

The Arcos Principles

Rolando H. Castañeda and George Plinio Montalván

Preface

Although the Council of State approved legislation to allow foreign private investment in Cuba in the form of joint ventures as far back as 1982, it was not until the second half of the 1980's that the authorities launched an aggressive campaign to attract foreign capital when the country entered into a severe economic crisis. Until 1993 the amount of foreign investment in Cuba was relatively modest, but during 1994 several agreements were concluded that might have perverse consequences for the country's future long-term growth.

In May 1994, an agreement for the promotion and protection of investments was signed in Havana with the government of Spain. Apolonio Ruiz Ligeró, Spain's Secretary for Foreign Trade declared to reporters that

"The most important aspect of this agreement is that it establishes measures to stimulate and protect investments, allows for arbitration and dispute-settling systems, and has a very positive psychological effect." [translation is ours]

Then in mid-June 1994, during the visit to Cuba by Mexico's President Carlos Salinas de Gortari prior to the Ibero-American Summit held in Cartagena, Colombia, an agreement for the purchase of 49% of EmtelCuba by Grupo Domos was announced, for a total of US\$1.5 billion. This amount includes a direct payment of about US\$500 million for its share in the company, US\$200 million in the form of a swap of Cuba's outstanding debt with Mexico, and the remaining US\$800 million to be invested over a 7-year period, with the Cuban government contributing half that amount. As part of the deal, EmtelCuba received a 55-year monopoly concession on local and long-distance service as well as data and image transmission. Officials of Grupo Domos indicated that the contract had been structured such that it would be

"...viable financially, politically and legally."

Any serious analyst knows that even within the framework of the Socialist Constitution of 1976, the agreement between the governments of Cuba and Spain is illegal, because it tends to validate and exonerate the violation of basic human and labor rights, and is therefore null and void. The agreement concerning EmtelCuba purports to grant a legal monopoly that any future government of Cuba interested in the development of a dynamic and competitive market-based economy will be forced to declare null and void, because it is a clear obstacle to the development of an economy based on international trade and its re-incorporation to the international community within the framework of GATT and NAFTA. Due to the very difficult economic situation and to the incompetence and corruption that is inherent to the socialist system, the authorities are not forcing foreign investors to compete adequately for national assets and for concessions. Foreign investors are obtaining concessions and business deals that are so favorable as to be unwarranted. The dogmatic communists now calling themselves "reformers" who have ruined the economy over the past 36 years are now encouraging the plunder of assets, selling goods and granting concessions at liquidation prices. It is well known that many of these concessions involve assets that were illegally expropriated by the same Cuban authorities without compensation. Moreover,

the authorities are promoting improper conduct on the part of the foreign investors, especially unfair labor practices, which is exacerbating social injustice and inequality. These foreign corporations, by becoming formal associates of the Cuban regime, are accomplices in the violation of basic labor rights and political freedoms of the population. This "final" solution to attempt to resolve the ongoing crisis of the socialist system has serious ethical and efficiency problems, as well as legal and constitutional.

Because of the situation described above, during the second quarter of 1994 the authors sent a document to Gustavo Arcos Bergnes, Executive Secretary of the Cuban Committee for Human Rights (CCPDH) in Cuba, through the good offices of several persons, among them Dr. Ricardo Bofill (President of the CCPDH), proposing a set of "Principles for Foreign Investment in Cuba." The purpose was not only to consult Mr. Arcos regarding the proposal itself, but also regarding calling them the "Arcos Principles," inspired by the Sullivan, MacBride, Slepak and Miller Principles, which were designed to fight racial, religious and political discrimination by means of a code of conduct for foreign investors in South Africa, Ireland, the Soviet Union and China respectively. In endorsing them, Gustavo Arcos authorized the use of his family name (Luis Arcos Bergnes, Gustavo Arcos Bergnes and Sebastián Arcos Bergnes) for these Principles; this is a family with a long history of dedication to the cause of democracy and human rights in Cuba.

