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THE WORKING GROUP ON U.S. RELATIONS WITH CUBA

The members of the Working Group on U.S. Relations with Cuba believe that the recommendations stated in this paper promote overall U.S. interests. While there may be some parts of the report with which some participants are not in full agreement, each participant believes that the report, as a whole, provides a sound basis for future actions by the government of the United States.

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OF THE UNITED STATES

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A Road Map for Restructuring U.S. Relations with Cuba

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FOREWORD

Over the last few years, our relations with several "adversaries" have shifted dramatically, and, in some cases, suddenly. Russia and China are conspicuous cases in point. When the shifts are abrupt, there is often a period of disarray in the U.S. government because of little preparation for the change in relationships. For this reason the Atlantic Council decided to anticipate normalization of relations with Cuba--one of our few remaining adversaries--by preparing a road map to guide our policy-makers once a decisions are made to begin this process.

Our basic assumption is that the political changes in Cuba are inevitable, but it is difficult to predict how or when they might occur. Thus, we have assembled an inventory of the most pressing issues for the United States and have suggested ways to address them, irrespective of, though not apart from, the specific transition in Cuba. We have learned from our experiences in Eastern Europe and elsewhere that even when transitions are gradual, they encounter many obstacles. But we have also learned, most recently in South Africa, that forethought and creativity, especially in economic matters, can help ensure that even contentious aspects of change do not throw the process off track.

In addition to the individual members of the Working Group, we want to acknowledge the important, substantive assistance of Dr. Armando Lago, Ms. Violanda Botet, Mr. Nigel Purvis, Mr. Mark Sullivan, Ms. Dianne Rennack, Mr. Ricardo Cadenas, Dr. Burton Sapin, Mr. Ralph Galliano, Mr. Stuart Lippe, Mr. José Gavilando, Robert E. Freer, Esq., Mr. Michael Balgley, Dr. Carmen Diana Deere, Dr. Jorge Pérez-Lopez, and Mr. Alain Mutén.

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David C. Acheson
President

The Atlantic Council of the United States

EXECUTIVE SUMMARY

This policy paper provides guidelines for U.S. government officials and the Congress for dealing effectively with the political, economic, and security issues that will need to be addressed once decisions are made to normalize relations with Cuba. We expect the normalization process will be neither quick nor smooth because of the many contentious issues to be resolved.

Several assumptions must be stated at the outset: First, the issues and recommendations included herein apply *only after a decision is made to normalize relations and do not address current U.S. policy*. The Cuban Democracy Act of 1992 (Public Law 102-484) clearly states U.S. law and the conditions required for normalization, which include Cuba's pledge to hold free, fair, and internationally observed elections and adhere to accepted standards of human and civil rights. This Act, therefore, is the point of departure for any process of restructuring relations. In the event that the Cuban Liberty and Solidarity Act becomes law, it will supercede the Cuban Democracy Act and increase the restrictions on current bilateral relations. Nevertheless, it does not alter the recommendations of this paper, except to the extent that in its final form, it could specify requirements and linkages during a Cuban transition.

Second, the paper assumes a cooperative government in Cuba, but does not suggest a particular scenario for the political transition. Although the specific sequence and pace of normalization depend overwhelmingly on the nature of that transition and the political composition of the Cuban government, this paper only prescribes general policy steps for the United States. The process will most likely be gradual, with some issues resolved before others. A logical first step would be an agreed framework that addresses the more contentious issues like claims and trade, but this does not preclude simultaneous work on the full range of issues. Indeed, it may be preferable to handle "smaller" issues like communications and travel before resolving the larger ones, but again, this decision depends on political factors beyond our power to foresee. Our purpose here simply is to suggest *how* to deal with each of the issues on their own. The order of presentation of the issues does not imply a recommended sequence of decision-making.

This report is based on (1) analysis of the laws, regulations, and policies that govern bilateral relations at the present time; (2) extensive interviews with current and former government officials, members of Congress, business leaders, academics, and prominent members of international organizations; (3) case studies of the problems involved in restructuring relations with former U.S. adversaries, including the Soviet Union, China, Vietnam, Nicaragua, and Iraq; and (4) ideas and recommendations developed by the Working Group, individually and collectively.

Major recommendations outlined in the paper are as follows:

1. *Once a decision has been reached to normalize bilateral relations, the President should appoint a senior coordinator in Washington to oversee the implementation process, including the management of aid and assistance programs, liaison work with multinational organizations, and the establishment of contacts with Cuban officials. Meanwhile, the head of the U.S. Interests Section in Havana should be appointed chargé d'affaires while the President begins the process of appointing an ambassador.*
2. *The first priority for the senior coordinator should be the drafting of a framework agreement that outlines a process and a timetable for addressing the outstanding bilateral issues. The coordinator should draft the agreement in close consultation with the Congress and relevant Cuban officials.*
3. *The Departments of State and Treasury should negotiate an agreement with the Cuban government to establish as soon as possible a mechanism for dealing with U.S. claims in Cuba. This agreement should set forth a process that addresses the largest claims first and subsequently treats the remaining claims in a just and equitable manner. The Department of State should not espouse additional claims, unless the Congress passes legislation to do so. The public release of the agreement with Cuba will set forth a program for dealing with claims that will undoubtedly require more time to settle. Meanwhile, claimholders will be reassured that a fair process of settlement is underway, and that they need not attempt to bring pressure to impede or postpone other aspects of the normalization process.*
4. *The Department of State should encourage prompt Cuban readmission into international organizations like the International Monetary Fund and the World Bank, while sanctioning the Organization of American States and the Inter-American Development Bank to lift their suspension of Cuban governmental participation. The United States should work closely with these organizations. Congress should resist pressures to link sectoral interests in the United States with U.S. financial commitments to these organizations and their programs for rebuilding Cuba.*
5. *Normalization will require immediate lifting of the trade embargo and other economic sanctions. The United States should also encourage a process which leads to readmission for Cuba into favorable trade relationships, namely Most Favored Nation (MFN) status, the Generalized System of Tariff Preferences (GSP), and the Caribbean Basin Initiative (CBI). The Export-Import Bank and the Overseas Private Investment Corporation (OPIC) should take the lead in expanding incentive programs for trade and investment,*

assuming that Cuba has embarked on a plan for resolving its outstanding debt.

6. *Other unilateral U.S. restrictions on travel, port entry and access, and mail services should be lifted quickly. The continuation of Radio and TV Marti will also be under scrutiny, but these programs should proceed as long as the U.S. government determines that they continue to play a constructive role during the period of transition in Cuba.*
7. *All Cuban refugees remaining at Guantanamo Naval Base should be promptly resettled, either in the United States or in other countries. The Attorney General should make clear that any additional refugees leaving Cuba will be returned while the Departments of State and Justice negotiate a gradual process of returning to a normal migration policy for Cubans. This process should allow for higher, initial numbers of migrants.*
8. *The Departments of State and Defense should begin negotiating the termination of the use of Guantanamo Naval Base. These negotiations should be linked to the potential utilization of Guantanamo as a free trade zone or development facility.*
9. *U.S. aid and assistance programs for Cuba should be carefully targeted and monitored. Assuming that the conditions in the U.S. Congress will not favor large appropriations of bilateral aid, the government's role should largely involve coordinating efforts among private and international donors. All programs should be temporary and designed to encourage the process of political reform, economic self-reliance, domestic and foreign investment, and positive trade relationships.*

More extensive recommendations for each issue follow in the policy paper. They end with a legislative agenda that outlines the key steps required in the Congress and a proposed approach. We believe that the steps described in this paper will contribute to a smoother process of restructuring relations, as well as stimulating the overall efforts of Cuba to establish itself as a democratic state and a responsible participant in regional and global affairs.

A Road Map for Restructuring U.S. Relations with Cuba

I. INTRODUCTION

The importance of developing a coordinated plan for restructuring bilateral relations cannot be overstated. After 35 years as adversaries, the United States and Cuba will be confronted with innumerable obstacles in their attempts to implement a coherent process of normalization, once leaders in the United States conclude that fundamental changes in Cuba justify such a course. Political rivalries, feelings of betrayal and alienation, and the sheer economic desperation in Cuba will make it extremely difficult to start rebuilding this new relationship with a clean slate. Some members of the Working Group have suggested that all Cubans, both inside and outside the island, approach the transition period as though "today were the first day of the rest of my life." This clearly is a model proposition. Although both proponents and antagonists consider what has been termed the "Cuban Revolution" to be a formidable historical period, this paper assumes no clear demarcation of before and after. Such an ideal approach would lead only to unrealistic expectations and disappointments, whatever one's political orientation. By taking a more narrow and pragmatic approach to coordinating U.S. policy for a generic transition, we hope to help make that transition easier in the short term and contribute to building lasting, cooperative, and mutually beneficial relationships in the long term.

Cuba is and has been an important concern for the United States. It is the largest country in the Caribbean and has the potential to once again become the largest U.S. trading partner in that region. Although the history of bilateral relations has been, to say the least, mixed, there is no doubt that both countries' histories are tied inextricably. This connection is further strengthened by the rise to prominence of the Cuban-American community. These people will serve as essential links to a free Cuba and will play a major role as a catalyst for fostering stronger ties between our countries. We also feel strongly that the Cuban-American community, with its will and resources, is pivotal in the cultivation of a new partnership that establishes a solid set of bilateral relations across all levels.

Recent changes throughout the Western Hemisphere have shown that the broader interests of the United States and the other nations of the Americas can be consistent with sectoral interests in these countries. Future U.S. relations with Cuba should be developed under this premise by crafting policies that promote the convergence of overall political and economic objectives. While the concerns of individuals and groups are serious, they should not prevent policy-makers from keeping the larger picture in mind and supporting efforts which balance the interests of constituencies,

Overcoming 35 years of adversity will be a tremendous challenge. Both Cuban and U.S. policymakers will find this process beset with difficulties. It is the sense of the Working Group that a road map for an organized, efficient method of normalization takes an important first step toward promoting future good relations. Whether we witness such a result depends, ultimately, on the wisdom and patience of those charged with implementing these policies.

II. KEY ISSUES AND RECOMMENDATIONS

DIPLOMATIC RELATIONS: THE FIRST STEPS

The conditions for normalization are effectively established in the Cuban Democracy Act (Public Law 102-484, Title XVII). These include internationally supervised, free and fair elections and a respect for human rights and democratic freedoms. While the President of the United States could establish diplomatic ties unilaterally, he cannot independently lift the trade embargo--an essential condition for "normal" relations--unless he can certify to Congress that the Cuban government has met these conditions. Although the process could be gradual through the "calibrated" lifting of sanctions, full restoration of diplomatic relations should include an agreed framework, with a timetable, to resolve the outstanding bilateral issues. Without this framework, efforts to restore normal relations will be disjointed and are likely to become disrupted over single issues.

Establishing diplomatic relations with Havana could begin with a simple act--a Presidential announcement would suffice. However, if important political differences remain, a joint declaration that also addresses the key issues in terms of principles would be more appropriate. The ideal sequence would proceed as follows: (1) the joint announcement of a normalization agreement, including a framework and timetable; (2) immediate elevation of interest sections to embassies, with heads of these becoming chargés; (3) designation of a senior U.S. coordinator to oversee implementation of the agreed framework; (4) ambassadors exchanged and accredited.

Background

1. The Vienna Convention of 1963 and customary international law set no specific formula for the establishment of diplomatic relations between two states, but require only that this be done by mutual consent. Simultaneous executive announcements would be the simplest way to restore full diplomatic relations. The question of reopening consulates in Miami and Santiago would also be discussed. Once the decision is made to normalize, the United States and Cuba would presumably both wish to move quickly to elevate relations to the highest level. The Chief of the U.S. Interests Section in Havana would no doubt have immediate talks with the Cuban leadership and among other things, seek their assurance that their government assumes all international and treaty obligations, including the UN Declaration on Human Rights.

2. The particular steps of restoring full diplomatic relations will depend mainly on the nature of the Cuban government. In addition, the domestic politics of both countries may pose obstacles in the way of full normalization. Without a basic

agreed framework between both governments, it will be difficult to distinguish statements of principle from actual positions on the wide array of contentious issues like claims, trade regimes, migration, the Guantanamo Naval Base, and others.

3. Converting the U.S. Interests Section into an embassy, and perhaps reopening the Santiago consulate, will require additional funding and personnel.

Recommended Steps

1. *Once the President decides that the United States should normalize relations, the United States and Cuba should develop a joint declaration and a framework, including a timetable, for dealing with the key outstanding issues.*
2. *The President, following informal consultation with the leadership of the Congress, should immediately appoint a senior official responsible for coordinating the normalization process in Washington. The coordinator would oversee implementation of normalization by the various U.S. agencies, as well as serving as a liaison to the relevant Congressional committees. The coordinator should also manage aid and assistance programs.*
3. *The United States should take reciprocal steps to upgrade the Interests Section to an embassy and accept the credentials of the Cuban ambassador. The Head of the U.S. Interests Section in Havana should be made chargé d'affaires while the President nominates, and the Senate confirms, a distinguished individual to become U.S. ambassador.*
4. *The process of restoring full diplomatic relations should proceed based on principles of justice and fairness and not become bogged down over minor issues. The framework should state the basic requirements from the U.S. perspective so that, regardless of the nature of the Cuban government, there will be no miscalculations based on a misperception of U.S. policy. This framework could also include alternative mechanisms for resolving private sector disputes.*
5. *The Department of Defense should establish military-to-military ties with Cuba. The Department of Treasury and the Federal Reserve should also establish direct contacts with their Cuban counterparts.*

MIGRATION

Migration will remain a central issue in bilateral relations, especially in the short term. Some reports estimate the numbers of Cubans who would seek migration to the United States in the hundreds of thousands. The potential for large numbers of illegal immigrants will remain serious, perhaps more than ever before, depending on the severity of conditions in Cuba and the ability and willingness of the government to discourage or prevent their departure. Normalization will require changes in current U.S. immigration laws and policies that are based on an adversarial relationship. In addition, more than 30,000 Cubans held at Guantanamo Naval Base following the August 1994 exodus must be resettled.

Background

1. The 1966 Cuban Refugee Adjustment Act allows the Attorney General to convert the status of arriving Cubans from refugees to permanent residents after one year. It remains nominally in force, despite the 1980 Mariel boatlift which flooded southern Florida with 129,000 Cubans, including criminals and mentally incapacitated persons, and the 1994 exodus of about 33,000 which again threatened to overwhelm U.S. capabilities to handle large numbers of refugees.
2. Under the September 1994 agreement, the United States agreed to a total legal migration of a minimum of 20,000 Cubans per year, not counting the next of kin of U.S. citizens. A lottery has been introduced to encourage those not already high on the entry list. Also under the agreement, both governments are to arrange for the voluntary return of the 33,000 Cubans who arrived in refugee centers after August 19, 1994.
3. Once relations are normalized, the United States must decide whether Cubans seeking migration will continue to receive special treatment, or will be processed under the normal provisions of the Refugee Act of 1980 and the Immigration Act of 1990. Some interest groups, especially in Florida, will exert pressure on state and federal authorities to restrict numbers of entrants, even though the Cuban-American community may help absorb this latest wave of refugees by providing financial aid and sponsorship. Those opposed to special treatment of Cuban migrants--including the agreement to permit a minimum number of migrants--argue that this represents a dangerous precedent and other countries may seek much larger quotas by threatening to overwhelm U.S. borders with illegal immigrants.
4. The cost of maintaining the Cubans at Guantanamo as well as the political controversy over detention will make the extended use of these facilities untenable.

