

CANADA, THE US AND CUBA

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HELMS-BURTON AND ITS AFTERMATH

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The Martello Papers

The Queen's University Centre for International Relations (QCIR) is pleased to present the twenty-first in its series of security studies, the *Martello Papers*. Taking their name from the distinctive towers built during the nineteenth century to defend Kingston, Ontario, these papers cover a wide range of topics and issues relevant to contemporary international strategic relations.

This volume presents a collection of insightful essays on the often uneasy but always interesting United States-Cuba-Canada triangle. Seemingly a relic of the Cold War, it is a topic that, as editor Heather Nicol observes, "is always with us," and indeed is likely to be of greater concern as the post-Cold War era enters its second decade. The main impetus for the current heightened attention is the American *Helms-Burton Act* of 1996, which seeks to place added pressure upon Cuba *inter alia* by allowing America's government and its citizens to take legal measures against enterprises and citizens of other countries who do business with the island.

Given the efforts of both Washington and Ottawa to mitigate the impact of Helms-Burton on the overall bilateral relationship, it may appear at first glance that this is, as contributor Evan Potter suggests, "a tempest in a teapot." But the issue is important because it has struck a number of raw nerves in the foreign policies of both countries and, as Nicol relates, has exposed profound differences in how Canada and the US conduct diplomacy, especially in the Western hemisphere. This is so, even though both countries share the ultimate goal of seeing Cuba catch up with history and become a liberal democracy, one that respects human rights and the free market.

For many in the US, especially in Congress, the communist government of Fidel Castro remains not only a potential threat to their country's security, but an affront to the ideals upon which America's political culture and foreign policy are based. The end of the Cold War, far from lessening the desire to promote American values abroad, has in many ways reinvigorated the role of idealism, as is evident in the Clinton administration's policy of "engagement and enlargement." If Washington, with the blessing of its allies, can champion democracy and free enterprise in Eastern Europe and Asia, why should it not do the same in the Americas, where its "crusading" zeal first manifested itself in the nineteenth century? Moreover, the well-known influence of the powerful Cuban-American community in Florida must

be taken into the equation (as does contributor Dan Fisk, who worked on Helms-Burton when he was an aide to Senator Jesse Helms).

As with other American friends and allies, and as in other circumstances, Canada finds itself in the uncomfortable position of agreeing with the ends of US policy but having problems with the means — all the more so because the means, as prescribed by Helms-Burton, are seen as directly challenging Ottawa's longstanding approach to Cuba as well as Canadian interests and values. Canada did not break relations with Cuba after 1959, and over the decades continued diplomatic and trade links. In recent years, as Havana has looked for foreign capital to replace the aid once given by Moscow, several Canadian firms have invested in Cuba. Perhaps more important has been the domestic context. Ottawa's stand on Cuba is partly directed toward a public eager to see proof of Canadian independence in foreign policy. Resistance, in the form of Canadian legislation to counter the extraterritorial implications of American law, is regarded as a further assertion of Canadian sovereignty in the face of American hegemony, a challenge seen as being even more pronounced in the unipolar world of the 1990s.

With American security and idealism, Canadian economic interests and nationalist sensitivities, as well as domestic constituencies in both countries, so involved, it is no wonder American-Cuban relations have found their way onto the Canada-US bilateral agenda. The essays in this volume provide a comprehensive and eclectic set of explanations and analyses of this complex triangular issue.

We are grateful to the Security and Defence Forum of the Department of National Defence, whose ongoing support enables the Centre to conduct and disseminate research on issues of importance to national and international security. As is the case with all *Martello Papers*, the views expressed here are those of the authors, and do not necessarily reflect the position of the QCIR or any of its supporting agencies.

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1. *Introduction*

Heather N. Nicol

It seems that Cuba is always with us. Several times a year news coverage of Cuba explodes, as this small country is painted, yet again, as a major “threat” to global stability. More recently, however, Cuba is just as likely to be portrayed a tropical paradise for investors, or a vacation destination, as a dangerous place. These conflicting images underscore the fact that Cuba is a complex society, and that the issues framing Canadian and American perception of Cuba are equally complex. Many would argue that the importance of Cuba to Canadian and American political decision-makers goes well beyond the bounds of rationality. Cuban issues loom large in American and Canadian international and domestic politics — too large, perhaps, than is warranted in terms of the significance of Cuban trade or immigration to North American countries.

Why are North Americans so preoccupied with Cuba? The answer seems to be that the problem of Cuba is inimical to the construction of domestic policies and bilateral relationships between Canada and the United States. Yet complicating the fact that Cuban relations are indeed constitutive of Canadian and American relations — and in this sense constitute something of a “private conversation” between countries — is the greater issue of the threat of American unilateralism in multilateral context. While Americans defend their position on Cuba as specific in time and place, Canadians see it as the tip of an iceberg which threatens a “rules-based” international system.

To many it would seem that we have reached an impasse over Cuba. Canadians and Americans refuse to budge, ideologically or politically, while Cuba continues to exist much as it has for nearly half a century. The Soviet Union has crumbled, history has ended, and yet Canada, the US and Cuba remained diplomatically entwined and politically counterpoised. In all of this there is a great debate concerning justification, purpose and results of Canadian and American attitudes and actions towards Cuba. Still, there is little consensus and little movement forward.

The papers in this volume attempt to move debate over Cuba forward. In the first essay, Sahadeo Basdeo sets the tone with his explanation of the developments that have led to the current impasse over Cuba, and Canada's difficulties with the *Helms-Burton Act*. Basdeo suggests that the American approach to Cuba differs from Canada's in very important ways, and speaks to the problem of whether there is value in engagement or cooperation.

In the chapters that follow, a series of essays explore the nature of this impasse. Rather than scratch the surface, they look for deeper realities and prospects. As the papers by Fisk and Nicol indicate, American politics have greatly influenced the United States' Cuban legislation. This legislation reflects a concern with much more than the problem of the immediate situation in Cuba. American legislation encodes both political cultures and structures of political organization and philosophies, which are embedded in very precise and predictable ways within the Helms-Burton discourse. While Fisk supports the *Helms-Burton Act*, and provides a remarkable and indeed very fresh insight because of his involvement in framing the legislation, Nicol is less enthusiastic, looking for the ways in which Helms-Burton embodies a specific "take" on world relations which is deep seated and irreconcilable between Canada and the US.

Similarly, the papers by Canadian scholars Kirk, McKenna and Potter, disagree over results. Kirk and McKenna suggest that Canada's Cuban policy has been moderately successful, but Potter is more cynical. He argues that Canada's "coalition building" approach has failed to achieve its desired goals. Clearly these two sets of authors use a different yardstick to measure "success," and as such offer some useful insights into the nature of the impasse over Cuba and its structural roots. This raises the question of Canada's motivation in supporting Cuba and in opposing Helms-Burton. McKenna and Kirk argue that Canada's position is the product of a long and storied relationship with Cuba — as well as mutual respect between the two nations. Potter argues that there is clear self-interest in the Canadian position, and that Canadian decision-makers have not been successful in building their case within the new global order.

In the end, who should we believe? What conclusions can be drawn from the essays in this volume? Perhaps the most important conclusion of all is, as the authors reveal, there are real complexities inherent in American and Canadian positions on "Cuba." There is no single criteria and no single measure of motive or outcome. While many scholars have suggested that Cuba is merely an extension of the Cold War, the authors in this volume suggest that the post-Cold War period has developed its own set of "Cuban difficulties." Moreover, the authors reveal that the US and Canada will continue to "fallout" over Cuba, and that rather than being old news, the difficulties are very much alive and on-going. In this sense, this volume is a timely response to the continuing problem of Canada, the US and Cuban relations. Although it is rooted in the analysis of the *Helms-Burton Act*, now several years in place, it moves forward to an analysis of how the Act reflects on-going realities and structures in political decision-making. The

“Cuba Problem” is as much a metaphor for the inherent difficulties of Canadian-American relations as it is a specific reference to the American concern with this tiny Caribbean state: Regardless of “the remarkable relationship” there are still very contentious issues which have not, and will not simply vanish. As Basdeo concludes in Chapter Two, it is unlikely that different Canadian and American approaches will change in the near future, and certainly not until “Castro dies or demits office.” And while the Canadian approach does not require the latter, the American approach certainly must. Moreover, “the point of significance is that while the US is pre-occupied with the embargo as a vehicle to realise democratic change in Cuba, with that policy’s potential for violence and mayhem, Canada desires an evolutionary and peaceful transition to democracy.”

2. *Helms-Burton Controversy: An Issue in Canada-US Foreign Relations*

Sahadeo Basdeo

Introduction

The dismantling of the Soviet Union in 1989 has had serious consequences for Cuba, due to its excessive dependence on the Soviet economy. President Castro was the first to recognize the new imperatives placed upon Cuba. His reference to the growing crisis in his country in the early 1990s as a “special period in a time of peace” bears testimony to this.¹ Since then, Castro has introduced serious austerity measures to adjust to this “special period.” He has continued to give priority to health care and education, while emphasizing the need to achieve self-sufficiency in food production as well as the expansion of tourism and foreign investment to obtain hard currency.² He has moved away from isolationism by seeking an integration of the Cuban economy into world markets.³

Castro’s acceptance of economic and commercial liberalism, has not, however, been accompanied by political liberalization. The Cuban leader has no doubt found the Tianamen Square experience in China instructive, as well as the Soviet experience resulting from *glasnost* and *perestroika*. Political liberalization is to be avoided if it opens the floodgates for democratic change. Yet, Castro’s Cuba has been recovering slowly from the dire economic difficulties of the early 1990s. To experience a growth in GDP of 2 percent in 1994, 2.5 percent in 1995 and 5 percent in 1996 was no mean achievement, particularly under these circumstances. With increasing foreign investment in major sectors of the Cuban economy over the last eight years, the ageing Castro regime has remained optimistic that it will ride the storm.

But even before the Soviet collapse, Cuba's economic recovery was impeded by the US imposed economic blockade, introduced in the early 1960s. The US government has continued to tighten the embargo, particularly since 1989, believing that it would generate the domestic dynamics needed to overthrow the leftist government in Cuba.⁴ Some went so far as to predict the demise of Castro within a few years. There were no limits to such speculation, and indeed in the late 1980s and 1990s many reputable scholars and policy analysts have supported this move towards isolating Cuba. For example, Stanislav Levchenko, once director of the KGB, predicted that Castro would be out of office in 1990. Malcolm S. Forbes, Editor-in-chief of *Forbes Magazine*, was told by his crystal ball that Castro would be in exile with his brother Raul by 1991. Former Assistant Secretary of State Elliott Abrams, not to be outdone, argued in January 1990 that Castro had no more than one year left as President of Cuba.⁵ A less pessimistic picture was painted by Andres Oppenheimer, a mainstream US journalist, who predicted in 1991 that Castro's fall "may be a matter of weeks or ... a few years."⁶ And, writing in two separate issues in the journal *Foreign Affairs* in 1990 and 1992, Susan Kaufman Purcell not only endorsed the US policy prescription for Cuba, but advised against reconciliation with Castro.

