What Is All the Commotion About? International Attacks on the Validity of the Cuban Liberty and Democratic Solidarity Act

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INTERNATIONAL ATTACKS ON THE VALIDITY OF THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT

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I. INTRODUCTION

On March 16, 1996, the President of the United States, William Jefferson Clinton, signed the Cuban Liberty and Democratic Solidarity Act (Liberty Act),\(^1\) one of the most controversial pieces of legislation the United States has ever adopted. The provision of the Liberty Act which has caused most of the controversy permits those U.S. nationals whose property was confiscated by the Cuban government to sue in U.S. Federal district courts any person who "traffics" in their confiscated property.\(^2\) Since the enactment of the Liberty Act,\(^3\) numerous countries have attacked its validity alleging, inter alia, that it violates international law by infringing on the sovereignty of other states.\(^4\)

As a result, several foreign countries have threatened retaliatory action against the United States if U.S. nationals attempt to enforcing the provisions of the Liberty Act against the nationals of those foreign countries.\(^5\)

On June 4, 1996, the General Assembly of the Organization of American States (OAS) approved the mandate which instructed the Inter-American Juridical Committee (Committee) to...
examine the Liberty Act and to decide its validity under international law. The Committee made several findings including that the Liberty Act: 1) transformed a claim for expropriation or confiscation, which is generally viewed as a state-to-state claim under international law, into a domestic legal claim under international or municipal law by a U.S. national against a national of a foreign state; 2) conferred the right to make such claims on persons, including Cuban citizens, who were not U.S. nationals at the time of the confiscation of property; 3) attributed the responsibility for the acts of a foreign state to private nationals of that state; 4) valued compensation for the loss of the confiscated property in a way which could result in treble damages; 5) determined the damages as the total value of the confiscated property, without considering the value of the benefit derived by the person from the use of the property or the claimed loss to the original owner by its use; 6) allowed claims against foreign nationals without providing them with effective means to refute or contest the allegations against them, including the issues of ownership and amount of damages, particularly those determined by the Foreign Claims Settlement Commission (Commission); 7) confused a claim for damages or restitution, based on naturalization or expropriation, with an action in rem to claim confiscated property or an action in personam for unjust enrichment from the use of such property by any person subsequently involved with the property; and, finally, 8) created liability for foreign nationals who lawfully use expropriated property in the territory of the expropriating state. The Committee held that the Liberty Act has "significant areas" which are "not in conformity with international law."

This Comment examines whether the Committee correctly applied international law to the provisions of the Liberty Act which allow U.S. nationals to sue for money damages any person, including a foreigner or foreign company, which buys, leases, derives benefit from, or otherwise traffics in property which the Cuban government confiscated from U.S. nationals. The decision, although not binding, hampers U.S. efforts to

7. Id. at 4-5.
8. Id. at 8.
9. Id. at 3.
gather international support for tougher sanctions against Cuba.

This Comment argues the Liberty Act essentially functions as a sanction on Cuba by discouraging foreign investment in confiscated property which provides Cuba with badly needed economic aid. The Liberty Act's deterrent effect against economic investment in Cuba, rationally based on a person's fear of incurring liability, is undermined by decisions such as the Committee's that questions the Act's validity under international law. The decision ultimately affects the willingness of many countries to openly support the Liberty Act because these countries may not wish to support an act which many in the international community consider to be contrary to international law. In the worst case scenario for the United States, the decision will serve as a justification in the eyes of the world for retaliatory action against the United States by those countries whose nationals are affected. The final result may be interference with the Act's stated, if not impossible, goal: to bring democratic freedom and prosperity to the Cuban people.¹⁰

Part II of this Comment looks at the rights and requirements of the Liberty Act, and illustrates its impact with an authentic example. Review of the history of the Liberty Act and the events leading to the Committee's decision is provided in Part III. Part IV analyzes the rationale the Committee employed in reaching its decision and examines the reasons advanced to reject the pertinent provisions of the Liberty Act under customary public international law. Finally, this Comment concludes with a summary in response to the validity of both the Liberty Act and the Committee's decision.

II. THE LIBERTY ACT IN THEORY

The Liberty Act imposes civil liability on persons who "traffic" in property confiscated from U.S. nationals by the Cuban government and grants the nationals the right to file suit against "traffickers" for money damages¹¹ in federal district court.¹² Only a U.S. national who is a citizen or a legal entity organized under U.S. law may sue a person trafficking in confis-

¹⁰. Liberty Act, supra note 1, § 3(1).
¹¹. Id. § 302.
¹². Id. § 302(c)(1).
cated property.\textsuperscript{13} In addition, the Act also gives a U.S. national who was a citizen of Cuba at the time of the confiscation the right to bring an action; however, a potential plaintiff must wait two years from the promulgation of the Act before filing suit against the trafficking person.\textsuperscript{14} The Liberty Act's definition of "person" includes any person, legal entity, or foreign national.\textsuperscript{15} The Act defines the term foreign nationals as either an alien or a juridical entity, such as a corporation or partnership not organized under U.S. law.\textsuperscript{16}

In order for a person to incur civil liability and to expose themselves to a possible suit by a U.S. national, they must knowingly traffic in property confiscated from a U.S. national.\textsuperscript{17} The Liberty Act defines trafficking broadly. The definition includes a person who knowingly and intentionally sells, purchases, or leases confiscated property or who benefits or profits from the trafficking of the property.\textsuperscript{18} Actual or constructive knowledge that they are trafficking in property confiscated from a U.S. national is required under the Act.\textsuperscript{19} Confiscated property includes real, personal, or mixed property, which has been nationalized, expropriated, or seized by the Cuban government without the return of the property, payment of adequate and effective compensation, or the settlement of the claim to the property by an international agreement.\textsuperscript{20} Confiscated property does not, however, include real property presently in use for residential purposes, unless the U.S. national's claim has been certified by the Commission under the International Settlement Act of 1949 or the property is occupied by a Cuban government official or ruling political party.\textsuperscript{21}