Recommended Steps

1. *Congress should enact legislation to repeal the Cuban Adjustment Act (Pub. L. No. 89-732). Assuming a democratic government in Cuba, "refugee" status will no longer be appropriate. The Department of Health and Human Services should reassess welfare programs for Cuban refugees. (to be revised after vote on Simpson and Shaw bills)*
2. *The Department of State should place priority on processing the Cubans in detention in Guantanamo under "extraordinary circumstances," while making it clear that any future illegal migrants will be returned to Cuba. Clear provisions should also be made to return the remaining "excludable" persons, in U.S. custody.*
3. *Given the likely demand for migration, the shift to normal immigration should be undertaken gradually and should include arrangements for high initial numbers of migrants. However, the Department of State and the Immigration and Naturalization Service (INS) should make clear that such measures, though necessary, are strictly temporary. The Attorney General, in consultation with Congress, should develop plans to gradually phase out the use of "parole" powers for Cubans. Special consideration will also have to be given to refugees in third countries with cases pending in U.S. consulates. Finally, funds should be appropriated to assist in resettlement costs of Cubans in refugee centers.*
4. *The U.S. Government, in conjunction with the Government of Cuba, will need to discourage large numbers of Cubans from migrating illegally. The U.S. Information Agency (Radio and TV Marti) should maintain extensive efforts to persuade eager Cubans to migrate through legal means, as well as coordinating aid and assistance efforts that encourage people to stay and help rebuild Cuba. Congress should be prepared to appropriate contingency funds to the Departments of Transportation and Defense for interdiction operations in the Florida Straits. Enlisting the cooperation of the Cuban-American community in South Florida for this endeavor is critical.*

AID AND ASSISTANCE

Cuba will need substantial emergency and reconstruction assistance during its continued transition to a private-sector-dominated, market economy. Much of the shock usually experienced in these transitions already has been absorbed with the decline in living standards over the last four years. Nevertheless, Cuba, in one form or another, is in need of anywhere from \$500 million to \$2.5 billion a year in emergency aid, technical assistance, economic infrastructure development, and social support.¹ Initially, the levels would probably be lower because of limited ability to absorb aid, then would rise to higher levels for a period of three-to-five years while the economy recovers. Most of this aid will come from international organizations like the World Bank, Inter-American Development Bank, the United Nations Development Programme, as well as private voluntary organizations. Yet to qualify for such assistance and administer aid programs effectively, several problems will need to be addressed. In particular, the ability of foreign capital to generate a substantial positive contribution should be greater than traditional governmental assistance, especially given the new priorities of the U.S. Congress.

Background

1. Cuba has not yet made the transition from a Soviet-style national accounting system to the standards used by most market economies and the International Monetary Fund (IMF). Furthermore, the government has released only limited economic data since 1989. As a result, estimates of requirements for foreign assistance are highly uncertain. These would be essential for international aid donors and the United Nations Economic Commission for Latin America (ECLAC), which customarily is responsible for providing quick response (about 10 days) quantitative estimates of the need for reconstruction and recovery.
2. A wide range of bilateral, multilateral, and private aid efforts will need coordination: the United States can act quickly to deliver emergency aid while the International Monetary Fund (IMF), the World Bank, and the Inter-American Development Bank develop assistance and stabilization programs. Also, several multilateral organizations for economic cooperation in the Caribbean, such as the World Bank's Caribbean Group on Economic Cooperation and the UN's Caribbean Development Cooperation Committee will be involved. However,

¹ These figures are based on studies by Amb. Ernest H. Preeg and are included in his book, *Cuba and the New Caribbean Economic Order* (Washington, D.C.: Center for Strategic and International Studies, 1993), and the work of Jose F. Alonso and Armando M. Lago, contained in their report, "The Foreign Assistance Requirements of a Democratic Cuba: A First Approximation," *Cuba in Transition: Volume #3. Proceedings of the Third Annual Meeting of the Association for the Study of the Cuban Economy* (Washington, D.C., 1994), pp. 168-219.

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Cuba must first officially request assistance to trigger multinational responses and, to date, Cuba has been unwilling to make such overt appeals to agencies outside the United Nations system.

3. Coordinating aid programs also will be a challenge in terms of establishing an adequate distribution system for the types and quantities of aid without contributing to corruption, undermining privatization efforts, or developing economic dependency over the longer term. Cuba's limited number of non-governmental civic institutions will further restrict aid efforts.

4. Cuba's large external debt also looms as a threat to the country's future economic recovery. Cuba has not serviced its approximately \$7 billion debt owed to Western, mainly government, creditors, since July 1986, though it has already settled at least some of its foreign debt with Spain and Mexico through asset swaps. Nor is Cuba servicing its Russian debt: Denominated in rubles, the value ranges from a few hundred million to perhaps as high as \$20 billion.² In addition to claims for expropriated property, Cuba owes about \$100 million to the U.S. Export-Import Bank.

5. Attracting foreign capital will be important and transfers from Cuban-Americans may provide a substantial immediate infusion of money. In recent years, the Cuban-American community of about 1.2 million persons provided about \$300-400 million per year in transfers to relatives and friends in Cuba. By comparison, about 600,000 Salvadorans in the U.S. transferred about \$470 million per year. Thus, without restrictions and with a more favorable political climate in Cuba, the Cuban-American community could provide substantially more in both remittances and private investments.³

6. Election monitors, non-governmental and religious groups, and other builders of civil society will be needed to assist in building new systems of governance. Spain and Canada have already begun a series of legal and educational exchanges designed to help Cubans enact statutory reforms, as well as more substantial legal restructuring.

² It should be noted, however, that Russia does not agree to this exchange rate calculation, and, at least for the purpose of stating its initial position, speaks of "constant rubles."

³ Amb. Ernest Preeg "conservatively" estimates remittances at about \$800 million per year, although this number is considered by most experts to be the highest potential estimate. Readers should be reminded that all figures are highly uncertain, given the lack of data available from Cuba and the rapid social and economic changes underway. See also page 23, *infra*.

7. In addition to basic problems with insufficient food, fuel, and public utilities, pollution from shipping, loss of biodiversity, and antiquated factories are serious concerns. Soil erosion is extensive in the countryside. Working with Cuban experts, the United States is in a strong position to provide technical assistance and training to help with environmental cleanup.

8. Funding for U.S. aid programs is currently contingent on establishing an effective mechanism for handling claims by U.S. citizens against the government of Cuba for confiscated property. Other preconditions may include the monitoring of human rights and democratic practices. Legislation pending in the 104th Congress will undoubtedly require strengthening and making more explicit both the existing restriction on aid to Cuba and which reforms Cuba must adopt to receive U.S. assistance.

Recommended Steps

1. *All U.S. aid and assistance to Cuba will be contingent upon the ability of the United States Agency for International Development (USAID) to allocate funds as well as the will of the U.S. Congress to appropriate additional amounts. Within such limitations, the U.S. should give priority to temporary relief programs while making it possible, on a governmental level, for multilateral and private assistance to flow on their own.*
2. *The senior official responsible for coordinating normalization should establish clear objectives for U.S. aid programs. The coordinator should also oversee U.S. cooperation with international donors and with non-governmental and private aid organizations, including religious charities. Part of this effort should include establishing a clearinghouse of all U.S. aid activities and encouraging public-private partnerships.*
3. *The Department of State should permit and encourage the IMF, World Bank, and the OAS to accept or reactivate Cuban membership as soon as possible. The senior coordinator should be the principal interlocutor with the group of international donors (most likely headed by the World Bank) in their design of an economic assistance program for Cuba. The coordinator should ensure that U.S. aid programs act in concert with the efforts of others.*
4. *If funds are made available, USAID should design and initiate emergency assistance programs to dramatically improve the quality of life for most Cubans within six months. For example, food and medicine are in short supply and public water supplies and electricity are not reliable. Cash grants may be needed for oil imports to help restore public power and transportation systems. Also, trade credits for petroleum imports from*

Russia, Venezuela, Mexico and other countries which lead to increased oil imports for energy generation and public transportation would have a dramatic affect on living conditions. Assistance in these areas is relatively inexpensive and would provide visible changes that build important popular support for longer-term assistance programs and the overall transition.

- 5. The United States should spearhead international efforts to devise a 'Brady Plan' for Cuba's remaining debt. This has been a common practice for Latin America and Eastern Europe.*
- 6. USAID should provide Congress with the necessary information for 'authorization and appropriation legislation for emergency and reconstruction assistance. ECLAC estimates may be useful in determining the scope of requirements. Moreover, longer-term governance assistance should be separated initially from emergency aid, at least until the economy regains enough strength for the necessary political and economic reforms to be undertaken. Although meeting basic standards of human rights is a necessary precondition for normalization and thus assistance of any kind, a premature insistence on the fulfillment of a long and complex process of reform should not be allowed to prevent the flow of much-needed humanitarian aid.*
- 7. The Department of State and USAID should consider ways to assist Cuba with institutional reform whose result is an enhanced capacity for trade and investment. The Department of Commerce should be targeted to play a supervisory role as was the case most recently for Haiti. Assistance programs should also pay attention to the increasing importance of portfolio investment and take steps to help Cuba establish an active financial sector.*

PARTICIPATION IN INTERNATIONAL ORGANIZATIONS

As part of the normalization process the United States will play a key role in the readmission of Cuba into several key international organizations. These include the Organization of American States (OAS) and the Inter-American Development Bank (IDB), the International Monetary Fund (IMF), and the World Bank Group. Establishing active membership in these organizations is essential to Cuba's reintegration into the international community, but significant obstacles will stand in the way. By harmonizing the readmission process with its own policies toward Cuba, the United States can help to improve overall hemispheric and global relations with the island. Participation in international organizations is crucial, not just on a technical level, but also for spreading a perception of neutrality and goodwill. The United States should work through multilateral fora as much as possible when it attempts to instruct or otherwise influence Cuban policy. This is especially important for aid and assistance programs.

Background

1. Cuba is not a member of any international financial organization. It withdrew from the IMF in 1964 and resolved its arrears problem with that organization in 1969. There have been some informal discussions between Cuba and former IMF officials, as well as nationals from other IMF countries, but those have focused narrowly on the need for Cuba to establish the national accounting reporting procedures followed by the other IMF members.
2. Although Cuba is an active participant in the United Nations, including its subsidiary organizations like the Pan American Health Organization, its membership in other organizations has been suspended or withdrawn. For example, the government of Cuba was suspended from the Organization of the American States in 1962. If reinstated, Cuba would be responsible for 1.24% of the OAS budget based on its previous quota. Under the current OAS budget, this would amount to \$885,000 for 1995. Given the drastic deterioration of the Cuban economy since 1989 and the 1990 OAS adjustment of quotas, Cuba would likely be entitled to an adjustment downward. Such an adjustment will require information on the Cuban Gross National Product (GNP) per capita--information that is not currently available.
3. Because of the OAS suspension, Cuba does not participate in other Inter-American organizations, such as the Inter-American Development Bank (IDB), the Inter-American Defense Board, and Group on Agricultural Cooperation. However, Cuba does participate in a few regional organizations which do not include the United States, such as the Ibero-American Summit and the Caribbean States Association. These are important fora for regional consensus and function

as important bridges to participation in organizations of which Cuba and the United States are both potential members.

Recommended Steps

1. *Once Cuba meets the conditions specified in the framework agreement, the President should instruct the U.S. representatives to the IMF, World Bank, and OAS to support Cuba's requests to become a full member of multilateral institutions. This will be necessary in order to expedite the flow of aid and assistance with economic restructuring. Once Cuba has been admitted to the IMF, readmission to the World Bank and the remaining Bretton Woods institutions should follow quickly. The U.S. representatives should resist external pressures to demand certain quota levels for Cuba in these organizations; such decisions are internal and the United States should work as a team player.*
2. *Congress should not attempt to impose additional conditions on regular payments to these organizations, assuming that Cuban domestic practices after normalization continue to comply with the standards outlined in the Cuban Democracy Act. Thus, Congress should be mindful of the need to reintegrate Cuba into the hemisphere and international community. At the present time, no additional legislation is required for this, because the process is permitted to occur under the Cuban Democracy Act, whose provisions supersede those of the "Helms Amendment" (Sec. 525 of the Foreign Assistance Act of 1994-95) and other restrictive legislation.*

CLAIMS AND FOREIGN ASSETS

The initial framework agreement for restructuring normal relations must establish procedures for dealing effectively with claims against the Government of Cuba for property confiscated from U.S. citizens since 1959. As a related issue, the U.S. government may also wish to promote a fair resolution in Cuba of the claims of Cuban nationals who have subsequently become U.S. citizens. Given the poor condition of the Cuban economy, full cash compensation is unlikely. Yet, if not handled quickly and effectively, the claims issue could stifle the flow of badly needed investment and aid. For this reason, all efforts should be directed toward establishing a program for quick settlement even though complete resolution of all individual claims may require several years.

In negotiations with Cuba over the claims issue, some arrangements will need to be made for returning the remaining, recoverable assets of the Cuban Government that were frozen in the United States in response to the seizure of properties of U.S. nationals in Cuba. Also, the United States should anticipate that Cuba will claim damages resulting from the embargo, although there is no apparent basis for such claims in international law.

Background

1. Under the 1964 Cuban Claims Act, 8,816 claims were adjudicated by the U.S. Foreign Claims Settlement Commission. Of these claims, 5,911 were found to be valid, of which approximately 5,000 are individual claims and the rest are claims of companies. At the time, these claims totalled about \$1.8 billion. With simple interest at the 6% per annum specified by the adjudication, these claims currently amount to about \$5.6 billion. At compound interest, a standard more consistent with the owner's loss, commercial practice, and precedents in international law, the value of registered claims would be more than \$13 billion. Corporations account for about \$1.6 billion of the original \$1.8 billion and the top ten claimants account for more than one-half of the total.⁴ The industries represented by these claims include telephone, electric utilities, sugar, cement, and mining. Some of the major claimants may be interested in and capable of putting their properties to use immediately to help jump-start the Cuban economy and minimize the demand on Cuban government cash resources.

2. These certified claims, however, are limited only to those persons and companies who were U.S. nationals at the time their property was seized.

⁴ See Robert E. Freer, Jr., "Restitution's Role in the Recovery of the Cuban Economy," (paper presented at the conference on "The Future of the Sugar Industry in a Free Cuba," Miami, Florida, July 15, 1994).

Additional claims are being asserted by those who were Cuban nationals at the time they lost property and have since become U.S. citizens. Some of these unregistered claimants have organized to press for the return or appropriate compensation for their property. Some may sue in U.S. courts the Government of Cuba and foreign companies that have acquired interests in confiscated properties.

3. The U.S. government will need to address quickly the cases of those whose claims have already been adjudicated by the Foreign Claims Settlement Commission. The government also will be under pressure to respond to the unregistered claimholders. In deciding how to deal with claims, it also would be useful to distinguish between larger and smaller claimholders. Some of the larger claimholders are interested in restitution, although many are concerned about any liability that may be imposed on them for environmental degradation of their property in the past 35 years. Smaller claimholders, such as individuals who lost their residences, may be more interested in compensation, since it would be difficult to evict Cuban families who subsequently have resided in these houses for more than 30 years. If wholesale restitution is not possible, the Government of Cuba will not have sufficient funds for returning the full value of confiscated property, and those individual and corporate claimants seeking cash compensation will likely face partial and deferred payment.

4. Any effort to expand the pool of claimholders to include unregistered claims will be controversial. There is no basis in international law for a country to assert claims on behalf of citizens who were not nationals at the time of the confiscation,⁵ and any attempt to do so may increase the obligation of the U.S. government. Furthermore, those who already have registered claims may oppose efforts to open the process. Rough estimates suggest that the total property confiscated in the early 1960s amounted to approximately \$7 billion. Assuming 6% annual simple interest, these unregistered claims could now total more than \$20 billion.⁶ Other estimates of unregistered claims are higher, particularly when those still residing in Cuba are considered, and, with compound interest, the amount becomes enormous.