The best U.S. policy ... remains the current policy, centred around continuing the embargo and calling for free elections. It ... for the first time has a chance of being truly effective. It may somewhat prolong the inevitable transformation of the crumbling Cuban system, but not by much. In the meantime it is helping to level the playing field between unarmed dissidents and a heavily armed but increasingly vulnerable government. It may also allow Cubans, in this new age of nationalism, to construct a new Cuban nationalism based on democratic rather than authoritarian values.⁷

Any premature reconciliation she argued, would snatch "defeat from the jaws of victory by allowing Castro to substitute US trade for declining Soviet aid and thereby prolong his undemocratic personalistic rule."⁸

This approach has characterized US policy towards Cuba since 1989 and has been fully endorsed by Cuban émigré communities, particularly by the Miami-based influential right wing organization — the Cuban American National Foundation (CANF) led, until recently, by Jorge Mas Canosa. Indeed, both the former Bush and current Clinton administrations, pressured by CANF, have been unrelenting (see Chapter Six, this volume). In 1990 the first significant blow was struck when the "Mack Amendment" was introduced in the US Congress. It was designed to strengthen the economic blockade against Cuba by restricting subsidiaries of US multinational companies from trading with Cuba. Widespread international condemnation of the amendment followed. Canada played a leading role when then External Affairs Minister Joe Clark declared, in 1990, that American firms doing business in Canada "could not comply with the rules set down by the Mack Amendment or any other law of its nature established by a foreign government."⁹ To Canada, and other nations, the Mack Amendment violated the

sovereignty, laws and interests of host countries which housed US companies. In addition US unilateral action was inimical to the interest of international trade and taken outside the juridical framework of The General Agreements on Tariffs and Trade (GATT).

This line of reasoning did not dissuade the US Congress from passing the *Cuban Democracy Act* on 24 September 1992. This Act was designed to cut US aid to countries trading with Havana and end tax benefits for US companies allowing their overseas subsidiaries to do so. Again international reaction was strong, and once more Canada was among the first to speak out. Dennis Boulet from the Canadian Ministry of External Affairs affirmed that “Canada cannot accept this. What is at stake is the extraterritorial application of a US law that would usurp a company’s right to do business according to Canadian trade laws.”¹⁰ Similar sentiments were echoed by the European Community and the capitals of Latin America and the Caribbean. Among the critics were the US’s closest allies. Even in the United Nations, a Cuban resolution criticizing the extraterritorial effects of the *Cuban Democracy Act* won 59 votes at the General Assembly. Only the US, Romania and Israel were opposed, while 71 countries abstained.¹¹ It was a major diplomatic victory for Cuba at the UN.

Since 1991, there have also been restrictions on remittances to Cuba and, in more recent times, measures have been taken to prevent uncontrolled immigration from Cuba to the US. Both of these actions have spelt suffering for many in Cuba. But it was in 1996 that the US government took the decisive step to tighten the noose around Castro’s neck by passing the *Cuban Liberty and Democratic Solidarity Act*, better known as the *Helms-Burton Act*, after its principal authors, Senator Jesse Helms (R) and Congressman Daniel Burton (R). The reaction to this Act, by Canada, is the central focus of this paper. It will review Canada’s relationship with Cuba since the 1950s, Canada’s essential difficulties with US thinking over Cuba during this time, and how Canada has persistently advocated a different approach to dealing with Cuba — an approach predicated upon constructive engagement (dialogue and cooperation) rather than one of confrontation. Moreover, the paper will focus on the similarity in views between Canada and other major actors in the global community over the *Helms-Burton Act* and will finally look at the steps being pursued by Canada and others to dissuade the US from effecting the full intent of this law.

The *Helms-Burton Act* and Its Implications

It is important to point out that when the Helms-Burton legislation began as separate bills in the US Senate and House of Representatives in February of 1995, the US Administration was opposed to Titles III and IV in the bill.¹² President Clinton was very conscious of the extraterritorial implications of Title III in particular, which would permit lawsuits to be launched in US courts against Canadian and

other foreign firms allegedly “trafficking” in property expropriated by Cuba from American nationals. The Administration was also opposed to the restriction on temporary entry into the United States of corporate officers and controlling shareholders of these companies, along with their spouses and minor children. This stance was reassuring to those who felt that President Clinton was serious about fostering closer person-to-person relations with Cuba, as reflected in several earlier measures, including direct air charters between the US and Havana, the signing of the Tarnoff Alarcon agreement to regularize the migration of Cubans to the US, and the confidence-building measures established between the Cuban and the US Armed Forces in Guantanamo Bay about overflights, shipping and free passage.¹³ However, when on 24 February 1996, the Cuban Air Force shot down two civilian aircraft operated by an organization of anti-communist Cuban exiles known as “Brothers To The Rescue” (one of which was piloted by José Basulto who had been involved in the Bay of Pigs invasion and with obvious CIA connections) President Clinton’s policy changed.

Notwithstanding the argument of the Cubans that their air-space had been perpetually violated by the “Brothers To The Rescue,” and that this went unheeded by the US government, the international community — including Canada — condemned Cuba’s action.¹⁴ It was a violation of internationally accepted rules prohibiting military attacks on civilian aircraft. This cry was taken up by Florida’s politically powerful, million-strong community of exiles, who seized the impending presidential elections to their advantage. With Cold-War style rhetoric Clinton not only condemned the act “as an appalling reminder of the nature of the Cuban regime: repressive, violent, [and] scornful of international law” but announced that he would support the Republican sponsored Helms-Burton bill which he had earlier vetoed.¹⁵ As one informed commentator suggested, the Cubans fell into the trap set up by the right-wing exiles in Miami who “were trying to provoke an incident that might help pass the Helms-Burton legislation.”¹⁶

On 12 March 1996, President Clinton signed into law the *Helms-Burton Act*. This Act, as indicated earlier, is designed to tighten the US embargo on Cuba through sanctions against all companies doing business with Cuba, regardless of nationality. It allows US citizens to sue foreign companies in US courts for compensation related to properties confiscated by the Castro regime (Title III). This Act also denies US visas to anyone, including corporate executives or shareholders of foreign companies, now benefiting from the use of confiscated property. (Title IV).¹⁷

Under the Act, President Clinton enjoys the right to suspend Title III for intervals of six-month duration. On three occasions since the passage of this measure, he has been forced by international pressure to exercise this right — an indication, no doubt, that it is the easier and safer road to travel while some rapprochement with Cuba is established with the help of US allies. The Clinton administration is fully aware that it cannot afford to jeopardize, or to put at risk, the future of its important economic relations with its major trading partners — including Canada,

the EU and Mexico — over Cuba, which in the words of one author, is of no importance since the end of the Cold War and “should not even be on the radar screens of US foreign-policy concerns.”¹⁸

The *Helms-Burton Act* has serious implications for Canada. Before its passage into law, many in the Congress felt that Canada would not oppose the Act, and believed that its trade and overall relationship with the US was far more important to Canada than its trade with, and investment in, Cuba. The Americans were dismayed, however, when they were told that the issue was not a matter of the relative importance of Canadian trade with the US, as opposed to Canadian trade with Cuba. *Helms-Burton* violates Canadian sovereignty. It violates international law and it violates the rules of conduct laid down by the GATT, now administered by The World Trade Organisation (WTO). It is also inconsistent with the General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA).¹⁹ But even so, to assume that Canada would support an irrationally based *Helms-Burton Act* against Cuba is a miscalculation of a historical reality.

Canada and Cuba: The Historical Relationship

Historically, Canada has always had a close relationship with Cuba and the Caribbean region.²⁰ Close links were established centuries ago, dating back to the four months Samuel de Champlain, the founder of New France, spent in Cuba in 1601. Since then, the relationship has been ongoing, with the establishment of Canadian trading ties and investment pattern in the island nation. Investment in the citrus and pineapple industries, as well as the banking and insurance sectors, have been prominent areas of Canadian interest.²¹ The Royal Bank for example, was among the first banks in Cuba. It was established in 1899, and by 1926 had 114 branches throughout the island. The Bank of Nova Scotia followed, in 1906. By the turn of the century, the American industrialist dubbed the “Canadian Magician” — the one-time general manager of the Canadian Pacific Railway, Sir William Van Horne — was in Cuba with the intention of building the first trans-island railway.²² Indeed, as Kirk has so dramatically emphasized, this has led to many mutual trade linkages between the two countries.