\begin{itemize}
\item \textsuperscript{13} Id. § 4(15).
\item \textsuperscript{14} Id. § 302(a)(5)(C).
\item \textsuperscript{15} Id. § 4(8), (11).
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id. § 302.
\item \textsuperscript{18} Id. § 4(10).
\item \textsuperscript{19} Id. § 4(9).
\item \textsuperscript{20} Id. § 4(4), (12). Debate exists over the differences between confiscation, expropriation, nationalization, and seizure. For debate of these terms, see Frances H. Foster, \textit{Restitution of Expropriated Property: Post-Soviet Lessons for Cuba}, 34 \textsc{Colum. J. Transnat'l L.} 621, 651-52 (1996). For the purposes of this Comment, the terms are used interchangeably and given the definition provided by the Liberty Act, except where a different analysis flows from the use of a particular term.
\item \textsuperscript{21} Liberty Act, \textit{supra} note 1, § 4(12)(B).
\end{itemize}
As stated previously, U.S. nationals may bring an action against a person trafficking in confiscated property in U.S. district court.\textsuperscript{22} All procedural requirements applicable to a federal question action under Section 1331 of Title 28 of the U.S. Code apply to an action brought under the Liberty Act.\textsuperscript{23} In addition, service of process is made in accordance with Section 1608 of Title 28.\textsuperscript{24}

The money damages for which a U.S. national may sue under this Act are calculated using one of three methods, with the greatest amount being adopted.\textsuperscript{25} The first method of calculation is the amount of damages, plus interest, certified by the Commission under the International Settlement Act of 1949.\textsuperscript{26} If no claim was filed with the Commission, the court may appoint a special master to determine the amount of the claim, plus interest.\textsuperscript{27} This determination, however, is not conclusive and serves only an evidentiary purpose.\textsuperscript{28} The final method of calculation is the fair market value of the property, determined as the greater of the current value of the property or the value of the property at the time of confiscation, plus interest from that date.\textsuperscript{29} The Liberty Act trebles the amount of the foregoing damages when a person traffics in confiscated property certified under the Commission\textsuperscript{30} or where the trafficker is given notice by a U.S. national of the national's intent to bring an action under the Liberty Act and the trafficker ignores a demand to cease the trafficking of the confiscated property.\textsuperscript{31}

On July 16, 1996,\textsuperscript{32} January 3, 1997,\textsuperscript{33} and again on July 10,
1997, President Clinton exercised the option under the Liberty Act that allows the President to suspend the implementation of Title III for six months, presumably in an attempt to ease tensions with complaining countries. Unfortunately, this suspension also delayed what will undoubtedly be a fascinating analysis of the first action filed under the Act and an examination of the possible problems in its implementation.

The impact of the Liberty Act can best be understood through the use of an illustration based on the author's own personal experience with the Cuban confiscation of his father's property and that of his grandfather's. The author's father, who for the purposes of this example will simply be referred to as "Father," fled from Cuba to Miami, Florida in 1960, shortly after Fidel Castro's rise to power. Father's property, consisting of farm land and surrounding buildings, remained in grandfather's possession for some time, but was eventually confiscated by the Cuban government. The property at the time of confiscation had a fair market value of $75,000. Subsequently, Father became a U.S. citizen and continues to reside in Miami today. The confiscated farm land and buildings have reportedly been sold to a foreign company, which built a factory on the land and is currently conducting business there. Although not organized under U.S. laws, the foreign company has offices and conducts business in the United States. The property has a current value of $100,000. Thus, the issue is whether the Liberty Act offers Father any recourse.

Father was not a U.S. citizen at the time of the confiscation of grandfather's property, so, as a preliminary matter, he would have to wait two years from the date of the Act's implementation before filing suit. Once the two years have passed, and barring any further delay by the President, Father can file suit in U.S.

34. William E. Gibson, Clinton Blocks Cuba Lawsuits Suspension Leads to Protest from GOP Legislators, SUN SENTINEL (Ft. Lauderdale), July 17, 1997, at 12A; Clinton Uses Waiver to Block Helms-Burton Law, HOUSTON CHRON., July 17, 1997, at 22.
35. Liberty Act, supra note 1, § 306(b)(1). Liability for trafficking in confiscated property has accrued from November 1, 1996, and is not tolled. White House Special Briefing Subject: Presidential Decision on Title III of the Cuban Liberty and Democratic Solidarity Act, FED. NEWS SERV., July 16, 1996, available in 1996 WL 5794619.
37. Although the illustration is true, the exact details, including the value of the property and who "owns" it today, are unknown.
38. See Liberty Act, supra note 1, § 302(a)(5)(C). This amount in controversy requirement has been met in Father's case.
district court against the foreign company currently in possession of the property, provided the company is amenable to service and suit under personal jurisdiction and Father's claim exceeds the federal amount in controversy requirements of subject matter jurisdiction.\textsuperscript{39} Father was unable to file a claim with the Commission because he was not a U.S. citizen at the time of the confiscation, so he may sue for the amount determined by a special master, if appointed by the court, or the fair market value of the property, whichever is greater.\textsuperscript{40} Father must prove ownership of the property, presumably as an heir, and must also submit evidence proving the current value of $100,000, which is the greater of the two amounts in the example.\textsuperscript{41} Father may even sue for triple the current value of the property if he gives notice to the foreign company of his intent to sue, and the company continues to traffic in the property.\textsuperscript{42} The foreign company may contest the claim and also has the right to submit evidence tending to disprove either Father's ownership or the amount of damages.\textsuperscript{43}

The district court will apply the Liberty Act to the facts of the case and will make a determination. Either party may appeal the district court's judgment in the same way they would any other federal judgment entered against them.\textsuperscript{44} In theory, this is the way the Cuban Liberty and Democratic Solidarity Act should work.

