



The Political Economy of Change in Cuba

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“Globalization and the Socialist Multinational:
Cuba and ALBA’s *Grannacional* Projects at the
Intersection of Business and Human Rights”

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I. INTRODUCTION:

Cuba is not isolated within the global governance order.

--Need to avoid “Embargo mentality” that has spawned an ideology of presumptive separation that, colored either from the political “left” or “right” presumes isolation as the equilibrium point for any sort of Cuban engagement.

--Embargo has affected only the *character* of Cuba’s engagement rather than the *possibility* of that engagement as a sustained matter of policy and action.

--Suggests that to study Cuban global engagement requires a recognition and rejection of the “Embargo mentality” as the *ordering device* for analysis (though the Embargo is important in its own right).

Nature of Cuban global engagement:

Since the 1959 Revolution, Cuba has fought a number of wars on multiple fronts in the service of its national interests and internationally significant ideological campaigns.

--Virtually every lever of state power has been used in these efforts — including military, diplomatic, organizational, economic, media, cultural, religious and ideological efforts.

The U.S. served as a foil for many of these campaigns. Result is mixed.

ONE GREAT SUCCESS — sum of efforts have propelled Cuba to a level of influence on the world stage far beyond what its size, military and economic power might have suggested.

-- Like the United States, Cuba has managed to use internationalism, and especially strategically deployed engagements in inter-governmental ventures, to leverage its influence and the strength of its attempted interventions in each of these fields.

For this reason, if for no other, **any great effort by Cuba to influence behavior is worth careful study.**

Focus after 2000 – Globalization

Globalization has not left Cuba untouched (despite Cuban and American protestations to the contrary).

But Cuba has sought to engage globalization on its own terms.

The engagement must be understood as increasingly bound up within the context of Cuba's external relations, especially those in which Cuban has participated in the construction of a multi-national institutional architecture and in which it may not appear to take the lead.

Form of Global Economic Engagement— Alternative Regional Multilateralism

Cuba has undertaken two significant efforts.

1. Development of an alternative basis for inter-governmental management of trade through the *Alianza Bolivariana Para los Pueblos de Nuestra América (ALBA)*.
2. Development of an alternative basis of the organization of economic activity for the production of goods and provision of services to be undertaken within the alternative framework for regional multilateralism.

Implementation

Alternative regional multilateralism is being realized by new forms of economic organization – derived from conventional forms but conceived along radically different lines.

Concepto grannacional:

offered as a new form of transnational public enterprise, one that is meant to provide a viable challenge to current conventional global systems of economic organization.

Grannacional economic activity, ideologically based, is divided into two categories.

1. *proyectos grannacionales* (PGs), are inter-governmental in character.
2. *empresas grannacionales* (EGs), focus on the creation of entities controlled by ALBA states and geared to the production, sale and distribution of goods.

Alternative Regional Multilateralism

Meets

Emerging Global Norms Framework for Human Rights in Commercial Activity

1. International Hard Law

A. Conventional Law

B. Customary International Law

C. Domestication of international law (*Licea v. Curaçao Dry Dock Co.* 2008)

2. Public and Private International Soft Law

A. OECD framework for regulation of Corporate governance and multinational enterprise behavior norms

B. U.N. “Protect-Respect-Remedy” Framework and its Guiding Principles

These enterprises, arguably created as a challenge to the conventional global economic framework still must operate within the general parameters of human rights and other norms with respect to which international consensus has been developing, many with Cuba's approval, when they engage in transactions in global commerce.

The Issue:

Cuba is at the forefront of the development of an alternative framework for regional multilateral commercial and economic.

Simultaneously, the **GLOBAL COMMUNITY** has been at the forefront of developing new normative frameworks for business and human rights in commercial settings.

What happens when they meet?

Organization of Paper:

1. The *concepto grannacional* in the context of conventional economic globalization
2. Implementation: Case study of the *Misones Barrio Adentro*.
3. Conflict or Convergence: International Human Rights norms and enforcement frameworks



II. THE *GRANNACIONAL* – CONCEPT, PROJECT, ENTERPRISE.

From ALBA to enterprise – the ideological framework of ALBA.