Whether it be Van Horn building railways in Cuba after the last spike, or life insurance companies, which underwrote fully 75 per cent of all insurance policies in the 1950's, Canadians have been very active in Cuba. This became clear to me ... in the fisheries museum in Lunenburg, where the walls are decorated with many stencils of companies based in Santiago de Cuba and Havana. The traditional trade in salt cod and lumber... and citrus products and rum... is well established.... A footnote on the other side of the ledger: Cuba's first embassy to Canada was not in Toronto or Montreal, much less in Ottawa. It was in glorious downtown, Yarmouth, Nova Scotia ... set up ... to help the salt cod trade.²³

Canada's involvement continues to be constructive in Cuba, during the second half of this century. Not only have reciprocal trade figures been climbing, but respect and recognition for different ideological approaches to national development characterize the relationship. This has been reflected in the policies pursued from the time of Conservative Prime Minister John Diefenbaker in 1959, to the incumbent Liberal Prime Minister Jean Chrétien. Like Mexico, Canada has not severed diplomatic ties with Revolutionary Cuba, although many other countries did, after 1959.²⁴ The decision to maintain diplomatic ties with Cuba was taken by Diefenbaker, and has since been upheld by his successors. Diefenbaker's rationale was three-fold. First of all, he believed, with justification, that Canada "stood to gain economically after Washington cut the sugar quota and broke diplomatic relations with Cuba."²⁵ As Kirk notes, "given the dependence of Cuban industry on North American technology, it appeared logical that Canadian subsidiaries of US based companies could provide the required spare parts and machinery."²⁶ Secondly, notwithstanding ideological differences, the Diefenbaker Government was convinced that Castro enjoyed popular support, as he indeed did. Thirdly, Diefenbaker's stance was a response to the growing criticism at home that Canada was slowly becoming a satellite of the US — a stance which became easier for him to adopt given the profound mutual antipathy between himself and John F. Kennedy — "the crusty Prairie politician of modest social origins and the sophisticated US patrician, whom Diefenbaker considered "pathologically ignorant, about Canada."²⁷

Still, Canada has had moments when it registered its disapproval of policies pursued in Cuba. This is particularly so where human rights abuses are concerned, and where Cuba pursues policies which are inconsistent with Canada's approach. For example, the Trudeau Government suspended development aid in 1978 because of Cuba's mercenary military role in Angola. Yet the strong relationship between these two countries has been able to weather the storm. The meeting between Castro and Liberal Prime Minister Pierre Trudeau in 1976, was the basis for a new and lasting friendship between both men and both countries.²⁸ It was this friendship upon which External Affairs Minister Joe Clark was to build when, in 1990, Cuba was desperate for help after the collapse of the Soviet Union. Moreover, from 1990 to the passage of Helms-Burton in 1996, Canada, under both the Conservative and Liberal administrations, has been in the forefront at the United Nations condemning the US trade embargo, the Mack Amendment and the *Cuban-Democracy Act*. It might be said that over the years, the vote on the embargo has increasingly become an annual ritual within the United Nations — with the US being isolated more and more in its policy toward Cuba.²⁹ By 1994, André Ouellet, then Canada's foreign minister, stated that with the Cold War over it was time "to turn the page" with Cuba.³⁰ He announced that Canada itself was prepared to provide development aid to Cuba, suspended in 1978. He called upon the US to emulate Canada and revamp its policy toward the Caribbean nation.

New Approaches Toward Cuba: Canada Responds to Helms-Burton

By 1994, Canadian official policy to Cuba was clear. Cuba was no longer a threat to anyone and Washington should overcome its phobia regarding Havana. Consequently, Canada consistently argued at various multilateral forums, including the Organisation of American States (OAS) and the Summit of the Americas in December of 1994, that the US position to isolate Cuba was counter-productive.³¹ What was needed was the reincorporation of Cuba into the international economy. In addition, Canada had come to recognize the considerable investment potential in Cuba, which the Canadian private sector had earlier identified and was then exploiting. Official backing was now being given to these initiatives in a positive attempt to revive an ailing Cuban economy. In addition, humanitarian support in the form of food and medical supplies was provided by Ottawa, and the industrial cooperation arm of the Canadian International Development Agency (CIDA) funded many Canadian companies considering investing in Cuba.³²

Apart from these initiatives, the Canadian government also announced, in June 1994, other adjustments in its policy directed at enhancing official bilateral relations with Cuba. These included increased senior-level contacts, beginning with the June 1994 visit to Cuba by Christine Stewart, Secretary of State for Latin America and Africa; strong support for parliamentary exchanges; continuing encouragement for the activities of such non-governmental organizations (NGO's) as Oxfam-Canada, CUSO, the Anglican and the United Churches, the Canadian Foodgrains Bank, Ottawa-Cuba Connection, The Jesuit Centre for Social Faith and Justice and Carleton University of Canada.³³ It was not surprising, then, that Canada's track record and its pro-active and sympathetic position to Cuba has placed it in an ideal position to play a leading role in the campaign against the *Helms-Burton Act* after it was signed into law.

Canada's official position on the *Helms-Burton Act* is anchored philosophically, and politically, in the contribution that it has been making to the renewal of the Cuban economy and society since 1990. Canada has been sensitive to Cuban needs in the circumstances of desperation: To isolate and ignore Cuba is to exacerbate the suffering of its people. No such policy is acceptable. Hence Canadians maintain that Helms-Burton is morally unjust and politically unsound, and that the American objective of forcing Castro out of office through public disenchantment with a collapsing Cuban economy, is far from likely. If anything, that policy mind-set has strengthened Castro's grip on power. Believing that the Canadian approach is far more realistic, Christine Stewart stated in May 1996 in Ottawa, at a symposium hosted by the Canadian Foundation for the Americas (FOCAL) and the Washington-based Centre for International Policy on the Helms-Burton law, that while Canada and the US share many of the same goals with respect to Cuba,

Our aim is a peaceful transition to a genuinely representative government ... that fully respects internationally agreed human rights standards. And we look forward to Cuba becoming an open economy. However, we differ from the United States on how to reach these objectives. We have chosen the path of engagement and dialogue; the United States has picked isolation.³⁴

To reinforce its arguments against the Castro regime in Cuba, the US has consistently argued that human rights abuses justify the intent of the *Helms-Burton Act*. The US administration has gone so far as to describe Cuba as a police state. To this Canada has consistently argued that while it recognizes Cuba's positive record on economic and social rights, it still has concerns in the areas of civil and political rights. Canada has been among the first to express concern at the severe sentence handed down in April 1995 against human rights activist, Francisco Chaviano. In February 1996, Canada denounced the harassment of the Conciliano Cubano, an emerging coalition of human rights activists and an unofficial opposition group.³⁵ In January 1997, human rights was a major item on the agenda when Lloyd Axworthy visited Cuba to hold discussions with Castro.³⁶

But Canada acknowledges that some movement has been made by Cuba in improving its human rights image, largely because of constructive engagement and ongoing dialogue. In May 1996, for instance, Cuba signed the UN Convention on Torture, and has been favourably disposed to visits from the UN High Commissioner for Human Rights as well as several other human rights organizations.³⁷ It has publicly affirmed its willingness to broach the subject with virtually anyone. Cuba's willingness in this regard is understandable. No doubt conscious of its own shortcomings, it is still confident that its record can stand up against those in many Latin American and Asian countries which continue to enjoy strong commercial relations with the US. China and Vietnam, both Communist states, have abominable human rights records, yet they continue to receive Most Favoured Nation treatment.³⁸ In the Latin American context, Amnesty International (AI) noted in its 1996 report that Cuba has — when compared to such countries as Brazil, Chile, Colombia, Mexico, Nicaragua and Guatemala — a better human rights rating.³⁹

This AI Report noted extra-judicial executions by police and death squads in all those countries. Likewise it has identified particularly, though not exclusively, torture and the annual disappearance of hundreds of people, many of whom have been "activists, former refugees, religious personnel, street children and trade unionists" in the case of Guatemala and Colombia.⁴⁰ The perpetrators in most cases have been "the security forces and government-backed armed groups."⁴¹ Torture, extra-judicial execution and disappearance of individuals were absent from Cuba, though reference in the AI Report was made to the presence of some prisoners of conscience and several political prisoners.

This is very much the Canadian view of Cuba. Canadian officials have maintained that Cuba is a far cry from a frightening police state, and that its record pales when compared to the violent repression in nearby South American countries.

Yet the ultimate irony is that the US, which has maintained its trade embargo for 37 years against Cuba, encourages business with these countries. As Mark Entwistle, Canada's ambassador to Cuba noted in December 1996, while Cuba has a good record in providing its people with access to health care, education and a minimum standard of life "Canada would like to see greater freedom in Cuba but is not about to lecture or harangue Havana. That is what the Americans have asked Canada, Mexico and Europe to do in exchange for relief from the Helms-Burton Act." Ottawa's ambassador also observed that

There are cases of violations of human rights, but the kind of abuse of the individual that you see in many other countries doesn't exist in Cuba. There is no pattern of torture. People don't disappear in the middle of the night. Vigilante squads don't roam the streets.⁴²

Max Yalden, a retired human rights commissioner appointed by the Canadian government to help Cuba make its citizen complaint system more transparent and independent, agrees with Entwistle, and has said that "I don't have the impression Cuba is a boiling cauldron of anti-Castroism or that a lid is being kept on." He argues that many of the civil and political rights Canadians take for granted — a free press and multiparty elections — are not the only measure of progress. His view is that Cuba should be given credit for "significant achievements in the rights of the population to health care, education, social safety and equality for women, children and the disabled." As for other rights he noted "It will take patient work with Cuban authorities — we realise you're not going to change them overnight."⁴³ His views mirror the official Canadian position that it is better to coax civil and political freedoms out of Cuba by constructive engagement (more investment and trade, combined with quiet but insistent diplomatic pressure) rather than adopt the US approach. This approach was reiterated on 21 January 1997 by White House spokesman Nicholas Burns while Axworthy, Canada's External Affairs Minister was visiting Cuba. Burns argued that "isolation and containment and economic embargo is (sic) the best way to deal with the lone remaining holdout from another era, the communist era."⁴⁴

If Canada does not agree, neither does the European Community. The European Community is similar to the Canadian approach, and calls upon Castro to encourage a transition "to pluralist democracy and respect for human rights and fundamental freedoms." It has distanced itself from supporting the embargo and the Helms-Burton law as the means of achieving this goal.⁴⁵

Helms-Burton and Business: A Chilling Effect?

It is the investment implication of the Helms-Burton law which is considered the most offensive to Canada and the wider international community. Since the passage of the Act, global opposition has intensified. Canada and the EU have been

in the forefront of this attack condemning Title III of the Act. Title III allows US nationals with claims on expropriated property in Cuba to sue in US courts in order to recover money from foreign companies or people who “traffic” in that property. Likewise Canada and others have denounced Title IV of the Act, which allows the US government to deny entry to senior executives of companies who have been “trafficking” in property subject to a US claim. The latter clause has already affected the senior executives of one of Canada’s major investors, Sheritt International Corporation, who have been barred from entry into the US.⁴⁶

The intent of the *Helms-Burton Act* is basically to starve Cuba of hard currency by dissuading and inhibiting foreign investment in this Caribbean island-nation. While it has partially slowed down investment in Cuba and in a few instances has forced companies to make public announcements of their divestiture from Cuban operations — as in the case of Cemex of Mexico, Redpath of Canada, Paradores Nacionales of Spain and ING of the Netherlands — investment continues to be promising.⁴⁷ By October 1996, some seven months after Helms-Burton, 25 joint ventures were signed bringing the total to 240. One was the big deal with Vancouver-based Wilton Properties, a \$400 million scheme to build 11 resort hotels on the island. Another 143 new projects were under negotiation by the end of 1996. By December of 1996 total foreign investment was put at \$2.1 billion dollars.⁴⁸ Cubans seem confident, despite Helms-Burton, that they can hold on to their existing foreign investors.

