of the other alternatives. Thus, Cuba's adoption of the Hague Rules brought it in line with the majority of nations, including the United States. Some European countries have adopted the Hague-Visby Rules, but relatively few countries have adopted the more recent Hamburg Rules. Because different nations have adopted different rules, there is still the potential for conflict. For example, the rules vary greatly in the limitations on carrier liability and how that liability is calculated. Consequently, if you have two potential forums to resolve the issue, it is important to determine which Rule will apply.

Mandatory laws are important if the parties decide to deviate from the Hague Rules, as is permitted under Cuban law, because then their court will be faced with the question of whether the rules are mandatory law — mandatory law being laws that the parties may not contract away from. The United States considers its adoption of the Hague Rules, codified as the Carriage of Goods at Sea Act (COGSA),² as mandatory law from which a party cannot deviate. The view in Cuba would be more liberal in the sense of permitting the parties to set their own terms.

Has there been any discussion in Cuba with regard to the appropriateness of looking at the Hague-Visby Rules or the Hamburg Rules?

2. See 46 U.S.C. App. §§ 1300-1315 (1994).

PROFESSOR SANTANA:

No, there have been no such discussions.

PROFESSOR GORDON:

The next question is one that we initially placed in the symposium because Professor Roy Hunt is involved in historic preservation and has had some previous discussions with Pedro Monreale on this issue. HAMBURGBOOT would like to locate its shipping headquarters near the port of Havana, an appropriate place for the headquarters of a shipping company. It has seen some of the old colonial buildings in Old Havana and thought of tearing down a block or two to put up a nice, modern, glass commercial tower. Does Cuban law permit this?

PROFESSOR SANTANA:

From our point of view, it could not be done. The reason is that Old Havana was designated by UNESCO in 1982 as a *patrimony of humanity*. From that moment, laws and regulations have been enacted by the local government and are now in force to protect this area from the destructive effects of both time and man. If HAMBURGBOOT were to build a post-modern tower in the middle of Old Havana, it would destroy the historic colonial environment.

PROFESSOR GORDON:

Nevertheless, I want to raise the possibility that the title to the property being considered by HAMBURGBOOT may have been previously held by a company that was an U.S. company or a company owned by Cubans who are no longer in Cuba. How would this be resolved?

PROFESSOR LEONARDO RODRIGUEZ:

One of my areas of responsibility is consulting. I advise firms who are going to other countries or making plans to develop businesses somewhere else. It is important that we recognize that, basically, all property titles in Cuba remain unsettled. Nonetheless, in Cuba they are going ahead and making deals; they are selling properties; and they are establishing contracts with firms outside of the country. The owners or the stockholders of those firms should be very concerned about the eventual resolution of the property title and whether the transactions are valid.

We are not talking just the claims by the U.S. government or by U.S. citizens. People have short memories about the expropriations that took place thirty years ago in Cuba. For every U.S. property that was expropriated, there were as many as ten Cuban properties expropriated. Thus, let us recognize that what we are dealing with is a kind of counterfeit currency. Essentially, we would be trading with stolen property for which you would go to jail in the United States.

PROFESSOR GORDON:

What does the Cuban government say to HAMBURGBOOT when it asks, "What about this title issue?"

PROFESSOR SANTANA:

I have brought with me as an example an agreement that was recently signed between the Republic of Cuba and the United Kingdom. Cuba also has an agreement with Spain, and there is progress toward signing similar agreements with Germany and Canada. I would like to read some aspects of the agreement between the Governments of Cuba and the United Kingdom.

For the promotion and protection of investment, the Government of the Republic of Cuba and the Government of the United Kingdom of Great Britain and Northern Ireland, desiring to create favorable conditions for greater investment by nationals and companies of one estate in the territory of the other estate, recognizing that encouragement and reciprocal protection under international agreement of such investments will contribute to the stimulation of business initially and will increase prosperity of both estates, have agreed as follows:

Article 1 - Definitions

For the purpose of this agreement,

a) investment means every kind of asset, and in particular, those not exclusive, including

1) moveable and immoveable property and any other property rights such as mortgages, liens, or pledges.

PROFESSOR GORDON:

Do you have something to add Professor Monreale?

PROFESSOR MONREALE:

Yes, I would like to address a few issues with respect to investment in Cuba and expropriated property. First, Cuba has successfully negotiated all claims coming from every country except the United States. Thus, the only pending claims stemming from the expropriations are the claims coming from U.S. corporations. The second point is that compensation for these expropriated properties in Cuba can take several different forms. One of these forms could be restitution, but there are many other forms as well. The Cuban government has frequently expressed their openness to negotiate in the future the claims of U.S. corporations.

Let me also clarify that although some investments in Cuba by companies from Europe, Latin America, or Asia may be related to some factories or facilities that were the property of U.S. corporations before 1959 or 1960, most of the new investments are taking place in facilities and industries incorporated after 1961. Therefore, most of the investors coming into Cuba are not concerned with former U.S. properties for the simple fact that most of the investments are not taking place in facilities formerly owned by U.S. corporations.

PROFESSOR MONCARZ:

First of all, I want to thank the University of Florida for inviting us to this symposium. We were late in being invited to this session, but we are here. I think we have to establish from the outset exactly what the overriding problem is for investors interested in Cuba. The problem is that investors are faced with an unpredictable nation trying to do business with the outside world. This problem raises several questions. What was the legal framework in Cuba? How has that framework has changed through time? Will today's legal framework be the same tomorrow or will it be radically different?

We know the legal framework and the process by which it is changed in the United States and other countries. However, in Cuba, the legal framework and how it is changed is not clear. Thus far we have phrased the question as one of a government versus corporations. The problems that Spain and other countries have had with Cuba have been settled. But at what price?

The United States has not resolved these problems. What will be the price of resolution? We do not know. What will be the law? We do not know. At the same time, we have to understand that these investments in Cuba, at least from my viewpoint, must be very short-term. In other words, the rate of return on these investments has to be very fast. The return on investment has a lot to do with the risk involved. Today's Cuba, even though it has done a lot to bring further investment to the island, represents a high political risk. We do not know what is going to happen there. Therefore, the return on investment has to be much higher, and the turnover ratio, that is, the time it takes for the return to be realized, has to be no more than six to twelve months. It is very hard for someone to make an investment in infrastructure when the political risk is very high and the situation is uncertain.

PROFESSOR RODRIGUEZ:

Precisely. The issue of political risk must be paramount in an investor's mind. Companies are contracting with the existing Cuban government, which has been in power for thirty-seven years. If there is something we learn in life, it is that things begin, grow, and mature, and thus they change. Change is a fact of life, and there will be a change in the Cuban government. There will be different individuals at the helm of Cuba, and they may not look upon these current agreements with favor.

Apart from the potential change in these laws or agreements, there is the potential impact of market forces. Many of these enterprises are being set up under artificial economic conditions, maintained by the Cuban government. For instance, the labor force is not allowed to have collective bargaining agreements. This labor force is recruited by the Cuban government and then provided to the foreign company. The labor force is

paid in pesos while the government collects dollars. Thus, as Professor Moncarz has indicated, investors must have significant short-term profits because the long-term environment in Cuba is so uncertain.

There is another aspect of investing in Cuba that requires that foreign companies be very careful. Currently, there is no independent judiciary in Cuba. Today, we are meeting in a law school; a "temple of learning" like the temple that I had to walk away from thirty years ago because I was not able to say and think the way I wanted. The concept of academic freedom does not exist at the University of Havana today. Last year, the Minister of Education of the Cuban Government, Fernando Vesino Allegre said that those who do not agree with the ideology of the Cuban government may not attend the University of Havana. After witnessing today's open discussion of different opinions at the University of Florida, I hope the Cuban panelists will take back to the University of Havana this aspect of academic freedom.

In the future when there is a truly independent judiciary, those who had their property confiscated will be able to go to Cuba in an environment of freedom and challenge those confiscations and any current agreements affecting their property. Foreign companies currently investing in Cuba should think twice about the possibility of having to defend an agreement made with a previous government under conditions that will not hold up in a different environment.

PROFESSOR GORDON:

A few years ago, when we had Mexican participants in this program, I asked the question: "Why would a party be interested in arbitration?" One of the questions we have raised here concerns the possibility of arbitration of a commercial shipping dispute. Investors deal with a number of countries around the world where there is no independent judiciary. The Mexican response was that the Mexican judiciary is so corrupt that the Mexican court system cannot be used. Similarly, there have been substantial trading relationships created recently in Eastern Europe and in the former members of the Soviet Union where there is serious doubt about the independence of the judiciary. One of the traditional methods merchants have adopted to avoid problematic judiciaries is arbitration. Because the Cuban version of the Hague Rules is not mandatory law, parties can use arbitration clauses to choose not only a forum outside of Cuba but also different dispute resolution rules.

However, there is a related problem. Arbitral decisions must be enforced to be effective, and the realistic possibility of such enforcement is crucial in countries where assets are present. Thus, we still must address the problem of an independent judiciary if the country in which we are trying to enforce the decree does not have an independent judiciary. Regretfully, I think we deal with judiciaries that are less than independent in far too many countries in the world.

PROFESSOR RODRIGUEZ:

I think it should be said that the previous government of Cuba, even though it came to power under less than ideal circumstances, had a judiciary that was independent. Even Castro had a fair trial when he was prosecuted for an attack on an army barracks. He was able to express himself, and later he had the opportunity to live in the United States, something that his government has never offered to its citizens. Instead, he has ordered over 12,000 executions. I think these facts underscore the legal environment that exists in Cuba today.

PROFESSOR SANTANA:

Two to three weeks prior to the symposium, we received from the University of Florida the hypothetical regarding commercial, trading, and investment matters. We prepared answers as university professors and as lawyers since we are not politicians. Our answers are to legal questions on legal matters. Our purpose here is to answer these questions within a legal framework.

