

The International Tribunal on the US sanctions against the Republic of Cuba

pronounces the following judgment:

The extensive political and economic sanctions imposed on the Republic of Cuba since 1960 up to date violate international law. These include, above all, Articles 2(4) and 2(7) of the UN Charter on the protection of sovereignty, self-determination and the prohibition of intervention, the articles of the Universal Declaration of Human Rights (UDHR) of 1948 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, as well as the provisions of the World Trade Organization (WTO) on the protection of freedom of trade and numerous principles of the Treaty on European Union (TEU, Maastricht Treaty).

Merits of the case

I.

Since 1960, the USA has built up an ever more comprehensive network of sanctions against all areas of social life in Cuba, which profoundly affect the living conditions of the Cuban population. Building on the "Trading with the Enemy Act" of 1917, the US government enacted a series of further laws and regulations after the revolution in Cuba in 1959. These include the „Foreign Assistance Act“ of 1961, the „Cuban Assets Control Regulations“ of 1993, the „Cuban Democracy Act“ of 1992, the so called „Torricelli Act“, the „Cuban Liberty and Democratic Solidarity Act“ of 1996, the so called „Helms-Burton Act“ and the „Trade Sanction Reform and Export Enhancement Act“ of 2000. The aim of all these measures was to destroy the social, economic and cultural achievements of the revolution of 1959. As early as 1960, Lester Mallory, Deputy Assistant Secretary of State for Inter-American Affairs, openly articulated the strategy of the US administration: the aim was to weaken the vitality of the Cuban economy, provoke hunger and despair and sow discontent in order to facilitate regime change. Literally: *"every possible means should be undertaken promptly to weaken the economic life of Cuba [...] [by] denying money and supplies to Cuba to decrease monetary and real wages, to bring about hunger, desperation and overthrow of government"*. These criminal principles have guided US sanctions policy against Cuba to this day.

The Tribunal heard numerous witnesses and gathered extensive evidence over two days of hearings. It has heard the detailed indictment and examined the arguments in defence of the accused US Administration. It has been presented with numerous examples of the deep interventions of the sanctions in almost all areas of social life, giving the impression of a total blockade of Cuba with ever new restrictions. The only easing of travel and money transfers to and from Cuba under President Barak Obama was lifted again by the Donald Trump Administration and reinforced by further measures. Even the change to the government of President Biden didn't bring relief.

The sanctions affect the entire economic and financial sector and are aimed at Cuba's technological sovereignty, which is vital for economic development and access to technological innovations. International payment transactions are closed for Cuba as evidenced by current practice shown in the context of this Tribunal. No country faces a process of technological modernisation under these conditions.

The sanctions have caused the most serious damage to the entire public health sector. The health system in Cuba has gained worldwide recognition for its exemplary care of the population, but also for the outstanding results of its pharmaceutical research and industry processes. The extraterritorial effects of the blockade have severely hampered and very often made impossible the import of necessary components for the production of medicines as well as international medical cooperation. During the period from April 2019 to March 2020, the US blockade caused losses in the health sector amounting to 239 million 803 thousand 690 dollars, which is almost 80 million more than the losses recorded in the period prior to the COVID-19 pandemic.

The blockade has caused an ever-increasing reduction in the supply of fuel, which not only hinders all efforts at industrial progress, but also drives up the cost of daily supplies for the population. This is also strongly felt in agriculture, for which the sanctions have dramatic consequences, be it in the import of fertilizers and herbicides or the operation of the irrigation system.

The education sector, internationally recognized as exemplary, is not spared from the sanctions either. It severely hampers all online education opportunities, hinders international exchange and the provision of schools and universities with the necessary equipment and teaching materials due to the lack of foreign currency. The blockade to the telecommunications and information technology sector has a negative impact on the possibilities for Cubans to have an adequate infrastructure, greater access to the Internet and computerization.

Overall, the evidence gathered from witnesses, videos and documents has given the impression of a concentrated attack on the basic structures of Cuban society, its livelihoods and development capabilities, which is unique and unprecedented in history in its duration and scope.

II.

This practice of sanctions against the Republic of Cuba violates international law in all aspects. This was also recently recognized by the UN General Assembly in its resolutions of 23 June 2021 (A/RES/75/289) and 3 November 2022 (A/RES/77/7) and on 4 November 2023 at the request of Cuba (A/78/L.5) and called on the US government to repeal their laws.

1. The sanctions clearly violate Cuba's sovereignty, which is protected under Article 2(1) of the UN Charter, and the prohibition of intervention under Article 2(4) and (7) of the UN Charter. On 4 November 2023, the UN General Assembly, by an overwhelming majority of 287 votes to 2 with 1 abstention, called on states for the 31st time "*to refrain from promulgating and applying laws and measures of the kind referred to in the preamble to the present resolution [Helms-Burton Act]*". The resolution is based on the clear decision that unilateral sanctions are illegal if their effects exceed a certain level of severity. Although this threshold is not defined, the duration, scope and objective of the sanctions leave no doubt as to their illegality. The USA cannot invoke justification grounds either. The sanctions cannot be considered a reaction to conduct that violates international law. If the nationalization after the revolution of real estate owned by US citizens is meant, it was in accordance with the principle of sovereignty of each state over its natural resources (UNGV Res. 1803v. 14 December 1962) and was justified. Moreover, the Helms-Burton Act and the sanctions expressly pursue

completely different objectives, which are not aimed at restitution or compensation, but at regime change. Nor can the USA invoke the protection of the security of its state. Although the USA has placed Cuba on a list of states that allegedly support terrorism, it has never been threatened by Cuba.