⁵ However, there is a precedent in U.S. law which establishes jurisdiction over cases involving foreign governments when a nexus can be established between confiscated property and profits invested in the United States by the new owners. See *Argentina v. Weltover, Inc.* 60 U.S.L.W. 4510 (1992); and *Bernstein v. N.V. Nederlandsche-Amerikaansche* 210 F. 2nd. 375 (1954).

⁶ Based on estimates by Jose F. Alonso and Armando M. Lago, in *The Foreign Assistance Requirements of a Democratic Cuba* (London: La Sociedad Economica, April 1994).

5. Based on Cuba's experience in settling claims issues with other countries, Havana should be willing to negotiate an agreement on claims as part of the normalization process. But even assuming such an agreement, some U.S. citizens may decide to not accept the terms of the agreement and sue any governmental or private party who benefitted therefrom. Some of these claimants may demand restitution because the Government of Cuba has acted in a private capacity through joint partnership with foreign companies in these seized assets, although the property was originally and allegedly expropriated for public use--which is legal, assuming fair and reasonably contemporaneous compensation. The impact of such law suits is not clear.

6. By law, claims must be settled within three years of a transition to a democratically-elected government or funding will not be made available for foreign assistance and similar programs (Sec. 527, Foreign Relations Authorization Act, FY 94-95). The President, however, may waive these prohibitions on an annual basis if it is in the national interest and Congress is so notified. (Also see provisions of new Helms bill, if passed).

7. Although the size and complexity of the confiscation of the property of U.S. nationals which occurred in Cuba is unprecedented, in less challenging previous situations the U.S. Department of State has negotiated a settlement agreement with foreign governments on behalf of all U.S. citizens and corporations, after authorization by the U.S. Congress for the Foreign Claims Settlement Commission (FCSC) to conduct a pre-settlement adjudication of claims. This has already occurred for Cuba, so the Department of the Treasury would be charged with executing the payments. However, because of its magnitude and complexity, a lump sum settlement may not be feasible or appropriate in this situation. For the unregistered claimants, Congress may authorize appropriate action on their behalf to assist them to secure a remedy from the Government of Cuba, although this would also be unprecedented.

8. The Department of the Treasury froze Cuban assets in the U.S. worth about \$149 million in July 1963 after about \$500 million already had been transferred to Canada. Of this, about \$67 million is estimated to be "recoverable property," that is, in relatively liquid assets. Other assets include unsecured bonds, securities, safe deposit boxes, and amounts claimed in pending disputes with U.S. companies. Most of these assets in the United States are probably unrecoverable, meaning that such assets are impossible to redeem or of little value.

9. The process may involve other parts of the U.S. government to the extent that conditions are placed on the settlement agreement. Additionally, a mutual legal assistance agreement will be necessary so that U.S. and Cuban officials can share data and records of claims. Also, to encourage the continuing investment in

restored properties, the Internal Revenue Service, with Congressional authorization, may need to establish new regulations for those who claimed capital losses on their previous tax returns to defer recognition of gain until such gain is realized and repatriated.

10. Finally, attention will have to be given to dispute resolution options, such as those available under UN auspices, through the International Court of Justice, or through the World Bank's International Centre for Settlement of Investment Disputes (assuming Cuba quickly becomes a member of the Bank and subscribes to the Centre's Convention⁷) or a private voluntary arbitration forum. This will be especially important in complicated cases where disputed property was sold or is run by the Cuban government and/or other third-country investors. In most instances, third party investors were on notice regarding irregularities in titles, but nevertheless assumed the risks.

Recommended Steps

1. *The Departments of State and the Treasury should establish a quick and orderly process for settling U.S. claims, accepting the fact that the Cuban economy is not able to support more than fractional compensation. In designing the process, both departments should consult constantly with Congress. All efforts to deal with claims should be within the larger context of the reconstruction of the Cuban economy which best serves long-term Cuban and U.S. interests with appropriate emphasis on the future protection of investment. The settlement mechanism should be outlined in an agreement which would be available to the general public to offset any concerns that the process has not been set in motion.*
2. *The Departments of State and the Treasury should emphasize that all negotiations and agreements are predicated on the establishment of firm laws and constitutional reforms which guarantee and protect private ownership of property in Cuba.*
3. *All policy should be made in careful consultation with the relevant interest groups. Although it will be difficult to harmonize all their positions, a clear and unified policy should be developed at the outset. Decision-making will be difficult enough in Cuba without additional uncertainty created by differing U.S. positions on claims. Provided that the principle of*

⁷ However, disputes between a State and a foreign private party may be referred to the Centre for settlement only if both parties so agree, and this is usually stipulated in the original concession or other agreement between the host government and the foreign investor at the time the project is formed.

compensation has been accepted by Cuba, the subsequent negotiations on specific claims should not be allowed to impede other aspects of U.S.-Cuban relations, especially aid and investment.

4. *In negotiating a compensation agreement, the Departments of State and the Treasury should carefully examine the positive and negative aspects of past settlements with Eastern Europe and Latin America (particularly Nicaragua). The Department of State should also keep an open mind about the form compensation eventually takes: Because Cuba lacks the hard currency to pay a fraction of the claims, a program of vouchers tied to the potential return on privatized industries is preferable. One creative proposal suggests transforming the Guantanamo Naval Base into a development facility with a portion of the shares or profits going to the U.S. Government as part of an overall compensation plan.⁸*
5. *The Department of Agriculture and the Commodity Credit Corporation should investigate, with the Department of Treasury, the possibility of a special sugar fund which derives its capital from the differential of the U.S. price for sugar and the world price. This differential equals about \$.10 per pound: if the United States bought Cuban sugar and resold it at the U.S. price, a significant source of revenue would be created. 75% of this revenue could be used to pay expropriation claims while 25% could be used for general development purposes in Cuba.⁹ Assuming that the Cuban government agrees to the plan, the Departments of State and the Treasury should include it in a potential compensation agreement, while the Congress should support the plan as an overall compromise while ensuring that the agreed purchase amount does not cut significantly into the preferred supplies of domestic producers.*
6. *Where restitution of properties is an option, settlement should be linked to plans for returning them to productive use. To encourage privatization and offset some of the financial losses that may be incurred in the settlement, Congress should consider tax incentives in limited cases for U.S. investors who make productive the confiscated properties that are returned to them. Other incentives may include those for philanthropic foundations created with funds received as compensation.*

⁸ Rolando H. Castañeda and George Plinio Montalván, "Economic Factors in Selecting an Approach to Expropriation Claims in Cuba," *op. cit.*

⁹ A division suggested by Monroe Leigh, Esq., private correspondence, March 1, 1995.

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7. *A triage-like approach is necessary in developing the policy to handle specific claims. The U.S. government and the major U.S. claimants should resolve the largest claims first, thus gaining diplomatic and economic leverage over other parts of the settlement process. Careful attention should be devoted to vocal groups of Cuban-Americans; while some will not want the United States to espouse their claims, their representatives may demand that conditionality be placed on other, non-relat. issues until the claims are settled. The Congress and Departments of State and the Treasury should strongly resist such pressures while working to establish constructive and creative solutions to this problem.*
 8. *The Department of Justice should be mindful of lawsuits by unregistered claimants and determine if their ramifications threaten to stall the entire settlement process. If appropriate, the Justice Department could seek to provide advice on how such claims should be handled.*

TRADE

Under current law, trade cannot be restored until Cuba introduces substantial political and economic reforms, including the holding of free and fair elections with international observers. The Cuban Democracy Act provides for sanctions to be lifted "in carefully calibrated ways in response to positive developments in Cuba," but it also specifies that sanctions be maintained so long as the Cuban government continues to refuse to move toward democratization and greater respect for human rights.

Once the sanctions are lifted, the level of trade will depend in large part on the extent to which Cuba is allowed access to U.S. markets. Cuba could become the largest U.S. trading partner in the Caribbean: It is well located for transshipment and export processing, and it has a highly educated labor force, significant mineral resources (nickel, cobalt, manganese, and chromite), a biotechnology industry, and attractive tourism resources. Cane sugar refining may be an attractive possibility on a cooperative (i.e. re-export) basis with the United States. Nevertheless, U.S. exports to Cuba will probably far outweigh imports, at least for the first several years.

Background

1. Cuba will continue to have difficulty financing imports. Foreign aid, investment, and remittances will be important sources of hard currency in the early years. Still, U.S. exports to Cuba could grow to about \$2 billion a year. This could lead to the creation of more than 16,000 jobs in the United States.¹⁰
2. Despite efforts to diversify, sugar still dominates the economy. Between 1985 and 1989, sugar accounted for more than 70 percent of Cuba's foreign exchange earnings. As recently as 1992, Cuba was the world's largest exporter of sugar. However, sugar production has fallen from 7.6 million metric tons in 1990-91 to about 4 million tons in 1994, and Cuba has been unable to meet export commitments, mainly to Russia and China. The 1995 sugar crop is expected to be less than 4 million tons. Meanwhile, sugar exports continue to be essential for crucial imports like energy. In late 1993, Russia and Cuba signed an important barter agreement in which Cuba will provide 1 million tons of cane sugar in exchange for 2.5 million tons of Russian oil.¹¹ Cuba's sugar exports most likely

¹⁰ Dr. Jorge Perez-Lopez, personal communication, November 17, 1994.

¹¹ Carmen Diana Deere, "U.S.-Cuba Trade in the Process of Normalization of Relations and of Cuban Economic Recovery," unpublished paper prepared for the Atlantic Council of the United States, October 31, 1994.

will continue to bring in vital energy under barter arrangements with Russia and Venezuela, even after the U.S. embargo is lifted.

3. Because of the importance of sugar in the Cuban economy and its former role in U.S. imports, the U.S. sugar import quota will be a contentious trade issue. In an era of freer trade, the U.S. sugar quota system may come under increased scrutiny. It results in a substantial difference between world sugar prices, about 14 cents per pound, compared to the U.S. raw sugar prices of about 22 cents per pound. In 1958 Cuba held 38% of the U.S. sugar market, exporting 3.2 million MT.¹² But subsequently, the total U.S. sugar import quota has been reduced from about 9 million tons in the 1950s to 1.2 million tons in 1992-93, while Brazil and the Philippines are now the leading sugar exporters to the United States. These exports represent less than 10 percent of U.S. sweetener consumption.¹³ The reductions in the sugar import quota during the 1980s were undertaken to protect U.S. cane and beet sugar producers without providing direct government subsidies. Corn producers also have taken advantage of the high prices for sweeteners and now corn syrup accounts for almost half of the U.S. market. Changes brought about through GATT as well as the 1995 farm bill suggest an improving market for cane and beet sugar. While not likely ever to recover to pre-Castro volumes, businesses in the United States and Cuba may find mutually beneficial opportunities in cooperative ventures, such as re-export.

4. In addition to sugar, other Cuban imports may face significant opposition from U.S., Caribbean, or other foreign producers, even though many products, like citrus and tobacco, could be complementary, that is, they could be blended, mixed, or otherwise refined to maximize supply or quality.

5. Domestic food production has fallen sharply, but Cuba currently lacks hard currency to pay for imports. Even in good times, Cuban domestic food production never satisfied the demand. Cuba has been an importer of rice, pork, lard, chicken and dairy products. Given the chronic shortfalls, fertilizers, pesticides and other commodities represent potential import areas.

¹² Jorge Perez-Lopez, *The Economics of Cuban Sugar* (Pittsburgh: Univ. of Pittsburgh Press, 1991), Tables 30, 31.

¹³ Foreign Agricultural Service, *Sugar and Sweetener Situation and Outlook* (Washington, D.C., March 1994); U. S. Department of Agriculture, *U.S. Sugar Tariff-Rate Quota Entries* (Washington, D.C., October 1, 1992-September 30, 1993).

Recommended Steps

1. *Once the President is able to certify to Congress that Cuba has met the conditions of the Cuban Democracy Act, Sec. 1708, he will need to lift the trade, transportation, and travel sanctions imposed by Sec. 1706. Congress should then pass legislation repealing any additional sanctions. Also, the President should waive restrictions on shipping to and from Cuba, and the Office of Foreign Assets Control should modify or revoke existing regulations on Cuba accordingly.*
2. *Most Favored Nation (MFN) trading status should be granted as soon as possible to Cuba. The Department of State and the U.S. Trade Representative should begin steps to admit Cuba into the generalized system of tariff preferences (GSP), and the Caribbean Basin Initiative (CBI). These steps should be taken by way of the negotiation of a bilateral investment treaty with Cuba, detailed in recommendation 2, p. 24, infra.*
3. *Regardless of the time frame in acceding to MFN and GSP, the U.S. Trade Representative should establish regular meetings with the Cuban government on trade issues. The prospects for trade depend primarily on the degree to which U.S. markets are opened to Cuban products. Such issues could be addressed in bilateral or multilateral trade agreements, as well as in the World Trade Organization (WTO), assuming that Cuba becomes a full, participating member. Concerning the differential in U.S. and Cuban sugar prices, a special fund, described in recommendation 5, page 17, supra, should be set up to help settle U.S. claims.*
4. *U.S. government agencies should keep apprised of efforts by chambers of commerce and bilateral business councils to encourage trade. Such discussions can help identify potential problem areas.*
5. *Congress should weigh efforts by special interest groups to inhibit imports from Cuba with the longer term, overall potential for free trade in primary products.*
6. *Because trade and investment are the keys to sustained economic viability, priority should be given to eliminating the barriers to the functioning of free markets. Meanwhile, both public and private assistance programs should consider improving infrastructure such as ports and roads which impact on the building of permanent and prosperous trade relationships.*

FINANCE AND INVESTMENT

Even under the most optimistic normalization scenario, Cuba will be in dire need of investment. A large capital infusion is needed, not only to rebuild an island economy experiencing its worst crisis of this century, but also to finance some of the drastic structural changes that will be necessary for Cuba to fully rejoin the community of market economies. Multilateral lending inevitably will be limited and focused mainly on the short term, so most of Cuban development will need to be based on private investment, including foreign direct investment. Because the United States represents the largest potential market for Cuba, U.S. policy can play a crucial role in mitigating some of the greatest obstacles and fostering a better investment climate. As stated above in the section on claims, the most urgent tasks will be to set up a satisfactory process for dealing quickly with the issue of claims and creating a favorable environment in Cuba to protect investors, both domestic and foreign.

Background

1. Cuba will be a generally unattractive investment site for years to come. The country's productive sector, principally the sugar industry, and infrastructure, especially power distribution and telecommunications, are seriously deteriorated. Furthermore, the small internal market's purchasing power has diminished sharply over the past few years. Multinational corporations and banks looking at large-scale investment prospects will be deterred by the shortage of viable projects offering competitive rates of return. However, limited amounts of investment may flow quickly into tourism, communications, and a few other more modern industrial projects, and the construction industry could boom for a while.
2. The current Cuban commercial regulatory environment is not suited to a free market economy. Substantial revisions are needed in everything from property, labor, environmental, and safety legislation to international investment agreements, exchange controls, and rules for foreign trade.¹⁴ An efficient banking system is needed to foster capital accumulation, trade, and investment. Current government labor practices also are grossly out of step with world practices. For example, a government entity--*Empleadora Nacional*--contracts to provide labor to foreign ventures for an average monthly fee of \$400 per worker, in hard currency, while the worker only receives 250 Cuban pesos--worth about only about \$3 per month.

¹⁴ See Antonio Jorge and Robert David Cruz, "Foreign Investment Opportunities in Cuba: Evaluating the Risks," in Jaime Suchlicki and Antonio Jorge, eds., *Investing in Cuba: Problems and Prospects*. (New Brunswick: Transaction Publishers, 1994), 28-31.

3. The threat of political instability remains a deterrent to foreign investment. Even a relatively peaceful transition will likely be threatened by persistent tensions between former Communist officials, reformers, and returning exiles. Unemployment resulting from badly needed reductions in the military, civil bureaucracy, and public sector firms could further exacerbate tensions.