At this point, let me add one other thing. The document referred to earlier, that is, the agreement signed between the governments of Cuba and the United Kingdom, was signed on January 30, 1995. Similar agreements have been signed with Canada, Spain, the Netherlands, and France. Currently, there also are negotiations with Germany and Mexico for similar agreements. As far as I know, all these countries have a very long tradition in legal matters. I think many people in this room are familiar with the traditions of England. I assume that England is aware of the risks involved in making investments in Cuba and has decided that it is worth their while anyway.

PROFESSOR GORDON:

The potential change of government in Cuba raises the question of whether these agreements will be respected by a future government. I think we have a number of instances where although there has been an extraordinary change in the political economy, a willingness to fulfill previously made agreements remains. Thus, I suspect that a company that has taken a property where the title is questionable would have the ability to perhaps receive restitution, or more likely compensation. This issue has a very rich recent history in Eastern Europe; particularly, in regard to the former East and West Germany. There, a combination of restitution and compensation has been the standard means of resolution to this problem. I would like to move on to the questions that we have presented.

HAMBURGBOOT found some problems in going into Old Havana, and it was suggested that perhaps it had better look at alternatives sites. How would it go about finding a location, and in particular, what kind of structure would it be able to create?

PROFESSOR SANTANA:

HAMBURGBOOT may want locate its shipping headquarters near the port in Havana. Although it is not permitted to build the modern, glass commercial building in Old Havana, this building could be built in Verradarro or Miramar. These city districts are very near the port, only five to ten minutes by car.

There are some very recent regulations regarding real estate and immovables, which should encourage private interests and joint ventures to buy houses or apartments. These would be built in association with the National Housing Institute. Buyers will get title to the buildings but not to the land on which they are erected.

Additionally, be advised that a Cuban corporation has been recently incorporated to refurbish and maintain the colonial buildings in Old Havana, operate museums, and create the proper conditions and services for tourists visiting the area. This corporation and a group from Spain have established the first joint venture in Cuba for real estate and immovables. In addition to other things, they will refurbish some very famous buildings in Old Havana.

PROFESSOR RODRIGUEZ:

We are obviously being faced with a series of laws and all types of legal reforms to carry on business. Again, the issue is how long are these laws going to be good? One year? Two years? Three years? We have a government that is not faithful to its own laws or to what it says. For instance, we are still waiting for free elections, which were promised long ago.

Now that the socialist model has failed because the former Soviet Union has ceased to send US\$4 to US\$5 billion a year, the Cuban government has turned around 180 degrees and is trying to attract foreign firms to sustain its economy. However, investors must be wary of this new attitude. Ricardo Alarcon, President of the Cuban National Assembly, recently said that people who think Cuba is moving toward the capitalist system are idiots. Does that mean that the Spanish company and the British Government who signed the agreement are idiots?

PROFESSOR GORDON:

I think what we need to do is to realize that so much of what has been said has been talked about for over thirty years, and that we have a situation in transition where there is still a great deal of political commentary going on between the two countries. Ricardo Alarcon is viewed in this country as a politically volatile individual. What we are really interested in exploring today is something very different, and I would like to try to concentrate on the framework that is currently developing in Cuba. What we are trying to do is to see whether or not there is a legal transition going on, and if so, what is the nature of that legal transition. Countries have had to deal with

other nations in transition throughout the world. There are many countries, as reported by Professor Santana, that have entered or are entering into agreements with Cuba, and many foreign companies are searching Cuba for business opportunities. The viability of these business entities is at risk. Maybe, the risk is too high. I think most investors around the world who have conservative concerns will find these risks too high. While we ought to be aware of the risks, it is valuable to know how Cuba is changing its laws in this area.

PROFESSOR MONCARZ:

The hypothetical company, HAMBURGBOOT, has a lot of problems because they have to rent and do not know for how long. So, it is very hard for them to get into a permanent location. They have to enter into a very short-term arrangement.

The company also needs to be concerned about items that go into the investment process such as the infrastructure. What is the infrastructure in Cuba and in Havana for their facility? Will the workers come on time? Are there enough services to get to the type of headquarters that we are talking about? Finally, the contracts between the government of Cuba and most corporations are short-term, therefore, there is little time to recoup investments. Further, I see three problems with locating the shipping headquarters in Cuba. First, who is going to finance the building? Is it going to be self-financed? Is the Cuban government going to finance it? Is the German government going to finance it? Second, again what is the legal framework? Third, there is question of management styles. How will the management styles of the shipping company, the Cuban government, and the Cuban workers making this building mesh? Will the company import German workers to build the building, following German specifications? Which specifications are going to be followed? How costly is the building going to be? What other alternatives are there for setting up the headquarters?

PROFESSOR GORDON:

Our next question is: What are the prerequisites for moving the shipping headquarters of HAMBURGBOOT to Cuba?

PROFESSOR SANTANA:

The Chamber of Commerce of the Republic of Cuba was established by Law Number 10-91, on February 1, 1963. It has been entrusted with the National Register of Foreign Representations in Cuba and the Register of Economic Associations, established under Provisions of Law Decree Number 50, dated February 15, 1982 (1982 Joint Venture Law).³ The application for

3. Declaracion Legislativo Numero Cincuenta de Esociacion Economica Entre Partidos Cubano y Extranjero [Legislative Decree Number 50 on Economic

registration of a foreign representation office should be formalized in the National Register of Foreign Representation by the interested parties. The interested parties or their legal representatives are required to present the following documents:

(1) A signed, written standard by a competent officer of the entity, requesting authorization for the establishment of an office in the Republic of Cuba. The signature of this officer should be signed and notarized before a Notary Public or Chamber of Commerce of the entity's country of origin;

(2) A certified copy of the Act of Constitution of the entity. This should be legalized by the Cuban Consul in the corresponding country and certified by a Cuban Notary Public;

(3) A Power of Attorney and capacity of representation of the institution in Cuba. This should be legalized by the Cuban Consul in the corresponding country and certified by a Cuban Notary Public;

(4) A curriculum vitae of each representative of the entity;

(5) A list of the Cuban enterprises and organizations involved in negotiation with the entity in Cuba and the volume of transactions made within the last three years, if any;

(6) A detailed explanation of the entity's interest in establishing an office in Cuba, based on mutual benefits for both parties and relations with the entity's main activity;

(7) Banking references issued no more than three months in advance of the date of presentation of the application papers; and

(8) Information on the production, technical, or service activities in the last five years; also activities and locations of subsidiaries or branch offices in other countries it believes will be involved in its relations with Cuba should be stated.

All documents written in foreign languages should be accompanied by a Spanish translation with a statement that they are accurate translations of the original document. If approved, the company must operate in compliance with the restrictions and the license extended by the National Register of Foreign Representation under the Chamber of Commerce of the Republic of Cuba.

PROFESSOR GORDON:

In organizing this company, we are going to be looking at legally trained advisors. Professor Camacho, can you tell us about the law firms that have been created in Cuba, their nature, the training of their people, and the role they play? I know that you are involved in their training.

Association Between Cuban and Foreign Entities], Gaceto Oficial, Feb. 15, 1982, at 11, English translation *available in* Cuba: Legislative Decree on Economic Association Between Cuban and Foreign Entities, 21 I.L.M. 1106 (1982) [hereinafter 1982 Joint Venture Law].

PROFESSOR CAMACHO:

In Cuba there are, at this time, four independent law firms. According to Law Decree Number 77, dated January 20, 1984, these firms are considered civil societies. They are authorized by the Minister of Justice to provide to natural or political persons, the following services. They may give legal advice for the establishment of joint ventures and other forms of economic associations authorized by the 1982 Joint Venture Law. These firms may assist in the writing and review of contracts, the registration and protection of intellectual property rights, and providing secretarial services. They also may provide legal aid to the state administration bodyguards and the government attorney's office. Finally, the firms may provide assistance in a variety of areas including arbitration, preparation of tax liquidation reports, translations, legal responsibility studies, and the arrangement of various permits and visas.

PROFESSOR RODRIGUEZ:

I would like to follow up on your statement, Professor Gordon, concerning the legal advice and what Professor Camacho just mentioned. From what I have heard law firms in Cuba today basically are not independent law firms, as we understand them in the United States or as we used to understand them in Cuba before Castro. This also applies to independent C.P.A. firms that analyze the financial statements and could present a point of view that might not be in accordance with what the Cuban government wants to be stated. I think we should clarify that the terms independent law firms and independent accountants do not have the same connotation in Cuba as they do in the United States.

Law firms and accountants are government functionaries, fulfilling a role assigned to them by the Cuban government. An attorney in Cuba would never challenge the government. An independent C.P.A. would never state that the financial statements of any organization in Cuba were other than they officially appeared. That has not been possible since 1959-1960. I think it is important that the audience realize that what we in the United States understand as an independent attorney or an independent C.P.A. is totally alien to those professions as they exist in Cuba today.

PROFESSOR GORDON:

I think that we are aware that the type of independent law firm that we see in this country and that we had seen in Cuba prior to 1959 is not exactly what is in Cuba now. Nor is it exactly like what had been in the Soviet Union during its very long history of communism. However, there were lawyers and law graduates of Moscow State University, and they did practice law. They were often in the difficult position of doing work at the behest of the government while attempting to enhance trade between the Soviet Union and other countries.

Is there any prohibition of HAMBURGBOOT's German attorney entering Cuba and negotiating with Cubans? To what extent do the independent legal counselors in these offices have an opportunity to deviate within the law? As I understand it, the 1982 Joint Venture Law has a number of provisions that are flexible in interpretation. Is that where we find a measure of independence in working within the framework of many rules. We work within a framework of rules in the United States, however, the framework of rules in Cuba is considerably more restrictive. What do you see as the independence of the lawyer representing HAMBURGBOOT?