\section*{III. The History of the Liberty Act}

The Liberty Act condemns the Cuban government's attack on two American civilian planes and states that the incident exposed Cuban dictator Fidel Castro's disregard for international law.\textsuperscript{45} The American planes were owned and operated by Brothers-to-the-Rescue, a humanitarian group that flies over the Florida Straits searching for Cuban rafters attempting to reach the United States.\textsuperscript{46} On February 24, 1996, three unarmed

\textsuperscript{39} See id. § 302(c)(1).
\textsuperscript{40} See id. §§ 302(a)(1)(A)(i)(I)-(III), 303(a)(2).
\textsuperscript{41} See id.
\textsuperscript{42} See id. § 302(a)(3)(B).
\textsuperscript{43} See id. §§ 303(c)(2),(3), 302(c)(1)-(2).
\textsuperscript{44} See id. § 302(c)(1).
\textsuperscript{45} Id. § 116.
\textsuperscript{46} Id. § 116(a)(1); Larry Rohter, Exiles Say Cuba Downed 2 Planes and Clinton Expresses
Brothers-to-the-Rescue planes flew over international waters north of the Cuban coast when two of the planes were shot down by a Cuban jet. All four U.S. citizens in the planes were killed. This international incident gave the Liberty Act the support it needed to pass in both the House and Senate of the U.S. Congress and reportedly led President Clinton to sign the Act into law on March 12, 1996. Ironically, before the incident, U.S. Secretary of State Warren Christopher recommended that the President veto the bill as then presented. Perhaps as a result of the Clinton administration's change of mind, the Liberty Act immediately drew criticism from the international community. As previously stated, several countries, particularly Mexico, Canada and those in the European Union, allege that the bill violates many provisions of international law. Allegations quickly turned into threats of retaliatory legislation, open trade war, and actions against the United States in international tribunals.


47. Liberty Act, supra note 1, § 116(a)(2)-(8); Rohter, supra note 46; Navarro, supra note 46.

48. Liberty Act, supra note 1, § 116(12); Rohter, supra note 46; Navarro, supra note 46.


53. Jonquieres, supra note 5 at 4; Wolf & Coleman, supra note 5 at 7; Gaunt, supra note 5. The European Union, in particular, requested that the World Trade Organization (WTO) form a panel to examine the validity of the Liberty Act. Gustavo Capdevilla, WTO Takes United States to Trial Over Helms-Burton, INTER PRESS SERVICE, Nov. 20, 1996, available in 1996 WL 13589298. The WTO agreed and now has six months to produce its findings. The United States has refused to attend the WTO panel and maintains that the WTO is not the proper tribunal to deal with such an issue because the European Union's problems with the Liberty Act are "a matter of U.S. national security and foreign policy" and, thus, not a trade issue to be handled by the WTO. Id. U.S. Vows to Boycott Tribunal Over Cuba Europeans Protest Helm Burton Act, NEWS AND OBSERVER (Raleigh, NC), Feb. 21, 1997, at A1; see also U.S. State Department Spokesperson Nicholas Burns Holds Daily Briefing (CNN Television Broadcast, Oct. 17, 1996).
The United States attempted to ease tensions and draw support for the newly promulgated Act by sending special representative Stuart Eizenstat to Mexico to meet with government officials and business leaders, but despite the Act's stated purpose of bringing democracy to Cuba, Eizenstat found only harsh criticism and more threats. Mexico has openly opposed U.S. policy against Cuba in the past and continues to oppose any blockade or other measure against the country with whom it shares good commercial and diplomatic relations. One journalist suggests the reason for the furious reaction to the Liberty Act is that preliminary reports indicate the Act is already having a deterrent effect on investment in confiscated property. Canada's ambassador to Cuba, Mark Entwistle, and even Cuban Vice President Carlos Lage, among others, admit the Liberty Act is having a "significant chilling effect" on investment decisions in Cuba. The number of entrepreneurs going to Cuba and seeking investment opportunities has reportedly declined because of fear of incurring liability under the Act.

Until the Committee's decision, the allegations, threats, and criticisms against the Liberty Act were unsupported by any legal opinion from international governmental or quasi-governmental organizations. Finally, on June 4, 1996, during a session entitled "Freedom of Trade and Investment in the Hemisphere," the General Assembly of the OAS instructed its Committee to examine the Liberty Act and determine its validity under international law. The decision by the Committee that the Liberty Act does not conform to international law is not binding on the United States in any international tribunal. However, the decision's effect is measured in the strength it gives to allegations that the Liberty Act violates international law and the support and it

54. U.S. Alone in Zeal to Apply Helms-Burton Law Against Cuba, INTER PRESS SERVICE, Aug. 29, 1996, available in 1996 WL 11625094. The criticism was so severe that Special Representative Eizenstat canceled a lunch with Mexican legislators and continued on to Canada and the European Union. Id.

55. Id.


57. Id.


59. Committee's Decision, supra note 6, at 3.

60. Id.
provides for retaliatory action against the United States.\textsuperscript{61} The Committee based its opinion on several principles of public international law as defined in Article 38, Paragraph 1\textsuperscript{62} of the Statute of the International Court of Justice.\textsuperscript{63}

IV. THE DECISION OF THE INTER-AMERICAN JURIDICAL COMMITTEE

A. The Protection of Property Rights of Nationals Under International Law

The Committee concluded that the Liberty Act's protection of the property rights of U.S. nationals violated international law in several areas.\textsuperscript{64} A careful review of the conclusions reached by the Committee requires the observation, at the outset, that international law recognizes a presumption against the existence of a conflict between municipal and international law.\textsuperscript{65} This presumption stems from the notion that since international law is, for the most part, based on the "common consent" of countries, no state would purposefully enact a municipal law that conflicts with international law.\textsuperscript{66} Thus, municipal laws should be interpreted in a manner that would avoid any conflict with international law.\textsuperscript{67} However, a municipal law contrary to international law is inapplicable with respect to other states whose

\begin{itemize}
\item \textsuperscript{61} Anderson, supra note 4; US envoy to Mexico, Canada, Havana, AGENCE FRANCE PRESSE, Aug. 27, 1996, available in 1996 WL 3914556.
\item \textsuperscript{62} Article 38, Paragraph 1 provides:
\begin{enumerate}
\item The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
\begin{enumerate}
\item international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
\item international custom, as evidence of a general practice accepted as law;
\item the general principles of law recognized by civilized nations;
\item subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
\end{enumerate}
\end{enumerate}
\end{itemize}

\textsuperscript{63} Committee's Decision, supra note 6, at 4.
\textsuperscript{64} Id. at 8.
\textsuperscript{65} OPPENHEIM'S INTERNATIONAL LAW 81 (Robert Jennings & Arthur Watts eds., 9th ed. 1992) [hereinafter OPPENHEIM].
\textsuperscript{66} Id. at 81-82.
\textsuperscript{67} Id. at 82.
rights and obligations are first derived from international law. Such states may disregard the municipal law "to the extent of its conflict with international law."68 With these principles in mind, the Committee's several conclusions are discussed below.