To understand the *grannacional* project, one must start with the presumption that its contours are a construct of applied ideology, grounded in opposition to what Castro has long derided as “neo-liberalism”.

Fundamental premise:

deep suspicion of private sector globalization without strong state control and the understanding of the deployment of economic globalization as a means of deepening the dependence of developing states to the great national economic powers, headed by the United States.

ALBA is meant to provide an inter-governmental context within which these ideological confrontations with conventional globalization can be implemented.

Concepto Grannacional as ideology

The conception of *grannacional* is divided into **three components**, historical and geopolitical, socio-economic, and ideological.

The first, historical and geopolitical, is grounded in the sense that the business of the construction of Latin America, started with the wars of liberation of the 19th century, is unfinished. **Its object is integration** at the supra-national level, that is, to understand *grannacionales* as the formal expression of efforts to create a single nation.

The second component, socio-economic, understands the commercial activity and its traditional forms as a **functional means to reach the political ends** of integration. *Grannacionales* are meant to serve as the great vehicle for state directed development.

The third, ideological, envisions the *grannacional* as functional integration devices **advancing political and economic aims of the state**. Specifically, the *grannacional* enterprise has as its objective the manifestation of a united front by generating a multi-national block for the structuring of sovereign regional politics.



Consequences when looked at from the perspective of conventional economic globalization:

--efficiency is measured differently than in classical economics or under the framework of conventional economic globalization. It is understood only in relation to the aims of the state in meeting its political goals, measured to some extent on the state's assessment of its ability to meet the needs of a majority of its people. Both the political and needs objectives are also constructs of state policy.

--This produces something of an inversion from concepts in classical economics.

Implementation: *proyectos grannacionales*” (PG) and “*empresas grannacionales*” (EG) as engines.

PG’ s: reorganization of key sectors of state activity around which state to state activity is contemplated.

key fields of activity, encompassing political, cultural, economic, scientific, and industrial activity.

This organization is grounded in ALBA’ s normative construction of principles of “**just trade**” and solidarity commerce,

Three principles—

barter transactions,

non-reciprocity in trade relations, and

differential treatment of trade partners to advance national and development objectives

(commercio compensado, no-reciprosidad, y trato diferenciado).

Implementation: EG' s as socialist multinational

EG' s are entities created to carry out the economic and trade activity organized through PG' s. **If PGs are meant to organize productive activities, EGs are meant to implement them in an orderly way.**

Organization: EGs are all state owned enterprises, established a separate juridical persons, interest in which is measured through share ownership by participating ALBA Member States. (ALBA Jan. 27, 2008). But they might be organized in other ways by special legislation or as a department of a ministry.

PG and EG projects are not limited to be established at the supra-national level – single state PGs and EGs may be created as long as they are consonant with ALBA principles and goals.

Relationship between PG and EG is not strictly linear – though it is clear that every EG must derive from a PG, not every PG will require the establishment of an EG.

The Objectives of EGs as Socialist Multinationals

Embody an alternative to the model of the private multinational enterprise. EGs are said to invert the traditional maximization model by seeking to maximize the welfare of the objects of economic (or other) activity, rather than those involved in the production or financing of that activity.

--are autonomous and

--might enter into joint venture arrangements with private sector enterprises.

--primary focus of activity is within the ALBA zone; "excess" activity directed outbound.

EFFECT: regionalist globalization model with economic activity directed by states rather than through markets.

This suggests a new face for traditional command economy activity, but it is unclear whether it also suggests a change in function.

EG' s: Operational Objectives

Marked by tensions between satisfaction of needs and the necessity to fund operations.

general parameters:

- EGs should operate to **maximize the use of the existing capacities of the economies of each ALBA state** in their operation to aid economic development.
- EG production should be **directed to satisfy the needs of the ALBA zone first**; excess production might be directed to international markets.
- Though EG maximization model focuses on consumer need, EGs must arrange their **internal operations to be self-sustaining**, a difficult task.
- Corporate social responsibility emphasized**. EGs must also ensure environmental sustainability, promote equitable labor conditions and an equitable distribution of wealth.
- Corporate distributions**: EG earnings will be distributed to the ALBA Member State shareholders for their use for social ends, or retained by the EG.