PROFESSOR SANTANA:

I have had personal experience in this matter because I acted as a lawyer on the commission that prepared the proposal to the government in 1982 for the enactment of Law Decree Number 77, creating the possibility of establishing independent law firms. In Cuba there is a code of ethics for lawyers and attorneys, just as there are in most parts of the world. These law firms have been established with the approval of the Minister for Justice, and registered as partnerships as a civil society. The lawyers who form this society work independently and according to the code of ethics; they give free advice. It is possible for any lawyer, a foreign lawyer from Germany, France, or England to visit Cuba. Foreign lawyers visit Cuba and are in touch with these Cuban law firms. I can provide the names of the foreign law firms who have done business in Cuba, and you may ask them if they have any complaints with the advice that the independent lawyers have given.

Perhaps, the problem is that the other members of the panel have not visited Cuba for many years, and if they were to go visit these law firms, they would have a different opinion.

PROFESSOR RODRIGUEZ:

Through these laws, I see a legal structure being set in place. I do not see, the same rights for individuals as far as legal access to challenging the government. For example, there are people who have lost property in Cuba and have remained in Cuba, but have not been compensated. These Cubans have been denied the most basic elements of liberty: private property and free contracting. Without these things you do not have individual liberty.

PROFESSOR GORDON:

I think we are again getting far afield from what we would like discuss. I think we have looked at the expropriation issue as much as is necessary for the purpose of our hypothetical. We have some other questions that I think are important. What kind of legal education have the independent legal advisors had? What is their background? Can you tell us about the preparation necessary to practice law? I ask this because I think our law students are curious about legal education in Cuba. How long is the education and what materials do you use? Do students receive training with respect to Spanish or European laws in their lessons?

PROFESSOR MONCARZ:

What are the admissions requirements, Professor Gordon?

PROFESSOR RODRIGUEZ:

Yes. The admissions requirements, according to the Minister of Education.

PROFESSOR GORDON:

Alright. How do students enter law school?

PROFESSOR MONCARZ:

To get into the University of Florida College of Law is very hard. Is it the same in Cuba? What are the prerequisites?

PROFESSOR RODRIGUEZ:

There are ideological considerations, aren't there?

PROFESSOR GORDON:

How do you view the process?

PROFESSOR CAMACHO:

We have a general plan of material in relation to the studies at the University of Havana. I think it is sufficient. We receive information from Europe, Latin America, and many countries throughout world. We try to give the students all the information necessary for them to understand situations all over the world and to compare what has happened in the rest of the world with the laws and changes we are experiencing in Cuba. I have not heard any questions or complaints in relation to the information that we give to our students.

PROFESSOR GORDON:

Do your students have access to foreign material in their studies? For example, regarding international trade, do they have access to the WTO documents?

PROFESSOR CAMACHO:

Yes. The students can go anywhere to find any information they need. We sometimes suggest topics to them, but they can go anywhere to find the information and can ask us about whatever they wish.

PROFESSOR GORDON:

I found it interesting that even during the most difficult times in the Soviet Union, the greatest access to information was given to law students at Moscow State University not in their first year but in their second, third, and fourth years. At that point in their legal education they truly had access to information from all over the world, albeit within a rather closed, privileged class. Is that anything comparable to what exists in Cuba?

PROFESSOR SANTANA:

Let me clarify something. Because I have heard some comparisons between the former Soviet Union's legal establishment and Cuba's. The members of the panel, I am sure, know that a long legal tradition existed in Cuba before the revolution. One of the most famous faculties at the

University of Havana was the Faculty of Law. I must say that there is no comparison between Cuban lawyers, both before and after the revolution, and lawyers in the former Soviet Union. One of the most complete libraries at the University of Havana and in all of Cuba is the library at the Faculty of Law. All students and professors have access to every book and journal from every part of the world that they need for their studies.

I want to remark on one other thing regarding the administration of justice. Visit Cuba freely and see how the administration of justice operates. Take a taxi and ask the driver to take you to the Court. The sessions and the trials are public. You may enter freely and see what happens. See if the defense attorney complies with the ethics of any lawyer in the world. I invite each of you to observe our court system.

PROFESSOR RODRIGUEZ:

Professor Gordon, I have one question before we proceed. Since we are talking about the law school, I need some clarification. You are talking about the accessibility of books and computers, for example. I am more interested in the accessibility to the Cuban youth of the law school. The Minister of Education in Cuba has said that the University of Havana will not be open to those who do not agree with the revolution. I think it is important that we recognize that we have a university in Cuba to which people who differ ideologically or politically with the government have no access and that troubles me. It troubles me because it was not that way from 1958 to 1959 when I went to the University of Havana. I do agree that they have a wonderful library in the law school because it was there when I left.

PROFESSOR GORDON:

I would like to turn this over, as I have promised, to Representative Jorge Rodriguez-Chomat. He who has come from Tallahassee this morning and must go back later today, although as we say about all of our legislators, "We are safest when they are not in session or when we can keep them away from Tallahassee." Jorge Rodriguez-Chomat is currently serving in the Florida legislature. He also has practiced law in Miami for a decade. Thank you very much for coming.

REP. RODRIGUEZ-CHOMAT:

I would like to thank you, Professor Gordon, Leonardo Rodriguez, and Professor Moncarz. I would like to thank Dr. Lombardi for the privilege of being here and addressing you today. Ladies and gentlemen, faculty and staff of the University of Florida, first let me identify myself. I am Jorge Rodriguez-Chomat. I am a State Representative for District 114, which is an area in Kendall in the southwest section of Miami. I am 49 years of age. I am convinced that at this point in time I represent not only the 110,000 residents of my district, but also the 2 1/2 million Cubans who live outside of Cuba. As a matter of fact, I am convinced that I also represent more than

80% of the population of Cuba. I appreciate the honor of being here and being allowed to address all of you.

The University of Florida is a great university. It is a shining example of a bastion of free speech and academic freedom. The President of the University, Dr. John Lombardi was under heavy pressure to cancel this symposium. A number of representatives asked him to cancel it because they considered it offensive to themselves and to the Cuban people. Dr. Lombardi had the courage to deny our request. He came to Tallahassee yesterday and told us that because there was academic freedom and free speech, and because we could learn from this experience, the symposium would not be canceled. He also invited us to participate. I told Dr. Lombardi that I would not sit at the same panel, that I would not participate with three Cuban agents espousing the breach of U.S. law.

Dr. Lombardi said I would be able to give my speech without censorship and without limit. While you talk about a Cuban legal system allegedly in the process of evolution, about a Cuban legal system encouraging foreign trade and investments, you must look at it from a historical perspective.

Let us review Cuba's history, because history repeats itself. In 1959, almost at the beginning of the revolution, the present Cuban government enacted a law that expropriated from the Cuban people, U.S. companies, and anyone else who owned private property in Cuba, every piece of land of an agrarian nature. Then in 1960, this same regime, with the same man in power, enacted another law that took away houses, condominiums, commercial buildings, and every piece of urban real estate from the people.

One year later, the same government decided that money should not have its true value and passed another law. Then the government passed another law, which required everyone to exchange all of their money. If you had anything over 1000 Cuban pesos, you lost that amount. For example, I remember my father had 11,000 Cuban pesos. After turning them, he walked away with 1,000 pesos and official papers that said we could go to a bank and redeem a hundred pesos a month for the next ten years.

From 1962 to the late 1970s, the Cuban government proceeded to confiscate, expropriate, and steal every piece of private property in Cuba from every Cuban citizen and those who were not Cuban citizens, including U.S. and other foreign companies. In the 1980s, however, the Cuban government decided to give a break to free enterprise. For example, because not enough food was being produced in Cuba, the government encouraged small farmers to open farmers' markets. The farmers did and were very successful. There was a new capitalistic breed within the revolution. Within two years, Castro decided that those people were enriching themselves at the expense of the people, and he took away their properties and their businesses. Additionally, many people were sent to prison for being counter-revolutionaries. That is the historical perspective.

Now Cuba wants people to invest money in Cuba. Well, they should think about the safety of their investment. When I went to Miami-Dade Community College in 1967, I was told by a professor in Economics 101 never to gamble with the stock market. Rather, you should invest in the stock market, otherwise you will lose your shirt. I suggest to you, ladies and gentlemen, that investing in Cuba today is high-risk gambling. It is gambling in two ways. First, an investor is gambling that history will not repeat itself and Castro and his puppets will not steal the investment. The investor is gambling with the future Cuban government, because there will be a future Cuban government. There will be a time when Castro will no longer rule Cuba.

When that happens, ladies and gentlemen, all of those who have invested in Cuban property since 1959 will have a high risk of losing their investment to Cubans who did not support the present Castro regime and had their property stolen and have filed claims. They are entitled to those properties that are now being sold or given into joint partnerships with the government. It is a basic principle of our legal system that if you steal from somebody, you cannot pass title to that property to someone else. This is a fundamental principle in every free society in the world, but not in Cuba. In Cuba, stolen property is sold by the government to European investors. I know we were told that this symposium had nothing to do with the embargo, investments in Cuba, or trade with Cuba, but I believe that it has everything to do with them.

When you invest, you must take into account the safety of your investment and the return on your investment. If you give money to the Cuban government, how do you expect to be paid? The Cuban government owes billions of dollars throughout the world; billions of dollars in debts that have not been paid to their creditors. This is proof that Cuba cannot pay you back. Cuba does not buy oil and food for its people because it does not have the cash. Without cash, you cannot repay your debts. So, how are they going to pay you back on your investment?

You also must consider the labor pool. Let us talk about labor and the cost of the employees who will work for you. This is the one thing that the Cuban government has to offer. It has slave labor; slavery happens in Cuba when Cuban women, young Cuban women, have to sell themselves because this regime cannot feed them, cannot provide them employment, and forces them to do that type of activity in order to be able to feed themselves and their families. That is disgusting.

Now let me also talk about bloodshed. Are we going to forget about the blood that has been shed in Cuba? Are we going to forget about the worst assassin that ever populated this hemisphere? Are we going to forget that this man, Fidel Castro, has killed more of his own people than any other dictator in this hemisphere? He deserves a seat next to Stalin, next to Hitler,

and I hope in the near future a seat in the warmest spot of hell.