However, to ease the Cuban plight Canada, Mexico and the EU have come out opposing the principle of the Act. Canada has maintained that the legal provisions of the Act violate international law and unlawfully imposes domestic US legislation extraterritorially on non-US citizens and companies. Most important, the Act establishes a dangerous precedent for US foreign policy in the hemisphere by imposing, unilaterally, US action to force other countries to comply with American wishes. Canada also opposes the Act on the ground that it violates the principle of international trade. As Christine Stewart points out: “Helms-Burton has transformed a US-Cuban problem into a much broader trade and investment issue that undermines what the United States and its major trading partners have been trying to achieve in the last few years: a freer-trade environment.”⁴⁹ She goes further:

Not only does Helms-Burton brush aside accepted legal practice, it flies in the face of our new vital trade regime, the North American Free Trade Agreement (NAFTA). Canada, Mexico, and the United States negotiated NAFTA to ensure that trade is conducted under a predictable system of rules. We broke new grounds in negotiating rules on investment and movement of business persons. We are concerned that this new law could violate a number of those provisions.⁵⁰

Mexico’s president Ernesto Zedillo emphasized the identical tenor of his country’s concern in June 1996, in an address to the joint sitting of the Canadian parliament. He stated that “Mexico and Canada consider inadmissible every measure that, rather than promote liberty, obstructs freedom, that instead of

dropping barriers, erects them to the detriment of international investment and business.”⁵¹

Apart from its convincing political denunciation of Helms-Burton, Canada’s condemnation of Titles III and IV of the legislation was not altogether altruistic, since it was in part influenced by its considerable preponderance of investment in Cuba. Since the early 1990s the Canadian Government has been providing strong support to Canadian businesses seeking opportunities in the Cuban market. Since then Canada has increased its embassy trade staff, and participated in Cuban trade fairs helping to promote Canadian products.⁵² It has identified areas for macro-economic cooperation, where Canada could help Cuba modernize its key economic policy institutions such as the tax collection system and its central bank needs, and has begun negotiations for a Foreign Investment and Protection investment.⁵³

That input led Lloyd Axworthy, Canada’s External Affairs Minister, to quip after his January 1997 visit to Cuba, that Canada had accomplished more in his five hours of talks with Fidel Castro than the Americans had accomplished in the last 30 years by isolating Cuba. The fact is that Canada sees business investment and the modernization of Cuba’s financial and commercial institutions as a means of assisting the Cuban people to overcome their economic difficulties and enter the market economy. Such an approach would help both current and future investors to undertake effective business operations in Cuba.⁵⁴

Canadian Business in Cuba: A Growing Concern

Canada’s private sector is one of the largest investors in Cuba today. Since the Mulroney era, Canadian entrepreneurs have been seeking commercial and investment opportunities in Cuba with considerable success. Many Canadian companies now have substantial investment in Cuba, especially in the mining sector. Likewise a large number of businesses have been exporting Canadian products to Cuba. Since slightly over 20 percent of Cubans now have access to foreign currency, the catchment area for Canada’s exports has increased. Since 1992, Canadian commercial involvement in Cuba has been extraordinary. As Kirk has vividly stated, one only has “to mingle with Canadian business representatives on the weekend flights to Havana from Montreal and Toronto to see the variety of sectors that believe that the Cuban economy ... is profitable.”⁵⁵ There is no doubt that Canadian companies want to position themselves “to take advantage of the flood of opportunities that will arrive should the US embargo be lifted.”⁵⁶

The many Canadian companies with investments in Cuba today include the Alberta-based Sherrit International with holdings in nickel and cobalt in eastern Cuba. Wilton Properties Ltd., headed by Vancouver entrepreneur Wally Berukoff has increased the growing Canadian presence by undertaking a \$400 million joint venture to build 11 hotels and other tourist facilities with Cuba’s state hotel firm Gran Caribe. One hotel is to be constructed in Havana, five in Jibacoa, three in

Cayo Lago, and the other two on the Isle of Youth.⁵⁷ Berukoff's decision is seen as courageous given the fact that "there have been some indications that a number of European hotel chains have been holding back, delaying their activities in Cuba to see how Helms-Burton plays out."⁵⁸ Miramar Mining Corp., also based in Vancouver and run by Wally Berukoff, is exploring two mining prospects in Cuba: a copper-gold project on the western end of the island and a gold deposit on the Isle of Youth.⁵⁹ A number of junior-Canadian companies like Holmer Gold Mines Ltd., MacDonald Mines Exploration Ltd. and CaribGold Resources Inc. have joint ventures with Cuban companies to explore for gold. York Medical and Saskatchewan Opportunities Corp. have jointly been engaged in commercializing Cuban pharmaceuticals for sale in the developed world.⁶⁰ Canada Northwest Energy, a subsidiary of Sheritt, has been involved in oil exploration in Cárdenas Bay and on land in Sancti Spiritus; so has Calgary-based Bow Valley Energy Inc. The Delta Hotel chain which manages several hotels in eastern Cuba is also engaged in hotel construction. The Pizza Nova chain has been expanding to meet the needs of Canadian tourists (the largest national destination to Cuba over the last few years) and this has been complemented by investment made recently by Canada's Labatt Breweries.⁶¹ These are only a few in an ever-increasing Canadian private sector presence in Cuba where, by the beginning of 1997, some 30 Canadian companies were doing business and where the two-way trade between Canada and Cuba totalled about \$600 million in 1996.⁶² It is not surprising that Canada has now become one of Cuba's biggest trade and investment partners.

The greatest success story and Canada's biggest corporate test case, is Ian Delaney's Sheritt International. Sheritt's nickel mine at Moa Bay was originally built by Freeport Sulphur Co. of New Orleans in 1959.⁶³ It had only just started shipping nickel concentrate to Freeport's refinery in Louisiana when it was seized by Castro in 1960. In December 1994, Sheritt and the government of Cuba entered into a joint venture whereby Cuban nickel would feed Delaney's refinery at Fort Saskatchewan, Alberta. By this time Delaney was selling more than half of his refined nickel into the United States. The anti-Castro alliance was outraged and by June 1995 Delaney found himself on a US treasury department blacklist. Delaney subsequently thumbed his nose at the American embargo and found new markets for his nickel. As his business relationship with Cuba grew to near mythic proportions, this Canadian entrepreneur, whose investment today is over \$650 million dollars in nickel, cobalt, tourism, gas and oil and has become a "preferred" investor in Cuba, became the first Canadian victim of Title IV of the *Helms-Burton Act*.⁶⁴

Delaney, along with his family and top executives of his company, have been debarred from entering the US.⁶⁵ This action has evoked widespread official and unofficial condemnation in Canada. Art Eggleton, Canada's Trade Minister, described the move as outrageous. "It's ridiculous" he said "for the United States to deprive some Canadian children of the chance to visit Disneyland" noting that kids are hardly a threat to America's national security.⁶⁶ He was supported for the

first time by a passionate body of NGOs. A coalition of church, labour and relief groups urged Canadians to avoid vacationing in Florida unless the US government eased the sanctions.⁶⁷ Marion Dewar, head of OXFAM-Canada was just as forthright: “How can we vacation in a place that bullies its neighbours and harms poor people in Cuba?”⁶⁸ Even Peter Morton, the *Financial Post*’s Washington bureau chief did not mince words. The US has settled its claims with Communist Vietnam, he remarked, where over 58,000 Americans lost their lives in a war “that should evoke ... far more painful emotions in the U.S. than the eviction of a handful of wealthy Batistas from their Caribbean playland.” The US is willing to overlook human rights abuses in China arguing that promotion of free trade with that communist country would promote civil rights, “yet none of that applies to Cuba.” He concludes that Cuba is an obsession for the US and it should not be surprising that “it is difficult to line up any allies, especially Canada, in its Cuba cause.”⁶⁹ Wayne S. Smith, senior fellow at the Centre for International Policy in Washington, sums it up best when he says that “to place at risk the future of ... our economic relations with Canada, Europe and Mexico, over Cuba which with the end of the Cold War is of no importance at all ... is truly irrational.”⁷⁰

Canada’s Campaign Against Helms-Burton

Since March 1996, and especially after Title IV of Helms-Burton was applied against the senior executives of Sheritt International, Canada has intensified its campaign against the propriety of the legislation. It has successfully sought the help of the international community and various multilateral organizations in condemning the Act. It has raised the issue at the Organisation for Economic Co-operation and Development (OECD), the Organisation of American States (OAS) and the World Trade Organisation (WTO). Within the OECD Canada negotiated binding instruments on the Multilateral Agreement on Investment (MAI) to protect investments against such measures as Helms-Burton.⁷¹ On 23 August 1996 an important decision was handed down by the Inter-American Juridical Committee of the OAS, strengthening the Canadian case. It ruled that Helms-Burton was not in conformity with international law.⁷² Likewise, Canada and the EU have attempted to challenge the act as a trade dispute under the WTO by threatening to invoke the establishment of a panel to resolve the conflict. The US has reacted by claiming vociferously that the WTO should have no jurisdiction on this issue since it is a matter of US national security. It has therefore threatened to invoke Article XXI of the GATT (known as the national security exception) and has refused to participate in any dispute resolution process — a matter which has caused no end of worry for those interested in the integrity of the multilateral trading system. The overwhelming view is that Cuba is not a security threat to the US any longer and any attempt to invoke Article XXI would be an abuse of privilege. As two eminent trade lawyers have argued:

Any justification by the United States for the measures taken under Helms-Burton on the basis of the national security exception would constitute one of the most alarming instances of reliance on this exception in the history of the GATT, and would pose a significant threat to the credibility of the multilateral trading system as it exists today.⁷³

In the meantime, Canada and Mexico have taken steps to challenge Helms-Burton by invoking the establishment of a dispute settlement panel under NAFTA.⁷⁴ In addition, the EU, Mexico and Canada have enacted more immediate measures in an attempt to counteract the devastating effects of Helms-Burton. In all three cases, the principles guiding these legislative measures are quite similar. Canada introduced retaliatory legislation in 1996, by amending the *Foreign Extraterritorial Measures Act* (FEMA) of 1985 to permit the Attorney General of Canada to block any attempt by a foreign claimant to enforce a judgement under a law such as Helms-Burton in Canada. It would also give Canadian companies recourse in Canadian courts if awards were made against them in US courts, under Helms-Burton legislation. The FEMA amendments would provide a right to claim damages in Canada for an equivalent amount against the American claimant.⁷⁵

In another move, perhaps more symbolic than anything else, two Canadian Liberal MPs — John Godfrey and Peter Milliken — introduced a private member's bill in the House of Commons in October of 1996, that parodied Helms-Burton. This bill would allow Canadians whose ancestors lost property in the American Revolution to sue foreign businesses that now use those properties.⁷⁶ While the possibility of this bill becoming law is remote, it does reflect Canadian sensitivity and antipathy to the *Helms-Burton Act*.