EG Operations: Stakeholder Welfare Maximization, “Fair Price” and “Just Trade”.

EGs embrace the form of organization and production of private multinational corporations, including **supply and production chain principles**, and **resource procurement optimization**.

--But their intense connection to states makes them both regulatory and commercial vehicles.

But pricing grounded in notions of “**fair price**”

--its definition is ambiguous, though likely grounded in principles of “just trade” and solidarity identified above.

--can be understood as a political rather than a conventionally economic principle.

That is in line with ALBA’s core notion of the conflation of politics and economics. That, in turn, is in line with ALBA’s core political principle of the inseparability of public (sovereign) activity and market activity of state or private actors.



From theory to reality

PGs and EGs have been used increasingly to organize state sector economic activity within and across ALBA states.

- In states like Cuba with minimal private sector activity of any significance, the use of these vehicles merely suggests a rearranging of the economic sectors affected.
- In other ALBA states, especially Venezuela and Bolivia, the result has been to effect a nationalization of economic sectors by a process of public privatization— that is the use of private sector entities “owned” by the states that also regulate the enterprises operating in that sector.

PGs predate EGs in many fields.

- They predominate in the social, cultural and political areas, though they also encompass important service sectors— principally the health and health care fields.
- Many of these were organized early on as “Missions” (*Misiones*). *Misiones* have been defined as large-scale strategic interventions to guarantee fundamental rights to the most excluded sections of the population.

Most PGs and EGs remain in the planning stage.

- Many of them are only recently announced.
- A number of them seem to serve their greatest purpose for their ideological rather than their functional value.
- To date, PGs have sought to organize the following sectors: energy, finance, commerce, transport, telecommunications, education, culture, health, manufacturing, tourism, and mines. Newer ventures include agriculture, fishing and other economic sectors.

What Makes the *Concepto Grannacional* **innovative**?

Internationalize state-based central planning model.

Adopt conventional organizational forms from emerging private markets framework of economic globalization.

Changes conventional welfare maximization model from a focus on the shareholder (or the firm) to something like national welfare maximization effected through firms.

The great innovation of the *grannacional* concept, then, lies in the internationalization of state-based central planning and control model within a regional trade zone.

- ALBA Member States now seek to create a web of economic arrangements, of state generated and controlled markets, that flow from state public policy based determinations of appropriate production, sale, distribution and development.
- The ultimate stakeholder in these enterprises thus shifts from the shareholder (and lender), to the national *demos* of participating states, whose interests are represented by the state apparatus.
- Rather than maximizing shareholder value, **the EG must now maximize national welfare**, as those things are measured by the states who participate (and regulate those markets). **ALBA Member States have sought to turn the conventional economic model from one that privileges private interests to one that adopts the forms of private organization, but in which the state acts as both regulator and shareholder.**



III. FROM THEORY TO PRACTICE: JUST COMMERCE, GRANNACIONAL ORGANIZATION, AND THE MISIONES BARRIO ADENTRO.

Reorganization of Venezuelan health sector through PGs and EGs.

ALBA state barter transaction are memorialized by the states directly through Conventions (**Convenios Comerciales Compensados or CCC**) memorializing the terms of the barter transactions.

--A number of these projects were organized as *misiones* (missions), an organizational term with origins in the revolutionary politics of Venezuela.

--Misiones were originally produced to privatize traditional state activity in Venezuela after the 1999 election of Hugo Chavez. “A “mission” was aimed at concentrating efforts of different sectors and public organizations in order to rapidly satisfy urgent social needs, increase community participation, circumvent bureaucratic obstacles, and to employ the organizational and logistic facilities of the Armed Forces in the development of civil social actions.” (Muntaner et al. 2008, 236).

--the health sector in Venezuela was particularly susceptible.



From desire to engagement reality – the Misiones as Grannacional.

In the health care sector, two *misiones*, *Misión Milagros* and *Misión Barrio Adentro* (MBA) were expanded as a vehicle for bi-lateral and multi-lateral exchanges among states, principally at first, between Cuba and Venezuela.