I. The Arcos Principles

The Arcos Principles outlined below are intended to promote human rights and fair labor hiring and employment practices in Cuba. As such, they are not immutable. They are subject to periodic review to ascertain if, by following them, Signatories will in fact be contributing effectively to the improvement of the human and labor rights situation in Cuba. Adjustments may be made to the Principles when and if it is felt that doing so will further encourage the government of Cuba to adhere to international human rights standards, as established in the Vienna Declaration approved by the World Conference on Human Rights on 25 June 1993, as well as workers' rights established in Convention No. 111 concerning Discrimination in respect of Employment and Occupation, Convention No. 87 concerning Freedom to form Labor Organizations, in Convention No. 29 concerning Forced Labor, and in other relevant international agreements and conventions.

Principle I

Respect for the dignity of the Cuban people and for due process of law.

Each Signatory of the Principles will make a commitment to take the necessary measures to ensure respect for the dignity of the Cuban people and to undertake actions to bring about the establishment of a State of Law in Cuba, with respect for due process, human rights, and the international labor conventions of which Cuba is a signatory.

Principle II

Respect for basic human rights. Equal rights and non-discrimination of the Cuban people in access to and use of facilities and in the purchase of goods and services, especially those normally reserved for foreign visitors or residents.

Each Signatory of the Principles will proceed immediately to:

A. Allow all Cubans equal access to and use of all public areas (e.g., all beaches, parks, hotels, restaurants and eating establishments, and transportation facilities) that may be normally reserved to foreign visitors and residents; oppose adherence to and support the repeal of all laws and practices that deny equal access to public areas reserved for non-Cubans.

B. Allow all Cubans equal opportunity and access to purchase goods and services available to foreign visitors and residents.

The current practice is in violation of Articles 42 and 65 of the country's current Constitution, as well as Article 13, Section 1 of the Universal Declaration of Human Rights.

Principle III

Equal and fair hiring and employment practices, with non-discrimination for reasons based on political considerations, sex, race, religion or age.

Each Signatory of the Principles will proceed immediately to:

A. Issue internal regulations to eliminate the "Labor Record" (Expediente Laboral) and the "Cumulative School Record" (Expediente Acumulativo Escolar) from the hiring process, including all information relating to moral attitudes, social conduct of workers (distinctions that do not constitute a labor merit), membership in political and civic organizations and all other information that is extraneous to the employment relationship.

B. Hire Cuban workers directly. Signatories that currently do not hire Cuban workers directly, but contracts with a Cuban entity for that purpose, should seek to put an end to that practice. There should be no limitations on hiring nor governmental influence in hiring or termination.

Current practices in Cuba violate ILO Conventions 111 and 29, Articles 40 and 41 of the country's current Constitution, and Article 2, Section 1 of the Universal Declaration of Human Rights.

Principle IV

Promotion of fair labor standards and the right of Cuban workers to form labor unions and to receive fair wages.

Each Signatory of the Principles will proceed immediately to enact company regulations in accordance with internationally recognized fair labor standards. In particular, the following will be implemented:

A. A work-day and work-week with reasonable limits. There should be no compulsory overtime or volunteer work, and an agreement to pay extra for overtime hours worked. Article 45 of the Constitution establishes an 8-hour work-day.

B. Appropriate and comprehensive procedures for handling and resolving individual employee complaints. Workers should have the right to appeal before fair and independent tribunals, with

all guarantees, including independent counsel, notice, hearings, and appeals without threats or retaliatory measures.

C. Provisions dealing with termination of employment, disciplinary measures and sanctions against the company's employees modeled after ILO Convention 158.

D. Support for the rights of Cuban employees to form their own associations and belong to governmental or independent unions. Allow the use of appropriate facilities on the joint venture's premises for meetings of the company's workers.