Other Examples of American Unilateral Decision-Making

Canada's case against Helms-Burton has received additional international support because of another unilateral decision taken by the US administration that has provoked widespread condemnation since 1996. This has been the signing of the *Iran and Libya Sanctions Act* of 1996 by Bill Clinton.⁷⁷ This Republican-sponsored bill was designed to punish Iran and Libya, described by the President as "two of the most dangerous supporters of terrorism in the world."⁷⁸ This Act introduced against the background of the explosion on TWA flight 800 off Long Island, New York, the pipe-bombing at the Atlanta Olympic Games and the terrorist attack on a US military base in Saudi Arabia, imposes sanctions on foreign companies undertaking new investments worth more than \$55 million (US \$40 million) in oil or gas projects in either Libya or Iran. This legislation would punish foreign firms for trading with those countries. These firms can be barred from doing business with the US government, from exporting products to the US, from receiving goods that require US export licenses and from borrowing more than

US \$110 million from American financial houses. While only PanCanadian Petroleum Ltd. of Calgary with its \$17 million investment in oil exploration nears the ceiling established by Clinton, the stakes in question are high for the EU. Libya and Iran account for 25 percent of all the oil imported into the EU and several EU firms have major investment in these countries. France's Total SA oil company for instance is one such firm with an \$820 million contract to develop offshore oilfields with Iran.⁷⁹

It is not surprising that the EU condemns Clinton for trying to impose American hegemony on the Islamic world. Similarly, several of Washington's staunchest allies, already outraged by Helms-Burton, opposed the move. Canada stood among them. Ottawa opposed the measure largely on principle. While Canada shares "the concerns of the United States and other countries on international terrorism and place a high priority on finding ways to combat it, this is not the way to proceed," echoed Foreign Affairs Minister Lloyd Axworthy.⁸⁰ This sentiment was shared by International Trade Minister Art Eggleton who saw the so-called "D'Amato Bill," named after its sponsor, Republican Senator Alfonse D'Amato of New York, as another "attempt by the United States to dictate trade policy to its allies" and vowed that "Canada will continue to defend its interests against the extraterritorial application of such legislation."⁸¹

American Responses to Canada's Position

It was Canada's unrelenting position — coupled with international support provided by Mexico, the 15-member EU, and others — which forced Clinton to suspend Title III of Helms-Burton.⁸² It was an admission that other options needed to be explored to avoid a disruption of good relations between the US and her major trading allies. President Clinton chose to appoint Stuart Eizenstat as his special envoy on Cuba to travel to world capitals to make the case for a real multilateral effort at promoting democracy in Cuba.⁸³ This decision was the product of obvious considerations. The US feared the judicial outcome if Helms-Burton was treated as a trade dispute before the WTO. It also sensed its vulnerability in invoking the national security provision of the Act. Similar insecurity arose as Canada and Mexico kept threatening to invoke the NAFTA panel to resolve Helms-Burton which they saw as a trade dispute. Unfavourable judgements could be doubly disastrous. It was likely to portray the US as injudicious and irrational towards Cuba and would likely confirm what many see as the undesirable excesses of unilateralism. In addition, should the US lose, it could bring disaster on everyone else — not just the US, as Riyaz Dattu points out — but "the whole WTO system and the GATT."⁸⁴

These were the concerns which led Clinton to develop a new agenda as the basis of continuing dialogue with US allies and which led the EU to request the

WTO to postpone appointing members of a panel that was supposed to hear the trade case.⁸⁵ Canada likewise decided to postpone temporarily the establishment of a NAFTA panel.⁸⁶

Clinton's new agenda advocated the need for international pressure to be placed upon Cuba to accelerate the democratic process. To this end, Eizenstat was mandated to persuade Canada, Mexico, the EU and others to adopt five key principles to overthrow Castro. They included making public statements calling for democracy in Cuba, funnelling government aid through Cuban non-government agencies, increasing support for independent journalists, ending government subsidies to Cuba, and pledging not to help Cuba develop a nuclear reactor.⁸⁷ Eizenstat added to this list when he visited Canada in August of 1996. He called for Canadian companies investing in Cuba to adopt new standards for trade and investment, as well as more stringent business practices, through the introduction of the Sullivan principles. This would force Canadian companies to pay workers directly rather than through a government agency, and would recognize the formation of trade unions. Finally the American Under-Secretary of Commerce called upon the Mexican and Canadian governments to drop their NAFTA challenge, insisting that it was wrong to use a trade panel to resolve political differences.⁸⁸ He promised that if America's major trading partners drop retaliation threats and join the US drive to democratize Cuba, Clinton was likely to continue suspending Title III of Helms-Burton.⁸⁹

The call for Canadian companies to adopt new standards for trade and investment evoked strong opposition from Canada's influential Business Council on National Issues [BCNI]. Its president, Thomas D'Aquino, speaking on behalf of 150 large corporations, rejected the position that Canadian companies should reform their hiring and payment policies, environmental practices, and other aspects of doing business in Cuba to satisfy the Clinton administration. D'Aquino asserted that big Canadian companies behaved responsibly around the world though he agreed that "there were limitations of operating in countries, from Cuba to China, with repressive government. Just being in such countries helps bring about political change."⁹⁰

Since 1997, discussions over the *Helms-Burton Act* have produced a temporary ceasefire between the US and its Canadian and EU allies. President Clinton for his part continues to suspend the implementation of Title III. This delay in invoking Title III has allowed Canada and the EU to be firm but fair with Cuba. While they have requested Castro to be more responsive to liberal democratic reforms they have shown greater sensitivity to Cuba's current predicament by setting the tone for constructive change on an incremental basis through direct investment and political dialogue. Canada's agenda for democratic change in Cuba is best illustrated in the joint communiqué issued by the Cuban and Canadian governments after Foreign Minister Axworthy's visit to Havana in January 1997. This spells out the principles of constructive engagement which Canada chooses to pursue rather than the policy of isolationism advocated by the US.

The 1997 Cuban-Canadian communiqué represents the cornerstone of Canadian policy towards Cuba. It stresses joint cooperation and continuing dialogue between both states in a number of areas. These include cooperation in the administration of justice and the judicial legal system including exchanges of judges and judicial training; parliamentary exchanges focusing on the operations of parliamentary experience in both countries; broadening and deepening cooperation and consultation on human rights through exchanges between officials, academics, professionals and experts; support for the activities of Cuban and Canadian non-governmental organizations within the framework of bilateral cooperation; provision of technical support for Cuba's policy of economic reform particularly in the areas of taxation and central banking; collaboration on narcotics interdiction and the prevention of international terrorism; the provision of food aid to Cuba and finally the exploration of joint research and development projects in the health and environment sectors.⁹¹

Notwithstanding US lukewarm support for Axworthy's mission to facilitate democracy in Cuba, the Canadian initiatives in the joint communiqué did not impress Clinton. He responded with some scepticism:

While I am gratified that the Canadians ... and the Europeans, are now talking more to the Cubans about human rights and democratic reforms ... I am sceptical, frankly, that the discussions ... will lead to advances. I believe our policy (of isolation) is the proper one, but I'm glad the Canadians are trying to make something happen in Cuba.⁹²

Nicholas Burns dismissed Axworthy's initiatives as nothing that would guarantee fundamental reform: "there is no reason to believe that ... the tiger is going to change its stripes."⁹³ This assessment by the US reflects the basic difference in the approach of both countries to Cuba. As Axworthy put it Canada sees

value in the specifics of human rights co-operation, including Canadian support for grassroots groups in Cuba, encouraging Cuba to allow UN human rights monitors into the country, helping train judges and legal officers, and expanding a citizens' complaint system. It is the preparatory work needed to facilitate a democratic infrastructure. Democracy must be nurtured.⁹⁴

Axworthy was critical of the US notion that multi-party elections must be the litmus test of freedom in Cuba. "Look at Russia — simply having an election doesn't give you democracy."⁹⁵ The point of significance is that while the US is preoccupied with the embargo as the vehicle to realize democratic change in Cuba, with that policy's potential for violence and mayhem, Canada desires an evolutionary and peaceful transition to democracy.

Conclusions

With such different perceptions and approaches to Cuba, it is likely that Helms-Burton would continue to be on the US statute books for some time, certainly

until Castro dies or demits office. In the meantime Clinton will continue to suspend Title III of the Act indefinitely to appease his allies and critics. For this reason Helms-Burton will continue as a controversial issue in Canada-US relations. Since Title IV of Helms-Burton can only be suspended by the US Congress and consequently is beyond the jurisdiction of the President. Any suspension of this legislation, if it is to occur in the short term, must come from a concerted attempt by three groups: the international community, the silent majority in the US, and Castro himself.

Strong international pressure on the President and the Congress must continue. Both must be persuaded that there are other avenues to achieve democratic change in Cuba — an argument which they themselves must sell to the Cuban émigré community in Miami. Likewise, the normally silent majority in the US must become vocal in the denunciation of an obsolete and anachronistic policy — a policy that remains frozen in the era of the Cold War and hinders a rapprochement with Cuba. This is being made easier by the stance which a major section of the US business community has been taking in recent times. In November 1996, the US Chamber of Commerce came out against Helms-Burton describing it as simply “bad public policy,” and called for significant modification.”⁹⁶ Obviously US businesses with foreign operations fear they may get caught up in an international backlash if all aspects of Helms-Burton come into effect. In addition they view with considerable apprehension how substantial business opportunities, which could be theirs for the taking if the embargo and Helms-Burton are suspended, are quickly slipping away to major investors from Europe, Asia and Latin America. What is therefore needed is an American groundswell resembling the anti-Vietnam campaign against the embargo and Helms-Burton. It would certainly have the force to alter radically US official thinking towards Cuba. Finally Castro for his part must accelerate the pace of liberal economic and democratic reforms which were started after 1989. This would serve as ammunition for the forces of change in the US. It would certainly lend credence to and provide political and moral justification for Canada’s policy of constructive engagement.

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26. Ibid.