4. Meanwhile, investors contemplating buying into properties in dispute will be discouraged by the uncertainty of obtaining clear title. Similarly, Mexican, Spanish, Canadian, and other foreign investors who obtained interests in disputed properties may find those acquisitions challenged, which could hinder the overall investment climate.

5. Cash remittances from Cuban-Americans to friends and relatives in Cuba will not be a sufficient source of foreign capital over the long term, even though these remittances have important short-term benefits. With a favorable political environment in Cuba, the Cuban-American community could provide up to \$800 million a year.¹⁵ Over the longer term, however, remittances are not likely to be an adequate, overall source of investment capital.

6. Another--although very uncertain--source of potential investment is the Cuban-American capital that is reportedly ready to move into small and medium-sized projects, even where profit expectations are low. Estimates range from about \$1 billion over 5 years to as much as \$6 billion.¹⁶ The political climate will be pivotal in determining how much of this investment materializes.

7. An important means of protecting U.S. investment in Cuba would be the negotiation of a bilateral investment treaty (BIT) with the new Cuban government. The U.S. Trade Representative's BIT program has resulted, to date, in agreements with 34 countries. The program has focused not on large, industrialized trading partners, but rather on those less-developed countries (like Cuba) in which investment risks are substantial.

¹⁵ See Sergio Diaz-Briquets "Emigrant Remittances in the Cuban Economy: Their Significance During and After the Castro Regime" (paper presented at the Fourth Annual Meeting of the Association for the Study of the Cuban Economy, Miami, Florida, August 1994); and Ernest Preeg, *Cuba and the New Caribbean Economic Order*, *op. cit.*, 56-57.

¹⁶ See Jose F. Alonso and Armando M. Lago, *The Foreign Assistance Requirements of a Democratic Cuba: A First Approximation*, *op. cit.*

Recommended Steps

1. *The Overseas Private Investment Corporation (OPIC) should take immediate steps to reach an investment agreement with the Government of Cuba and encourage Cuba to reach a similar accord with the World Bank's Multilateral Investment Guarantee Agency (MIGA). Once these agreements are in place, OPIC and MIGA should use their political risk insurance, financing and foreign investment advisory services to expedite the flow of U.S. and other foreign direct investment into Cuba. The United States should lead efforts of international donors to create a debt relief plan for Cuba, as mentioned in recommendation 5, p. 10, supra. OPIC should also help the Department of State coordinate plans for aid and assistance directly with longer-term strategies for investment promotion. Similar to trade policy, these strategies should emphasize removing restrictions and not the assertion of special treatment for Cuban goods or investors.*
2. *The U.S. Trade Representative should negotiate a bilateral investment treaty (BIT) with Cuba that closely follows the U.S. model BIT (see annex). This provides for the enforcement of a variety of important investor rights, including most-favored nation and national treatment of investment; expropriation only for a public purpose and upon payment of "prompt, adequate, and effective compensation"; free transfer of investment capital and returns in a convertible currency; and prohibition of performance requirements (e.g., local-content or minimum export requirements).*
3. *The various departments of the Executive Branch who deal with investment should devote particular attention to privatization programs, especially in helping Cuba to establish separate procedures for enterprises of different sizes, as well as heeding lessons--positive and negative--from privatization programs in Nicaragua, Argentina, Chile, and the emerging post-Communist economies of Eastern Europe and the former Soviet Union.*
4. *Although the U.S. Government can do little to focus private capital on distinct sectors, it can help promote awareness in the international community of the attractive investment opportunities that do exist in the most important sectors of the economy, namely tourism and agribusiness. Special attention should also be given to crop diversification and light industry.*
5. *To insure that Cuba is eligible for U.S. and multilateral assistance, the State Department and other agencies should promote human rights and fair labor practices in Cuba. Good models for such principles have existed for South Africa (Sullivan), Ireland (MacBride), Russia (Slepak), and China (Miller).*

A current proposal exists for Cuba: namely, the "Arcos Principles" provide a good point of departure for consideration of an appropriate standard.¹⁷

¹⁷ See Rolando H. Castañeda and George Plinio Montalván, "The Arcos Principles: Joint Project of Gustavo Arcos Bergnes, on behalf of the Cuban Committee for Human Rights, and the International Society for Human Rights," unpublished draft, August 4, 1994.

COMMUNICATIONS

Telecommunications services between Cuba and the United States were limited after 1959 but were never severed. Currently they are permitted--even encouraged--by the Cuban Democracy Act (Section 5(e)). Similarly, the U.S. Postal Service has authority under the Act to establish direct mail service to and from Cuba (Section 5(f)). Radio Marti was established in 1983 to further "the open communication of accurate information and ideas to the people of Cuba" (Public Law 98-111). The legislation establishing TV Marti (Public Law 101-246), as well as the 1994 International Broadcasting Act, contain similar guidance. These programs will need to be reviewed once Cuba and the United States begin a process of normalizing relations.

Background

1. Bilateral telecommunications were treated differently from other issues by both Cuba and the United States. The 60-circuit telephone cable connection from Cuba to the outside via the United States continued to operate, but U.S. policy precluded increasing the number of circuits or upgrading technologies to meet demand. However, in the late 1980s, policy changes authorized an additional 60 circuits. Satellite communications were also permitted as part of U.S. policy to encourage the flow of information. Nevertheless, the current telecommunications capacity remains inadequate. An estimated 600-800 circuits are probably needed to meet demand, along with extensive renovation of the local telephone infrastructure.
2. The Federal Communications Commission (FCC) granted permits in October 1994 to U.S. companies to establish telecommunications services with Cuba. Initially, five companies signed agreements that provide the Government of Cuba with 50 percent of the revenue generated by phone calls between Cuba and the United States. The FCC authorized the U.S. companies to increase the number of circuits to about 700, but such a capacity will not be realized until the Cuban phone system is modernized.
3. During the process of normalization, the mandate and fund allocations to Radio and TV Marti probably will be challenged. Some groups will exert pressure on the budgetary process to expand the resources devoted to Radio and TV Marti, while others may seek to restrict them. Cuban-Americans and others in the United States may argue for an enhanced need to promote information flows to Cuba. Others may argue that normalization and cooperative relations eliminate the need to broadcast alternative sources of ideas. Of course, conditions in Cuba will be the main factor in determining the need for continued broadcasting. In Eastern Europe, the many uncertainties that accompanied the

transitions led to the continuation of Radio Free Europe, a policy urged by national leaders such as Lech Walesa and Vaclav Havel.

4. The restoration of regular mail service will lead to a huge increase in demand. Cuba may require assistance in improving its postal system.
5. There will be pressure from claimholders to fully resolve disputes over the telecommunications network before any new initiatives are allowed to proceed.

Recommended Steps

1. *Promoting the free flow of information should be a priority component of U.S. policy. The demand will be high for new phone systems, fax machines, radios, televisions, cable systems, and printed materials. Also, the development of a free press should be a priority for aid and educational exchange programs.*
2. *Congress should fund Radio and TV Marti if they continue to meet important needs during a transition period and fulfill their basic objectives as defined by Pub. L. No. 98-111, Pub. L. No. 101-246, and the International Broadcasting Act of 1994. The numbers of viewers of TV Marti could rise dramatically after jamming and electrical failures cease and television sets become more available.*
3. *After this transition period, the roles of Radio and TV Marti can be assumed by the private sector. Several radio and TV stations in Miami are capable of providing such functions. Private sector initiatives to improve telecommunications services also should be encouraged, as well as the expansion of private courier services.*

TRAVEL AND TRANSPORTATION

The United States Government will need to take the necessary steps to restore normal travel to and from Cuba. In addition, private companies will need to meet the increase in demand for air and sea travel. At the present time, only three air charter companies serve Cuba from Miami. Before 1959, there were approximately 20 flights a day by several airlines.

Background

1. Travel to Cuba is extremely limited at the present time. Few U.S. citizens are permitted travel permits, while no active maritime service (tourist or trade) exist. U.S. law permits travel without a passport to any adjacent North, Central, or South American country or territory, with the exception of Cuba. (See 22 CFR 53.2).
2. The demand for travel to and from Cuba probably will be very high, but systematic estimates have yet to be made. U.S. and Cuban ports may be inadequate to handle this surge in activity. Both the Miami seaport and airport have expanded significantly in the past few years, but further expansion may be needed if several thousand people and cargo travel to and from the island each day. Furthermore, processing large numbers of new travelers through customs and immigration will need to be anticipated.
3. Although technically still in force, the 1953 U.S.-Cuba Air Transport Agreement (amended in 1957) is suspended and no direct air travel is permitted with the exception of charter flights. Direct air travel could be resumed quickly either under this agreement or under an arrangement of "comity and reciprocity" until the old agreement is updated or a new agreement is reached. A new agreement seems more appropriate because of the many changes that have taken place: For example, some carriers under the original agreement no longer exist, although their rights have passed to their successors. New air carriers are also using different routes and hubs.
4. The safety and security of Cuban facilities will need to be verified, although Cubana airlines apparently meets ICAO standards.
5. Although U.S. carriers regularly overfly Cuba, additional air traffic control arrangements at the Miami Air Route Traffic Control Center (ZMA) may be necessary to cope with the higher numbers of flights.
6. Because of the embargo, any vessel that enters a Cuban port to engage in trade may not, within the ensuing 180 days, engage in trade in a United States

port; and any vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest may not enter a United States port (Section 1706, Cuban Democracy Act of 1992). Assuming normal diplomatic relations and a lifting of sanctions, new port access and duty agreements will be required.

Recommended Steps

1. *The normalization process will require that the President waive the restrictions on shipping to and from Cuba, provided the Government of Cuba meets the conditions noted in the Cuban Democracy Act, Section 1708.*
2. *Similarly, the Department of State should promptly re-establish provisions for travel. Once this occurs, there will be important short-term effects: The Department of State should ensure that pre-Castro agreements on shipping lanes, fishing, and customs are quickly resumed or re-negotiated. In particular, the Department of State, in conjunction with the Department of Transportation (DOT) and other agencies, should negotiate an agreement to restore normal air travel.*
3. *The Federal Aviation Administration (FAA) should expedite a preliminary study of Cuban facilities, equipment and practices to facilitate restoring normal travel. If the FAA determines that Cuban facilities are inadequate, the Department of Transportation should consult directly with the Department of State and USAID and develop plans to supply the necessary assistance for improvements. Other determinations on expanded corridors, hubs, and so forth, should be made as quickly as possible by the Department of Transportation.*
4. *Congress will need to pass legislation to repeal restrictions on travel, port entry and access, and any other embargo-related items that cannot be addressed directly by executive agencies. Additional funds should also be earmarked for the Coast Guard to prevent large-scale illegal travel.*
5. *The Department of Defense and the Department of Transportation should study the feasibility of using Homestead Air Force Base to handle some of the air traffic, especially charter flights.*

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SECURITY

The legacy of the adversarial relationship between Cuba and the United States includes such important security fixtures as Guantanamo Naval Base and the Russian intelligence site at Lourdes. In addition, the extensive and growing involvement of the Cuban military in economic and political affairs make its evolving role a practical challenge for U.S. policymakers.

Background

1. Although the military importance of Guantanamo Naval Base has diminished since the end of the Cold War, the lease can be terminated only by the mutual agreement of both governments or by abandonment of the United States. In addition, Guantanamo still serves as an important refugee holding center. The process of negotiating a departure from Guantanamo would encounter several obstacles: removal of the minefields placed in position by both sides and current U.S. laws and policies which require seeking reimbursement for infrastructure and associated improvements.
2. The Russian intelligence site at Lourdes continues to operate. In early 1995, the Russian government renewed its \$200 million payment to Cuba for some of the operation costs of the site. Opposition to Russia's use of Lourdes arose in the U.S. Congress, where an attempt was to deduct this amount from U.S. aid payments to Russia.
3. Because of the size and social importance of the Cuban military, any rapid political change could make its position very precarious. Divisions within the military may also pose threats to the stability of the country and the region. The extensive involvement of the military in agriculture and other economic sectors may complicate attempts to build ties to U.S. companies and individual investors, thereby making the changing nature of the military a bilateral issue. There may even be pressure from within the United States to restrict aid and assistance to sectors that involve members of the Cuban military, which could provoke resentment and/or opposition within Cuba.

Recommended Steps

1. *In anticipation of normalization, the National Security Council should conduct a study of how Guantanamo Naval Base should fit into the normalization process, that is, if, when, and how its use by the United States should be terminated. Closing the base should be considered within the overall context of U.S. base policy and its security relations in the*

Hemisphere. The Departments of State and Defense should keep an open mind about linking the alleged value of the existing facilities to general assistance, debt, and investment programs. The Base may also be converted into a specialized trade zone or another type of leverage for resolving property claims.¹⁸ Meanwhile, all refugees held at Guantanamo should be removed from the Base through a process outlined in the framework agreement.

2. *The National Security Council should lead a study including representatives from the Department of State and the Arms Control and Disarmament Agency, the Defense Department, and the intelligence community on the role of the Lourdes Intelligence Site in the overall triangular relations among the United States, Russia, and Cuba. Plans regarding future use of the site should be addressed in the framework agreement to prevent any linkage of this issue to vital aid and assistance.*
3. *The National Security Council should develop programs to advise the Cuban government on different models of defense conversion, using examples from other countries in the Americas and Asia. The Pentagon's Office of Defense Conversion should appoint a representative to the group who would travel to Cuba and establish contacts with the ministries there. Although the role of the U.S. representative(s) should be strictly advisory, they, in cooperation with regional institutions and international donor groups, can help the transition process by lending both technical and general expertise.*
4. *As stated in Recommendation 5 in "Diplomatic Relations: The First Steps" (page 4, supra) the Department of Defense should institute a program of military-to-military exchanges to help reintegrate the Cuba into regional security arrangements. The United States should support efforts by the OAS and the Inter-American Defense Board to admit Cuban participants.*

¹⁸ See Rolando H. Castañeda and George Plinio Montalván, "Economic Factors in Selecting an Approach to Expropriation Claims in Cuba," paper presented at the conference, "Resolution of Property Claims in Cuba's Transition," (Shaw, Pittman, Potts & Trowbridge, Washington, D.C., January 26, 1995), 16-17.

47.

CRIME AND LAW ENFORCEMENT

Because of its geographic location in the center of the Caribbean and proximity to U.S. shores, Cuba has the potential to be a major center of drug trafficking, smuggling, and money laundering. In addition, poor economic conditions and a weakening of political authority may encourage the development of organized crime and corruption.

Background

1. Cuba has a long history of criminal activity associated with gambling and narcotics. Recent experiences in Eastern Europe also suggest that rapid political and economic change create extensive opportunities for organized crime. Further, the transnational nature of smuggling, laundering, and other activities make crime and corruption in Cuba a serious potential issue for the U.S. government. Close cooperation with Cuban authorities will be necessary to deal effectively with these problems.
3. The United States and Cuba have an existing treaty of extradition, but this may require significant revisions or a complete overhaul, depending on current arrangements with other Caribbean countries, the nature of the Cuban government, and its plans for legal and constitutional reform.
4. A related, unresolved subject involves several thousand Mariel refugees with criminal backgrounds who still remain in U.S. jails, prisons, and mental health facilities.

