jurisdiction in such a way as to establish the credibility of international criminal tribunals on a basis that cannot be criticized from a due process point of view. This is important not only for the assurance of justice to the accused, but also for the reputation of this Tribunal, and for the effect the record of this Tribunal will have on public acceptance of a permanent international criminal court. In my view, international law has not yet accepted the position that the accused's right to a fair trial is subject to discount and "balancing" in order to provide anonymity to victims and witnesses.

The issue raised here has several striking similarities to the issue raised by the proposed victims' rights amendment to the U.S. Constitution—and at least one fundamental difference, which I will come to later. The proposed constitutional amendment, as introduced by Senators Kyl and Feinstein and Congressman Hyde, would create in victims of violent crime a fundamental right (1) to be informed of the trial; (2) to be present at all stages of the trial; (3) to be heard at sentencing; (4) to object to plea bargains or release from custody; (5) to be given notice of any release or escape; and (6) to receive full restitution from the convicted offender. Doubtless, this proposal will be refined during the legislative process, which is likely to be lengthy and controversial, even though it was endorsed in principle by both of the principal candidates for President in the recent election.

What is most significant about the proposed constitutional amendment is that, in its present form, it does not specifically modify any due process rights guaranteed to an accused under the Constitution. And Senator Kyl stated in introducing the measure that it would not infringe on constitutional rights of any accused person. Thus, it is fundamentally different from the "balancing" endorsed by Ms. Chinkin.

Ms. Chinkin's position, if generally adopted, would equate the hard-won constitutional rights of the accused, which are embodied in the International Covenant and derived from national judicial experience over many centuries, with victims' rights, which are in the process of being defined. And she would leave it to an international court of limited tenure to balance, on a case-by-case basis, the historically developed rights of the accused against the emerging rights of victims. Surely, the rights of victims should be defined on a more rigorous basis—if not in a constitution, at least in the Rules of Procedure and Evidence of the Yugoslav Tribunal.

As these comments are being written, the trial chamber has just begun to hear the defense side of the *Tadić* case. The chamber has already provisionally allowed the prosecutor to put at least one unidentified witness on the stand. I understand that counsel for Tadić may wish to put one or more unidentified witnesses on the stand to help establish Tadić's alibi defense. If this should happen, there is the additional risk that the trial may be characterized as a contest between oath helpers. To avoid this risk, I hope the trial chamber, at the end of the trial, will decide to strike out the testimony of those witnesses whose identities have been withheld from Tadić and his counsel. This is a step that the majority of the trial chamber in paragraph 84 of its interim decision of August 10, 1995, indicated it might take if necessary to assure a fair trial.

MONROE LEIGH

THE HELMS-BURTON ACT: EXERCISING THE PRESIDENTIAL OPTION

The provisions of the Helms-Burton Act[1] authorizing lawsuits by U.S. nationals against foreign firms that "traffic" in property expropriated by Cuba have caused much contro-

[1] Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, Pub. L. No. 104-114, 110 Stat. 785 (1996).

versy. While there are divisions among American international lawyers as to whether they violate international law,[2] there seems to be general agreement—which we share—among foreign governments and publicists that they do. Energetic efforts by American diplomacy have called forth from the European Union a declaration calling for Cuban reforms in the field of human rights and political freedom. However, the Council of Ministers also adopted a regulation declaring the Act to be in violation of international law and decreeing that any company established in Europe that is subjected to a judgment under the Act may "claw back" against the assets of the American plaintiff in any one of the Union's fifteen states.[3] Such actions and counteractions will inevitably strain the Western alliance and our common commitment to the rule of law. Complaints about Helms-Burton have also been submitted by Europe to a dispute panel of the World Trade Organization and by Canada and Mexico to arbitration under the North American Free Trade Agreement. Whatever the technical merits of the complaints, putting Helms-Burton into application would unnecessarily burden these still-fragile institutions with divisive controversies.

Helms-Burton in section 306(b) gives the President authority to suspend the provisions allowing suits against "traffickers" for successive periods of six months if he finds that such a step "is necessary to the national interests of the United States and will expedite the transition to democracy in Cuba." President Clinton has already exercised that authority once. The suspension period will shortly expire and the question arises whether to repeat that action. We urge that, in the interest of keeping the United States in compliance with international law and avoiding unnecessary tensions with our closest allies in Europe and the Americas, President Clinton again exercise the authority to suspend those provisions of the Act.

THEODOR MERON AND DETLEV F. VAGTS

[2] See the exchange between Andreas F. Lowenfeld and Brice M. Clagett, *Agora: The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act*, 90 AJIL 419, 641 (1996).

[3] N.Y. TIMES, Dec. 4, 1996, at A8.