Misión Milagros was conceived as a program to provide people of Latin America with certain eye care services.

--envisioned a set of programs directed by the Cuban and Venezuelan states.

--both states would organize within joint ventures into which each state would contribute the appropriate mix of both public and private sector entities.

Mission Barrio Adentro: the **organization of health care to the poor in Venezuela.**

--memorialized as part of a wide ranging **Convenio** (2000) between Cuba and Venezuela to establish a series of programs to aid in the development of both states in a variety of sectors – agriculture, tourism, medical products, education, transportation, and sports.

--each state would contribute in accordance with its economic strengths and state directed economic development objectives.

--Cuba agreed to “prestará los servicios y suministrará las tecnologías y productos que estén a su alcance para apoyar el amplio programa de desarrollo económico y social de la República Bolivariana de Venezuela.” (Convenio, art. II).

--Venezuela agreed to provide petroleum among other goods and services. (Convenio Art. III).

The Terms of the Barter Arrangement: Precision and Ambiguity

Cuba agreed to the provision, at no cost to Venezuela, of the services of doctors to serve in the health care sector in Venezuela. (Convenio 2000, art. IV).

- Cuba was to supply these medical personnel to work in underserved areas of Venezuela, and bear the costs of their salaries.
- These medical personnel were to provide medical services and training of locals.

Venezuela was obligated to pay only the costs of food, lodging and internal transportation of these medical personnel supplied by Cuba.

- These programs were to be administered at the state level through the establishment of a “Comisión Mixta” (Convenio 2000, art. V) headed jointly by representatives of the Venezuelan Production and Commerce Ministry and by MINVEC, the Cuban Ministry for Foreign Investment and Economic Collaboration. (Id.).

- The details of the programs undertaken, and their day to day running were to be delegated jointly within each of these ministries. (Id.).

--The Cuban state never explained many of the conditions under which it recruited and maintained the doctors gathered for participation in MBA.

--It has not been transparent with respect to salaries and working conditions



The Issue of Labor

But it is clear that while the MBA program is founded on political goals, it also understood in its commercial context by the Cuban state.

--For Venezuela, Cuban doctors serve as a valuable input in the business of creating a viable public health sector.

--For Cuba, it serves as the core of the business of hiring out labor.

--Cuba has a long history of hiring out labor to foreigners within the Island. But the business of hiring out workers to outsiders – whether to directly advance state objectives, like the MBA program, or merely to serve the economic interests of foreign partners – essentially treats individuals like factors in the production of national wealth.

--That wealth is produced by the profit generated in those transactions. That profit is related to the differences between the compensation paid by the Cuban state to its employees sent abroad, and the amounts it charges its “clients” for the services of these individuals.

--“Loaned” individuals do not participate in discussions over the pricing of their services to third parties, and they are required to accept state determined compensation for their services.



The Collision between Socialist Multinational and International Human Rights

Many thousands of individuals employed by the Cuban state abroad in this program have complied with their obligations. Some have not.

The issue of compulsion is at the heart of that collision.

--The loan system conflates notions of individual citizen duty and individual dignity with respect to labor.

On the one hand, it appears that, as a formal matter, individuals are not formally coerced to serve the interests of the state's business and political dealings abroad. On the other hand, some have argued that as a functional matter the state effectively coerces service, and then, once abroad, tightly controls the freedom of movement of bartered employees.

--Yet what might appear to the Cuban state as appropriate behavior to compel its citizens to do their duty within the substantive parameters of the domestic legal order might be characterized as compulsion under the substantive parameters of other systems.

The characterization is important for its consequences under international law.



IV. POINTS OF CONFLICT AND INTERSECTION BETWEEN ALBA JUST COMMERCE AND INTERNATIONAL HUMAN RIGHTS REGIMES.

QUESTION: do legal consequences at the international level follow from adoption of this state-centered form of economic activity that conforms to all of the requisites of the laws of Cuba and Venezuela and conforms to their political and economic organization?