Even now the bloodshed continues. Less than a year ago, there was a boat that attempted to leave Cuba. It was called *El Trece de Marzo*. In that boat there were forty to fifty Cuban men, women, and children whose only crime was to try to leave Cuba and come to the United States. The regime did not like that and sent its vessels and assassinated those people, who are today on the bottom of the sea, a few miles from the northern coast of Cuba. Can we forget this?

Can you forget your personal safety? Can you forget your personal safety when you are going to make an investment? Is it worth it to you to own the whole campus if you are dead and cannot enjoy it? Personal safety, ladies and gentlemen, comes into play in this situation because Cuba does not have a legal system.

Instead, Cuba has the law of one man who is a dictator, a tyrant, and an assassin. Let me refer you to a *Miami Herald* article from the day before yesterday.⁴ A young woman, Liz Balmaseda, wrote a beautiful article, where she refers to a man by the name of Yndemiro Restano. Yndemiro Restano spent ten years in Cuban jail because he founded a party known as The Harmony Movement. He disagreed with the Cuban government. As recently as 1992, he committed another crime; he distributed leaflets. He was not in agreement with the system, and he went back to prison and will continue to do time until the Restia de Viran decides to let him go. His only crime was not agreeing with the system.

Is it worth it to you to put your money into the Cuban economy and then perhaps be arrested because you happen to say something that is not pleasant to the man in power? You do not have a legal system in Cuba; you have a dictatorship and the will and the power of one man that has been carried out against the Cuban people for the last thirty-five years through the force of machine guns. Earlier in this symposium Professor Gordon referred to his trips to Cuba in 1957 and 1994. In 1957 he saw a prosperous country. He saw democracy in action. He saw people able to say whatever they wanted. Granted, we had a president who was considered by many to be a dictator. But there was an incredible amount of freedom, especially as compared to what now exists in the Republic of Cuba. In 1994, I am sure that he saw a completely different picture. I hope the dream that Professor Gordon has, which is one of going back to Allestaran in Old Havana and sipping a glass of wine in friendship with people there, will never materialize. I invite him to go back to a Havana where freedom and democracy really exist, not to the Havana of today where that assassin continues oppressing the Cuban people.

4. Liz Balmaseda, *Cuba's Price on Freedom Leave Country*, MIAMI HERALD, Apr. 12, 1995, at 1B.

I have heard about the claims being resolved, except those claims from the U.S. government and U.S. individuals. I suppose our panelists forgot about the Cuban individuals. They are not human beings in Cuba. Castro does not believe in human rights. Castro's government violates human rights all the time, or should I say does not violate them because they simply do not exist and something that does not exist cannot be violated. As a result, it is incredibly risky to invest in Cuba.

I know there are some people here who are obvious Castro sympathizers. It is a great pleasure to live in a country where you can espouse your ideas because you would not be able to do that in the Republic of Cuba. But I do not want to end this speech without making an invitation. I do not know if the panelists from Cuba are Castro agents or not. I highly suspect they are. I do not know if they are Communists. I highly suspect that they are. I do not know if they are in fact freedom-loving Cubans or simply supporters of the Castro regime. I highly suspect that they support the regime. But giving them the benefit of the doubt, I would like to extend the best invitation that they will ever receive. That is the opportunity to make history today and to defect. Defect and stay here. Ask for political asylum. Do not go back. Do not play the game. Do not be a socialist.

PROFESSOR GORDON:

Next, we will look at the materials that illustrate the extraordinary amount of interest in Cuba throughout Europe. The comment that I received in Cuba last summer from Cubans was that their greatest fear is that Cuba will someday be governed by Miami Cubans. The greatest fear of Cubans living in Miami is that they will not someday govern Cuba. I think we have just seen that illustrated in the last thirty minutes.

AFTERNOON SESSION

PROFESSOR GORDON:

I cannot not help but think of the many times in the past when I have been in countries in Europe, in areas like Titograd, Yugoslavia, at the expense of our government and have been accused of being a CIA agent and a lackey of the U.S. government. I sat there and thought, gee, the CIA has never called me. All these years I have been waiting in my office for the call from the CIA headquarters in Langley, Virginia to come, and I would get to do something secretive and different, but the call never came. Still, time after time, I was accused of being one of those people. Someone mentioned to me today that one of our famous American authors, when asked what free speech was, said "I do not know what it is but I know that it does not start until you get mad." I think we are exercising free speech here today.

Our second hypothetical concerns a French corporation, ECC-BOTTLE, S.A. It produces several soft drinks marketed in Europe and some African nations. It also produces rum, partly because it receives sugar from the

African nations in exchange for the soft drinks. It has developed some advanced technology in rum distillation and in the process of bottling. ECC-BOTTLE is in the process of now making enquiries in Cuba. One of the first enquiries regards their soft drinks. Would the company be able to become engaged in trade? We are not talking about investment, we are talking about trading goods.

PROFESSOR CAMACHO:

There are no restrictions in Cuba on trade with respect to soft drinks. The company only has to take into account competitive forces.

PROFESSOR GORDON:

Now who would buy these goods in Cuba? Who would purchase soft drinks? What is the structure of their companies?

PROFESSOR CAMACHO:

Well, ECC-BOTTLE's products can be purchased by foreign firms, whether established in Cuba or not. However, these firms have to be authorized to deal with such products in the Cuban territory. They can operate either directly or through representatives. In addition, the products can be purchased through private Cuban companies or state enterprises with the same restrictions mentioned above, according to its commercial activities.

PROFESSOR GORDON:

Who would actually do the purchasing if the soft drinks were, for example, to be sold in government dollar stores or government hotels. What government agencies does one go to see in order to sell soft drinks?

PROFESSOR CAMACHO:

Well, when a foreign firm applies to the National Register for Foreign Representations under the Chamber of Commerce, it leases the product that it intends to commercialize. The Ministry of Foreign Trade gives authorization by means of the license granted. In this kind of transaction, no other agency or ministry participates.

PROFESSOR GORDON:

Now, assuming a conflict arises, what commercial laws will apply.

PROFESSOR CAMACHO:

Cuba's 1885 Commercial Code and some supplementary provisions to this Code would apply. There is also the Civil Code, Law Number 59, published in the *Official Gazette* in October 1987.

PROFESSOR GORDON:

It is interesting that in nations that are in transition some of the laws that were in existence long before revolutionary periods very often are still in effect. You referred to the 1885 Commercial Code. Many civil law nations have commercial and civil codes which are very old codes but tend to retain their use during times of greatly fluctuating political climates. I gather that is the case in Cuba, that the foundation for commercial transactions has essentially remained the 1885 Commercial Code, even though the quantity

of trade may have diminished substantially.

PROFESSOR CAMACHO:

Yes. That seems to be the case.

PROFESSOR GORDON:

One of the conventions that has been adopted in many countries around the world, including the United States, is the U.N. Convention on Contracts for the International Sale of Goods (CISG).⁵ This Convention is something that often is omitted from discussion in our classes. Is there any discussion of the adoption of that Convention in Cuba?

PROFESSOR CAMACHO:

As far as we know, not yet.

PROFESSOR GORDON:

Are you aware of this Convention? Is it something with which you are familiar?

PROFESSOR CAMACHO:

No, not at all.

PROFESSOR GORDON:

It is essentially a substitute set of substantive rules, of contract rules, which apply in place of domestic contract rules for the resolution of a transaction, if the contract is an international contract and if both parties are members of contracting states. It would certainly seem to me that is something that we will see adopted in most countries. In selling to Cuba, would the company have the choice of selling to an enterprise or agent, who would take products on a consignment basis but not take title or sell the goods directly with title passing to a distributor?

PROFESSOR CAMACHO:

Any of those possibilities could be used. Today in Cuba, there are all types of business people and firms. In some cases, they have been incorporated through national entities or have established agencies in Cuba. While, other businesses have decided to operate from their respective countries.

PROFESSOR GORDON:

One of the more sensitive areas in international trade is how goods are paid for. The Cuban currency, obviously, is not an international currency at this time. Companies in France are not going to want to be paid in Cuban pesos. The company in France is going to insist upon is payment by letter of credit. Is that possible?

PROFESSOR CAMACHO:

Yes, that is possible.

5. 15 U.S.C. App. (West Supp. 1996).

PROFESSOR RODRIGUEZ:

I have a question concerning the last item, the payment of debts. According to the *British Intelligence Unit*, Cuban debts as of December 31, 1994, were US\$7.5 billion; US\$2.2 billion is owed to the Paris Club; US\$1.62 billion to other governments; US\$2.2 billion owed to banks; and US\$1.5 billion owed in commercial debts. In addition, of course, there is around US\$22 billion to the former Soviet Union. Cuba is having a problem getting credit. How are they planning to solve that?

PROFESSOR GORDON:

Good question. I think it is an important question because I think that area has not been discussed. It seems this situation forces most transactions into cash transactions or letters of credit transactions. Letters of credit are very difficult to use unless you have some sense that they are going to be paid. ECC-BOTTLE is not going to be willing to become creditors of a Cuban agency. Rather, it will want either to be paid in cash or to use a confirmed letter of credit.

The process, for those of you who are not aware of this, would be for the purchaser of the goods in Cuba to go to a bank. The first question would be what bank? A letter of credit by a Cuban bank would probably not be acceptable by a foreign seller. They would want it confirmed by a French bank. The French bank then would promise that once those goods were shipped from France to Cuba, the seller could take the shipping bills of lading to the bank, and the bank would make payment. The French bank would then collect from the bank in Cuba. The Cuban bank, in turn, would collect from the party that drew on the letter of credit.

How effective is the use of letters of credit in Cuba for the payment of goods? Is it being used as a method of payment for goods?

PROFESSOR CAMACHO:

Letters of credit are considered as commercial as are all other payment instruments, but they are very expensive to use in Cuba. Banks all over the world will issue Cuban letters of credit. However, international banks usually ask for confirmation, which makes the transaction more expensive.