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29. By 1995 the vote at the UN General Assembly against the Cuban embargo was overwhelming. Some 117 countries voted against it, while 3 voted for it. These were the US, Israel and Uzbekistan.
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86. Ibid.
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3. *Cuba in US Policy: An American Congressional Perspective*

Daniel W. Fisk

Introduction

In general, Americans who have focused on the issue of Cuba agree on the objective of democratic change on the island, while disagreeing on the most effective means of promoting such a change. The US government's policy towards Castro's Cuba often is dismissed as a relic of the Cold War and an American preoccupation with Communism, but it is more appropriate to view Cuba policy since the fall of the Soviet Union in terms of the "democracy agenda."¹ Whether cast as "idealism" or "*realpolitik*," this "democracy agenda" seeks the promotion of government based upon the consent of the governed and free markets with equality of opportunity and access.

The two most recent iterations of US Cuba policy — the *Cuban Democracy Act* (CDA)² and the *Cuban Liberty and Democratic Solidarity* (LIBERTAD) Act³ — were born out of a congressional sense of frustration and necessity, based on the Executive Branch's failure to pursue initiatives aimed at promoting democratic government on the island. Inherent in the evolution of US policy leadership on this issue are the electoral and political incentives of members of Congress, and the nature of the American political branches to struggle over the direction of foreign policy.⁴ For the decade prior to the enactment of the CDA in 1992, Cuba was not a foreign policy priority for the President or the State Department. The Executive Branch had largely avoided the subject or, more appropriately, dealt with it in narrow terms, namely as an immigration problem to be minimized.

Partly in response to domestic constituencies, however, Congress could not ignore the issue. With the demise of the Soviet Bloc, congressional frustration increased as new opportunities to focus on Cuba appeared to be side-stepped by the Executive Branch.

As Republicans prepared to assume the majority in the Congress in late 1994, many of these same frustrations with the Executive Branch were present. Except this time, rather than a Democrat-controlled Congress pushing a Republican President, it would be a Republican dominated Congress requiring a Democrat President to deal with Cuba. As 1994 ended, the new congressional majority found a listless US Cuba policy, an Administration that could and would apply US leverage when the cause suited it (for example, in Haiti), a Cuban regime desperately seeking new sources of hard currency, and a growing trend among governments, especially in the Western Hemisphere, to confiscate American properties. The LIBERTAD Act was the response.

This paper offers an American congressional perspective on the reasons for the LIBERTAD Act, the political and legislative dynamics of its approval, and an assessment of the policy's impact. Having been a participant in the legislative process, I also provide some observations on the dynamics that came into play during the Act's consideration. This paper will offer some discussion from a "practitioner's" perspective, of the interplay of partisan, ideological, and institutional forces at work in US foreign policy-making. It first reviews why Congress believed in the necessity of another edifice in the existing structure of the US-Cuba relationship, then turns to the dynamics of the law's enactment, followed by a discussion of the Act's impact, offering an assessment of what has been achieved. Finally, the paper concludes with some observations on the situation in 1998.

Why the LIBERTAD Act?

The impetus for the LIBERTAD Act can be found in the convergence of four events. These were the ascension of a Republican majority in the US Congress; the Clinton Administration's policy towards Haiti; an increasing incidence of property takings in the Western Hemisphere by Latin Governments; and the Cuban regime's search to replace lost Soviet subsidies.

President Clinton, after having campaigned in 1992 to the right of President Bush on Cuba and in strong support of the *Cuban Democracy Act*, had made few, if any, efforts to promote democratic change in Cuba, or even to call attention to the repressive reality of Castro's Cuba. This lack of interest in Cuba can be explained in large part by Administration personnel. Many of those in the Administration responsible for Cuba policy (or who attempted to influence Cuba policy) had been openly critical of US efforts to isolate the regime or promote the removal of Castro.⁵ In fact, every signal from the Administration's political

appointees prior to 1995 indicated rapprochement with Castro.⁶ Except for the question of containing the large outflow of Cubans attempting to flee the regime, administration appointees primarily saw US policy towards Cuba as little more than a vestige of the Cold War which needed to be revised.⁷

The Clinton Administration's inactivity on Cuba contrasted sharply with its aggressive policy towards Haiti. In Haiti, the Administration was willing to exert the diplomatic, political, and military capital and credibility of the United States, as well as risk American lives, to restore to power a person perceived to be an anti-American demagogue, albeit a democratically-elected one. The Administration worked to form an international coalition, applying the necessary leverage to achieve Aristide's restoration. Jeane Kirkpatrick, a leading Republican foreign policy thinker, asked,

What has happened to the Clinton administration's enthusiasm for promoting democracy in the Caribbean? When Haiti was the issue, "restoring democracy" had top priority. The Clinton team was indefatigable in pressing demands before the United Nations Security Council — to tighten an already punitive economic embargo, to further isolate the country, to secure a mandate for the use of force to remove Haitian 'dictators' who constituted a threat to international peace and security.⁸

The Administration's willingness to pursue democratic objectives in Haiti at any price was not lost on Congress as 1994 ended.⁹

A second factor prompting congressional action was a growing trend, throughout Latin America, of governments taking American-owned property without compensation or adequate domestic remedies to resolve disputes. As 1994 ended, American citizens had had over 1,400 properties valued at \$600 million taken in Nicaragua. There were at least 25 claims in Costa Rica, and some 20 takings had occurred in Honduras.¹⁰ These, when combined with the 5,911 certified claims involving American properties taken in Cuba, made the Western Hemisphere the worst offender in terms of uncompensated property takings. American citizens, victimized by these takings lobbied the Senate Foreign Relations Committee, generally, and Senator Jesse Helms (RNC), specifically, for remedies and assistance in resolving these disputes. In many instances, the US State Department was the subject of citizen complaints as much as the foreign government that had actually taken the property.¹¹

Moreover, while the Clinton Administration remained inactive on Cuba (and on the general issue of property confiscations), Castro was engaged in an aggressive international campaign to sell the idea that Cuba was opening economically and the United States was on the verge of lifting its embargo. Castro had been hit hard with the loss of between \$5-6 billion in Soviet subsidies, and was searching for a means of making up the difference. This effort entailed an opening for Cubans to engage in "self-employment"¹² and a campaign to promote foreign investment.¹³ For the foreign investor, Castro offered a labour force watched over

by state security and an infrastructure that consisted of a large number of properties taken from American citizens in violation of international law and, arguably, Cuban law. While pursuing these economic openings, the regime continued its efforts to “perfect a system in which repression of the Cuban people serves as a foundation for the governments maintenance of power.”¹⁴

Congress: Where to With Cuba Policy?

Senator Jesse Helms, Chairman of the Senate Committee on Foreign Relations, and Admiral (ret.) James “Bud” Nance, the Committee’s Republican Chief of Staff, approached the question of Cuba with no preconceived notions as to what course to follow, except that they did not wish to legitimize or subsidize the Castro regime. They merely had a “gut instinct” that the issue needed reinvigorating. As the staff member responsible for Western Hemisphere issues, I was asked to begin considering policy options and the political environment to achieve any course of legislative action.¹⁵

One question that those favouring lifting the US embargo could not answer was: why is Castro’s number one priority the embargo’s end? Even critics of the embargo conceded that this was (and remains) at the top of Castro’s foreign policy objectives. It is the regime’s top priority because the regime calculates that not only can it survive such a US policy change, but can actively profit from it.¹⁶ Such a policy shift would provide both the hard currency the regime needs and the legitimacy Castro wants.

A second question involved the record of engagement. The argument is that US policy has failed; that after nearly 40 years and eight US Presidents, the policy has not succeeded in removing Castro or moderating his behaviour. Castro is still in power, true, and his internal behaviour remains as repressive (but more sophisticated) today as it was in its infancy. However, there is another record of relations with Cuba that bears equally upon this debate: the record of over three decades of engagement by other nations with Castro’s Cuba. Frankly, that record has been no more successful in removing Castro or moderating his repression.¹⁷ Rather, this engagement, arguably, has supported his regime and undermined the effectiveness of the US embargo.

Given this lack of any discernible positive results of others’ engagement, the question is, why, then, are others in Cuba? I asked this of foreign embassy personnel and foreign and US businesspersons. In 1994, the consistent answer I received was that they were in Cuba awaiting the lifting of the US embargo, for the advent of a US market in Cuba, not because of any existing Cuban market, or because they sought to democratize the regime.

This led to a fourth inquiry, how has Castro structured engagement and what assets, facilities or activities are on the “market”? In Cuba, foreign investors work

through the central government, who determines the investor's labour force. The foreign investor pays the government, in dollars, somewhere between \$400 and \$900 per month for each Cuban employee. The government then pays that employee roughly the equivalent of \$10-20 a month. One analyst concluded that this "wage confiscation scheme" is the Cuban state's "most important source of earnings from foreign joint ventures" and that the informal wage supplements given directly to workers by foreign investors "means little more than putting food in hungry stomachs, allowing the favoured workers to get by somewhat better than the impoverished rest ... [and that] its overall impact on empowerment is trivial."¹⁸ The Cuban government gets much-needed hard currency, the investor gets a labour force watched over by state security, and the workers get a pittance.

The structure and implementation of foreign investment in Cuba has both a political and legal dimension: it supports the regime and ratifies the taking of property. The infrastructure that Castro offers consists of a number of properties taken from American citizens in violation of international law.

This creates a "Cuba precedent" that undermines international law on property takings. If Castro's Cuba can nationalize and/or expropriate properties, deny the rightful owners any compensation or redress, and turn those same entities over to other private concerns which can operate against the interest of the rightful owner, then why cannot other nations do the same? Since international property settlements are based primarily on customary international law, which itself is based on State behaviour, then European, Asian, Canadian, and Latin American acceptance of that situation raises the question as to whether Cuba's takings are acceptable behaviour. The answer seems to be that, if the takings are at the expense of US citizens, then it is proper to trample on their rights. This situation was unacceptable to Senator Helms and the other authors of the LIBERTAD Act — the LIBERTAD Act was a clear rejection of an arguable evolution in international law legitimating the Castro regime's property takings or similar takings by other governments.

A lifting of the US embargo, it was concluded, helped the regime, and the engagement policies of other nations made them little more than accomplices to the regime's survival and wrongful exploitation of Cuban citizens and Americans whose property had been confiscated without compensation. The original bipartisan coalition of co-sponsors of the LIBERTAD Act recognized that any US policy shift that might extend the Castro dictatorship was immoral. But they also recognized that the status quo — that is, the policy of doing nothing — was equally intolerable. The objectives of the LIBERTAD Act, then, were to break the status quo through a proactive American policy to encourage the demise of Castro's repressive regime, to lay the foundation for American support for Cuba's democratic transition, and to encourage a modification in international property law that did not give the confiscating government the latitude being exercised by Castro. The question remained how to translate these objectives into law.