APPROACHES: Two categories of sources of conflict:

1. **Hard Law (conventional and customary international law)** – international law applied by states or by appropriate international organizations;
2. **Soft Law (international declarations, public and private guidelines and governance rules and principles that target specific governance communities)** – governance frameworks without precise legal effect within domestic legal orders but which may effectively bind or influence actors

Hard Law Collisions: Harbingers from the United States.

Hard law may affect the operations of socialist multinationals in one of two forms:

1. **direct liability** for the socialist multinational or the government shareholders.
2. Liability to **third party** public or private partners (joint venturers) through application of **complicity theories**.

Two recent cases highlight a new reality for the socialist construct within the broader context of emerging regimes of international human rights systems.

--**One** suggest that the ways in which the ALBA model of social and economic organization can arguably present a case of human rights violations in the way in which the state conducts its business.

--**The other** suggests ways in which non-state foreign partners participating directly or indirectly in these activities might also face liability for complicity in the human rights violations of the state.



Cuban Doctors Loaned to Venezuela Sue in Miami

In February 2010, a group of Cuban doctors who had participated in MAP filed a lawsuit in the United States against Cuba, Venezuela and Venezuela's state run petroleum corporation, *Petróleos de Venezuela (PDVSA)*. As reported in the local newspaper:

The doctors told reporters at a press conference in a Miami suburb on Tuesday that they were forced to enroll in the programme with Venezuela due to dire economic circumstances and political pressure at home. According to several US and Venezuelan media sources, the plaintiffs described being held captive in crowded lodgings or with families affiliated with the Venezuelan regime, and forced to work seven days a week. "We were under strict surveillance at all times. We weren't allowed to go out when we wanted to or interact with Venezuelans other than our guardians," plaintiff Frank Vargas, a 33-year-old general practitioner from Havana, told reporters. His colleague Maria del Carmen Milanés, 34, added that interacting with known regime opponents was especially forbidden. . . . Had they protested, the doctors explained, they would have been forced to return to Cuba where they would have paid for their insubordination. (Id.).

The complaint painted a picture that served as a perverse reflection of the amalgamation of political and economic factors on which ALBA itself is based, suggesting, for example a tie between Venezuela and what it described as terrorist regimes in Cuba and Iran.

Legal Basis of Complaint

The legal basis of this complaint, grounded in the **Alien Tort Claims Act (ATCA)** (The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. 28 U.S.C.A. § 1350); draw on international hard law as domesticated in US law)

--The object is to draw on international norms applicable to non-U.S. citizens in American courts.

--Traditionally, these provisions have been applied against right wing dictatorial regimes, especially in developing states. (e.g., *Filartiga v. Pena-Irala* 1980)

--This case represent a reversal of sorts, where they are applied to test the legal validity under international law as understood by American courts, to a Marxist-Leninist organization of economic activity.



Complicity and the Socialist Multinational: *Licea v. Curaçao Dry Dock*, 537 F.Supp.2d 1270 (S.D.Fla.2008).

--case involved a number of Cuban workers who, having emigrated to the United States, brought suit against the Curaçao Dry Dock Company for complicity in the Cuban government's business of bartering labor for goods and services.

--court determined that the agreement between Curacao Dry Dock and Cuba to barter Cuban workers to pay off the debt owed by Cuba amounted to forced labor under international law norms. (*Id.*, at 1359-63).

--These international norms were incorporated through the Alien Tort Claims Act, 28 U.S.C. § 1350 (2000), and the Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. § 1962(b) (2000) under which the case was asserted.

Nature of Judicial Findings

- The court summarily dismissed the bartering arrangement as **inherently violative of an individual's human and labor rights** on the basis of its characterization of the Cuban political and labor system. (Id., 1359-61)
- Characterization **drawn from a 2008 report prepared by the U.S. State Department**, which the court took as uncontroverted because of the procedural posture of the case.
- Though the violations were caused by Cuba, the company was liable on a **complicity theory**. “The Defendant in this case . . .conspired with the Republic of Cuba to force Cuban citizens to travel to facilities the Defendant owns in Curaçao, to hold them in captivity there, and to force them to work repairing ships and oil platforms. (Id., at 1360).

But the **precedential value of the case may be limited.**

- The court initially entered a default judgment against defendant
- critical facts leading to the conclusion were never controverted or effectively put at issue either by the Cuban state or by Curaçao Dry Dock. (id., at 1357-58).