PROFESSOR MONCARZ:

Let us backtrack a little. If I were ECC-BOTTLE and wanted to sell to Cuba, first I would want to know how Cuba is going to pay for my goods. One of the reasons we are here today is that the Cuban government is in grave financial difficulty so they are trying to export. Cuba is not interested in importing consumer goods like soft drinks. They are interested in exporting things like minerals and oil. As Professor Rodriguez has mentioned, Cuba owes over US\$7.5 billion throughout the world. They have not repaid this debt. In other words, they do not have credit, consequently, since they do not have credit, they cannot use letters of credit.

I have asked for some months to find out about the Cuban banking

system because it is an interesting subject of discussion. How has the Cuban banking system evolved through time? What is it that exists today? My understanding is that there are three official banks. Some of the foreign companies do business with these banks, which mainly has to do with the deposits that they bring to Cuba. In other words, when they want to deal with the Cuban government, they have to make a deposit. Thus, investors deposit money in those banks, into which, I might add, the Cuban people cannot deposit money. These banks are merely banks of foreign commerce for foreign investment in Cuba.

Remember that we are dealing here with investors and the Cuban government. Can the Cuban people put money in the bank? Can the Cuban people exchange this money for dollars or for francs or for some other currency? Can the Cuban people invest in this soft drink company? I think from a theoretical level, it is very interesting to see how we can apply these commercial measures. As an example, the letter of credit is a great commercial instrument. It is a great commercial instrument when you have established a relationship through time. The Cuban government is trying to change this relationship, but the record has not been a very good one until recently. This is why they do not have this type of credit. This is why they usually have to pay cash. This is why Cuba needs to export and why they have to import capital. They must import capital in order to export, otherwise, the country is going to go down the drain. So how can they get capital? This is why we are here, to hear both sides in terms of how do they will get capital.

PROFESSOR RODRIGUEZ:

Financing is a major problem for prospective investors in Cuba. Joint venture partners must self-finance or find creative ways to secure their investments because Cuba has no credit of its own.

PROFESSOR GORDON:

I think there is no question that Cuba's debt is a very difficult situation. Mexico's debt is a problem as well. Many other countries are in debt. It is very difficult to trade with Mexico because it is hard for Mexicans to get letters of credit in the same way that it is hard for Cuba.

PROFESSOR MONCARZ:

There also is a foreign exchange problem. In the case of Mexico and other countries, it is great to get this influx of capital, but is Mexico exporting? That is the important question. Get the exports, and you get the capital, but what do you do with it? That is, of course, the subject for another symposium.

PROFESSOR GORDON:

This leads to the issue of the viability of the nation's currency, and the Cuban currency has certainly been an artificial currency. I know Pedro Monreale talked about the changing rates of the Cuban currency when he was

here before. However, that situation has since reversed direction in the last few months. I wonder if you would comment on the difference between the official value and the real value in the last couple of years and what has been happening to the real value of the currency and why.

PROFESSOR MONREALE:

Before I address that, I would like to put in perspective the analysis we are trying to conduct here. In order to better understand the issues of foreign trade and investment in Cuba, and the interactions between foreign trade, foreign investment, and the legal system, it is important to understand some basic facts about Cuba. Otherwise, it might be considered that we are talking about a hypothetical country where time has been frozen and nothing is happening. I propose the opposite view in order to understand the country and to forecast the future of the country.

First, it is a very well established fact that Cuba has been in the worst economic crisis of its history during the last five years. I could tell of worse things about this crisis than anything already mentioned. Cuba is in a tremendous economic crisis. There are social problems in Cuba; the kind of social problems that Cuba has not known during the last thirty-five years. The political system in Cuba is very different from other political systems. Cuba also is a political system that is under a strain, that is, an embargo by the most powerful country in the world, the United States of America.

Nevertheless, Cuba has conducted trade with almost every country in the world other than the United States. There are more than 400 foreign companies represented in Cuba and conducting business in Cuba. There are more than 150 joint ventures in Cuba between Cuban enterprises and foreign investors. One and one-half billion dollars have been invested in Cuba, and the amount of that investment is increasing. It is important to realize that although there are tremendous problems in Cuba, something is happening in terms of foreign trade and investment. In order to explain this complex reality, we must address the issues in a more concise manner.

Of course, there is the problem of risk. My point is that although we have all these problems, there have been enough people, governments, and enterprises willing to take those risks. We have the problem of a trade-off between the risks and the kind of incentives that the Cuban government has to offer. My point is that we are seeing a reversal of the trend that we had seen in past. Increasingly, there may be conditions in Cuba that would reverse this trend. For instance, Cuba might offer less incentives because other conditions in Cuba might change.

Let me go directly to the point of the political risks, because I think it deserves attention. Of course, I think that in Cuba, even the most optimistic investor perceives political risks, but for reasons very different from the reasons of the past. The risk they see is not that they will see a government radically different from the current one sometime in the future, but that in

this period of transition, there are political risks. Perhaps these risks are too high; however, Cuba is not alone in having political risks.

I think a very important feature of this transition is the option of market-oriented structures and policies. There has been a very important process of institutional transformation, particularly in the legal system since 1990. There has been diversification in the organization of the economy. New forms of property have been created. Of course, the Cuban government is not going to capitalism. I think that it firmly believes it will have to maintain important elements of the socialist system, but it has adopted policies that have created the present diversification in the Cuban economy. Incidentally, the most important transfer of assets from the state to other economic sectors has not been in the foreign investment sectors. Most of the assets that the Cuban government has been transferring to other institutions are not going to foreign investors but rather to the Cuban people. Five million acres of land have been transferred to the people in the last twelve months.

Another important element we are seeing in this process of transition is a change from short-term investment to long-term investment. The bulk of foreign investment in Cuba is long-term investment in the mining sector of the economy. The return on these investments will not occur in just one or two years. If we review the facts we will see that most of the foreign investment in Cuba is for contracts of twenty-five years, with an option to renegotiate for an additional twenty-five years. Finally, I think this is a learning process for the Cuban government, for the new business organizations in Cuba, for the foreign partners, for lawyers, for economists, and for the Cuban people.

One of the most interesting features of this transition is the Cuban government's attempt to diminish the level of risk and refine the legal system. However, I agree with my fellow panelists that it is not perfect. Nonetheless, we are initiating a process to rectify the legal system in order to allow transition in Cuba. A new law for foreign investment will be debated in Cuba that will address most of the issues that we are discussing today. Further, as was stated earlier, foreign governments and the Cuban government have been signing agreements for the mutual protection of foreign investors. Cuba is working to reduce the risks faced by foreign investors. How effective Cuba will be at reducing these risks remains to be seen.

I think foreign governments have moved to defend their investors. They are really interested in doing things in Cuba, which is a new area of development. What I have seen above all else, is that the most important elements are trying to reduce the risks in Cuba. Foreign investment in Cuba is the centerpiece of economic growth in Cuba. I think that it is important to allow foreign investment in a country with a growing economy.

Partially related to the problem of risk is the issue of the economic reform that is currently taking place in Cuba. A huge debate is taking place about how to proceed with economic reform, and I think that this reform will be important in providing more confidence to foreign investors. At the same time, a private and corporate sector has been created. Further, most of the action in terms of economic reform is in the area of the domestic economy. I think, and many people in Cuba would agree with me, that economic reform is a critical issue in order to allow and create a more viable environment for foreign investment.

Sometimes when the question is asked, "How could Cuba obtain foreign capital or credit?," I think that we are talking on different levels because, at this moment, Cuba is obtaining foreign investment and obtaining credit. Cuba has been renegotiating her foreign debt. This is the beginning of the process. There is a proposal in Cuba to reform the banking system. I think after the renegotiation of the foreign debt with Mexico, the Cuban government has clearly tried to reschedule her foreign debt, using the kind of tools that were not used in the past. For example, the famous swaps of foreign debt for equity. This is a process of attempting to change a very complex society. In order to understand this, we conduct this hypothetical exercise, while also examining the real world of present day Cuba.

PROFESSOR RODRIGUEZ :

I would like to provide some numbers in response to what Professor Monreale has just indicated. Then, I would like to elaborate on some of the issues he has raised. The gross domestic product of Cuba in 1989 was US\$32.5 billion. According to an estimate by the British, in 1994 it was US\$18.4 billion. What we have here is an economy in free-fall. Real growth, that is, the domestic product, has been decreasing by 10% to 25% on a yearly basis. Total exports were US\$5.4 billion in 1989 and US\$1.7 billion in 1994. These are the problems that Cuba faces.

The problem that they face is simple. The Soviet Union is not picking up the tab anymore. From 1963 through 1989, the Soviet Union contributed, according to the data that I have here, around US\$140 billion. While Cuba was receiving those subsidies, Cuba was never thinking about changing the economic structure of the country. Cuba was never thinking about creating a private sector or opening Cuba to foreign investment. Instead, they expropriated US\$3.3 billion in U.S. property. In the past, they have expropriated hundreds of millions of dollars worth of other foreign property before it became necessary to have foreign property. Now, we have a 180-degree turn. However, as we look at what the Cuban government is trying to do, let us be realistic about what they really want. First, they want to maintain collective ownership of property. Keep that in mind. Second, they want to maintain a leading economic role for the Cuba government. Finally, they want to maintain the socialist principles of distribution of goods.

Cuba has been forced into reform because they have no other place to go. The Soviet Union is no longer picking up the tab. Cuba is looking around to find somebody that will provide them the US\$4 billion that they used to get from the Soviet Union. Castro never thought that the U.S.S.R. was going to break up. The reforms being instituted are resulting in the decrease in the purchasing power of the people, reduction of the standard of living, a charge for things that used to be free, and the beginning of a taxing system. The tragedy is that Cuba has an internal problem. It has factions within the government that do not know which way to go. We are hearing that Cuba wants to open the country to imports. Yet, once again, Ricardo Alarcon, a important figure in the political structure, recently said that anyone that thinks that Cuba is moving towards a capitalist system is an idiot.