1. Domestic Courts as International Forums

The Committee first concludes that the domestic courts of a claimant state are not the proper forum for the resolution of state-to-state claims.69 Thus, under this rationale, a U.S. national with a claim for expropriation or confiscation may not bring his claim in the courts of the United States under the Liberty Act, but rather, the United States must bring an action on the national's behalf in an international tribunal.

A thorough discussion of whether a claim for expropriation or confiscation is exclusively a state-to-state claim to be brought before an international tribunal solely by the espousing state on behalf of one of its nationals is beyond the scope of this Comment; however, it should be mentioned that expropriation claims historically have been brought before international tribunals by an espousing state, reinforcing the notion that states are the only proper parties in international law actions.70 At the same time, this historical general rule of state espousal is in decline.71 Oppenheim notes that "the increasing role of individuals as subjects of international law," among other things, "ha[s] tended to make the distinction between international law and national law less clear and more complex than was formerly supposed at a time when the field of application of international law could be regarded as solely the relations of states among themselves."72

The distinction between international law and municipal law becomes less important when compared to the practical problems that arise when a state attempts to apply rules of international law within its municipal system and when there is a conflict between a rule of international law and an internal law

68. Id. at 84.
69. Committee's Decision, supra note 6, at 6.
71. Id.
72. OPPENHEIM, supra note 65, at 54.
of the state, as in the present case. Oppenheimer answers these questions by surveying the practice of several states and concludes that rules of international law do often operate as part of municipal law, but not all the time. International law depends on the state municipal systems of law for the enforcement and application of international law and leaves to these systems the precise method for the obedience of the law.

Such is the case with the Liberty Act. The United States may not always apply rules of international law to municipal law, but by enacting the Liberty Act, it has essentially adopted the historically international claim of expropriation or confiscation into its municipal system, at least to the extent of the Cuban expropriations. A survey of the national laws of various countries support the notion that such an adoption is entirely within the confines of customary public international law. This of course does not answer the question whether municipal law should apply rules of international law, in lieu of international tribunals. The general rule, if there is one under international law, is that a person who cannot recover their expropriated property in the country of expropriation may recover their property elsewhere. In the case of expropriation or confiscation, at least, the author proposes a balancing test between the adequacy of remedies, or lack thereof, in international tribunals and the possible remedies under municipal law, with the ultimate goal of reaching an equitable result.

Under the current situation, U.S. nationals with expropriation claims do not have adequate remedies against Cuba directly. Cuba has shown no interest in either returning the property or effectively compensating U.S. nationals for the confiscation of their property. In fact, it is offering the confiscated property for sale to foreign nationals. Moreover, the interna-

73. Id.
74. Id.
76. See OPPENHEIM, supra note 65, at 82-83 (discussing the forms in which states “meet their international obligations,” including the “transformation of international law into national law by way of statute”); see also id. at 54-55.
77. Id. at 54-59 (examining the operation of international law in the municipal law of various states, including the United Kingdom).
78. B.A. WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW 10 (A.D. McNair et al. eds., 1959).
79. Liberty Act, supra note 1, § 301(8).
80. Id. § 301(5).
tional judicial system lacks adequate remedies for the wrongful expropriation of or unjust enrichment from confiscated properties.\textsuperscript{81} The jurisdiction of international tribunals is consensual,\textsuperscript{82} thus, Cuba could effectively deny any remedy to a U.S. national whose property it confiscated by simply not consenting to the jurisdiction of the international forum. Even assuming Cuba consents to jurisdiction, it could be decades before a U.S. national sees any compensation, which in any case is likely to be an inadequate amount when compared to the amount to which the U.S. national is entitled under international law.\textsuperscript{83} Balancing the inadequacy of international remedies available to U.S. nationals with the remedy of money damages under the Liberty Act results in the inescapable conclusion that the Act, and the U.S. municipal legal system, is better suited to remedy the claims of U.S. nationals whose property has been confiscated by the Cuban government. Notwithstanding the Committee's decision, the judicial courts of the United States are a proper forum for the resolution of the expropriation claims of U.S. nationals.

2. The Espousal of the Claims of Non-Nationals

The preceding analysis, however, does not address the Committee's conclusion that the claimant state has no right to hear claims by persons who were not its nationals at the time of expropriation.\textsuperscript{84} Applying the Committee's rationale to the Liberty Act results in the conclusion that international law prohibits the United States from allowing its nationals who were Cuban citizens at the time of the confiscation of their property to sue persons trafficking their property.

Ordinarily, when a private person has suffered an injury, a state wishing to bring a claim in an international tribunal on behalf of that person must show that the person was its national at the time of the injury.\textsuperscript{85} This is because by "taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality

\begin{footnotesize}
82. Clagett, supra note 81, at 436-37.
83. Id. at 437.
84. \textit{Committee's Decision}, supra note 6, at 6.
\end{footnotesize}
asserting its own rights—its right to ensure, in the person of its subject, respect for the rules of international law." As a general rule, international law leaves it up to the state and its municipal law to determine who its nationals are. This determination, however, may not be conclusive evidence of nationality under international law. The International Court of Justice in the Nottebohm Case regarded nationality as a legal bond having as its basis a social fact of attachment, a general connection of existence and sentiments, together with the existence of reciprocal rights and duties.

It bears mentioning that these general principles are not entirely applicable to the Liberty Act and the remedies it provides for U.S. nationals who were Cuban citizens at the time of the confiscation of their property. The foregoing principles appear to apply exclusively to situations where a state brings a claim on behalf of its national in an international tribunal or through diplomatic proceedings. The Liberty Act, on the other hand, provides a cause of action to U.S. nationals in the district courts of the United States. Thus, at least on their face, the general principles appear inapplicable to the Liberty Act.

The stronger argument, however, is found in the various exceptions to the general rule that a state may not bring an action on behalf of persons who were not its nationals at the time of the confiscation. States have protected the international rights of persons who are not their nationals by making international agreements and treaties and, particularly applicable in the present context, through diplomatic action based on humanitarian concerns on behalf of nonnationals wronged by another state.