2. The sanctions imposed by the USA on Cuba also violate numerous human rights, in particular those contained in the UN "Covenant on Economic, Social and Cultural Rights" (ICESCR) of 1966. These rights are just as binding and obligatory as political and civil rights. As early as 1997, the Committee on Economic, Social and Cultural Rights stated that unilateral economic measures *"often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work."*

The evidence has proven that these harmful consequences have occurred in the lives of Cubans. This means that the right to work (Art. 6 ICESCR) under just and favourable conditions with wages that allow a decent life (Art. 7, 11 ICESCR) is violated. As a result of inflation, between January and October 2022 alone, the average price of the basket of goods and services increased by almost 29%. From October 2021 to October 2022, inflation increased by almost 40%. In this situation, not only does inflation imported by world market prices play a key role, but essentially the lack of availability of foreign currency, aggravated by the intensified effects of the blockade and the US government's relentless pursuit of all sources of income in the country.

Similarly, the right to health (Art. 12 ICESCR) is permanently violated by the obstruction of the import of medical equipment for clinics and pharmaceutical products for the production of own medicines.

The right to education (Art. 13 ICESCR) and the right to science and culture (Art. 15 ICESCR) are also severely endangered and impaired by the lack of equipment and teaching materials and the impediment of scientific and cultural international contact.

Unlike all members of the EU, neither the USA, Cuba nor the EU have ratified the ICESCR. However, there is a consensus in the international academic community that these human rights are also binding for states and confederations of states on the basis of customary law.

3. The sanctions are aimed at restricting Cuba's trade with other states, blocking the import and export of essential goods and destroying financial transactions. They therefore contradict numerous provisions of international trade law as codified in WTO law. For example, Art. XI of the General Agreement on Tariffs and Trade (GATT) of 1947, to which the USA is a party, prohibits the restriction of imports and exports. The freezing of assets and the restriction of international transfers and payments is also prohibited. Art. III section 2 of the "Articles of Agreement of the International Monetary Fund" of December 22, 1945 also stipulates that members must refrain from all restrictions on current payment and discriminatory currency practices. Art. XVI (1) GATS stipulates that members of the WTO, such as the USA, must grant natural persons freedom of movement in various service sectors. Here, too, there are exceptions for reasons of essential security interests (Art. XIV *bis* GATS), but these do not apply to the USA in relation to Cuba. Neither Cuba's military, political nor economic activities pose

a threat to the USA. Finally, the USA refuses to use the dispute settlement system provided for trade disputes in the WTO system, which is expressly provided for in Art. III paragraph 7 of the Annex 2 of the GATT 1994 "*Understanding on rules and procedures governing the settlement of disputes*," expressly providing that "[...] *in the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned [in this case, the blockade] if these are found to be inconsistent with the provisions of any of the covered agreements*". The USA was never interested in a peaceful solution to the issues in dispute, as it wanted to weaken Cuba's economy in order to overthrow the government.

4. The sanctions against Cuba have far-reaching effects on extraterritorial companies and states, be it in the area of trade, finance, investment or tourism. In its repeated resolutions calling for the lifting of US sanctions, the UN General Assembly has cited the Helms-Burton Act in particular, as it targets the "*extraterritorial effects of which the sovereignty of other States, the legitimate interests or persons under their jurisdiction and the freedom of trade and navigation*" (UN DOC A/RES/74/7). In 1996, the EU also condemned laws and regulations with extraterritorial effect as a violation of international law, as they interfere with the sovereignty of foreign states in violation of the ban on intervention. With its so-called blocking resolution (Council Regulation (EC) No 2271/96 of Nov. 22, 1996), it even prohibited European companies from complying with the extraterritorial measures, declared all foreign court decisions based on the third-party effects of the sanctions laws null and void and decided on a right to compensation for damages and losses based on these laws.

Legal measures with extraterritorial effects also violate central Maastricht principles, e.g. No. 3 and 4: "*All states also have extraterritorial obligations to respect, protect and fulfil economic, social and cultural rights*" and No. 13: "*States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially*". Finally, Principle No. 22 explicitly demands: "*States must refrain from adopting measures, such as embargoes or other economic sanctions, which would result in nullifying or impairing the enjoyment of economic, social and cultural rights [...]. States must refrain in all circumstances from embargoes and equivalent measures on goods and services essential to meet core obligations*".

According to International Criminal Law codified in the Rome Statute of 1998 crimes against humanity are those that constitute generalized or systematic attacks against civilian population. Those are extermination, enslavement, deportation or forced expulsion, deprivation of physical and intellectual freedom, the persecution of a group on political, racial, ethnic or national grounds etc. Here, the blockade, even they call it an embargo or sanctions, undermines people's lives, freedom, rights and dignity and is a crime against humanity. Blockades are one of the most treacherous, illegal and illegitimate forms of warfare, even if they invoke international treaties and law to camouflage their action.

According to Art. II of the 1948 Geneva Convention on the Prevention and Punishment of the Crime of Genocide, paragraph c, "*Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*", is an act of genocide. The dramatic and huge impact of the above-mentioned laws and regulations, maintained for more than 60 years; also demonstrates that no blockade has been as comprehensive, long-lasting and brutal against a people as the one that the United States have maintained against

Cuba. The blockade has resulted directly and indirectly in the loss of numerous human lives and the decision of the US to maintain this blockade until the Cuban people decide not to bow the US are determined to maintain measures that are calculated to bring about in the long term the physical destruction at least in part of the Cuban people.

Such an attitude could amount to a crime of genocide.

5. Since the numerous sanctions and the US laws on which they are based are unlawful, they must be abolished. The USA must pay compensation for the damage caused to the Cuban state, its companies and citizens.

Brussels, 17 November 2023

Norman Paech, Suzanne Adely, Ricardo Avelãs, Daniela Dahn, Simone Dioguardi, Dimitris Kaltsonis