It is fascinating to witness this left-right-forward-backward movement in the economy of the country, while any other government in Latin America or any other part of in the world that had such successive failures would be thrown out of government in free elections. The only reason that this has not happened in Cuba is because the labor force and the population of Cuba do not get to have free elections.

PROFESSOR GORDON:

Maybe we need to look at figures other than those on the years from 1989 to 1994. This is important because that period came right after the end of the subsidization. I think one of the questions we have raised is: What has caused the change in Cuba? I think Professor Rodriguez has suggested the cause of the change has been the end of the golden calf, that is, the former Soviet Union. I think that, as for many of us, I had to change once I had left college and was told by my family that I was on my own. At that time, I certainly changed my work ethic. I think people inherently may need to be pushed into something.

I would like Pedro Monreale to present more recent statistics concerning what has happened in the past two years and what the projections are for the next year or so, given the changes and the development of the UBPCs.

PROFESSOR SANTANA:

Very recently, Fidel Castro has had the opportunity to go to France and meet with Francois Mitterand. Castro and Mitterand signed an agreement for the export of US\$100 million in produce from France to Cuba. This indicates that the French corporations, along with the French government, are not afraid of the possibility that they will not be paid.

PROFESSOR MONREALE:

In terms of the most recent figures, let me begin with the idea that apparently, and I say apparently because we do not have enough up-to-date evidence to confirm this, the Cuban economic crisis hit bottom in 1994. One of the most important indicators that support this analysis is that for the first time in five years, the Cuban economy registered a very modest economic

growth in 1994. However, important problems still exist in Cuba, which might be obstacles to future economic growth, such as the disappointing development of the sugarcane industry, the most important industry in Cuba. It is not clear that the problems in the sugarcane industry will be overcome within the next few years, but a very intense recovery program, including foreign investment, has been adopted in Cuba. So we will have to wait and see what happens.

In the case of other sectors of the Cuban economy, the Cuban government has released information that seventeen out of twenty-one industrial branches in the Cuban economy had positive growth in 1994. The level of exports has been relatively stagnant, basically as a consequence of the problems with the sugarcane industry. The level of imports also has stagnated because there is a close relationship between exports and imports in Cuba. We are reaching a time when the debate in Cuba, which is not only a technical but also a political debate, acknowledges that the prospects for economic growth in Cuba are directly linked to the prospects for economic reform. Therefore, the Cuban economy could have, in the near future, different priorities, and these differences will be explained by the different ways in which economic reform is implemented in Cuba. I will say that a very important factor in explaining future development in Cuba will be domestic economic reform. Although the foreign constraints that the Cuban economy has to face will still play a very important role, domestic reform will make the biggest difference in terms of the prospects for economic growth in Cuba.

PROFESSOR GORDON:

An article in the *Wall Street Journal* indicated that in 1991 Cuba had an eight-million ton harvest.⁶ Beginning with the end of subsidization in 1989 and the withdrawal of the purchasing power that the Soviet Union had provided, the harvest had dropped to four million tons by 1994.⁷ I think, as Professor Moncarz has pointed out, it takes a while from the time you plant sugar until you know what you are going to have as a growth amount. Initially, the thought was that it would drop much further to about 2.5 million tons for this year, but *The Wall Street Journal* suggests that it may actually be as much as 3.5 million or perhaps even a little more.⁸ This may well support the bottom-out theory.

PROFESSOR MONCARZ

I just learned something very interesting from you. The Cuban harvest was 4 million tons last year. In 1995 they had expected it to decrease to 2

6. Suzanne McGee & Mark Heinzl, *Cuba's Rosier Export Prospects Could Hurt Sugar, Metal Prices*, WALL ST. J., Mar. 1, 1995, at C1.

7. *Id.*

8. *Id.*

1/2 million tons, but it only went down to 3.7 million tons. So things are not that bad.

I would like to mention, because time is of the essence, that I am very glad that some of the words or points we have addressed have been answered by our colleagues or by the people on the panel. Those are the questions having to do with political risk, return on the investment, with an economy, if you wish, in transition. At the same time, I would not like to do injustice or disservice to Professor Gordon who has worked so hard on this questionnaire.

I would like to make two points before I answer the last question on the value of the Cuban peso. Cuba suffered a lot in 1959, before most of the us were born, because she changed from a capitalistic system to another system. The whole production structure changed. The way land, labor, capital, and technology were used all changed tremendously. The same thing happened in 1989.

How does a country survive or restructure its economy? This is one of the topics of today's discussion. It presents problems in terms of how to use land, labor, capital, technology, and entrepreneurship. In 1959, Cuba went from a capitalist fascist society to a socialist communist society. Since 1989, Cuba has been faced with the problem of determining what type of economic system to follow, and is still faced with this problem today. As we learn in the universities of this country and many other countries, unless you have a consistent policy, you do not have a policy. What is Cuba's policy? Is it capitalism? Socialism? Fidelism? What will its policy be tomorrow?

Now, to continue with the hypothetical question about the value of the Cuban peso. The value of the peso has been changing a lot, not unlike the value of the U.S. dollar. The dollar has been depreciating. Some people say that this is great for the United States. The value of the Cuban peso has changed through time. A great research paper, if not a dissertation, could be written on the value of the Cuban peso. In theory, the value of the currency is determined by supply and demand. The official value of a Cuban peso is US\$1.00 versus 1 Cuban peso. The Cuban government has determined that this is not the correct valuation. This is something else that it must address in the future, how to align the Cuban peso with other world currencies. Further, the dollarization of Cuba makes the valuation of the peso even more complicated. Of course, before the dollarization of Cuba, you almost always went to jail if you had dollars.

PROFESSOR RODRIGUEZ:

Tomorrow they may send you to jail again.

PROFESSOR MONCARZ:

I may go to jail again. When the dollar was first reintroduced in Cuba, one received 120 Cuban pesos to the dollar. A doctor made the equivalent of US\$2.00 or US\$3.00 a month. For whatever reason, now it is 40 Cuban

pesos to the dollar. Currently, Cuba is not producing more pesos. People in Cuba want dollars not pesos. But, not only are there no dollars in Cuba, there also are no pesos, at least according to people who have come from the island. A few months ago, people wanted to be paid in dollars. Today people want to be paid in dollars and in pesos. Apparently, the Cuban currency is doing much better. However, I still do not know if that is the true value of the Cuban peso.

PROFESSOR GORDON:

In the summer of 1994, the value of the peso was 140 pesos to a dollar. Professor Monreale, you have talked about the market for food and for crafts, and how this has had an impact. I think you referred to an impact on the changing value of the peso and that it had come back to about 40 to a dollar. Could you explain your idea on that?

PROFESSOR MONREALE:

This matter of the value of the Cuban currency is a subject of debate in Cuba. I would say it is a subject of intense debate among people who are having an impact on reform. Almost everyone understands that for many years the Cuban government has maintained a number value currency in Cuba. This was particularly felt at the time when the economic crisis erupted. Of course, it was compounded by political problems in 1994. Although the official rate in 1994 was US\$1.00 equals 1 peso, the black market rate was US\$1.00 for at least 120 pesos. By early 1995, this rate in the black market had decreased and now the going rate is 35 pesos to the dollar and coming down. The estimation for the summer of 1996 is 20 pesos to the dollar.

All the same, we will continue to have a number value currency in Cuba in terms of official policy. That is part of the debate. At this point, it is really not a matter of the Cuban government having an undervalued currency as it is the Cuban government's doing things that have reduced the black market in currency. In my opinion and that of certain economists in Cuba, two very important factors had an impact on this movement in the exchange rate in the black market. First, the financial package that the Cuban government has followed since May 1994 has contracted the demand for U.S. dollars in Cuba. Second, the opening of free markets for agricultural products. A very important part of the demand for U.S. dollars in August 1994 was that people were trying to convert their pesos to dollars in order to have access to food that was not available with pesos. All that changed in October 1994 when peso markets, which are food markets that accept Cuban pesos, opened in Cuba. Since the opening of the markets, at least until now, there has been a decrease in the price for a basket of imported products in the free markets compared with the prices that the same basket used to have on the black market. There has been a forty percent reduction in the price simply with the opening of the free markets for agricultural

products, and this has represented an increase in the real salary of the people in Cuba.

Thus, although the prices are still very high, there has been a contraction, and part of the goal of this policy eventually is to have a sustained increase in the production of food in Cuba. Further, reforms in the agriculture sector of the Cuban economy have had a major impact on advancing reform because these reforms are exactly the kind of proposals that will be extended to other non-agricultural sectors. Thus, reform in agriculture has been important for the expansion of reforms to other areas of the government.

PROFESSOR MONCARZ:

Just for your information, as Cuba liberated prices, suddenly more production came into the markets. Miracles! It is the contention of some economists, Professor Antonio Jorge and others, that Cuba used its inventory of agriculture goods to inflate the market when the law changed. Right now, the problem continues in Cuba. There is no food. Why? Again, land, labor, capital, and technology. There are no funds or exports, so there is no money to import the things necessary to produce at an efficient level.

PROFESSOR RODRIGUEZ:

Professor Moncarz has identified something that is unique; the issue of incentives. The way that the individual worker behaves when he is given the opportunity to own land, to own property, to own a business, to generate a profit and to keep that profit without government interference. This attitude is called productivity. The problem in Cuba is that the worker resists putting in a full day's work, because no matter how hard he works there are no rewards at the end. I think that is a major problem. The system has failed after thirty years to develop an entrepreneurial class, which would have developed, given the proper incentives and freedom.

That opens the door for me to touch on another subject, that is, the Cuban business community in Miami. There are over 57,000 Cuban home businesses in Miami. Many of these owners or their sons were kicked out of Cuba between 1959 and 1961. They came to this country and developed a thriving business community. A thriving business community where disposable income parallels the gross domestic product of the whole island of Cuba.