These exceptions have come about primarily in an attempt to mitigate the problems suffered by stateless or displaced per-

86. Id.; see also Norton, supra note 70, at 494.
87. GILLIAN WHITE, NATIONALIZATION OF FOREIGN PROPERTY 51 (1961); OPPENHEIM, supra note 65, at 512.
88. OPPENHEIM, supra note 65, at 512.
90. OPPENHEIM, supra note 65, at 512.
91. Liberty Act, supra note 1, § 302(c)(1).
92. OPPENHEIM, supra note 65, at 935-36.
93. WHITE, supra note 87, at 52.
94. OPPENHEIM, supra note 65, at 936-38.
sons and refugees. A stateless person is one who lacks both the nationality of the expropriating state and the nationality of any other state. A refugee or displaced person is an individual who resides outside his own country but who still bears the nationality of that country. Despite the different labels, all of these persons are in essentially the same position; they lack a forum where they can seek compensation from their government, and no government is likely to provide them with the protection and benefits that come from nationality.

U.S. nationals who were Cuban citizens at the time of the confiscation of their property share the same status as stateless or displaced persons and refugees under international law. Without a country to bring a claim on their behalf, these U.S. nationals lack a forum under international law in which to seek compensation for their loss. In apparent response to this problem, the Liberty Act provides these U.S. nationals a cause of action in its municipal courts, thereby avoiding the espousal requirements of the international tribunal. Public international law supports the U.S. right to create exceptions to the general principle that a state may not bring an action on behalf of a nonnational.

Moreover, it is a basic principle of international law that a state may protest the confiscation of its property or the property of its subjects and may protect its nationals by bringing a case on their behalf in an international tribunal. The state may also protect itself from injury caused by acts performed within the territory of a foreign state. The injury to the United States in the present case was Cuba's expropriation of its citizens' property, which transformed many Cuban citizens into refugees. The act of transformation by Cuba is ipso facto illegal under in-

95. Id. at 890-91.
96. White, supra note 87, at 52.
98. Id. See also Oppenheim, supra note 65, at 891.
99. Liberty Act, supra note 1, § 302(c)(1).
100. Oppenheim, supra note 65, at 512.
101. White, supra note 87, at 52. See Oppenheim, supra note 65, at 936-38.
102. Wortley, supra note 78, at 72.
103. Lee, supra note 97, at 556.
104. Wortley, supra note 78, at 20.
105. Liberty Act, supra note 1, § 301(3)(B)(iii).
106. Id. § 301(3)(iii).
ternational law. Further, where the expropriating state has inconvenienced or caused a loss to another state by expropriating the property of its citizens and creates a flood of refugees to neighboring states, international law recognizes the right of the neighboring state to refuse to recognize dealings of the expropriating state with the property of the refugees. Therefore, the United States, which arguably has been inconvenienced and has suffered a loss as a result of the Cuban refugee influx, does not have to recognize under international law Cuba’s dealings in property confiscated from U.S. nationals who were Cuban citizens at the time of the expropriation and who later became refugees only after Cuba confiscated their property. Equity and fundamental notions of fairness support ignoring differences such as the nationality of the person at the time of expropriation where the situation giving rise to the difference is caused by Cuba’s wrongful expropriations in violation of international law.

3. Domestic Liability for the Legal Expropriation of Property Within the Expropriating State

A further conclusion in the Committee’s decision is that the claimant state has no right to attach liability to foreign nationals for the use of expropriated property in a foreign state where the use of the property is legal in that foreign state. For example, such a conclusion would invalidate the Liberty Act because a foreign national could not be held liable for using property confiscated from a U.S. national, where such a use is legal within Cuba.

The Restatement (Third) of the Law: Foreign Relations Law of the United States (Restatement (Third)) provides that a state is responsible for injury under international law when it takes the property of a national of another state and the taking is not for a public purpose, is discriminatory, or is unaccompanied by just compensation. In addition, the expropriation of property becomes an international wrong where a foreigner’s property is

107. Lee, supra note 97, at 538.
108. WORTLEY, supra note 78, at 20.
109. See discussion infra Part IV.A.3.
110. Committee’s Decision, supra note 6, at 6.
taken in violation of a treaty, where the taking is arbitrary, or where the expropriating state fails to give adequate compensation. Cuba has committed an international wrong by its failure to adequately compensate thousands of U.S. nationals whose property was confiscated and whose claims were certified by the Commission. Where a wrongful expropriation or confiscation has occurred, the expropriating state gains title to the property by its own internal law, but other states do not have to recognize such title when the manner of acquisition is contrary to international law.

In the United States, the Federal Court of Appeals in Banco Nacional de Cuba v. Farr, Whitlock & Co. found that Cuba's confiscation of property is ineffective to transfer title because of the discriminatory nature of the takings, which violated international law, thereby becoming an international wrong. The consequence of a null title is to treat the property as stolen; as a result, the original owner retains title with the exception of a subsequent purchaser who purchases without actual or constructive notice. The Liberty Act recognizes this exception and requires knowledge of the trafficking in confiscated property before imposing civil liability for money damages on a foreign national who traffics in the property.

A foreign national who acquires wrongfully confiscated property from Cuba and who knowingly purchases, sells, transfers, or otherwise uses the wrongfully confiscated property is trafficking in stolen property as defined by international law. International law recognizes that a person in possession of property which he or she knows is stolen may become liable in damages to the true owner under an action for conversion or for conspiracy "to deprive the true owner of his rights." Thus, subjecting the foreign national to liability in the United States

112. Mann, supra note 75, at 176; see also Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F.2d 875 (2d Cir. 1981) (finding that failure to pay compensation to a victim of expropriation constitutes a violation of international law).
114. Wortley, supra note 78, at 16.
116. Mann, supra note 75, at 186.
118. Mann, supra note 75, at 186.
119. Id.
for withholding, transferring, or using\textsuperscript{120} the confiscated property does not violate international law, regardless of whether the confiscation or use is treated as legal within Cuba.\textsuperscript{121}

The legality of a taking under the internal law of a state, where no compensation was paid for the loss of the property, was rejected as a defense to liability in the Iran-U.S. Claims Tribunal case, \textit{Phelps Dodge Corp. v. Islamic Republic of Iran}.\textsuperscript{122} In that case, the tribunal also rejected the defense that the taking was for financial, economic, and social concerns and found that even these worthy objectives did not relieve Iran from its obligation to compensate under international law.\textsuperscript{123} Under the current situation, the fact that Cuba is willing and able to transfer confiscated property to foreign nationals,\textsuperscript{124} even in the midst of an economic crisis, does not shield a foreign national from committing an international wrong by trafficking in wrongfully confiscated property, for "[the] facility in trading in expropriated property is no reason for ignoring rules of public international law."\textsuperscript{125}

4. Imposition of Liability on Traffickers of Expropriated Property

The Committee's decision also concludes that a claimant State has no right to impose or attribute liability to foreign nationals not involved in a confiscation through the creation of liability not linked to the confiscation or unrecognized by international law.\textsuperscript{126} Consequently, as applied to the Liberty Act, this conclusion would not permit the United States to impose liability on persons who traffic in foreign property because such persons had nothing to do with Cuba's confiscation of the property.