Potential for Future Application; Four principal points:

First, *Licea* increases incentives to bring additional cases of this kind before U.S. courts. While future cases are likely to see more aggressive defenses, the fact of litigation exposure itself may serve to chill economic activity involving ALBA Member States under GP and EG arrangements.

Second, liability for violations of human rights under a complicity theory has become more important as a mechanism for enforcing human rights norms, especially against businesses. The legal basis of complicity remains unsettled as a matter of transnational law. But this basis for liability extends beyond U.S. law in the form of aiding and abetting the violation of human rights or humanitarian law.

Third, emerging international hard and soft law systems are likely to increase the scope of exposure of states, their controlled enterprises and trading partners to liability for violations of international human rights norms. Cuba's EGs and PGs are likely to play a role in the development of these bases for liability.

Fourth, issues can be brought by a larger group of stakeholders, not just the people directly and adversely affected. Example--a recent complaint filed by the Unitary Council of Cuban Workers to the International Labor Organization related to the *Licea* case (Unitary Council of Cuban Workers 2009). The object was to use the standards of the international agreements to which Cuba is a party, against it. (Id.). The complainant argued that the basis of Cuban state labor policy, and its implementation in its economic regulations and commercial activities, violates ILO Convention Article 29 on forced labor ratified by Cuba in 1958.



Soft Law Collisions

Soft law may affect the operations of socialist multinationals in a variety of ways. I will highlight two because they are multi-lateral public law based efforts at framing international consensus on human rights obligations of commercial actors.

1. **OECD framework** (especially the Guidelines for Multinational Enterprises).
2. **the U.N.' s Protect-Respect-Remedy Framework** (General Principles for business and Human rights)

OECD Framework

The OECD is an intergovernmental organization representing most developed states.

It has developed three principle sets of norms for corporations that might be understood usefully in their constitutive role. These have become “an international benchmark for policy makers, investors, corporations and other stakeholders worldwide.

- Principles of Corporate Governance** (OECD 2004),
- the **Guidelines for Multinational Enterprises** (OECD 2000), and
- the **Guidelines on Corporate Governance of State-Owned Enterprises**. (OECD 2005).

The Principles of Corporate Governance have assumed an important role as a model for state legislation on the internal constitution of corporations. The Guidelines provide voluntary principles of business behavior covering virtually every aspect of the operations of an economic enterprise. “Although many business codes of conduct are now available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting.” (OECD Policy Brief 2001).

Enforcement

--Enforced through National Contact Point system

--Process based on mediation and fact finding

--complaint can be brought by people who have not suffered damage directly (civil society elements can use this relatively easily).

--No enforcement or sanctions; but decision of NCP is publicly available and can significantly affect stakeholders.

--limited to actions in OECD states, but the action giving rise to damage can occur anywhere

--the OECD framework can reach economic activities that have been deemed to comply with the law of the state in which the activities occurred. (U.K. National Contact Point Sept. 2009).

--applies to action down the supply chain of a multinational. . . complicity can lead to violation.

The cases and their respective contributions

recent decisions of the UK NCP have evidenced an expanding willingness to apply these frameworks to the worldwide operations of multinational corporations without regard to corporate organization and to aggressively apply notions of complicity.

--Supply Chains and weak states

Afrimex

DAS Air

--Multiple Law Sources (Polycentricity)

Vedanta

Khanewal

Sewri

T&G Peugeot

Rahim Yar Khan

--Appeals

BTC Pipeline

--Inducement to Settle Current & Prior Procedure

Anglo American

G4S

OECD System and Labor Bartering

Several recent cases from English NCP have indicated that **systems of labor supply, where employees have no right to bargain directly with effective employer may violate OECD Guidelines.**

Most cases from from European NCPs.

The American NCP system remains substantially dormant.

The United Nations' “protect, respect, and remedy” framework.

--reframes the way in which the political, economic and social governance orders work together.

-- framework seeks inter systemic harmonization that is socially sustainable, and thus stable.

--Now reduced to a set of Guiding Principles.