Recommended Steps

1. *The Departments of Justice, Defense, State, FBI, and CIA should prepare plans to address the potential spread of criminal activity throughout Cuba.*
2. *The Department of State should negotiate a new extradition treaty which takes into account changes in Cuba's legal system regarding standards of proof and "political" crimes. The State Department should also negotiate a mutual legal assistance treaty (MLAT) to establish an agreed system for law enforcement agencies to work together and provide assistance upon request.*
3. *The Departments of State and Justice (INS) should speed up negotiations with Cuba to return the remaining Mariel refugees whose criminal backgrounds or activities have kept them in detention.*

4. *CIA and FBI officials in Miami should establish early contact and rapport with their counterparts in Cuba. Both agencies should consider applying lessons from their recent work in Moscow, including the establishment of local offices. The Directors of the CIA and FBI should determine a clear division of labor for their work on Cuba.*
5. *The Senior Coordinator and relevant officials from the Departments of State, Treasury, Justice, the Coast Guard, and the National Guard should maintain close cooperation with police and justice officials in the South Florida community.*
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III. LEGISLATIVE AGENDA

Although the President has authority to normalize relations with Cuba, Congress plays the central role in the overall process. The Cuban Democracy Act suggests that this process could be gradual or immediate, depending on conditions in Cuba. But as yet there is no detailed legislative agenda for normalization, if and when the President certifies that conditions so warrant.

Background

1. There will be substantial and constant pressure from various groups involved in Cuba policy to have their specific goals addressed. There will also be pressure from within Congress to link many of the issues, especially aid and assistance, trade and export credits, and claims.
2. Conflicts of interest will arise between normalization and sectoral politics in the United States, especially with regard to agricultural products.
3. U.S. relations with Cuba may remain a contentious political issue, making it difficult to approach many of the problems with pragmatism and objectivity.

Recommended Steps

1. *Immediately after the decision to normalize is announced, key legislation should be repealed, updated, or amended. This includes first and foremost, the Cuban Democracy Act, the Cuban Adjustment Act, and additional legislation such as the Cuban Liberty and Solidarity Act, if passed.*
2. *Congress should first address aid and assistance, and if required, allocate the necessary funds for emergency humanitarian relief. These funds are temporary and should not be overly linked to other bilateral issues. Long term aid, however, can be addressed within the overall process of normalization.*
3. *The remainder of the legislative process could proceed piecemeal, but it is preferable that it be done at once in a comprehensive omnibus bill. As in the cases of the Soviet Union and South Africa, an omnibus bill addresses almost all aspects of restoring relations and supersedes all previous legislation. This would be preferable for the Cuban case as well. Such legislation should include provisions which supersede application of group restrictions,¹⁸ such as the Helms Amendment (Sec. 525) to the Foreign Assistance Act of 1994-95 and the Johnson Act (Pub. Law No. 80-772). The intent here is to address*

¹⁸ Group restrictions are those which apply a common nature, such as "Communist" or "enemy," to a set of countries, which over the years has included Cuba.

the specific needs of U.S. interests in Cuba without obstructing the entire normalization process. The "Friendship Act" (Pub. Law No. 103-199), for instance, removes Russia from the countries (Communist) to which the Johnson Act applies. The Friendship Act is included in the annex.

4. An omnibus bill would also have to remove Cuba from the list of nations to which adversarial or restrictive language is attached. This includes the "6(j)" list of the Export Administration Act of 1979 (referring to "terrorism"); the list of "Marxist-Leninist Countries."
5. In consultation with the Departments of State, Justice, and the Treasury, Congress should decide if additional legislation is warranted to settle outstanding claims, including expanding the pool of originally registered claimholders. However, once the settlement process is established, Congress should not attach the settlement of individual claims to any other aspect of the normalization process, unless the Cuban government acts egregiously and fails to honor newly established private property laws.
6. If enhanced trade in agricultural products with Cuba is a stated goal of U.S. policy, and if such trade is part of U.S. sponsored multinational assistance programs, the Congress should resist sectoral pressures to restrict these products from the U.S. market. Individual members of Congress will assuredly pursue the interests of their constituents, but creative, quid pro quo arrangements can be made to prevent restrictions that benefit only a small interest group. This has worked with the CBI and GATT initiatives, and should work for Cuba if the will is present.
7. The Senate Committee on Foreign Affairs and the House Committee on International Relations should strongly support multilateral dealings with Cuba, including U.S. participation in international assistance programs.

Notas de Ulises.

Soberanía y Constitución

La Soberanía reside en el Pueblo y de este dimanar todos los poderes. Es propósito establecer en nuestra Patria la tradición constitucional histórica. Somos irreductibles mantenedores de los Derechos Humanos y las Libertades Individuales tal y como han sido plasmados en las leyes fundamentales de la República desde las Constituciones de Guaimaro, Jimaguayu y La Yaya hasta la Ley Fundamental de 1940. Rechazamos y declaramos sin lugar toda legislación hecha bajo el designio del régimen castro-comunista desde su advenimiento hasta nuestros días.

La Guerra Armada y la Resistencia Cívica.

Apoyamos los movimientos de resistencia a la actual Dictadura dentro y fuera de Cuba. Entendemos por Resistencia a la Dictadura todo intento que pretenda el derrocamiento del régimen comunista de Cuba por medio de las armas y por vías de resistencia cívica tales como las huelgas laborales y la resistencia a la Opresión a través de manifiestos que inciten al levantamiento interno y que denuncien los desmanes de la satrapía comunista que hoy ostenta el poder represivo. Apoyamos física y moralmente, sin distinción, a todos los combatientes por la Libertad de Cuba.

El Ejército.

Entendemos que el actual Ejército de Cuba tendrá que tomar partido en el futuro cercano. Instamos a los militares a que terminen de una vez y por todas con la inmoral jerarquía que esclaviza al pueblo desarmado y a los propios cubanos que viven de uniforme. Es de todos conocido que solo un pequeño grupo o "pina" de dirigentes militares disfruta de prebendas y de todos los bienes de consumo que le son negados al pueblo cubano y al propio Ejército.

El Derecho de Propiedad.

Sin pretender llegar al desalojo de infelices, ni al arrebatado desordenado de las propiedades robadas por Fidel Castro, entendemos que los tribunales de justicia deberán caso a caso las injusticias cometidas por los ladrones del erario público y privado, teniendo como premisa el más genuino patriotismo e intereses nacional.

Industrias y propiedades vendidas a extranjeros.

Instamos a todos los cubanos que luchan por la Libertad de la Patria y al Pueblo de Cuba en general a que se declaren nulos y sin valor todos los títulos de propiedad o participaciones

entregados a extranjeros a cambio de dinero, divisas, mercancías, asistencias militares o servicios de cualquier índole. El territorio nacional, fincas y cosechas, minas, represas, instalaciones turísticas, embarcaciones, industrias y edificaciones son patrimonio exclusivo del Pueblo de Cuba y ha sido y continuara siendo ilegal su traspaso a personas extranjeras, naturales o jurídicas, sin previa autorización ejecutiva o congressional determinada por un régimen que represente plenamente al Pueblo de Cuba.

Enseñanza Democrática.

Es deber de los cubanos en general el intentar "desintoxicar" a la juventud del falso ideario comunista. Han Transcurrido mas de tres decadas de desinformacion y falsedades en el campo politico y en el historico. asi como en el economico. Es necesario instruir a los jovenes cubanos para que conozcan los valores inmarcesibles del Pueblo de Cuba: de su historia mambisa, de las instituciones democraticas, de los distintos gobiernos que han dirigido los destinos de la Patria, asi como del adelanto sin igual que gano Cuba en su posicion dentro del concierto de naciones civilizadas. Esta enseñanza debe ser impartida en la gobernacion del pais ya redimido: Los Derechos Individuales, las Libertades de Locomocion, de Prensa de Enseñanza, el Habeas Corpus, el Derecho de Asociacion y Desfile, La Libertad de Cultos, el Derecho a la Huelga de los Trabajadores, el derecho, enfin, de vivir en paz y sin miseria en nuestra amada tierra, conociendo a plenitud las leyes que asi lo garantizan, dentro de un sistema republicano de gobierno.

Unas palabras de información sobre el Foro y su desarrollo

En mayo de este año 1994 el Colegio de Abogados de La Habana en Exilio convocó al Foro en Apoyo al Futuro Cubano. En un artículo publicado en Diario Las Américas (7 de abril del 94), el Decano informaba de la convocatoria e invitaba a todos los abogados cubanos para que participaran, al mismo tiempo que exponía el porqué de este foro y su finalidad vivificadora de médula cubana frente a "los estragos que treinta y tantos años de culturización extraña, a uno y otro lado del Estrecho, han ocasionado a la identidad cubana".

El informe-invitación definía:

"El Colegio de Abogados de La Habana sabe que hacer una Constitución para la Cuba de mañana es una función para el después, porque sabe que la desaparición del régimen castrocomunista será conducida a través de un período de provisionalidad, o provisionalidades en cadena, antes de concurrir a la estructuración del nuevo estado democrático permanente.

Es esta Provisionalidad la que preocupa al Colegio, en cuanto a sus bases jurídicas y a sus proyecciones fundacionales del futuro, porque, cualquiera que sea el origen y forma, y quienesquiera que sean los protagonistas del hecho mutante, esa Provisionalidad será trascendente no tan sólo a la estructura sociopolítica del Estado, sino a la esencia y conciencia mismas de la nación. Para tratar sobre esto es que el Colegio ha convocado al Foro en Apoyo al Futuro Cubano.

En la Cuba de hoy podrán haber tantos talentos diversos como en cualquier otro instante de su historia; pero, evidentemente, se carece de la información jurídica que alimentó sus esfuerzos liberadores y normó la justicia para la convivencia en la República, fundamentando sus códigos y sus instituciones democráticas.

Esa información jurídica, esencia de identidad cubana, debió exiliarse al empuje de la horda totalitaria.

El Colegio de Abogados de La Habana, fundado en 1852 y depositario, por naturaleza propia y destino, de esa tradición jurídica por casi siglo y medio, legatario y albacea a un tiempo, siente, a su vez, el deber de transmitir al futuro de la nación el legado que a ésta pertenece y que es parte substancial de su identidad. Pero este legado es eso: substancia, médula generadora de ley, no la ley misma. El precepto corresponde al instante que preceptúa. Por eso el Colegio no legisla, no asume las funciones de los legisladores de mañana, sino que, anticipándolos, les acerca un resumen de principios y lineamientos del pensar jurídico de la nación, con la RECOMENDACIÓN de fundamentar con ellos la base ético-legal de la transición al nuevo Estado cubano."

Con esta percepción la Comisión, bajo la coordinación del Dr. Tomás J. Gamba, comenzó a trabajar sobre mociones y trabajos específicos y sobre el planeamiento de una estructura de texto para las RECOMENDACIONES. Finalmente se designó un "ponente", asignándosele la tarea de redactar una ponencia única, que recogiera los criterios consensuables en las diferentes mociones y las opiniones mayoritarias en los temas discutidos allí donde no hubiera consenso, todo informado del espíritu jurídico que alentó a la nación cubana en sus años de formación y de República.

El "ponente", además de seguir estas directrices, se documentó con estudios actuales de autoridades en diversas materias del saber cubano, asesorándose, en lo referente a la Educación, con la Dra. Mercedes García Tuduri; a la Salud, con los doctores Virgilio Beato Núñez y Héctor Wiltz y en la Economía con el Profesor Antonio Jorge, principalmente, aunque consultó obras y opiniones de otros especialistas en esas materias.

Durante este proceso de información, consulta y evaluación, estableció relaciones con abogados en Cuba, pertenecientes a la "Corriente Agramontina", que difieren de la obligada línea oficialista y entienden la profunda crisis que desfigura el ejercicio de la profesión

letrada y que están conscientes de la ausencia de contenido justiciero universal y de juridicidad propia en la normativa y la práctica del derecho en Cuba.

La Peña de Teobaldo Rosell, que cada martes se reúne en el Roma de la calle ocho y la avenida cuarenta y siete del suroeste de Miami, con más de medio centenar de asiduos contertulios entre los que se cuentan destacadísimos abogados, médicos, ingenieros, escritores, periodistas, empresarios, dirigentes obreros, políticos, cívicos, revolucionarios, militares, etc., ha sido un escenario propicio para discusiones trascendentes sobre el gran tema cubano, discusiones que alumbraron la comprensión del "ponente" primero y luego los debates en el pleno.

La ponencia fue entregada a cada miembro de la comisión Foro y de la Junta de Gobierno para su estudio y, dos semanas después, se citó a sesión conjunta de ambos organismos que integraron el pleno.

La sesión conjunta se inició el sábado 8 y continuó los días 15, 22, 27, 28 y 29 de octubre. Durante los debates se conciliaron opiniones diversas, lográndose la aprobación de todos los capítulos por consenso, excepto una cuestión de forma referente a la organización del texto aprobado, que debió decidirse por votación mayoritaria.

Los criterios individuales no incorporados a la ponencia tampoco fueron mantenidos durante la plenaria y, por consiguiente, no hubo voto particular que requiriera hacerse constar en acta.

Para el capítulo sobre el Poder Judicial el ponente se limitó a extractar la moción y un brillantísimo ensayo del Dr. José Morell Romero. El Dr. Morell Romero era partidario, además, de concretar todo el texto de las Recomendaciones en una misma RECOMENDACIÓN de que se adoptara por la Provisionalidad la Constitución de 1940, con las adaptaciones necesarias.

El capítulo sobre la Cultura no estuvo incluido en la ponencia general, sino que una moción original del Dr. Guillermo de Zéndegui se

sometió y aprobó directamente en el pleno.

Así quedaron aprobadas todas las RECOMENDACIONES del Foro en Apoyo al Futuro Cubano, convocado por el COLEGIO DE ABOGADOS DE LA HABANA EN EXILIO.

Así las ofrecemos en memoria de todos los forjadores de la nación cubana y de todos los que han luchado, sufrido y muerto por ella en la marcha hacia su independencia antes, y en el esfuerzo por rescatar su República ahora.

Y las ofrecemos, también, a todos los cubanos que están por nacer, en uno u otro sentido, en la República de mañana. Las ofrecemos a la Esperanza.

Dios nos oiga.

Exilio en Miami, Noviembre de 1994

Dr. Máximo R. Sorondo
Decano

RECOMENDACIONES

P R E F A C I O

El Colegio de Abogados de La Habana en Exilio, consciente de sus deberes y consecuente con la índole profesional que lo hace depositario de un valioso legado de tradición jurídica, determinó elaborar un proyecto de recomendaciones de principios y lineamientos jurídico-políticos, destinado a facilitar el reordenamiento institucional del futuro Estado cubano.

Obviamente, semejante objetivo presupone la previa instalación de un gobierno provisional capaz de realizar ese ordenamiento con sinceridad de propósitos, puesto que dichas normas sólo podrán tener aplicación y resultar útiles si el nuevo orden que se procura está inspirado por los principios básicos que informan los regímenes democráticos, esto es, aquellos donde impera un disfrute de las libertades individuales y donde se reconocen los derechos al libre ejercicio de la iniciativa económica y los derechos a la propiedad privada.

Los gestores del nuevo estado de derecho, protagonistas de la Provisionalidad, habrán de enfrentar las más difíciles circunstancias, debido a que todo el proceso de tránsito supone la vigencia simultánea de dos realidades que se oponen y rechazan mutuamente: la pre-existente y la reemplazante en

fase de proyecto. Esto conlleva la imperiosa necesidad de recurrir a fórmulas temporales de conciliación que eviten el vacío de legalidad y propicien el desenvolvimiento ordenado y pacífico de las relaciones sociales.

Tal situación precisa que el gobierno provisional tenga necesidad de ajustar sus decretos y demás disposiciones legales a normas de comportamiento que, lejos de obstaculizar el logro de la finalidad perseguida, faciliten el proceso de cambio de una a otra realidad institucional.

En todo caso, considera el Colegio de Abogados de La Habana que cualquiera que sea el desarrollo de la Provisionalidad, ésta tendrá efectos sobre el futuro de la nación cubana. La Provisionalidad deberá ser un período de ejercicio cívico para la readaptación de la democracia a las nuevas realidades políticas, sociales y económicas de la nación; para la revalorización del trabajo y la responsabilidad individual; para el fortalecimiento de la familia como célula vital del cuerpo social, en fin, para la urgente revitalización de los valores fundamentales que dieron identidad al cubano, mientras se vayan creando las formas estructurales capaces de conducir hacia la nueva república.