Current labor practices in Cuba violate ILO Conventions 29, 87, and 158, Article 45 of the country's current Constitution, and Articles 7, 8, 10, 20 (Section 1) and 23 (Section 4) of the Universal Declaration of Human Rights.

Principle V

Improvement of the quality of employees' lives outside the work-place in such areas as: occupational safety and health, culture, and environmental protection.

Each Signatory of the Principles will proceed immediately to:

A. Ensure that the methods of production meet occupational safety and health standards, and that they do not pose unnecessary physical or health hazards to the workers or surrounding communities.

B. Support local non-governmental organizations (NGOs) in activities and projects designed to safeguard and protect Cuba's cultural patrimony, including historic preservation, restoration of national monuments, and museum collections.

C. Take effective measures to protect the environment. In this regard, to minimize and strive to eliminate the release of any pollutant that may cause environmental damage to the air, water, or earth, make sustainable use of renewable resources, and minimize the production of waste, especially hazardous waste.

D. Take appropriate measures to repair any environmental damage resulting from the joint venture's operations. Specifically, Signatories shall assume responsibility for any and all clean-up costs required to repair environmental damage.

E. Influence other multi-national companies operating in Cuba to follow the Arcos Principles. Require Cuban suppliers, subcontractors and joint venture partners to follow the same standards.

II. Background

There is widespread agreement in the international community that the current government of Cuba violates the basic human rights of the population. On December 20, 1993, the UN General Assembly approved Resolution 48/142 exhorting that government to cease persecuting and punishing citizens for reasons related to freedom of expression and peaceful assembly, permit the legalization of independent groups, respect the guarantees for impartial trial, permit access to penitentiaries by independent national groups and international humanitarian organizations, review the sentences for political infractions, and cease taking retaliatory measures against those

seeking to leave the country, as well as that it allow the UN Special Rapporteur to visit that country. The European Community has taken the decision not to enter into in agreement for economic cooperation with Cuba until there is substantial progress in the human rights situation.

Moreover, the International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations has consistently found violations in the area of labor relations and employment practices on the part of the Cuban authorities. In this connection, according to preliminary studies by the International Society for Human Rights, the government of Cuba violates, among others: Convention No. 87 concerning Freedom to form Labor Organizations, Convention No. 29 concerning Forced Labor, Convention No. 111 concerning Discrimination in respect of Employment and Occupation, and Convention No. 98 regarding the right to unionize and engage in collective bargaining.

Cuba has been in the throes of a severe economic crisis since 1989, when the artificial trade and the massive transfers from the former socialist bloc began to decline until practically disappearing by 1991. National economic output has dropped more than 50 percent between 1989 and 1994, reflecting the marked inefficiency of the Cuban system of production. The decline and deterioration continue, especially in view of the strengthening of the U.S. embargo as a result of the Cuban Democracy Act of 1992 ("Torricelli Bill"). A further decline in output of approximately 5 per cent in 1995 is predicted by foreign economic analysts.

Although the Cuban Council of State approved Decree No. 50 on February 15, 1982 to authorize foreign investment in the form of joint ventures, the government did not become active in promoting foreign joint ventures until the late 1980's, when the country entered into the worst economic crisis in its history. The Cuban authorities launched a special campaign, indicating that it was temporary in nature, to attract investment from Western countries centered on development of the island's international tourism industry. In 1990, it enacted a special labor relations law Resolution 14/90 that applies exclusively to international tourist facilities, further limiting or eliminating workers' rights in that sector.

The socialist regime looked to foreign private investment as a means of access to foreign markets, capital and modern technology. However, the authorities have not adopted sufficient stabilization and liberalization policies that are necessary to correct and reestablish the country's productive capacity. In fact, foreign investment has been used as a means to avoid and postpone a meaningful and necessary transformation, rather than acting as an agent in support of such a transformation.

