INTRODUCTION

On March 12 1996 the American President signed into law the Cuban Liberty and Democratic Solidarity Act\(^1\) which is also known as the "Helms-Burton Bill" after its two primary sponsors Jesse Helms and Dan Burton. The President endorsed the bill in the wake of Cuba's downing of two U.S. civilian planes after the administration and House-Senate-conferees reached agreement on key provisions of the bill. Before that incident the fate of the bill had been unclear with the administration opposing key sections of it. Among other provisions, the bill codifies the current embargo against Cuba, bars visas to certain aliens who traffic in expropriated property, bars financing by a U.S. national or agency in transactions involving U.S. property confiscated by the Cuban government, and urges the President to seek an international embargo against Cuba. The bill also contains provisions on providing assistance to Cuba when a democratic transition occurs. The controversial provisions in the bill on expropriated property and exclusion of certain aliens are aimed at drying up foreign investment in Cuba and denying its government a source of hard

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currency.  

The controversial provisions, especially a new private right of action for U.S. citizens on confiscated property, have caused strong criticism in the international community and raise interesting questions of international law. In this article the author intends, first, to introduce the crucial provisions of the Helms-Burton Bill, second, to analyze the disputed issues according to the rules of international law, and third, to summarize the reactions and points of criticism which have emerged.

1 THE HELMS-BURTON BILL

The bill contains three titles:

Title I: Strengthening international sanctions against the Castro government;
Title II: Assistance to a free and independent Cuba and
Title III: Protection of property rights of U.S. nationals.  

According to section 3, the bill has the purpose to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere; to strengthen international sanctions against the Castro government; to provide for the continued national security of the U.S.; and most interesting here, to protect U.S. nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

With respect to the protection of property rights Congress’ findings are stated in section 301. It is explained that the wrongful confiscation or taking of property belonging to U.S. nationals by the Cuban government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development, section 301 (2). Moreover Congress has found that the Cuban government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which are confiscated from U.S. nationals, section 301 (5).

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2 Int’l Trade Rep. (BNA), available on WESTLAW in BNA-ITR database (13 ITR 11 d4, 10 d19)
4 Id. at 788.