Para los hombres y mujeres, quienesquiera que sean, que habrán de asumir la conducción de ese tramo de historia trascendente cubana, el Colegio de Abogados de La Habana en Exilio ofrece las siguientes recomendaciones.

SOBRE UNA ESTRUCTURA DE GOBIERNO

La existencia de una Provisionalidad gobernante presupone, en el caso de la Cuba actual, el rompimiento estructural de un pasado inmediato que adulteró, con elementos éticos y sociopolíticos foráneos, la conciencia de la nación y, al mismo tiempo, sugiere una voluntad de reencuentro consigo misma.

Con este presupuesto, la "Provisionalidad" actuará prudentemente si desarma y desestima toda la estructura previa del poder que hereda, institucionalizada por la Constitución de 1976 y su modificación de 1992, para desarrollar una nueva estructura capaz de vertebrar las aspiraciones de justicia y equidad del proyecto republicano, dentro de un campo de vocación auténticamente democrática, que fundamente al Estado de Derecho.

El legislador "provisional" deberá conciliar el difícil presente que intenta gobernar con el futuro que le trasciende, recurriendo al elemento jurídicopolítico que alimentó el proceso formativo de la nación y dio espíritu

al constitucionalismo de las repúblicas pre y posindependencia, cuya más cabal exposición se logró en la Constitución de 1940.

Hará bien la Provisionalidad si define, desde el principio, la división de poderes que tipifica el orden democrático de la organización social, -Ejecutivo, Legislativo y Judicial-, y los grados de autonomía en la interdependencia de ellos, aunque para estructurarlas deba ser consciente de su origen de hecho y no de derecho, que ha de caracterizar esta etapa gubernativa. Y hará bien si proclama la existencia de Dios conjuntamente con la libertad religiosa y la condición laica del Estado y hacerlo constar en los estatutos provisionales.

Recomendamos el fortalecimiento del régimen municipalista y su autonomía administrativa, en busca de la mayor y más directa participación ciudadana en las funciones cívicas de la nación.

Recomendamos que como cuestión esencial e imprescindible, se legisle para todos los cuerpos de actividades gubernativas, políticas, judiciales, educativas, informativas y, en general, para toda actividad ciudadana, estrictos lineamientos que preserven el más alto contenido ético-social y garanticen la honestidad administrativa pública y privada.

Hará bien la Provisionalidad si declara:

- 1) Asumir la gobernación del país con carácter temporal, con el fin de realizar la transición ordenada a un Estado de derecho de régimen democrático, de plenas libertades y de respeto a la persona y a los derechos humanos.

- 2) Anular la Constitución Socialista, sus modificaciones y toda la

legislación previa y posterior a ella, hechas por los órganos revolucionarios. Que queda finiquitado el régimen comunista en Cuba y disueltos el Partido Comunista y las llamadas "organizaciones políticas de masas" de carácter satélite.

3) Disolver los órganos del poder hasta entonces actuantes: las Asambleas (Nacional, Provinciales y Municipales), los órganos del Poder Judicial; las Administraciones locales; los Consejos de Estado y de Ministros; los Tribunales Populares, etc.

4) Disolver todos los cuerpos policiales existentes, solicitando asesoría competente de organismos internacionales para su recreación o reorganización. (Los cambios y la ratificación de las Fuerzas Armadas serán considerados con relación a las circunstancias particulares y participación de estas en el proceso transformador y al instante histórico que se vive, conforme al superior interés de la estabilidad nacional).

5) Que el Poder Ejecutivo provisional compuesto por el Presidente y el Consejo de Ministros, asume de inmediato las facultades legislativas, promulgando unos estatutos para la Provisionalidad y decretos y decretos leyes, tantos como sean necesarios para la administración del país y el mantenimiento del orden público, creando los instrumentos que para sus funcionamientos requieran.

6) Que está convocando para la creación de un cuerpo legislativo, con la posible mayor representatividad ciudadana, geográfica y del pensamiento democrático. Y que, asimismo, está conduciendo hacia un proceso constituyente de absoluta legitimación.

7) Que está designando un Tribunal Supremo de Justicia con

juristas cubanos de probada integridad personal e independencia de criterio politico y encargándole la organización de un Poder Judicial independiente.

8) *Que dispone la puesta en libertad de todos los presos o detenidos por causas politicas, condenados o acusados por supuestos delitos contra la seguridad exterior o interior del Estado, y contra la economia, mediante amnistia o sobreseimientos especificos, de todos aquellos cuya prision o detención, aunque amparada en tipos delictivos comunes, encubra la sanción de actividades o actitudes politicas.*

9) *Que está gestionando por medios diplomáticos y otros medios de comunicación efectivos y usuales entre gobiernos y países amigos, el envío a Cuba de todos los condenados o procesados cubanos en causas relacionadas con la lucha en favor de la libertad cubana o en contra del régimen dictatorial castrista y sus avanzadas de inteligencia o propaganda en el extranjero.*

II

SOBRE EL ESTADO Y SUS RELACIONES EXTERIORES

Es deseable que el legislador "provisional" conciba y así lo manifieste en esencia y textos, al Estado Cubano como una república independiente, organizada para el disfrute de la libertad, la justicia, el bienestar individual y colectivo y la solidaridad humana, cuya soberanía reside en su pueblo.

Partiendo de este concepto, sería recomendable:

1) Declarar que la República no reconocerá ni concertará pactos o tratados que en forma alguna limiten o menoscaben la soberanía nacional o la integridad de su territorio.

2) Proclamar la igualdad jurídica de todos los estados, condenar la guerra de agresión y aspirar a vivir en paz con los demás estados y a mantener con ellos vínculos de cultura y de comercio.

3) Proceder en principio a la revisión de los acuerdos y convenciones internacionales concertados o celebrados por el gobierno comunista, incluyendo los pactados con empresas extranjeras para la explotación de los recursos naturales y otros análogos, denunciando aquellos cuando fuese procedente.

4) Solicitar la inmediata restitución del ejercicio de los derechos de Cuba como miembro de la OEA y revocar la denuncia que en mayo de 1960 se hizo del Tratado de Río;

5) Gestionar el reingreso a los organismos y suscribir las convenciones internacionales de derecho público y privado vigentes, de los que era miembro o signataria con anterioridad a la instauración del régimen comunista cubano.

6) Que se manifiesta propicia a la participación en organismos regionales y en zonas de mercado común.

7) Que suscribe las disposiciones de la "Declaración Universal de Derechos Humanos", de diez de diciembre de 1948; del Pacto Internacional de Derechos Civiles y políticos de New York, del 19 de diciembre de 1960; de la Declaración Americana de los Derechos y Deberes del Hombre, aprobada en la Novena Conferencia Internacional Americana, Bogotá, Colombia, 1948; y de la Convención Americana sobre Derechos Humanos aprobada en San José, Costa Rica, el 22 de diciembre de 1969.

III

SOBRE LA NACIONALIDAD

Tradicional y universalmente es aceptada la clasificación fundamental de ciudadanía por "nacimiento" y ciudadanía por "naturalización" que Cuba acogió en su estructura legal del Estado cubano.

De la concepción jurídica cubana de ambas clasificaciones, más las exigencias demandadas por las condiciones especiales creadas durante la interrupción del curso histórico de la nación por el periodo revolucionario de facto y constitucional, resulta recomendable lo siguiente:

- 1) El reconocimiento a la ciudadanía por nacimiento de los nacidos en el territorio nacional y los hijos de cubanos y cubanas por nacimiento, nacidos en el extranjero, tan pronto como se domicilien en el territorio nacional.*
- 2) La anulación de toda disposición legislativa, ejecutiva y judicial o administrativa, posteriores al 1º de enero de 1959, que declaró perdida la ciudadanía por aplicación del artículo 15 de la Constitución de 1940 o de la Ley Fundamental de 7 de enero de 1959, así como la razón del art. 32*

de la Constitución Socialista o por cualquier otro fundamento basado en causa o motivo político utilizado por el régimen revolucionario.

3) El reconocimiento como ciudadanos por nacimiento de los nacidos en el extranjero, hijos de ciudadanos o ciudadanas por nacimiento nacidos en el extranjero, una vez que éste o ésta radique en Cuba o haya fallecido antes de pasado un año contado a partir de la disposición legal que lo determina, y que así lo solicite al residenciarse en Cuba.

4) La concesión de la ciudadanía por naturalización a extranjeros residentes en el territorio nacional o casado con cubano o cubana, después de cumplir los requisitos que la ley determine.

IV

SOBRE EL PODER JUDICIAL

El Poder Judicial había sido, hasta la irrupción revolucionaria del '59, una de las instituciones cubanas de más firme y respetable tradición. La intervención norteamericana, que hizo puente entre la Colonia y la República, no intentó forzar copias de su propio sistema en la estructura del aparato administrador de justicia criollo y encomendó a juristas cubanos la tarea de proyectarlos. Una nueva judicatura, encabezada por un Tribunal Supremo cubano sustituyó al viejo sistema colonial de tribunales locales, pero conservó raíces y leyes españolas.

Una posterior legislación republicana fue ampliando y conformando, rumbo a la idoneidad, este vital instrumento, cuya independencia es esencial para el equilibrio de poderes y para la aplicación de la ley y la justicia.

La subversión institucional del comunismo despojó a este instrumento de toda independencia, convirtiéndolo en mero brazo ejecutor de la voluntad totalitaria del Poder Ejecutivo. Será recomendable, pues, que la Provisionalidad declare abrogados, junto con la Constitución de 1976, la Ley de Organización del Sistema Judicial, del 10 de agosto de 1977; el Reglamento de los Tribunales

Populares, contenido en el Acuerdo #168 del Consejo de Gobierno del Tribunal Supremo Popular, de 2 de mayo de 1978; el Reglamento de Fiscalía General; el Reglamento de los Bufetes Colectivos y el Código de Etica Profesional, contenidos en la Resolución #938 del Ministerio de Justicia, de 20 de Dic. de 1978; la Ley de los Tribunales Militares, de 8 de agosto de 1977; la Ley de Fiscalía Militar de 1976; los Códigos Penal, de Trabajo, de la Niñez y la Juventud; la Ley de Administración Central del Estado; las leyes de procedimiento civil, administrativo y criminal y todas las normas, del rango que fueren, que se opongan a los principios de juridicidad democrática. Con la derogación de estas normas se declararían disueltos todos los órganos, organismos y organizaciones que existan o funcionen al amparo de ellas.

El legislador "provisional" y, en general, el del devenir post comunista, puede encontrar sustancias y formas estructurales en el Título XIV de la Constitución de 1940, arts. 170 al 208; y en la Ley Orgánica del Poder Judicial, la Ley del Tribunal de Garantías Constitucionales y Sociales, la legislación referente al Tribunal Superior Electoral, etc., vigentes al instante de la irrupción revolucionaria de 1959, sin perjuicios de las adaptaciones requeridas por la situación de excepción que constituye la provisionalidad de facto.

Se recomienda la designación de un Tribunal Supremo integrado por abogados de conocida alta reputación profesional, probada integridad personal, independencia de criterio político, con experiencia o conocimiento de la legislación y la práctica democrática de la República en la administración de justicia, que proyecte y organice la reestructuración del Poder Judicial sobre la base de la absoluta y total independencia de otros poderes públicos.

También es recomendable que esta comisión organice, paralelamente con el desarrollo de la estructura judicial, seminarios o cursos intensivos para impartirlos dentro de la clase togada, con el fin de habilitar magistrados, jueces, fiscales, profesores de leyes y abogados para el ejercicio democrático de la administración de justicia y la práctica del derecho en general.

V

SOBRE EL DELITO Y LA LEGISLACIÓN PENAL

En el campo del delito y su legislación punitiva la Provisionalidad ha de encontrar una ardua tarea por realizar. Ciertamente que tiene a su disposición para inmediata vigencia el cuerpo preceptual del Código de Defensa Social, promulgado en 1938 y que rigió en la República hasta su modificación y final sustitución por legislaciones del período revolucionario y el Estado socialista. Pero, esto por sí sólo no habrá de bastarle, porque:

a) el simple tránsito del tiempo exige la actualización del cuerpo penal por lo obsoleto de algunas reglas y la aparición de nuevas conductas lesivas que requieren tipificación y sanciones.

b) la subversión de valores individuales y sociales y de contenido ético, desarrollada por la presión deformante de la estructura totalitaria que enfermó a la sociedad cubana durante más de tres décadas.

c) la necesidad de aplicar normas de justicia por hechos delictivos cometidos con impunidad aún bajo el imperio de normas punitivas que fueron inaplicadas.

d) la necesidad de prever y atajar el mal endémico de la corrupción, con énfasis en las estructuras de poder y gobierno, puesto que la reconstrucción de Cuba no sólo debe perseguir metas de progreso material sino de integridad moral, única forma de alcanzar un grado de credibilidad que garantice el desarrollo y la estabilidad del sistema democrático.

En consideración a lo arriba expuesto recomendamos:

- 1) La observancia de los principios:
 - I. de que sólo existe delito cuando el acto (acción u omisión) resulta antijurídico, imputable, tipificado y sancionado por la ley penal.
 - II. de la distinción entre la intencionalidad y la culpa.
 - III. de la irretroactividad de la ley penal en perjuicio del acusado.
 - IV. de la no extensión de la imputabilidad criminal del agente del delito a sus familiares, allegados o asociados, ni la inclusión conceptual del llamado "crimen silente".
- 2) Tipificación de delitos por actos lesivos a la economía nacional.
- 3) Tipificación de delitos de lesa nación por actos relacionados con la importación, exportación, comercio, o distribución ilegal de drogas y otras sustancias alucinógenas lesivas a la salud de la nación y sancionados con el máximo punible.
- 4) Aplicación de la norma penal y de la jurisdicción correspondiente, vigentes al momento de la comisión del acto delictivo,

si éste fue cometido por un agente con cargo oficial de gobierno o administración del Estado, independientemente de si el acto fue realizado en el desempeño de sus funciones oficiales o no.

5) Agravación mínima de un tercio adicional de la sanción imponible por los delitos comunes cometidos por funcionarios del gobierno, el Estado, la Provincia o los Municipios en el ejercicio de sus funciones oficiales o al amparo del cargo que ostentan.

6) Incapacitación para el ejercicio de empleos públicos de los delincuentes sancionados por delitos cometidos durante el desempeño de sus funciones o sus cargos, por un término no menor al doble y en adición a la sanción impuesta.

7) Prohibición de amnistías o indultos totales o parciales que favorezcan a sancionados por los delitos referidos en los acápites 3, 4, 5 y 6 de estas recomendaciones.

8) Reglamentación del régimen penal y de los establecimientos penitenciarios conforme a los objetivos de reeducación y rehabilitación del delincuente.

9) Excluir el Estado de Peligrosidad como tipo delictivo sancionable bajo el eufemismo de medidas de seguridad pre y post delictivas y determinar que el índice de peligrosidad probado en un agente constituye una circunstancia agravante en la comisión del delito que se juzga.

VI

SOBRE EL PROCESO PENAL

El procedimiento criminal tiene por objeto la aplicación de la ley mediante la averiguación de la verdad, resultando de este modo el máximo garantizador de la justicia. Las reglas del Proceso, la rigurosidad de los términos, sus requisitos de escalonamiento y etapas, son inalterables. Su meta es el imperio de la equidad. Así, se ha dicho que el Derecho Procesal Criminal es un reflejo de las concepciones políticas de los pueblos, y de tal manera, que la evolución del Estado puede observarse en la evolución del procedimiento penal.