\textsuperscript{120} \textit{Edward H. Warren, Trover and Conversion}, i (1970). Some of the tortious acts amounting to a conversion include denying a person's title to property, securing, withholding, or transferring a possession, and altering or using the property.

\textsuperscript{121} See \textit{Oppenheim}, supra note 65, at 84 (discussing the "firmly established [principle] that a state when charged with a breach of its international obligations cannot in international law validly plead as a [defense] that it was unable to [fulfill] them because its internal law was defective or contained rules in conflict with international law...").

\textsuperscript{122} Phelps Dodge Corp. v. Islamic Republic of Iran, 10 Iran-U.S. Cl. Trib. Rep. 121, 129-30 (1986).

\textsuperscript{123} Id.

\textsuperscript{124} Liberty Act, supra note 1, § 301(5).

\textsuperscript{125} \textit{Wortley}, supra note 78, at 21.

\textsuperscript{126} Committee's Decision, supra note 6, at 6.
The Committee's decision erred in assuming that a foreign national not involved in the actual wrongful nationalization of property is immune from all liability. International law does not support the notion that a foreign citizen may possess, sell, transfer, or otherwise traffic in wrongfully confiscated property and not incur liability. As previously mentioned, the confiscation of property is treated as stolen. Additionally, international law recognizes that a person in possession of property that they know is stolen may become liable in damages to the true owner under an action for conversion or for conspiracy "to deprive the true owner of his rights." A foreign national in possession of property stolen from U.S. nationals may be liable for damages resulting from the conversion of the property. Furthermore, a foreign national who uses, transfers, or benefits from the stolen property is cooperating with Cuba to deprive U.S. nationals of their property rights and may be held liable for damages resulting from this conspiracy. The Liberty Act does not violate international law by imposing liability on persons who knowingly possess wrongfully confiscated property or cooperate with the Cuban government in depriving U.S. nationals of their right to compensation.

5. The Measure of Damages For Wrongful Expropriation

The Committee further concluded that a state may not impose damages in an amount "greater than the effective damages," which resulted from the wrongful expropriation, plus interest. Thus, the Committee believes the Liberty Act's calculation of damages for the confiscated property exceeds the maximum amount allowed under international law.

A claim for compensation is often the only claim available to a party where restitution is physically impossible because the object is lost or destroyed or because the expropriating party has no interest in returning the property. The issue concerning

127. MANN, supra note 75, at 186.
128. Id.
129. Id.
130. Committee's Decision, supra note 6, at 7.
131. Id.
132. Id.
133. Id.
134. WORTLEY, supra note 78, at 94.
which standard of compensation to apply, full or partial, has bred many articles and arguments.135 Perhaps the debate can be traced back to the Chorzow Factory case, decided in 1928 by the Permanent International Court of Justice.136 There, the Court, in holding the expropriation of German property by Poland to be illegal, stated that “reparation [for the illegal act] must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”137 According to the Court, this translated into a payment of restitution in kind, or of a sum equivalent to it.138 The United States entered the melee with the infamous phrase, “prompt, adequate and effective compensation,” used by Secretary of State Hull in 1938 to describe the compensation required from Mexico for its expropriation of land owned by U.S. nationals.139 Whether this formula represents the standard under customary international law has been a continuing source of controversy.140 The Restatement (Third) provides that a taking of property is wrongful under interna-

137. Id. at 47.
138. Id.
139. Note of Secretary of State Hull, Aug. 22, 1938, (Mexico-U.S.) 19 Dep’t. of State Press Releases, No. 465, Aug. 27, 1938, at 140 [hereinafter Hull Formula]. The U.S. Congress adopted the Hull formula as the standard of compensation required before an expropriating state can receive a loan from the Inter-American Development Bank. Foreign Relations and Intercourse, 22 U.S.C.A. § 283(r). However, the Court in Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F.2d 875, 892 (2d Cir. 1981), refused to accept the Hull formula, instead finding that international law required the payment of either “appropriate” or “full” compensation.
140. M.H. Mendelson, Compensation for Expropriation: The Case Law, 79 AM. J. INT’L L. 414, 414-15 (1985). The controversy was revived again during the debates in 1984 over the proposed draft of Section 712 of the American Law Institute’s Restatement of the Foreign Relations Law of the United States (Revised), which states the standard as “just compensation.” Id. Professor Oscar Schachter argued that, although the United States has maintained “just compensation” means prompt, adequate, and effective compensation, this formula has not been accepted as the international law standard and should not be considered as such. Oscar Schachter, Compensation for Expropriation, 78 AM. J. INT’L L. 121, 122 (1984). Professor Schachter instead suggested that “just compensation” should be replaced with the more flexible standard of “appropriate compensation” primarily because the Hull formula is not found in the decisions of international tribunals, and thus, is not a “general rule of law.” Id. at 122-24. But see Mendelson, supra (arguing that, although the decisions of international tribunals do not state the Hull formula literally, they do require full compensation, and leave no room for a flexible standard).
tional law when unaccompanied by "just" compensation. Compensation is "just" when, "in the absence of exceptional circumstances," it is equivalent to the fair market value of the property taken, and is paid, with interest, within a reasonable time after the expropriation. The comments to the Restatement (Third) recognize that the United States has consistently maintained that "just" compensation is defined as "prompt, adequate and effective compensation."

The standard of compensation is important, of course, because it determines how the expropriated property should be valued (i.e., the quantification of the property). The debate in this area has largely focused on whether valuation should be based solely on the "net book value" of an asset or whether the "going concern value," including contractual rights, future prospects, and lost profits, should be included in the computation.

While this issue has not been debated nearly as much as the standard of compensation, its resolution remains important, particularly in light of the amount of U.S. businesses confiscated by the Cuban government.