Moreover, foreign investment is taking place within a juridical framework that is illegal and imprecise, promotes administrative corruption, violates basic human and labor rights, and exploits Cuban workers by virtually expropriating almost all of their wages.

Article 141 of the Cuban Constitution of 1976 requires that a referendum be held to ratify any amendments. This did not occur in 1992, when several articles were modified in order to allow more favorable treatment for foreign investment. It is common knowledge that the Cuban authorities have prohibited access by the Cuban people to beaches, hotels, restaurants and other facilities that are reserved for foreigners which, in addition to violating Article 42 of the constitution, has given rise to considerable resentment on the part of the people of Cuba.

Decree-Law No. 50 lacks precision, and the agreements based on it are not held up to public scrutiny. This decree authorizes up to 49% participation by investors, but permits exceptions to that limit subject to approval by the Executive Committee of the Council of Ministers. As was pointed out recently by Carlos Solchaga, former Finance Minister of Spain and currently an advisor of the Cuban regime, as well as in an article in the June 25, 1994 edition of *The Economist*, this Decree-Law encourages administrative corruption due to the discretion it allows and its complexity, that is, because it is not transparent and of equal treatment for all. For example, the tax structure to be applied to net income of the joint ventures is negotiable, as is the accounting system they may use.

Decree-Law No. 50 constitutes, in fact, a legal framework that exploits Cuban workers. A Cuban entity (the *Empleadora Nacional*) hires the workers and then contracts with the joint ventures to provide the work-force in return for an average monthly fee of more than US\$400 per worker, in hard currency, to cover the workers' wages and benefits. The Cuban workers are then paid an average of 250 Cuban pesos per month less than US\$5 on the black market, which is probably the lowest wage in the Americas with the government keeping the difference, which is more than 99 percent.

In addition, the worker must turn over 40 percent of tips to the Communist Party. The social security contributions by the joint venture are made in hard currency, but are registered in pesos, thus compromising the worker's social security. This explains the low productivity of the Cuban worker and encourages foreign firms, who wrongly consider the problem to be a low work ethic, to discriminate against older workers and to use less labor-intensive methods, such as vending machines.

Moreover, this government employer agency uses the "Labor Record" (*Expediente Laboral*) and the "Cumulative School Record" (*Expediente Acumulativo Escolar*), which include personal information not related to work or academic experience, to discriminate against those who have merely expressed ideas different from the official ideology.

Resolution 14/90 applies exclusively to international tourist facilities and is extremely discriminatory for the worker. In essence, it legislates disciplinary conditions and the elimination of labor rights. International tourism workers face longer probationary periods, work longer hours, and are more likely to work irregular schedules. They are also subjected to several actions that result in disciplinary measures with shortened periods for challenging the disciplinary decisions, and have no right of appeal through the usual judicial and administrative channels. There are no dispute settlement procedures for reviewing the suitability or aptitude of workers who have successfully completed a probationary period. Resolution 14/90 also prohibits several types of conduct, within as well as outside of the work-place, that "might tarnish the exemplary moral and social image of international tourism workers," criticizing the national tourism enterprise or any government agency in the presence of tourists, etc. This Resolution violates due process of law, freedom of speech, and is also void for vagueness.

In contrast, the People's Republic of China requires all foreign firms operating in that country to allow labor unions that not only protect the labor rights of the workers, but also promote cooperation between workers and employers to facilitate the development of the firms.

According to the Cuban authorities, as of December 1993 there were 83 joint ventures operating in the industrial sector and 29 joint ventures in the tourism sector. Most of these joint ventures are with European companies: 35 with Spanish, 11 with French, 7 with Italian and 6 with Dutch companies. There were approximately 120 joint venture proposals under study. A total of 492 companies have representatives and/or offices in Cuba, among them Bayer, Castrol, Hoechst, Pegaso, Sandoz, and Total.