Why? What do we have here that we do not have over there? We are the same people and have the same heritage. The system is different. I hope that someday there will be a symposium related to the reconstruction of Cuba. When that forum takes place, we will address how the Cuban business community in Miami can lend its help to the Cubans on the island to sustain the necessary economic development. We will be to Cuba what West Germany was to East Germany. I have visited both. The end will not be a matter of taking over, it is going to be a matter of helping and providing help. But until some changes take place in Cuba that will not be possible.

In particular, Cuba currently does not allow for individuality. Instead, it stamps out individuality. Cuba puts individuals in jail because they are a danger to the system. A system that does not allow private property ownership or freedom to contract will necessarily not allow individual freedom. To have individuals with economic power in such a system is a danger to that system.

PROFESSOR GORDON:

I think that the changes that have been taking place in the last couple of years do constitute a danger to the system, to the extent that they have provided openings. I wonder if Professor Monreale would comment about the law, I think it is Law Decree 141, that has made legitimate what already was going on behind closed doors: people operating private business. Would you comment on this law? Do you see it as a step in opening up the kind of business activity that we have been discussing?

PROFESSOR MONREALE:

Before addressing that, I would like to talk about several issues already raised by the panel. First, in respect to the food situation in Cuba, there is no more food in Cuba now, not in the streets and not in the markets, than there was three months ago or one year ago. This is not just my opinion, it is the opinion of everyone who has been able to travel to Cuba and to talk to Cubans. The availability and the cost of food have nothing to do with inventories in Cuba. It is new production coming to the markets. The point is that a very important share of this increase in production is coming from private farmers in Cuba. Therefore, private farmers are making a lot of money.

I think one of the most fascinating issues in Cuba now is not the problem of the crisis, but the problem of the solutions that have been proposed for the crisis. One of the most interesting problems is that there has been a tremendous concentration of income in Cuba, basically income in the sector of prime producers and primarily from the agriculture sector. We have reached a point where three percent of bank account holders in Cuba hold 85% of the value of the total bank accounts in Cuba. I think this is a very important fact because, among other things, it says a lot about the system. My point is this is a system in transition; this is a system that is producing the kind of development that we are not supposed to produce if we are thinking with the old mentality. For example, currently the system rewards people who are successful in the market, which is contrary to the pure socialist model.

Of course, there is a difficult relationship when capitalism and socialism, or free markets and state control, coexist in the same system. Nonetheless, I think it is important to note that an evolving relationship between these two systems, capitalism and socialism, has been taking place in Cuba during the last few years. This development is very interesting compared to other parts

of the world. For example, the Chinese model is a combination of capitalism, socialism, and repression. However, in the case of Cuba nobody dares to call the mix or experiment between markets, socialism, and all the problems that come along with them the Cuban model.

This country as a society and government is in transition. This transition is opening up a crevice for foreign firms to do business in Cuba. It is important to note that all this progress and transition has been taking place not only with the Cuban government but also with Cuban enterprises and foreign investors.

I also would like to point out that even some U.S. corporations have been following this process in Cuba. They cannot conduct business in Cuba; that is illegal under U.S. law. However, it is legal under the laws of your country to travel to Cuba, conduct research, and make assessments about the Cuban market and its prospects. It is even legal under the law of the United States to sign non-binding agreements with the Cuban government. Many people will say that it makes no sense to go to Cuba and sign non-binding agreements. I believe it makes a great deal of sense because it creates a closer relationship between the Cuban government and U.S. interests here. Once it becomes legal in the United States to invest or to conduct business with Cuba, these enterprises will already have market assessments and letters of intention, signed with the Cuban government. In the coming years, these enterprises will be able to take advantage of the opportunities in Cuba because they already will have the knowledge necessary to do so.

This perception of opportunities in Cuba and changes in Cuba is not limited to people living in Cuba or to foreigners living outside of the United States. Even people here in the United States, academicians and U.S. corporations, have been trying to understand the process in a way that I think is important. This transition is a very complex process and the more information people have the better they will be able to understand and prepare for the opportunities and challenges that lay ahead.

PROFESSOR MONCARZ:

I would like to comment on the issue Professor Gordon raised earlier about Law Decree No. 141, which gave limited opportunities for people to enter into private employment. Like most other Cuban measures, this law has gone only half-way. The law does not allow everyone to enter into private enterprise, just a select number of people. I would like to use an example from an article in the *Wall Street Journal*.⁹ The article tells the story of a medical doctor who became a taxi driver because Law Decree No. 141 permitted him to work privately as a taxi driver but not as medical

9. Mark Klugmann, *The Americas: Socialism Breaks Down as Cubans Grasp for Greenbacks*, WALL ST. J., Apr. 7, 1995, at A15.

doctor.¹⁰ Law Decree Number 141 obviously has a problem with consistency. Are you going to liberate all Cubans or are you going to have the Cuban model? The Cuban model is, as are other models, full of inconsistencies.

PROFESSOR RODRIGUEZ:

I want to follow up on the statement by the previous speaker concerning the way people worry about Cuba. I am sure he would be very interested to know that the Cuban professional accounting association in Miami has been holding symposiums on how to modify Cuba's laws once the necessary changes take place. The Cuban business community of South Florida has a number of professional organizations that have been devoting time and effort on how to provide, once that transition that we all desire takes place, ideas and models of how to speed up the economic process. I think it cuts both ways when we talk about investments in Cuba and changes in Cuba. I think we all agree that changes are coming and that they are unavoidable. It has been a long time, thirty-seven years now, and I truly believe that the need for radical changes should take place as quickly as possible.

PROFESSOR GORDON:

I think we are slowly working toward some common ground. We started off with the idea that there was absolutely no change appearing in Cuba, and now, we are talking about a state of transition. We find open discussion and admission that Cuba is in transition, and your comment is that it is going to start at some time.

PROFESSOR RODRIGUEZ:

Certainly. There has to be change, and note that I emphasized "radical transition." Specifically, Professor Gordon, the people that have been in power for thirty-seven years must go. We agree basically that the Cuban people have suffered too long, too much. There has been too much experimentation and too much left-then-right, forward-then-backward policy changes in the current government. Cuba needs new thinking, and it may come from the middle level. Cuba needs a Gorbachev; it needs somebody to clear the air.

PROFESSOR MONCARZ:

The solutions to the problems in Cuba are going to be found by the Cuban people. The United States is a neighbor. It is a very powerful neighbor, but the Cuban people know what is good for them. They may get help from the Cuban community in Miami, but that community is not going to take over. It is a Cuban problem. It is very interesting, in a way, that we meet here and talk about Cuba. But this will not solve Cuba's problems. I will be very lucky if I am able someday to advise the Cuban government, as

10. *Id.*

I have advised Central and South American governments and the U.S. government. There is nothing wrong with that. But it is the Cuban people who will decide what is good for Cuba.

I do not think it is realistic when we say, when the press even says, that the Cubans in Miami are going to take over Cuba. That is crazy. Such an action goes against everything that we have learned, and we are against that. But at the same time, the United States must respect Cuba. The present Cuba, maybe, and the future Cuba, whatever that is. The Cuban people will know what is best for them in the same way that people in the United States know what is best for them. In that respect, the Cuban community in Miami is not going to impose itself nor will I impose myself on Cuba. I want to mention that I am not planning to take over Cuba or to mandate to the Cuban people what is good for them.

However, and let me end with this, it seems to me from my education and training that if something does not work, it must be changed. Here in the state of Florida and throughout the United States, we vote to change our leaders when we believe that something is not working. We talk, we argue, we debate, and we vote. This is a great thing. We are able to change and to express our opinions, and let us continue doing so. Hopefully, the people of Cuba will have this freedom one day, if they think it is what is best for them as a resolute people.

PROFESSOR GORDON:

There is an area that constitutes a third Cuba, and I think we should look at the framework of some recent legal changes in that area. It is called Verradarro. It is the area in which hotel development has been concentrating over the last few years. It is in the area in which our third hypothetical company, HOTELES-EEC, S.A., is located. HOTELES-EEC, which is a subsidiary of EUROTECH, would like to begin some tourist operations there.

Could we look at the nature of the joint ventures in Verradarro and how they are functioning and how they are structured. These joint ventures seem to be successful and possibly a greater center of market economy than anywhere else in Cuba.

PROFESSOR SANTANA:

I would like to refer once again to the hypothetical on the point of the subsidiary HOTELES-EEC, S.A. Is the company subject to the 1982 Conventional Law or are tourist investments governed more by contractual arrangement with the government? The answer is that tourist investments are subject to the 1982 Conventional Law. One of the main objectives of this law was the development of tourism and in its Preamble, the Law declares,

WHEREAS: It is advisable to establish legal regulations under which the economic associations of Cuban state enterprises and other national [Cuban] entities with foreign entities may continue to be

developed in Cuban national territory, within the guidelines of the policy in effect regarding this aspect of international economic relations, whose basic purposes include the expansion of exports and foreign tourism.¹¹

Very recently, I had an opportunity to look at a draft of a new Joint Venture Law, which at this moment is under discussion. Law Decree No. 50, 1992 Joint Venture Law, is now three years old, and I confess this will not be the final version. The new law is not in its final version either. However, I saw eleven differences that, from my point of view, are more open to tourist investment and other fields than the current law.

The first difference in the proposed law is that it provides guarantees for the foreign investor. No expropriation is allowed except in the case of the public interest, and in that case, it will be indemnified according to standard levels. The second difference is that the proposed law allows for unilateral investors to invest in Cuba without the participation of a national investor. Under the 1992 Joint Venture Law, the foreign investor must have a Cuban entity. Under the new law a foreign investor will be able to wholly constitute a company and do business in Cuba. The third difference is the possibility of investment in real estate and immoveables. The fourth difference, the Contract of Economic Associations, requires notarization before a notary public. In the past, this kind of contract only had to be registered in the Chamber of Commerce. Now, it has to be notarized before a notary public. This requirement is a new guaranty to the investor and constitutes the fifth difference.