Although a comprehensive examination of the valuation methods is best left to accounting articles, a brief examination of the decisions of the Iran-U.S. Claims Tribunal provides some helpful insight. As of 1987, when computing the fair market value of the business, the tribunal's method of valuation of the property interest consistently included future profits, as well as present obligations. At least one decision even included the element of good will in valuing the going concern of a business. At the same time, there had been no valuation based solely on

141. RESTATEMENT (THIRD), supra note 111, § 712.
142. Id. See REBECCA M.M. WALLACE, INTERNATIONAL LAW 166, (1986).
143. RESTATEMENT (THIRD), supra note 111, cmt. c. For the view that the Restatement "reaffirmed" the Hull formula, see Norton, supra note 70, at 474.
145. Brower, supra note 135, at 664-68.
146. Id. at 664-65.
148. See Stauffer, supra note 144, at 459, 461.
149. Brower, supra note 135, at 666.
150. Leigh, supra note 135, at 455-56.
the net book value of a confiscated enterprise.\textsuperscript{151}

Since 1959, Cuba has confiscated the property of thousands of U.S. nationals and millions of its own citizens.\textsuperscript{152} Some prominent U.S. companies with certified claims include Coca-Cola ($27,526,239.00), Texaco ($50,081,110.00), and Colgate-Palmolive ($14,507,935.00).\textsuperscript{153} Much of the property confiscated from these companies and other U.S. nationals is lost, destroyed, or has simply deteriorated. In addition, Cuba apparently has no interest in returning the confiscated property to these U.S. nationals, as it is receiving financial benefit from the transfer of confiscated property and assets to foreign nationals instead.\textsuperscript{154} As a result, Cuba has not settled with or compensated U.S. nationals for their loss.\textsuperscript{155} In light of these facts and the recent holdings of international tribunals,\textsuperscript{156} the award of full compensation, including, where applicable, going concern, is appropriate for Cuba’s expropriation of the property of U.S. nationals.

Accordingly, the Liberty Act provides for the award of money damages measured in the amount which is the greater of: 1) the amount, if any, certified by the Commission, plus interest;\textsuperscript{157} 2) under Section 303(a)(2), the amount determined by a court appointed special master; or 3) the fair market value of the property, calculated as the greater of either the current value of the property\textsuperscript{158} or the value of the property when confiscated, plus interest.\textsuperscript{159} In addition, a person who traffics in confiscated property certified under the Commission, or who continues to

\begin{footnotesize}
153. Travieso-Diaz, \textit{supra} note 147, at app. A.
154. Liberty Act, \textit{supra} note 1, § 301(5), (6).
155. \textit{See State Department, \textit{supra} note 152; see also Lillich, \textit{supra} note 150, at 117-29.}
158. For the sake of argument, it is assumed the "current value of the property" includes going concern, i.e., contractual rights, future prospects, and good will.
159. Liberty Act, \textit{supra} note 1, §§ 302(a)(1), 303(a)(2).
\end{footnotesize}
traffic in such property after receiving notice from a U.S. national, will be liable for triple the amount of damages. Although The Restatement (Third) makes no mention of treble damages, it does not completely rule out the possibility. A measure of damages other than the fair market value of property may be used where exceptional circumstances are present.

A U.S. national's claim certified by the Commission gives increased notice to the foreign national that the property was confiscated from a U.S. national. A foreign national who continues to traffic in the property with concrete knowledge of the wrongful expropriation is acting in willful and wanton defiance of international law and should be subject to punitive damages for such conduct. In essence, exceptional circumstances may be present under such a scenario.


The Committee's decision also concluded that a claimant state may not deprive a foreign national of due process of law to contest claims that may affect his property. The Committee, thus, necessarily found that foreign nationals are denied due process of law in U.S. district courts for actions brought against them by U.S. nationals acting under the Liberty Act.

A foreign national, however, is not denied the opportunity to contest a U.S. national's claim under the Liberty Act. Actions under the Act are subject to the same procedural requirements as provided in Title 28 of the U.S. Code and the rules of the federal courts, to the same extent such rules and provisions apply to federal action under Section 1331 of Title 28. In addition, U.S. nationals must prove ownership of the property, unless the claim is already certified by the Commission. The U.S. Department of State has further established the Helms-Burton Implementa-

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160. Id. § 302(a)(3)(C)(ii).
161. RESTATEMENT (THIRD), supra note 111, § 712, cmt. d.
162. Punitive damages are, at least theoretically, available to the victim of an expropriation.
Brower, supra note 135, at 659.
163. Committee's Decision, supra note 6, at 7.
164. Liberty Act, supra note 1, § 302(c)(1)-(2).
165. Id. § 302(c)(1).
166. Id. § 303(a)(1)-(2).
tion Unit, which collects and analyzes any information regarding claims of confiscation of a U.S. national's property by the Cuban government or the trafficking of such property. A foreign national is not deprived of due process of law in U.S. courts and may effectively contest the claim of a U.S. national to the property under its possession.

B. Extraterritoriality and the Limits Imposed by International Law on the Exercise of Jurisdiction

The Committee's decision states the conclusion that a state may not exercise jurisdiction over acts of "trafficking" abroad by foreign nationals "unless specific conditions are fulfilled which do not appear to be satisfied in this situation." In addition, the Committee finds that a prescribing state does not have the right to exercise jurisdiction over acts of trafficking abroad by foreign nationals where neither the foreign national nor the conduct in question has any connection with its territory and where there is no apparent connection between such conduct and the protection of the prescribing state's essential sovereign interest. Under the Committee's rationale, the United States does not have jurisdiction over the trafficking of property by foreign nationals in Cuba because the trafficking occurred within Cuba and is not connected to the protection of any sovereign interest of the United States.

