

flashpoint

Political Viewpoints of Godfrey Smith

...against the backdrop of a deeply cynical electorate, I sensed that people wanted to hear the views and opinions of their leaders, not just giving an interview during a scandal or a crisis, but arguing, reasoning, debating for the benefit of the public...

For Country or For Ego?

Written by: Godfrey Smith

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The two politicians put down their pens, shook hands and expressed their wish that the agreement just signed would lead to "a great upsurge in mutually beneficial trade" between their two countries.

It was April of 1982. Prime Minister George Price and British Minister of State Neil Marten had just signed the Belize-UK agreement for the promotion and protection of investments; the first such agreement Belize had signed since independence.

An official press release said "it is reasonable to assume" that similar agreements would be signed with other countries. Indeed others were signed with a number of countries.

Price's investment strategy was to openly court foreign investors to form joint ventures with local investors for the transfer of capital and technology; he personally led the charge until 1984 achieving very limited success.

The agreements provide for reciprocal protection of investment in both countries; for fair and equitable treatment and full protection and security for investors. In case of disputes between an investor and the host country, the disputes would be referred to international arbitration.

Foreign investors pumping money into unknown Third World countries are reassured by these agreements because they are the internationally accepted framework for settling investment disputes; it's a standard feature of international relations among countries.

International arbitration ensures that any dispute will be resolved in a neutral forum, before arbitrators who are independent and impartial, avoiding any "home-town" bias, real or perceived. This is important for investors dealing with states which exert control over their judiciary.

As Belizeans we were on the receiving end of "home-town" bias when the Swiss organization FIBA selected a Swiss judge who ruled against our national basketball team in favour of FIBA. Recourse to international arbitration conducted by three independent, impartial and respected judges vindicated our claim and restored national pride. As a country we decried FIBA's telling abolition of appeals to such international arbitration in any future case.

On April Fools' Day the government enacted a legislative torpedo – the *Supreme Court of Judicature Amendment Act* – that has blasted a gaping hole through Belize's regime for foreign investor protection.

The Act gives the Belize Courts jurisdiction to issue injunctions against investor companies or international arbitrators restraining them from commencing or continuing with arbitration proceedings or from seeking to enforce an arbitration award, in Belize or abroad. The Belize Courts may also actually declare an award given by an international arbitration panel as null and void.

Any investor who ignores the injunction (or their directors, shareholders, secretaries and advisors) can be tried summarily *in absentia* and fined up to \$500,000.00 or imprisoned for up to ten years.

Investors that refer disputes to international arbitration may find themselves slapped with a Belize injunction preventing them from continuing with arbitration on pain of massive fines or imprisonment. Or, after having gone through the time and expense of getting an arbitral award, may suddenly find that a court in Belize has set aside the award.

Belizeans would be outraged if after expending the time and expense of winning against FIBA in arbitration, FIBA simply ignored the judgment in favor of Belize and denied its sporting rights.

Why would the Government of Belize, struggling desperately to meet grave socio-economic challenges and needing substantial foreign direct investment, deliberately piss into the air to have it blow into the faces of foreign investors? (See Flashpoint April 29th 2009)

The government's response will be to contextualize the legislation. When it nationalized BTL, GOB said investors needn't fear; that nationalization was intended to deal only with the nefarious Lord Ashcroft who wanted to subject the whole nation to a kind of "new age slavery".

Doubtless, it will say that the new law will be used only against arbitration awards based on immoral or secret contracts, so investors should not fear.

But no bona fide investor will be reassured on the mere say so of a local politician. In the eyes of investors every contract willingly signed in black and white is a good contract; morality plays no role in international business.

Besides, the government has already demonstrated that its refusal to honor international arbitration awards goes beyond those supposedly based on immoral or secret contracts.

In June of 2008, a company called Newco got an arbitration award of \$8 million against the government for breaching a contract to lease the international airport. The government initially said it would have to pay but later made up fictitious taxes against the company and obtained an injunction restraining it from seeking to enforce the arbitration award in the US.

The government has arbitration awards against it worth in excess of \$100 million – and more pending. It can't blame all of this on the secrecy, corruption and bad deal-making of the past government. It's already responsible for a half billion dollar compensation package to the shareholders of the nationalized Telemedia.

Deploying extraordinary legislation to avoid accrued liability or litigation is never a good idea. As Attorney General I introduced legislation in parliament designed to stymie the lawsuit of an environmental NGO against government's approval of a hydro-electric dam.

The thinking was that it was justified because busybody NGOs were interfering in the government's right to development Belize and to reduce its reliance on Mexico for power supply. Plausible justification can always be found to justify ad hominem, targeted legislation.

The Privy Council considered the law a very serious matter. The Reporter newspaper excoriated me for it. The current Prime Minister, then Leader of the Opposition, laughed when I was obliged to stand in parliament and repeal the Act or face humiliation later before the judges of the Privy Council.

Now the Prime Minister has done the same thing; passed legislation to stymie the enforcement of lawful international arbitral awards. Will he say that the Act will be repealed as soon as Lord Ashcroft is run out of town?

This is a matter that should fully engage the attention of the Chamber of Commerce; it is as yet silent. Presumably it is not yet aware of the implications of the Act for foreign direct investment in Belize and its impact on existing treaty obligations.

The new law will not create a buzz abroad. Belize is not of any significance. Nothing short of a revolution here will get world attention. So the government will get away with it; at least in terms of the absence of international pressure.

But so long as this piece of legislation stays on the statute books, the country will pay an economic price. Today the target seems to be international investors. The law, however, is broad enough to be used inward against any businessman or union in Belize that might try to enforce a right against the government. *Di same knife weh stik goat stik sheep.*