As of the 1970's, multinational companies have played a role as good citizens and exerted significant pressure on governments in the area of human rights, non-discrimination, and fair labor standards. One of the best examples is the case of South Africa, where a large number of multinationals among these corporations such as IBM in the computer industry, Marriott in the hotel industry, ITT in telecommunications, General Motors in vehicles, Exxon in petroleum, Citicorp in the banking industry, Johnson & Johnson in pharmaceuticals, and many others became signatories of the "Sullivan Principles," contributing to the elimination of racial discrimination in the work-place, the collapse of apartheid and a first flowering of multi-racial democracy in that country. By financing the cost of monitoring compliance, signatory companies further demonstrated their good faith adherence to the Sullivan Principles.

Other examples of the recent movement toward extra-legal, market-driven enforcement of corporate social responsibility are the MacBride Principles (Sean MacBride was co-founder of Amnesty International who received the Nobel Peace Prize in 1974) proposed as a means to combat religious discrimination in Northern Ireland, the Slepak Principles, which related to human rights in the former Soviet Union, and the Miller Principles, which are aimed at encouraging political freedom and liberalization in the People's Republic of China and Tibet.

Because of the improper manner in which foreign investment is taking place in Cuba, rather than encouraging transformation, it is blocking or delaying the required reforms. Therefore, the organizations operating in Cuba that are dedicated to defending human rights and promoting democracy have decided to appeal to the international community in general, and particularly to those foreign investors that have operations in Cuba or are considering establishing joint ventures with the government, to subscribe and become Signatories of the Arcos Principles.

The organizations dedicated to human rights and the promotion of democracy that are co-sponsors of these Principles hope that multinational companies will exhibit the same sense of social responsibility that led to democracy in South Africa, thus contributing to the eradication of tourism apartheid and other forms of discrimination that are strongly resented by the people of Cuba, as reflected in the disturbances of August 5, 1994 with attacks on the Deauville Hotel and stores reserved for foreigners, as well as other violations of human rights and freedoms, of political discrimination, unfair labor practices, and the brutal exploitation of workers in what Article 1 of the Constitution of 1976 proclaims to be the so-called "Workers' and Farmers' State" (Estado de los Obreros y Campesinos) and Article 4 declares that "all power belongs to the working people."

A Special Unit for Responsible Foreign Investment will be established shortly to implement this Program and to support the international activities that will be carried out. The International Society for Human Rights, headquartered in Germany, will coordinate the Project's activities in Europe, as will its Pan American Committee in Latin America.

III. Implementation

A. Periodic Reporting

The Signatory companies of the Arcos Principles will proceed immediately to:

- 1.** Have all points of the Arcos Principles specified above audited on an annual basis by an internationally recognized certified public accounting firm. A reporting form to be provided shall be used by any Signatory whose operations in Cuba employ twenty-five or more Cuban nationals.
- 2.** Present an annual progress report, containing the results of the above-mentioned audit, to at least one human rights or independent labor organization in Cuba that is a co' sponsor of these Principles, with a copy to the Special Unit for Responsible Foreign Investment that will be established in the near future.
- 3.** Inform all Cuban employees of the company's annual report rating and invite their suggestions on ways to improve that rating.

B. Monitoring and Ratings

All foreign corporations that currently have investments in Cuba will be contacted by international labor and human rights organizations to request that they adhere voluntarily to the Arcos Principles and commit to their strict compliance.

The Special Unit for Responsible Foreign Investment will retain the services of an independent corporation to analyze the above-mentioned reports and monitor the performance of the individual Signatories. A list of Basic Requirements will be prepared to measure adherence to the Principles. A rating methodology will be developed and the results, together with a listing of the non-signatory corporations that were contacted, will be published and distributed to the media and pertinent organizations.

Signatories and supporting organizations will be requested to make special contributions to finance the effective implementation of this Program. By contributing to financing the costs of this enterprise, including monitoring, Signatories will demonstrate their good-faith adherence to the Arcos Principles.