The Legislative Process

Congress is about perceptions and math, politics and policy. The perceptions involve power, namely who has it and who exercises it. The math involves a simple equation: how does one get 218 House members and 60 Senators (enough to break a filibuster) to agree on a specific course of action or policy. The politics involves how to get that objective through Congress and signed into law; the policy is what one hopes to achieve by passage of the legislation.

Hobbes said that “the reputation of power is power.” And it is power that was assumed to have been transferred from the President to Congress with the election of 1994. But power is not simply an institutional arrangement within Congress; it is also something that is embodied in certain members of that institution, some by title (such as the Speaker of the House), some by a willingness to exercise whatever prerogatives the institution accords them. One such person was deemed to be Senator Jesse Helms of North Carolina, a conservative Republican closely identified with Ronald Reagan and anti-communism. Known as “Senator No,” it seemed that Helms had one quality that Washington had trouble dealing with: principles. The issue for Helms was not popularity or praise from the *New York Times* and *Washington Post*. He was willing to use Senate rules to influence or block policy. Consequently, his elevation to the Chairmanship of the Senate Foreign Relations Committee gave the drafting of the LIBERTAD legislation credibility and allowed for its serious consideration by the policy and political communities.

But Congress is also a math problem. In this sense, the other part of LIBERTAD was the effort to create and maintain a legislative coalition, a process likened to herding cats,¹⁹ capable of garnering majority (and presidential) support. As such, efforts were made to include as many different elements in the legislation as possible. This was the reason for an omnibus bill. A number of ideas in LIBERTAD had either been introduced in earlier Congresses as individual pieces of legislation, or offered as amendments to non-Cuba legislation. The bill was conceived as a unifying and mobilizing instrument within Congress, as well as an expression of US policy. The core co-sponsors were each given a stake in the legislation and had a reason to recognize that the whole was greater than its parts — in the sense that individual pieces of legislation supported by one or two members would not be as successful as one package representing the concerns of a larger number of members, including several key committee chairmen.²⁰ Such a “package deal” tied the various members into some provisions with which they may not have totally agreed if considered by itself. But with everyone’s fate tied together, mutual support became the norm. Intentionally, we set out to make LIBERTAD the only “Cuba game” in town, a situation that would eventually work to the legislation’s advantage.

In keeping with this strategy, Title I, “Strengthening the International Sanctions Against the Castro Government,” included a number of items previously

approved by the House of Representatives, either in committee or in amendments on the floor. Other sections were the result of opportunities that arose during the drafting of the legislation. For instance, information provided to the committee regarding activities by international financial institutions (IFIS) to provide assistance to Cuba,²¹ and Russia's intelligence and military relationship with Cuba, prompted insertion of language relating to these issues. In the case of the intelligence facility at Lourdes, Russia and Cuba announced agreement that Russia would exchange \$200 million in fuel and materiel for continued use of the facility, which is targeted at the United States,²² during the drafting phases of the legislation. Hence, the section conditioning US aid to Russia on that nation's aid to Cuba for use of the Lourdes facility.

Title II, "Assistance to a Free and Independent Cuba," was largely the Menendez legislation from the 103rd Congress, which the Administration had worked to keep bottled up. This title was significant for its clear indication that LIBERTAD was a bipartisan piece of legislation. But more importantly, it was an opportunity to force the Executive Branch to think about and articulate how the United States was prepared to deal with and assist a post-Castro Cuba — something that neither the Clinton Administration nor any of its predecessors had been willing to do on their own initiative.

Titles III and IV dealing with property rights were the new, and most controversial, provisions. As noted earlier, Cuba's strategy to attract foreign investment involved the regime's use of properties confiscated from US nationals, including citizens who were naturalized after immigrating to the United States or who were the target of property takings because of their political beliefs. In 1994, in the conceptualization stages of the LIBERTAD Act, representatives of US citizens with property claims against the Cuban Government expressed concern to the Senate Foreign Relations Committee about the Castro Government's willingness to provide economic benefits to third-parties who were willing to invest in properties that had been confiscated unlawfully from US citizens. The most prominent cases involved the Canadian corporation, Sherritt Inc., and its use of nickel mining properties and facilities confiscated from an American corporation, and the efforts of the Mexican investment group, Grupo Domos, to manage the Cuban phone system, the infrastructure of which also was confiscated from a US national. A third case involved the British company, Unilever. Unilever was reported to be exploring the use of facilities which were confiscated from US nationals Proctor & Gamble, Inc., Colgate Palmolive, as well as a Cuban family, and for which no compensation or other redress had been provided.²³ There was also information about the possible development of other lands confiscated from American nationals for the benefit of Cuba's tourist infrastructure.²⁴

Throughout Congress' consideration of the LIBERTAD bill, the Administration's point agency for the legislation was the State Department. While State was consistent in its objections, no clear message came from the White House; rather, conflicting signals came from that end of Pennsylvania Avenue. For instance, in a

13 April 1995 CNN interview, President Clinton said “I don’t know why we need any more legal authority than we already have.” But he did not reject the legislation outright, which would have been a far stronger signal. Further, the White House political people were not as critical or dismissive of the legislation as was the State Department. The message appeared to be that the White House would let State fight as long as it could, but if the bill landed on the President’s desk, there was no guaranteed veto. Regardless, the congressional strategy was to keep pushing forward, trying to take legitimate Executive concerns into account and balance the need for presidential flexibility with the congressional need to ensure that any policy was honoured in its spirit rather than in the breach.

While LIBERTAD was not meant as a “political” bill (meaning to gain votes for Republican candidates), it always had a political dimension, especially given that the Senate Majority (Republican) Leader Bob Dole was the expected Republican presidential nominee in 1996. The drafters of LIBERTAD were aware of the course taken by the Cuban Democracy Act: President Bush originally had opposed that legislation, arguing that it negatively affected his flexibility to conduct foreign policy and expressing concerns about the restrictions on both shipping and subsidiary trade with Cuba. However, as election-day 1992 drew nearer, Bush was confronted with both the policy and political implications of that legislation. After candidate Clinton endorsed the bill, Bush, who was then vacationing in Maine, announced he would support an improved version of the bill.²⁵

The original time-frame was to have LIBERTAD enacted during 1995. It was hoped that the momentum of the Republican majority, the intense focus on the “Contract with America” (of which Cuba was not a part), and the general disarray in the Clinton Administration would result in a relatively quick enactment. But the sponsors also were quite prepared to wait out the White House, letting the heat of November 1996 work its influence on the President and those advising him. Our calculation was that Clinton, having campaigned to the right of Bush on Cuba in 1992, would feel the pinch if he did not support the bill.

In February 1996 two civilian aircraft were shot down by Cuban fighters. It has become conventional wisdom to declare that, until that moment, LIBERTAD was dead and that Castro, through some Machiavellian ploy, deliberately shot down the planes in order to have LIBERTAD approved, the objective being to distract attention from his internal behaviour and divide the US and its allies.²⁶ In fact, the opponents of LIBERTAD had made two mistakes that became dispositive in the wake of the shoot-down.

The first mistake was to convince themselves that the bill was dead, despite every indication from the bill’s supporters that they were looking for avenues to get it to the President. When Helms had to drop the right-of-action provisions after failing, despite Dole’s support, to break a Senate filibuster in September 1995, the opponents declared that provision beyond resurrection. The “death watch” for the entire bill was considered over when the naming of the House and

Senate members to a “conference committee” (to reconcile the two versions of the bill) became entangled with Helms’ other legislative effort to reorganize the State Department and efforts to delay ambassadorial appointments. As November 1995 ended, the opponents declared the battle won, which contributed to their second mistake.

The shoot-down left the Administration and its congressional allies on Cuba with three options: support military action, do nothing, or support the LIBERTAD legislation. Senator Nancy Kassebaum (R-Kansas) had opposed the bill throughout and had actively worked with the Administration and other anti-embargo Senators to defeat it. But after the shoot-down, she supported the legislation. Outlining her reservations about general US policy and specific aspects of the LIBERTAD bill, and holding Castro responsible for bringing the United States to such a point, she told her colleagues:

I would prefer that we enact something other than this bill. But, Mr. President, that is not an option.... Mr. President, there is no other option before this body for those of us who believe strongly that the United States must respond to Fidel Castro’s latest outrage. Despite its faults, this legislation is the only game in town. For that reason, I will support it.²⁷

Thus, the opponents’ second mistake was that their strategy failed to offer any alternative if something happened. No one had factored the Castro regime into their calculations, at least not beyond another flood of refugees. All were shocked by the shoot-down, but the difference was that the supporters of LIBERTAD were not surprised that Castro was capable of such behaviour; the anti-embargo crowd seemed both surprised at the specific act and that the regime could act as it did. Hence, it had not foreseen any need to have a legislative stand-by strategy, even to respond to something as simple as a persistent effort by the LIBERTAD’s supporters who refused to pronounce the bill dead.

While conferees were not formally named until the end of 1995, staff consultations had progressed in expectation of a conference. Long before the shoot-down, congressional staff had agreed upon the outlines of a compromise and had started the process of sounding out the Administration on possible modifications that would assuage its primary concerns. One area specifically involved the Title III right-of-action provision. In early February 1996, Senate and House staff agreed to broach the idea of a waiver for the lawsuit sections. While that provision had been struck from the version of the bill approved by the Senate, the title was still the position of the House. House and Senate rules give wide latitude to conferees over legislation in disagreement (meaning legislation in which there are disagreements between the House and Senate versions). The rules allow for any resolution of the language that is within the scope of the conference (and the Constitution). This can include dropping sections in disagreement, having one body accept the other body’s language, negotiating some language in between the two versions,

or writing totally new provisions. On Title III, for Senator Helms, in particular, preservation of the principle of a remedy for American citizens remained a priority. As such, he was willing to toy with the presidential waiver, although he generally opposed such mechanisms.

The waiver alone did not necessarily guarantee White House or State Department support, or the votes of 60 Senators to end a filibuster of the conference report.²⁸ It did, however, signal that the bill was still alive as far as the authors were concerned and that they were looking at ways to move the legislation.²⁹ One option was to re-draft the bill as an amendment and force Senate consideration through that avenue. In the end, these other strategies became moot. With the shoot-down, the Administration's easiest course of action was acceptance of LIBERTAD. At that point, the conference was convened, with LIBERTAD supporters and the Administration hashing out some final details, including congressional acceptance of the President's ability to waive the right-of-action and the Executive's acceptance of a codification of the embargo.