The sixth difference is that foreign investment is possible in all economic sectors except for health and education. This means that one can invest in sugar cane, agriculture, mining, oil, tourism, and everything else. The seventh difference allows, with exceptional authorization, investors to collect a payment in national currency.

The eighth difference deals with the labor regime. In general, it will be necessary to use an employer enterprise. However, according to Article 34 of the draft, a different level of the labor regime could be used, provided it does not contradict the legal code. This means that depending upon the interest of the Cuban government in a particular kind of joint venture, that venture may be authorized a special labor regime. The ninth difference is the existence of a free zone, and the tenth difference is the existence of an industrial park. The eleventh and last major difference concerns settlements of conflicts. Under the new law, conflicts will be submitted to the Economic Division of the Courts.

11. 1982 Joint Venture Law, *supra* note 3, at 21.

I think these are the main differences between what we may call now the old law and the draft of the new joint venture law. As I mentioned before, this is not the final version. It is now under review, but I think the new law will provide a spectrum that will help all these matters.

PROFESSOR GORDON:

In looking at joint venture laws, which has been a principle part of my research over the last thirty years, I have noticed that when you find a joint venture law that remains stagnant for more than a decade, the economy will most likely be stagnant as well. Mexico, surprisingly, is an important example of this because their very restrictive 1973 Joint Venture Law was only changed in 1993. In 1972, I went to Eastern Europe to study the new joint venture laws in Yugoslavia, Romania, and Hungary. Those laws were rapidly followed by newer joint venture laws. We have seen the process go from allowing an absolutely limited foreign ownership of 49% to allowing 50%, then 51%, and then ultimately allowing unilateral investment. Indeed, when I returned to Poland, they had moved from allowing 49% to allowing 51% and were developing what they called their Third Joint Venture Law. The Third Joint Venture Law was going to allow unilateral investment. I think the only advice I gave them that they took was, "Why are you calling it a joint venture law? You have moved through a transitional state to a point where joint ventures are no longer mandatory." Of course, there may be some reserved areas. Even the United States has some reserved areas, such as airline ownership. So, Cuba's movement toward allowing unilateral investment seems to be a clear illustration of a nation in transition.

PROFESSOR RODRIGUEZ:

The term "nation in transition" has been used today in reference to the economy. Basically, what Professor Monreale is saying is that the wheel has come around 180 degrees, and the Cuban government now realizes, thirty-five years later, that it never should have expropriated all the property in 1960. However, let me point out that concerning tourism, I have some figures that I would like to share, and they have to do with Verradarro.

In 1992, US\$540 million in revenue was generated from tourism in Cuba. In 1993, tourist revenue increased to US\$700 million, and in 1994 to US\$800 million. However, only thirty percent of this revenue is profit, and the Cuban government must split these profits with its foreign investors. Out of the US\$800 million of revenue in 1994, there was US\$240 million net revenue, of which the Cuban government only took US\$120 million. A lot of earth had to be moved for what resulted in relatively very little profit in the end.

PROFESSOR MONCARZ:

Let me again mention that I think it is very important that Cuba is an economy in transition. There is transition, but transition towards what? That is the key question. The original planning system, even though some of it

has been changed, remains the same. It is a rigid system. Furthermore, it is not certain that what we really have is an economy in transition. The economy is alive but where is it going? Experience indicates that the current government may not necessarily remain committed to this transition. Political risk equals uncertainty. What is going to happen? Tomorrow Fidel Castro may halt or reverse the changes.

That is why it is so hard to invest in Cuba; the investors do not know what is going to happen. Why are people and companies investing? Because they see a high return in investing in tourism in Cuba. As Professor Rodriguez mentioned, it is very profitable to invest in Cuba. However, the people who are investing in the Cuban tourist industry are investing in a sector that is very different from the rest of the economy. When Spanish investors took over the hotels in Cuba, they immediately fired thirty percent of the labor force, because it did not work. That is why they have been losing money, because it is not working in an efficient way. When the foreigners take over, it becomes a completely different system. There is a transition but toward what? I would like to make one final comment about tourism. It is a great industry, however, as Professor Rodriguez has taught me, tourism was a terrible thing in the Cuba's past. Tourism came to Cuba and did terrible things. It took over the system and did not respect the Cuban people. Now Cuba is returning to tourism. What is going on?

There is another example of the changes going on in Cuba. Telecommunications has become the second most important source of revenue for the government of Cuba. People using telephones with direct access to Miami and elsewhere in the United States. This is a radical change.

PROFESSOR RODRIGUEZ:

I would like to say one word, because we will have to leave momentarily. It would not be so tragic if these exercises over the past thirty-seven years had achieved something of which we could be proud. But the price that Cubans have paid for Castro's experiment has been extremely high. Two and half million exiles. *Cuba and Its Martyrs*¹² is a new book, written by a Cuban colonel in the U.S. Army. It contains what is only a partial listing of those people executed under the Castro regime; even so, it is over 100 pages long with the name, date, day, and place of execution of 50 people listed on each page. We must remember that this is the government that we are hearing is in transition. The Cuban people have paid too high a price for failure.

PROFESSOR GORDON:

We need to put the past behind. Where is Cuba heading? What types of legal changes will Cuba see in the next few years?

12. ESTEBAN M. BERUVIDES, *CUBA Y SUS MÁRTIRES* (1993).

PROFESSOR MONREALE:

Let me speak very briefly on the problem of transition. I think this is a very sensitive issue. Let me begin with the idea that if we looked carefully at the history of political and economic transitions throughout the world, we would find that usually the first changes made did not reflect the final result. Thus, one of the most common kinds of transition has been where people do not know exactly what the final structure of the final goal will be. Instead, they know what the present structure is and that they want to change it. They begin to implement changes that will lead to further transformations. Then, perhaps, at some point in the middle, they will know more or less what the result will be.

I do not know exactly what kind of model Cuban society will have in the future. But I can tell you is that there is a transition in Cuba, and it needs to deal with the problem of the legal transformation in Cuba. It is, once again, very difficult to predict exactly what the future outcome of the changes in the legal system in Cuba will be. However, if we look at the area through the eyes of a lawyer, we can see some important changes in the Cuban legal system. The basic problem is that most of these changes deal with creating a new legal framework for the kind of transformations that are taking place in Cuba. My point is that the legal system we will see in Cuba in the future will be a system that will accommodate a more diversified economy. Thus, the Cuban system will have to implement the kind of mechanisms or tools that are compatible with a market-oriented economy. I think that in the area of foreign investment and trade we will see changes that will allow the creation of not necessarily a more favorable environment, but the proper environment in order to live with foreign investors.

Regarding the previous comments about Cuba needing to go all the way back to the way it was before the revolution, I believe this is not the case. The recognition that the Cuban economy has to be more diversified and has to be more market-oriented demands the capacity to change the old methods of planning in Cuba. However, that does not mean that a very important core element of Cuban society, which was created over the last thirty-five years will be dismantled. I think there are many important, positive things in Cuba in terms of the socialist structure. For example, social programs in Cuba, which are not found in other Latin American countries, must be maintained. I do not believe that the people living in Cuba will allow the dismantlement of those positive achievements of the last several decades.

Let me finally state that Professor Moncarz said the problems of Cuba have to be solved by the Cuban people. I cannot agree with him more. But to be frank with all of you, we have no illusions about this process. It will be complex and painful; it will be a very emotional process, because the price will be high on both sides. Cubans face complex political and legal issues. However, I firmly believe that there will be a role for Cubans living

inside and outside of Cuba. For this to happen it is important to develop what I call a confidence-building process between Cubans and the U.S. government, their institutions, and their citizens. I firmly believe that this symposium has been a useful step in that direction. On behalf of my colleagues and myself, I would like to thank *The Florida Journal of International Law*, the University of Florida College of Law, and particularly, Professor Gordon for providing this forum at which we could exchange our ideas. I also would like to thank Professors Moncarz and Rodriguez for their comments. They have been very useful, and although we do not care for many of the points made, it has been very stimulating. I hope we will be able to continue this process in the future. Thank you very much.

PROFESSOR RODRIGUEZ:

Professor Moncarz and I had not expected to be here. We were notified less than two days ago. The issue of academic freedom for us is paramount and that is why we are here. I do have friends that perhaps feel that it was improper for me to come here. I hope that the professors from the University of Havana will take back with them the concept of academic freedom that we have here. I hope they will work with their peers at the University to modify the existing rules and procedures to allow students who do not agree and support the government of Cuba to attend that University. I hope that their exposure to a pluralist society like the one we are fortunate to have in this country will encourage them to convey to their peers in Cuba that there comes a time when totalitarian government, one person making decisions, one party, is simply obsolete. As you said, Professor Gordon, history is in the past. Somehow, I believe history is the prologue to the future. Thank you.

PROFESSOR GORDON:

Every country that has started the process of transition in the last decade or so has not turned back. There has been a leveling-off in several of those countries, but each of them has increased the number of openings towards a market economy. I think we have agreed, I would hope we have agreed, that there is a transition occurring in Cuba. The sooner Cuba succeeds in this transition, the sooner it will be able to pay its debts and resolve some of the difficult problems between it, the United States, and former Cubans who are living in this country. The sooner Cuba succeeds, the sooner we will be able to lunch together at La Maravilla.

Looking back in years to come, I hope that this symposium will be considered to have been at least a small part of that success. To my knowledge, this is the first time that a conference of this nature has been held at any law school in the United States with the participation of faculty from the University of Havana School of Law. I am extremely pleased that you would come to visit us from your law school. I also am extremely pleased that Professor Moncarz and Professor Rodriguez had the courage to come out

of a very difficult area of this state and speak freely and openly, and to sit at this long panel with other Cubans. We hope that ultimately they may be reunited, so that we will no longer need to speak of their Cubans and our Cubans, but we will speak only of Cubans.