Las circunstancias anormales o particulares, propias de este periodo de tránsito institucional y de reconstrucción, exigen, sin dudas, algún procedimiento de excepción en lo penal, pero este proceso nunca debe ser tan expedito como el de los juicios revolucionarios, que sembraron de crímenes e injusticias la historia cubana.

En la República se mantuvieron los procedimientos sin formalismos del Juzgado Correccional, heredado del Gobierno Interventor, pero con jurisdicción limitada al conocimiento de faltas y contravenciones, todos hechos menores punibles con sanciones máximas de hasta seis meses de privación de libertad. También existía el proceso abreviado en la jurisdicción militar y, a partir de los

años treinta, el procedimiento de excepción de los Tribunales de Urgencia, que conocían de determinada clase de delitos, especialmente los llamados delitos políticos.

En consecuencia, encontramos recomendable:

a) Adopción y adaptación en todo lo posible a la Ley de Enjuiciamiento Criminal en la jurisdicción civil y mantenimiento de las reglas de excepción en el fuero militar, ambas vigentes en la República al instante de la irrupción revolucionaria.

b) Limitación en tiempo y campo punitivo de cualquier procedimiento criminal de excepción que fuere necesario y siempre sin perjuicio del debido respeto a los derechos humanos del procesado.

c) Restablecimiento del procedimiento sumarísimo de habeas corpus.

VII

SOBRE CÓDIGOS Y LEYES CIVILES

La Provisionalidad se enfrenta a una sociedad que debe renovarse desde sus cimientos, en consecuencia, precisada de derogar todas las normas que regulan la vida civil de la sociedad socialista. En el Código Civil, la Ley de Enjuiciamiento, la Ley Hipotecaria, el Código de Comercio y otras leyes civiles y mercantiles anteriores a la Revolución, puede encontrar una guía útil para la reestructuración de la vida jurídica en la nación, pero, además de los efectos erosivos y trastornadores de la organización social comunista sobre las relaciones intersubjetivas todas y sobre las múltiples facetas jurídicas de la nación, la Provisionalidad notará que no han transcurrido en balde los treinta y tantos años al margen del progreso, de la revisión y actualización periódicas de las normas de convivencia sociales y que, por tanto, la norma prerevolucionaria misma resulta obsoleta o inadecuada en muchos casos y ausente en otros tantos.

Es recomendable a la Provisionalidad que, dada la imposibilidad práctica de elaborar de inmediato una red normativa completa que supla a la que deroga y viabilice la existencia en Derecho de la vida civil del país, acoja en principio aquella legislación republicana en general y en substancia, y la aplique por la vía de la interpretación extensiva, restrictiva y analógica o la supla, en

ocasiones, con normas internacionales de justicia o dictados de equidad, mientras vincula a la experiencia la elaboración, revisión o actualización preceptual, y las remita al legislador de mayor legitimación representativa en el Estado de derecho constitucional.

Para el procedimiento civil recomendamos se adopte la Ley de Enjuiciamiento Civil vigente hasta la irrupción revolucionaria.

VIII

SOBRE LA FAMILIA

La familia es la célula primaria y básica de toda organización social y como tal fue reconocida por el pensamiento jurídico de la nación cubana, que la amparó en sus legislaciones y constituciones.

El gobierno provisional puede encontrar en los textos legales de la República y, concretamente, en los artículos 43 al 46 de la Constitución de 1940, la expresión de la conciencia cubana sobre la institución del matrimonio, las relaciones obligadas y obligantes entre padres y entre éstos y sus hijos, etc.

IX

SOBRE LA EDUCACIÓN

Los talleres de la educación fundamental son la familia y la escuela, ambas dentro del medio socio-económico que las enmarca.

Durante siglos, en Cuba -como debió de ser en todos los inicios del vasto mundo- la educación fue, generalmente, producto exclusivo de la formación familiar: las tradiciones, costumbres y conocimientos adquiridos, acumulados y asimilados por el núcleo familiar, impartían la enseñanza a los miembros de la descendencia.

Durante la Colonia, a pesar de que el primer maestro cubano indo-español apareciera en la primera treintena de la colonización, la escuela, como institución, aún demoraría siglos. Mientras, encomiables iniciativas particulares lograban aislados y limitados establecimientos de enseñanza, y muy especialmente por las actividades en este sentido de las estructuras religiosas católicas, que ensancharon, además, el campo de la enseñanza, con establecimientos de docencia superior. Piedra angular de este desarrollo fue la creación de la Real y Pontificia Universidad de San Jerónimo de La Habana en 1728 y, en 1767, el Real Colegio Seminario de San Carlos y San Ambrosio, que tan trascendental resultara para el destino cubano. Estos centros de educación y cultura produjeron la

aparición de una intelectualidad cubana notable ya a fines del siglo XVIII.

Del Colegio Seminario San Carlos y San Ambrosio, formados por el Padre Agustín Caballero y el Presbítero Félix Varela, surgieron los grandes maestros de la escuela privada del siglo XIX, que afirmaron la conciencia de la nacionalidad cubana y fundamentaron el camino a la independencia.

Pero la escuela de instrucción pública, general y gratuita, con apoyo oficial, aparece ciertamente, y se desarrolla, a través de la Sociedad Económica de Amigos del País, creada en 1892 durante el gobierno de Don Luis de las Casas. Luego vinieron los planes de instrucción pública, sobre todo el tercero y último, donde se declaraba obligatoria la enseñanza primaria, se creaba un instituto de segunda enseñanza en cada capital de provincia y se sugería la creación de escuelas normales para maestros. Al finalizar la Colonia con el siglo XIX, había en la Isla 451 escuelas públicas, con casi 21,000 estudiantes. El analfabetismo se elevaba hasta el 64% de la población total.

El gobierno interventor norteamericano dio gran impulso a la enseñanza primaria oficial, de modo que al inaugurarse la República en 1902, con poco más de un millón y medio de habitantes, se contaba ya con 3,594 aulas para 172,000 alumnos matriculados. Al llegar el fin de la República, en 1958, con una población de seis millones seiscientos mil habitantes, la escuela primaria pública oficial alcanzaba la cifra de ocho mil novecientas, con veintidós mil aulas, para una matrícula de setecientos treinta y seis mil estudiantes, que significaban un 11.6% de la población total.

Al iniciarse, la República recibió, además, seis institutos de segunda enseñanza; la Academia de Dibujo y Pintura San Alejandro, fundada en 1818 por la Sociedad Económica; la Escuela de Artes y Oficios, desde 1882. El gobierno

interventor había agregado una Escuela Náutica, una de Comercio y Taquigrafía y un Jardín Botánico, anexos al Instituto de La Habana; cinco escuelas de Agrimensura, anexas a los cinco institutos provinciales restantes. Estos centros secundarios eran considerados preuniversitarios y vocacionales.

Al morir la República en 1958, un sistema de instrucción pública bajo la dirección del Consejo Nacional de Educación y Cultura creado por la Constitución de 1940, contaba con veintiún institutos secundarios preuniversitarios, dos escuelas normales para maestros; siete escuelas normales de Kindergarten, catorce escuelas Escuelas del Hogar; dieciocho escuelas de comercio, cuatro escuelas de periodismo; tres escuelas técnicas industriales, cinco escuelas politécnicas, siete escuelas de Bellas Artes; un Instituto Nacional de Educación Física; una Escuela de Publicidad; una Escuela de Aeronáutica y doce escuelas de Artes y Oficios.

En 1958 la UNESCO precisó que el analfabetismo en Cuba era de 23.6%, que la colocaba en el cuarto lugar entre todos los países de Latinoamérica y que la proporción del gasto público dedicado a la educación alcanzaba la cifra del 23% que la colocaba en el primer lugar de la América Latina.

Paralelamente a la eficiente enseñanza pública se desarrolló la enseñanza privada, regulada oficialmente, que en 1958 sumaba 285 escuelas, entre las de enseñanza primaria, secundaria y especiales. De éstas, 245 estaban agrupadas a la Confederación de Colegios Católicos y treinta y seis a la Federación de Escuelas Privadas (laicas), con una matrícula superior a los 140,000 estudiantes.

En 1958, además de la Universidad de La Habana, eran oficiales la Universidad de Oriente, la Universidad Central Marta Abreu, y estaban en proceso de oficialización la de Camagüey y la del Norte de

Oriente. La enseñanza superior privada, con raíz constitucional y regulada por la Ley de Universidades Privadas y Centros Superiores y de Altos Estudios, permitió el florecimiento de la prestigiosa Universidad de Santo Tomás de Villanueva y las creaciones de las universidades Masónica, José Martí, San Juan Bautista de la Salle, Candler, y la de Belén, algunas de las cuales no lograron consolidarse.

Un análisis del desarrollo de la enseñanza en Cuba puede ofrecer al legislador post castrista numerosos puntos de referencia para evaluar lo conveniente y lo no conveniente en el planteamiento del futuro educacional. Nótese que el período republicano de cincuenta y seis años redujo el analfabetismo desde un 64% en sus comienzos a un 23.6%; que amplió el campo de la enseñanza vocacional y que permitió el ingreso a la enseñanza universitaria de una proporción referida a la población total del país únicamente superada por Argentina y Uruguay en América Latina. En estos momentos de provisionalidad y para adelante, Cuba requiere un ejército de maestros armados no con fusiles, sino con ideas, palabras, propósitos y esencias de cubanía.

Encontramos particularmente recomendables para cualquier planeamiento, lo siguiente:

1) La gratuidad y obligatoriedad de la enseñanza primaria y secundaria básica públicas. Una regulación oficial que permita el desarrollo de la escuela privada para que pueda suplir a la pública en lo referente a la obligatoriedad.

2) El art. 51 de la Constitución de 1940 que dice: "La enseñanza pública se constituirá en forma orgánica, de modo que exista una adecuada articulación y continuidad entre todos los grados, incluyendo el superior. El sistema oficial proveerá el estímulo y desarrollo vocacionales, atendiendo a la multiplicidad de las profesiones y teniendo en cuenta las necesidades culturales

X

SOBRE CULTURA

Conviene señalar que no estamos tomando el término cultura en el sentido lato que se le viene dando de estilo de vida y conjunto de expresiones típicas de una colectividad humana en un momento dado de su evolución histórica. Antes bien, lo estamos aplicando con significación restringida a la creación intelectual en todos los campos y disciplinas de la mente, en especial, los de la literatura y el arte.

Dentro de ese marco de referencia las nociones de ilustración y cultura dejan de ser idénticas, ya que la primera tiene un carácter propiamente formativo, se adquiere mediante la disciplina del estudio y es tarea de educadores. La segunda, en cambio, implica aptitudes y capacidades congénitas que sólo requieren ser auspiciadas y estimuladas.

Una de las más significativas conquistas de nuestro pasado republicano en favor del desarrollo cultural de la nación fue, sin dudas, el desglose de esa actividad de las propias del Ministerio de Educación del que venían dependiendo, mediante el establecimiento del Instituto Nacional de Cultura con el carácter de organismo paraestatal. Iniciativa ésta sin precedentes hasta entonces en el continente americano.

En consecuencia, recomendamos la creación de un instituto, como organismo paraestatal, fundado sobre los siguientes principios:

- 1.- No hay, no puede haber una cultura oficial. La cultura dirigida es un contrasentido y el Instituto debe fomentar y recoger la libre y espontánea manifestación de la actividad intelectual.
- 2.- La cultura constituye una zona de coincidencia nacional y el Instituto ha de mantenerse al margen de las polémicas partidistas.
- 3.- No hay función eficaz sin órgano idóneo de realización. El Instituto ha de responder, tanto por su organización como por las personas que lo integran, a las necesidades del país y a los altos y nobles fines que lo motivan.
- 4.- El Instituto ha de servir de nexo y apoyo a todas las instituciones afines de la nación, coordinando voluntades y esfuerzos y estimulando sus iniciativas.
- 5.- No basta con estimular la producción intelectual, es necesario que sus frutos se divulguen a fin de que sean del disfrute y provecho de las mayorías populares. Esa es en esencia la función social de la cultura.

En ese último sentido se hace recomendable el empleo de los medios audiovisuales de difusión con programas especiales dirigidos a rectificar pasados errores de apreciación en el juicio crítico de nuestros valores y de exaltar el decaído sentimiento patriótico.

Innecesario se hace señalar que habiendo traído consigo la revolución.

marquista la ruina y el deterioro de muchos de los bienes del patrimonio monumental, histórico y artístico de la nación, así como también el despojo y enajenación de la riqueza mueble, procede inventariar de inmediato dichos daños y procurar en cada caso su adecuada reparación y reintegro. A tales fines se hace recomendable recabar y utilizar el concurso de las organizaciones de iniciativa privada ya existentes, como la "Cuban National Heritage".

XI

SOBRE EL CUIDADO DE LA SALUD

Para una correcta atención y cuidado en la salud de una nación resulta básico, pero no suficiente, la promoción de médicos, dentistas, enfermeros y demás profesionales de la medicina. Un ejemplo convincente es la experiencia sufrida por el pueblo cubano en el proceso revolucionario de treinta y tantos años. El gobierno comunista construyó veintiuna escuelas de medicina que mantuvieron una impresionante masa médica de aproximadamente cincuenta mil profesionales. Pero, la compleja red de servicios de la salud construida con una enorme fuerza laboral de médicos, dentistas, enfermeros, paramédicos, administradores, etc., sólo ha alcanzado a prestar uno de los peores servicios de salud en todo el Continente. El desproporcionado aparato médico fue utilizado con fines políticos y propagandísticos. Mientras, la medicina en el país, sobrando de personal profesional, careció de medicamentos, y de los instrumentos técnicos de investigación, diagnóstico y tratamiento, que son tan indispensables como el elemento profesional, para el mantenimiento de la salud. En la Cuba comunista el cubano enfermo se muere de sencillas enfermedades, totalmente rodeado de médicos y otros profesionales de la medicina.

Con una sola escuela de medicina, la Cuba precastrista mantuvo una proporción de un médico por cada 1,037 habitantes y uno de los mejores sistemas de atención a la salud en todo el Continente, el que incluía una red de Casas de Socorro distribuida en todo el territorio nacional para servicios de emergencia y consulta gratuitas, abiertos las veinticuatro horas de cada día, los siete días de la semana; hospitales públicos en todas las provincias, hospitales especializados, profusión de clínicas privadas y mutualistas que alcanzaban a los grandes centros regionales; una vastísima oferta de consultas y centros médicos privados; un completo inventario de medicamentos y una tecnología en uso a la par de los países más desarrollados.

Para la sistematización del cuidado de la salud, en este nuevo período que comienza con la Provisionalidad, recomendamos:

1) Adscribirse a la declaración de Alma Ata de la Organización Mundial de la Salud (O.M.S.) que declara la salud un derecho humano fundamental que consiste en un estado completo de bienestar físico, mental y social.

2) Mantener el actual sistema de cuidado de la salud por el mínimo tiempo que la prudencia y la planificación del nuevo sistema aconsejen.

3) Desarrollar un plan nacional de salud, con participación gubernamental y asesoría de los colegios profesionales del campo médico y con representaciones obreras y patronales, que incluya fundamentalmente los siguientes principios:

- a) insistencia en la práctica de la medicina preventiva.
- b) garantía de servicios médico y dental desde el nacimiento hasta la muerte.
- c) control de costos y mantenimiento de calidad.
- d) pluralidad de opción.

FORO

En Apoyo al Futuro Cubano

Alberto Acosta Tijero, Carlos A. Arriaga, Alberto Beguiristain,
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B. Lacret, José Morell Romero, Juana L. Moreno de Trigo,
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Roberto Rodríguez de Aragón, Hilda Rodríguez Garcerán, Teobaldo
Rosell, Roberto Soto Santana, Rolando Torricella, Luis Valdés
Romero, Alberto Varona, Guillermo de Zéndegui.

Tomás J. Gamba, Coordinador; Máximo R. Sorondo, Presidente.