In most instances, a state has jurisdiction over persons and things within its territory; this concept of "[t]erritoriality" is the "primary basis for [a state's] jurisdiction," and a state's jurisdiction cannot generally be exercised outside its territory, unless an exception exists under customary international law. The principle of territoriality, however, is not easy to apply, especially when establishing jurisdiction based on whether a particular act occurred or "had effects" within the territory of a state. When dealing with criminal acts, Oppenheim questions "whether states have a right to exercise jurisdiction over acts of

167. State Department, supra note 152.
168. Committee's Decision, supra note 6, at 8.
169. Id.
170. OPPENHEIM, supra note 65, at 458.
171. Id.
173. OPPENHEIM, supra note 65, at 458.
foreigners committed in foreign countries ..." and concludes that "it is a matter for determination in each case whether a direct and substantial connection exists which is sufficient to justify a state treating as criminal the conduct of aliens taking place within the area of another state's sovereign authority." \(^{174}\)

There are several recognized exceptions to the principle of territoriality. \(^{175}\) Two are relevant to the present case. The first is the exception that the principle of territoriality does not apply to acts committed abroad which threaten the safety of a state, including its political or military security. \(^{176}\) Before a state is justified in exercising jurisdiction in self-defense, the act must be a serious one and cannot merely violate state policy. \(^{177}\) The second exception, often represented by the United States, is that states have the right to exercise jurisdiction over acts committed abroad which have or are intended to have an "effect" within their territory. \(^{178}\)

The "effects principle" is controversial; several states allege it is not in conformity with international law and it is an invasion of their sovereignty. \(^{179}\) In particular, this argument has frequently been made against the extraterritorial application of U.S. antitrust laws, \(^{180}\) which some U.S. courts have justified by using the effects principle as a basis for jurisdiction. \(^{181}\) The United States, however, is not alone, because several European nations \(^{182}\) and the European Economic Community \(^{183}\) have also applied the effects principle as a basis for the extraterritorial application of their laws. \(^{184}\) In addition, the effects principle has been recognized and applied by the Permanent Court of Interna-
tional Justice in the Lotus case.\textsuperscript{185} The Restatement (Third) also recognizes the principle, providing that a "state has jurisdiction to prescribe law with respect to (1) conduct outside its territory that has or is intended to have a substantial effect within its territory ...."\textsuperscript{186} The Restatement (Second) of the Law (Restatement (Second)) defined this conduct and its effect as one that is recognized as a crime or tort in states with "reasonably developed legal systems."\textsuperscript{187} Section 403 of the Restatement (Third), however, adds the element of reasonableness to the equation and lists several factors a court should evaluate before finding the exercise of jurisdiction based on the effects principle to be reasonable.\textsuperscript{188} Some of these factors include: "the extent to which the activity takes place within the regulating state or has substantial, direct, and foreseeable effect upon or in the regulating state,"\textsuperscript{189} "the importance of regulation to the international political, legal or economic system,"\textsuperscript{190} and "the character of the activity to be regulated ...."\textsuperscript{191}

The Liberty Act itself specifically states the effects principle as an apparent justification for the Act's extraterritorial jurisdiction.\textsuperscript{192} The questions which must be resolved are whether the trafficking of the expropriated property of U.S. nationals is conduct that is recognized as either a crime or a tort under the legal system of most nations, whether such conduct has a substantial effect within the United States, and whether such an exercise of jurisdiction is reasonable. As previously discussed, international law does not require that a claimant state recognize title to property wrongfully expropriated from its nationals.\textsuperscript{193} Such property is considered stolen, and a person in possession of it may be liable for the tort of conversion or for conspiracy.\textsuperscript{194} The possession by foreign nationals of property considered stolen from U.S. nationals under international law is, therefore, properly characterized as tortious conduct. Applying

\textsuperscript{186} RESTATEMENT (THIRD), supra note 111, § 402(1)(c).
\textsuperscript{187} RESTATEMENT (SECOND) OF THE LAW: FOREIGN RELATIONS LAW OF THE UNITED STATES § 18(a) (1965) [hereinafter RESTATEMENT (SECOND)].
\textsuperscript{188} Id. § 403(2)(a).
\textsuperscript{189} Id. § 403(2)(c).
\textsuperscript{190} Id. § 403(2)(e).
\textsuperscript{191} Id. § 403(2)(e).
\textsuperscript{192} Liberty Act, supra note 1, § 301(11).
\textsuperscript{193} WORLEY, supra note 78, at 16.
\textsuperscript{194} MANN, supra note 75, at 186.
the Restatement (Second) leads to the conclusion that this tortious conduct has a substantial effect in the United States under the effects doctrine.\textsuperscript{195} Moreover, the trafficking of the confiscated property substantially affects the United States in that it impedes efforts to return the property to its original owners.\textsuperscript{196} Thus, trafficking impedes the efforts by thousands of U.S. nationals to recover the millions of dollars in losses suffered from the wrongful expropriation of their property. This conduct outside the United States by foreign nationals has a substantial economic effect on U.S. nationals and justifies the extraterritorial application of U.S. law designed to reduce the wrongful conduct.

V. CONCLUSION

The Committee concluded that the Liberty Act was not in conformity with international law. Nevertheless, it appears that the Committee's rationale and conclusions failed to overcome the Liberty Act's presumption of validity. The U.S. adoption of the historically international claim of expropriation into its municipal law system is within the confines of international law, particularly in light of the lack of adequate remedies available to U.S. nationals with claims against Cuba. Similarly, extending the right to bring such a claim in U.S. courts to its nationals, who were citizens at the time of the expropriation, is supported by international law because of the lack of a forum in which these U.S. nationals have to bring their claims.

The legality of expropriation is not a defense to liability where the confiscation of the property by the foreign state was arbitrary or without adequate compensation, and therefore, in violation of international law. The Committee erred in assuming that a foreign national not involved in the expropriation is immune from all liability. International law does not support the notion that a foreign national may traffic in confiscated property, as defined by the Liberty Act, and not be held liable.

The standard of damages to be paid for a wrongful expropriation has generated much debate. However, the recent support in international tribunals for full compensation, including

\textsuperscript{195} RESTATEMENT (SECOND), supra note 187, § 18(a).
\textsuperscript{196} Liberty Act, supra note 1, § 301(7).
the going concern value, coupled with the unique situation of the Cuban expropriations, including the present number of outstanding expropriation claims, dictates the payment of full compensation as provided for under the Liberty Act. Foreign nationals may contest claims against them and are not deprived of due process of law in the courts of the United States.

Finally, the "effects principle," although controversial, is internationally recognized as a valid exception to the general rule of territoriality. The act by a foreign national of trafficking in confiscated property is recognized as tortious conduct, and such conduct has a substantial economic effect in the United States. The extra-territorial application of the Liberty Act, through the effects principle exception, is not unreasonable in light of the conduct involved, its effect in the United States, and the importance of the regulation of such conduct in the international political, legal, and economic system. The justifications and conclusions reached above weigh in favor of interpreting the Act in harmony with international law.

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