--rests on three pillars:

--the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;

--the corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and

--greater access by victims to effective remedy, judicial and non-judicial.”

U.N. Framework – Liability Standards

-- includes an expansive understanding of complicity liability, extends liability up and down the supplier and consumption chains and is not limited to private enterprises.

--The remedial framework looks with approval to the remedial framework provided under the ATCA in the United States and suggests it as a useful template for the enforcement of the Three Pillar framework against either states or corporations for human rights violations.

-- This framework, unlike that of the OECD, would require all states and enterprises to provide adequate venues for the determination of claims, and is not limited to certain groups of states, but applies to all actors.

--These provisions are not yet effective. They are likely to come into effect sometime in the next several years.

Key Features of the U.N. General Principles of Business and Human Rights that May be Relevant

1. Strong support of **extraterritorial principle** for enforcement of human rights by states (General Principles 2, 10, 21).

2. Incorporation of **complicity theories** (General Principles 12, 22).

3. Development of a framework for the construction of a set of **obligations on commercial enterprises independent of any law or rule binding on states** (General Principles 12-22).

--These can incorporate, for example, NCP decisional precedents as part of its jurisprudence.

WEAKNESS: Like the OECD framework, this is a soft law standard — no sanction power and no incorporation into domestic legal order

BUT — violation can have strong effect on behavior of stakeholders (especially consumer, investors and business partners).

Can the UN Framework Guiding Principles Apply to Cuban Labor Barter Agreements?

if read broadly enough, Cuba's barter system and notions of just trade, might contribute to a violation of the **(Cuban) state's duty to protect** and the **state sponsored enterprises responsibility to respect human rights**. To the extent that remedies are not available for complaints, both may also breach their obligations to provide a remedial framework for complaints.

1. The State Duty to Protect Human Rights (General Principles 5)

Fostering Business Respect for Human Rights

Application of state duty to the regulation of business

--set out human rights expectations (get the law right)

--take steps to implement via voluntary and mandatory rules
(law and policy approaches)

2. The Corporate Responsibility to Respect Human Rights (General Principle 12)

Standard: Respect Human Rights

Definition: Avoid infringement and mitigate

-- Source: International Bill of Rights and ILO Core Conventions

-- Internal Scope: Supply chain

-- External Scope: All enterprises in all forms



V. CONCLUSION.

This paper has suggested the contours of the violation exposure of *grannacional* projects under these international norms.

Two systems have grown up simultaneously side by side.

--On one side one has the emergence of a new effort to create a system of **economic multilateralism and globalization grounded in state power** and state directed commercial activity that rejects the basic parameters of conventional economic globalization.

--On the other there has begun to emerge **global systems of business and commercial conduct grounded in respect for a set of human rights norms** that have become institutionalized in hard and soft law governance systems.

Harmonization or Breach?

The very ideological foundation of the *grannacional* projects serves as the basis for conflict with normative standards in effect elsewhere.

--In a command economy in which there is no distinction between the political and economic sphere and where the line between obligations of citizens and of workers is blurred, the difference between a citizen's duty to the state and involuntary servitude can be quite thin.

--It is unlikely that international standards will bend to accommodate substantial deviations where the functional effect of state action appears to substantially impede recognized human rights, as those are generally understood.

While Cuba and the ALBA states may avoid the consequences of breach within their own territories, their assets elsewhere may be exposed to actions based on those breaches.

--And, perhaps more importantly, private and public enterprises of other states will also be exposed to liability for complicity in the violations of *grannacional* enterprises with which they might partner.

--That can have significant effects on the ability of *grannacional* enterprises to forge significant business relationships outside the ALBA area.

LAST WORD

Either

the socialist multinational will be challenged by emerging human rights systems and global norms incorporated into the operation of these enterprises

or

the socialist multinational and international business and human rights systems will have to bend toward one another's parameters.

Whichever outcome, Cuba (and ALBA) will have to engage with the global system of business and human rights as it engages in global commercial activity or it may well have to pay a price for the choice of their collective form of economic global engagement as it collides with the emerging legal and normative framework for international human rights applies to economic activity that, ironically enough, Cuba has helped to construct.

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