4) Alentar la iniciativa privada en el cuidado de la salud conjuntamente con la prestación de servicios médicos gratuitos, mantenidos como deber ineludible del poder público.

5) Privatizar determinado número de centros asistenciales administrados hoy por el Estado.

6) Garantizar la libre práctica privada de la medicina bajo regulaciones generales.

7) Responsabilizar al gobierno con:

- a) La higiene y sanidad públicas.
- b) Los estudios estadísticos y epidemiológicos.
- c) La prevención masiva de las enfermedades infecto-contagiosas.
- d) La educación ciudadana en materia de salud.
- e) La vigilancia en el cumplimiento de las normas generales y sanitarias en las instituciones médicas de servicios hospitalarios, clínicos, investigativos, etc.
- f) Del mantenimiento de centros asistenciales gratuitos y de bajo costo.

8) Alentar la iniciativa privada en el campo de los servicios médicos, de instituciones mutualistas; de cooperativas profesionales y sindicales; de compañías de seguros nacionales y extranjeras, etc.

XII

SOBRE EL TRABAJO Y LA SEGURIDAD SOCIAL

Trabajadores y empleadores privados no son "clases" en luchas antagónicas entre sí, sino aliados imprescindibles en marcha hacia objetivos de beneficios individuales e interés común. De la efectividad de esta alianza depende el desarrollo económico, y de su armonía, la salud social de la nación. Al Estado, en este campo, sólo corresponde la función de promoverlos y coordinarlos, determinando las reglas de equidad social.

No será fácil enderezar este concepto en la conciencia popular cubana, intoxicada durante treinta y tantos años con la prédica interesadamente equivocada y la práctica forzada de un concepto del trabajo como deber social, bajo el autoritario paternalismo del Estado en su función de empleador único.

Corresponde a la Provisionalidad iniciar el rescate de los conceptos de trabajo como derecho y empresa, como opción de libre iniciativa privada, vinculados ambos a la inalienable responsabilidad del individuo sobre su propio destino, dentro del contorno de la obligada solidaridad social en el medio que actúa.

En la prolija legislación social republicana, la más avanzada del Continente y una de las más progresistas del mundo civilizado, el "legislador

provisional" podría encontrar los elementos substanciales para una política de justicia laboral. En consecuencia, recomendamos:

1) Que, más que la reproducción y aplicación preceptual de aquella legislación, teniéndola toda ella como fondo y, principalmente, los arts. 60 al 86 de la Constitución de 1940, la Provisionalidad trace lineamientos generales para una política de producción, haciendo descansar su aplicación en comisiones de Conciliación y Arbitraje (obrero-patrón-Estado) que la adapten a las circunstancias de excepción que constituye este periodo de reconstrucción.

2) Prohibir el trabajo voluntario promovido y dirigido por el Estado, la Provincia y los Municipios y sus organismos oficiales. Promover, en cambio, las actividades de "esfuerzo propio y ayuda mutua", principalmente en las construcciones de viviendas familiares, así como amparar labores voluntarias comunales de iniciativa privada.

3) Reconocer el derecho de la libre asociación, sindicación o sindicato obrero, profesional, etc., pero prohibir la obligatoriedad de participación o pertenencia.

4) Establecer un salario mínimo que corresponda a cubrir las necesidades normales de subsistencia de un trabajador no calificado considerado como jefe de familia. La fijación del salario mínimo estaría sujeta a la situación económica del país, a la capacidad adquisitiva del circulante y a la disponibilidad de bienes de consumo. El salario mínimo también podría ajustarse en consideración al tipo y calidad del trabajo requerido, a sus horarios y a otras particularidades específicas del trabajo.

5) Declarar la libertad de contratación y la validez de los contratos

y convenios individuales y colectivos del trabajo.

6) Determinar el horario regular del trabajo diario, semanal y anual que no deberá ser superior a las ocho horas diarias, cuarenta y cuatro a la semana, durante once meses del año, para cada trabajador.

7) Proveer la reglamentación sobre condiciones mínimas de trabajo, la higiene, vacaciones pagadas, el seguro y el fondo de retiro y, en general, todo lo relacionado con la seguridad social, la salud y el bienestar del trabajador.

8) Declarar obligatorias, en todo caso, las Resoluciones de las comisiones de Conciliación y Arbitraje y, por lo tanto, ilegales los paros patronales y las huelgas obreras en desobediencia de estas resoluciones, hasta tanto se constituyan los Tribunales del Trabajo.

9) Desalentar el "sobretiempo" en los horarios diarios, semanales o mensuales del trabajo, con el fin primordial de ampliar el espacio de oportunidad laboral a nuevos brazos.

10) Permitir el ajuste de todo personal en las industrias y centros de producción y servicios privatizados, en proceso de privatización o aún estatales, hasta el límite de costeabilidad productiva en cada caso, con un mínimo de rentabilidad. Procurar, mediante la promoción y auspicio de otras actividades privadas que demanden empleo, la ubicación laboral del personal excedente.

XIII

SOBRE EL DERECHO DE PROPIEDAD

La propiedad es un derecho fundamental del individuo y como tal debe ser reconocido en toda legislación democrática, sin otras limitaciones que las exigidas por el interés social y cuya privación legal, por causa de utilidad pública, debe ser compensada con justo pago. Así lo proclama la Declaración Americana de Derechos y Deberes del Hombre y la Convención Americana Sobre Derechos Humanos, aprobada la primera en la novena Conferencia Internacional Americana, celebrada en 1948, en Bogotá, Colombia, y suscrita la segunda en noviembre de 1969, en Costa Rica, Centro América.

Modernamente la propiedad privada es concebida como un conjunto de facultades que posee el hombre sobre una cosa y que conlleva, además de derechos, deberes. Nuestra Constitución de 1940 determinaba su existencia y legitimidad "en su más amplio concepto de función social...", de modo que los conceptos de utilidad individual y de función social quedaban integrados en el mismo derecho. La prolija variedad de "cosas" que son o pueden ser objetos de propiedad, remite al legislador la delimitación del contenido de ese derecho, referido a cada tipo de bienes. El legislador, sin alterar nunca la esencialidad del derecho mismo, deberá ajustarse a las circunstancias particulares del período histórico para el que legisla.

Propiedad y propietarios son elementos inseparables de una misma y sola idea. La propiedad privada conlleva implícita la existencia de un propietario particular determinado y todo cambio en ese vínculo, efectuado al margen de la voluntad de éste, o sin su acatamiento compensado bajo el imperio de la ley, es una mutilación al Derecho de Propiedad, efectuada con violencia antijurídica tal, que lo convierte en un "derecho ilegítimo".

La legitimidad de la propiedad requiere la continuidad en derecho, pues una interrupción de hecho no puede ser convalidada sin que esta validación no implique la aberración jurídica de legitimar el despojo. Y, por otra parte, un proyecto social democrático, fundado sobre los principios de Empresa y Propiedad privadas, exige la estabilidad de sus instituciones, porque ¿qué confianza podría tener en la firmeza y perdurabilidad de sus derechos una sociedad levantada sobre los escombros legalizados de un despojo? ¿Cuándo serían también despojos sus propios derechos?

Si de establecer un Estado de derecho democrático se trata, no hay otra opción que la de reconocer y preservar la integridad de los derechos individuales, reconstruyéndolos allí donde hubiesen sido desintegrados. La conversión de un Estado totalitario de propiedad estatizada y economía dirigida, a un Estado de propiedad e iniciativa privadas, tiene que marchar, desde el inicio, por el camino de la "desestatización" hacia la "privatización". La privatización de la propiedad no puede asumir otra forma que la restitución integral en derecho a su estado previo a la estatización.

Corresponde al legislador "provisional" esta restitución integral de la propiedad-propietario-función social, dentro de las circunstancias reales que enmarcan este tramo excepcional de la reconstrucción cubana.

En atención a todo lo anteriormente expuesto, recomendamos:

1) Que la Provisionalidad, a través de su órgano u órganos competentes, trace los lineamientos generales para la privatización de los bienes estatizados o nacionalizados

a) de todos los bienes raíces dentro del país en poder o dominio del Estado, excepto aquellos de dominio público, incluidos parques nacionales, puertos, bibliotecas, etc. de los propios para su mantenimiento y funciones en el ámbito de la nación y los propios de las provincias, los municipios y los organismos paraestatales. Debe conservar, igualmente, el dominio del subsuelo;

b) todos los bienes de producción, industriales, agropecuarios, pesqueros y los de servicios, excluyendo, por el momento y hasta posteriores estudios, los de los servicios públicos básicos, como los de salud, comunicaciones y transportes y los suministros de energía.

2) Que la Provisionalidad a través de su órgano u órganos pertinentes, trace los lineamientos generales y de procedimiento para la justa solución en derecho y destino de las propiedades de bienes confiscados o expropiados de cualquier forma.

I.- Agrupándolos por clases, conforme a la siguiente clasificación:

a) bienes raíces per se e inmuebles por incorporación o destino;

b) bienes muebles;

- c) bienes de producción industrial;
- d) bienes de producción agrícola, pecuaria y pesquera;
- e) bienes de servicio;
- f) bienes de vivienda familiar urbana y,
- g) de vivienda familiar rural.

II.- Atendiendo a si el propietario expropiado aceptó o no aceptó voluntariamente, algún tipo de compensación o pago por el bien expropiado.

3) Que la Provisionalidad, por medio de su órgano u órganos pertinentes, distinga entre los diferentes "ius" o derechos integrantes del Derecho de Propiedad y, específicamente, entre dominio y posesión, muy en particular en lo referente a las propiedades de viviendas familiares en conflicto, al objeto de buscar y encontrar soluciones más justas en lo individual y acordes a la justicia social, a las exigencias del orden público y a las circunstancias de excepción de este periodo reestructivo.

4) Que la Provisionalidad instituya un organismo de privatización paraestatal y autónomo, que aplique los lineamientos generales en cada caso, dejando abierta una vía de apelación a los tribunales de justicia.

XIV

SOBRE POLÍTICA ECONÓMICA

La política económica de un Estado debe estar directamente relacionada y condicionada a los elementos definidores de la identidad nacional en sus perfiles histórico-cultural, socio-sicológico, religioso y otros, los que integran igualmente su estructura jurídica.

En Cuba, una política económica propia, con las características arriba señaladas, comenzó a desarrollarse en la segunda mitad de la década de 1920 y alcanzó a los finales de los 50's, período en el que, con sus altas y bajas, aciertos y fallas, se materializaba el anhelo mambi de la República "con todos y para el bien de todos", que impulsó el movimiento iniciado por la protesta estudiantil de 1923 y el consecuente proceso revolucionario de los años 30's y su corolario constitucional de 1940. Esta política, de espíritu nacionalista, objetivaba la diversificación económica; la modernización social; la tecnificación de la producción y administración y la integración social, a través de una firme promoción legislativa que capacitaba la solidaridad ciudadana y la conducción del propio destino.

Naturalmente, no es posible reproducir aquella etapa económica de la historia republicana en este instante de tan particulares condiciones donde, además de la necesidad de partir de menos cero, se exige hacerlo sobre la aberración de una estructura inflexible de economía estatizada. Sin embargo, sí, es recomendable la reinterpretación de aquellos mismos elementos de identidad, dentro del marco de las circunstancias actuales, en la definición de una política económica y su planteamiento, para el desarrollo del Estado democrático. Para la estructuración de la nueva filosofía económica y su instrumentación podrá optarse por emprender una vía de instantaneidad de cambios o por un proceso gradual de reemplazamientos, pero en todo caso será necesario una apropiada coordinación de las medidas de cambio de sistema, con las de estabilización y una armonización fundamental de las relaciones entre las actividades privadas y el Estado.

Corresponde a la Provisionalidad iniciar el proceso de desocialización y privatización, esto es, el trasvase de la economía real, estatizada, a una economía de libre mercado. Para esa nueva política económica en la Cuba que, recomienza, encontramos recomendable,

- 1) orientarla sobre incentivos materiales, capaces de promover la iniciativa privada y sostener el esfuerzo productivo a largo plazo;

- 2) elaborar una política de reconstrucción y desarrollo con énfasis en la diversificación agrícola y en el autoabasto racional en productos básicos de consumo y en materias primas, tanto en el campo de las actividades agropecuarias como en el de la industria ligera de consumo y manufacturera intermedia;

- 3) promover los mercados financieros y de créditos, y sus instituciones,

correspondientes a las películas de orientación y planeamiento arriba aconsejadas:

- 4) fijar objetivos a largo y corto plazo;
- 5) trazar una estrategia de inversión de recursos estatales y paraestatales para la reconstrucción y desarrollo a largo plazo, que incluya la formación de bloques aduanales, áreas de libre comercio, integración económica y mercados comunes;
- 6) determinar un tipo de cambio extranjero que responda a la paridad adquisitiva real;
- 7) libertad de precios de bienes y servicios a ofrecer y ser adquiridos por el mercado;
- 8) libertad de comercio exterior, sin perjuicio de controles acordes a un programa de estabilización;
- 9) libertad de inversión privada;
- 10) régimen fiscal dependiente primordialmente de ingresos generados por tributos habilitados por leyes y, secundariamente, por créditos de entidades bancarias o financieras y beneficios de empresas públicas.

Es igualmente recomendable el establecimiento o restablecimiento autónomos de:

- 1.- El Banco Nacional, con funciones de,
 - a) Instituto de emisión;
 - b) Dirección y supervisión de las políticas monetarias, crediticias y financieras;
 - c) Banco central para la banca comercial, agrícola, industrial y financiera privada;

d) *Depositario del Tesoro público.*

II.- *El Banco de Fomento Agrícola e Industrial.*

III.- *La Junta Nacional de Economía.*

IV.- *El Tribunal de Cuentas.*

XV

SOBRE UN INSTITUTO DE DEMOCRATIZACIÓN

La transformación de una economía centralizada en un Estado totalitario, dueño único de la propiedad y de toda actividad empresarial, a una economía de mercado de iniciativa y propiedad privadas, en un Estado democrático, es una tarea que enfrenta múltiples y complejas situaciones y ninguna de ellas de fácil realización.

La Provisionalidad podrá aprovechar la experiencia, positiva o negativa, de los diversos procesos de conversión iniciados en las recién liberadas sociedades del mundo socialista en la Europa oriental y en la Unión Soviética, pero, indiscutiblemente, tendrá que desarrollar fórmulas propias en la medida de las características identificadoras del pueblo cuyo destino conduce y gobierna y en las condiciones de acceso a un mercado internacional, prioritariamente conformado con las buenas y malas razones de una determinante geopolítica.

Para mantener un equipo humano dedicado al análisis y estudio de posibles soluciones a los problemas que presenta el proceso de transformación hacia el Estado de derecho democrático y la consolidación misma de éste, recomendamos:

- 1) La promoción y apoyo oficiales para la creación de un Instituto de*

Estudios Políticos y Socioeconómicos, dirigido específicamente a la consideración y análisis de los problemas propios de la transición y a la búsqueda de viabilidad en la gestión gubernativa para una efectiva reconstrucción nacional.

El Instituto sería así un órgano para la consulta ejecutiva y legislativa y un emisor espontáneo de sugerencias a estos poderes, al mismo tiempo que un centro abierto a la investigación sociopolítica y económica, capaz de realizar estudios macroeconómicos y sectoriales y otros, con los que fundamentar las nuevas estructuras del Estado democrático y de la libre economía.

2) Este Instituto, para obtener mejores resultados deberá tener las siguientes características:

- a) absoluta independencia;
- b) naturaleza esencialmente técnica, integrado y dirigido por profesionales de reconocida capacitación en sus respectivos campos de estudio, ejercicio o experimentación; de orientación democrática y desatados de toda función gubernativa. Reunidos todos con criterio despolitizado.
- c) Vinculación con el mundo académico nacional e internacional.