In talks with the Executive Branch officials, it was clear that they felt that they had no alternative but to make concessions. The codification language provoked as many comments as did the inclusion of any right-of-action language. For foreign embassies, especially the Canadian and European ones who had cabled their governments "don't worry, it's dead" messages two months earlier, the emergence and enactment of a stronger LIBERTAD Act led them to say that Castro was the master of events. It appeared they needed an excuse for either their lack of understanding of the US policy process or their unwillingness to heed repeated signals from LIBERTAD sponsors that the bill was not considered "dead" by them. It also showed that Castro remained a variable beyond anyone's predictive power.

There are two last points about the LIBERTAD Act that merit attention, and continue to be the subject of speculation. The first involves the role and influence of the Cuban-American community and American property claimants. Quite often, Cuba policy is analyzed as little more than a "puppet show": the policy is a marionette with strings pulled by "Miami." A number of prominent Cuban-Americans and Cuban-American organizations, including the Cuban-American National Foundation (CANF), supported the LIBERTAD Act. And a number of prominent lawyers involved in the foreign property claims field contributed legal advice; some of these lawyers represented parties with claims to confiscated Cuban properties. But the property provisions came as much from events in Central America, as Cuba. Support of Cuban Americans and property claimants was desired by the bill's authors; they were important allies, but they were not the driving force on either the bill's content or its legislative trajectory. As with the internal congressional dynamics, LIBERTAD sought to mobilize outside support and force recognition that both the Cuban-American and property claimant communities were stronger together than individually. Neither group got the exact piece of

legislation that each had wanted. And each had input into the process — committee staff had an open door policy, including for the bill's opponents — but it was the Chairman who made the ultimate decision on the substance and form of the legislation.

One of the interesting dynamics in the process involved the question of property rights. Jorge Mas Canosa, CANF's founder and president, was a reluctant supporter of the property provisions. But once he saw the enthusiasm for the provisions from the larger Cuban-American community, CANF supported the bill wholeheartedly. In fact, when the Senate forced Helms to drop those provisions, the CANF lobbyists stopped lobbying and headed back to Miami. The surprise for both the Cuban-American leadership and many in Congress was the resonance the right-of-action provisions had within the Cuban-American community; by including them in the right-of-action, we ensured their support and required the community's leadership to catch up with its followers.

As for the certified property claimants,³⁰ they wanted a bill that only applied to their properties. Senator Helms, however, firmly believed that the same rights apply to all citizens regardless of the date or manner a person received his citizenship. In the case of American claimants in Nicaragua, Helms has strongly supported the right of natural born and Nicaraguan Americans to receive the full support of the US Government in resolving their property disputes. Consistent with that view, he insisted that the property provisions establishing a private right of action in US domestic law and invoking the right of the US to control immigration be available to all US citizens victimized by Castro's takings, especially since the right-of-action provision was a private right that did not rise to the level of State espousal.³¹

The second issue is how the LIBERTAD Act was drafted. Critics, especially lawyers, have described the bill as "kindergarten drafting" because it is vague in its definitions and unclear in the exact parameters of what constitutes "trafficking." One of the premises of LIBERTAD is that lawyers and businessmen like "bright line" rules; they want exactitude. The intent of the Act was not to make life easy for those who want to invest in Cuba, or for their lawyers. In fact, it is meant to deter investment. Even so, in the case of Helms-Burton, the "bright line" rule is very simple: If an investor is 100 percent sure that a property was not taken from someone who was a US citizen as of 12 March 1996, then they can invest without fear of potential repercussions.

They also have nothing to fear if they are not subject to the jurisdiction of US courts. However, given the reality of Castro's takings, many investors cannot get such a guarantee as to the citizenship of the owner from whom property was taken by the regime and many businesses engaged in multinational endeavours are subject to US jurisdiction. Hence, the lack of clarity has a purpose: to create uncertainty. The six-month waiver also contributes to that uncertainty, for what if a US President just does not decide to invoke it? Investing in Cuba is a roll-of-the-dice anyway; the LIBERTAD Act was meant to increase the risks.

What has been LIBERTAD's Impact?

As we have seen, in late 1994, there was a listless US Cuba policy, an Administration that could and would apply US leverage when the cause suited it (e.g., Haiti), a Cuban regime desperately seeking new sources of hard currency, and a growing disrespect for the property rights of American (and other foreign) citizens by Western Hemisphere nations. The LIBERTAD Act changed this situation dramatically.

The intensity of the Castro regime's reaction to the law is the first litmus test of determining the impact of the policy. That the LIBERTAD Act has been effective is supported by the intensity of the Castro regime's efforts against it. Castro is not gone yet, but he is being squeezed. And the "squeeze" includes both US sanctions and initiatives like the *Cuban Solidarity Act* (Solidaridad) and other efforts to get aid to the Cuban people. The LIBERTAD Act's impact should be judged not only in terms of where we are today, but also where we might have been without the LIBERTAD Act. Further, the results should be judged in terms of whether the Act has begun to meet some of the goals that the authors set, not solely in terms of outsiders' reactions.

Specifically, The LIBERTAD Act sought four broad policy objectives. These were (i) to halt the drift in US policy; (ii) to stimulate global isolation of the Castro regime; (iii) to shut-off Castro's escape route by complicating his foreign investment schemes (and, in so doing, protect the property rights of American citizens who had been victimized by Castro's exploitation of wrongfully taken property and elevate international attention on property rights); and (iv) to have the United States prepare for the inevitable transition. In some form, each of the LIBERTAD Act's four main objectives is being achieved.

First, the LIBERTAD Act has done more than stop the drift in US policy. The law has invigorated US policy and produced a level of effort on Cuba that is almost unprecedented — and which many would never have expected from the Clinton Administration. Since the bill's enactment, we have seen the most sustained US policy focus on Cuba in nearly three decades.

The drift in US policy was halted, in part, by the codification of the embargo. While the President retains flexibility in implementing provisions of the Cuban embargo, it cannot be suspended or lifted in its entirety until real political and economic reform is underway in Cuba. Congressional frustration and dissatisfaction with the implementation of the economic embargo was specifically noted in the Conference Report which accompanied the LIBERTAD Act.³² Consequently, approval of the multifaceted LIBERTAD Act, like the *Cuban Democracy Act* before it, shattered any illusions that US policy resolve might be softened. The Act's second overall objective was to stimulate global sanctions and increase the international pressure on the Castro regime. The authors of the LIBERTAD Act favoured an international embargo against Cuba similar to that implemented against the

Haitian military regime, but they also understood that pressure could be exerted on the Castro regime in various ways beyond such an embargo. For a regime that is overly sensitive to public criticism of any kind, any number of avenues that increase international attention on its behaviour can be seen as a sanction and a move towards isolation.

It is remarkable, but fair, to say that until the European Union's (EU) adoption of a "Common Position" in December 1996, the European country that had done the most to help the cause of freedom in Cuba, albeit unintentionally, was none other than the Soviet Union. Its collapse deprived Castro of billions in subsidies, increasing the pressure on the regime to allow some economic space. While Castro and his government have referred to these economic steps as "tactical" and "emergency measures," these so-called "reforms" were forced by the failure of socialism.

An important event on the international scene, that happened to coincide with LIBERTAD's enactment was the election of José Mariá Aznar as Prime Minister of Spain. The fortification of US resolve on Castro's Cuba through the LIBERTAD Act combined with the Aznar government's honesty in addressing the brutality and repression of Castro has changed the international focus. Unlike the Felipe Gonzalez government which seemed determined to rationalize away Castro's misdeeds, Aznar has not shied away from publicly criticizing Castro's repression.

Although the European objections to the LIBERTAD Act continue, the subject of Cuba as something other than a place to sit on the beach has begun to enter into their policy calculations. Since the enactment of the LIBERTAD Act, there have been unprecedented political and diplomatic initiatives taken by the international community on Cuba. The most notable initiative remains the adoption of a "Common Position" by the EU. On 2 December 1996, EU member states and the European Commission committed themselves to pursue with the Cuban Government — both publicly and privately — respect for human rights, reform of the criminal code, release of all political prisoners, an end of harassment of dissidents, and compliance with international human rights conventions. This position clearly conditioned future European relations with Cuba on specific and concrete progress towards democracy. The position also requires that EU member states channel humanitarian aid to Cuba through NGOs instead of the Cuban government.

While respect for, and implementation of, the EU "Common Position" has been uneven among EU member states, it remains highly significant that such a document was promulgated. The fact is that the EU policy was codified, in effect, into a legally-binding document after the enactment was partly as a result of the LIBERTAD Act. Other actions coming in the wake of LIBERTAD's enactment include:

- The Brazilian Foreign Minister, in May 1998, held what was described as an "unprecedented meeting" with Cuban human rights activist Elizardo Sánchez. The Brazilian minister said human rights was a "heartfelt and priority policy" for President Cardoso.

- The British Government, in late 1997, announced it would step up its human rights activities in Cuba; and collectively, EU member states with embassies in Havana created a Working Group on Human Rights.
- The November 1997 Ibero-American summit saw unprecedented public criticism of Castro for not fulfilling promises he made at the 1996 summit in Santiago, Chile. While not expecting Castro to change his stripes, many were surprised at the number of Latin American officials who were prepared to criticize Castro publicly for his failure to live up to his political commitments. (During the November 1996 Ibero-American summit, Castro signed the communique calling for democracy throughout Latin America.)
- Symbolically, Nicaragua's President-elect Arnoldi Aleman did not invite Fidel Castro to his inaugural in January, 1997.
- The International Confederation of Free Trade Unions, Europe's largest labour confederation, issued a stinging report condemning labour conditions in Cuba's "worker's paradise." The report calls for truly independent unions and enhanced worker rights, and strongly supports adherence to "best business" practices by foreign investors in Cuba.
- The international business community, for the first time, is serious about the development and implementation of "best business practices" for investors in Cuba. While the ultimate impact of such guidelines is open to question, they are a positive step forward. Nonetheless, any "best business practices" must mandate that Castro not control an investor's workforce. Cubans should be free to work for whom they want, not for whom Castro wants them to work. The serious discussion of "best business practices" did not emerge until after LIBERTAD was on the books.

It is significant that no comparable list of international and/or multilateral activities exists before the enactment of the LIBERTAD Act. When the LIBERTAD Act was introduced, no one would have predicted this level of pro-human rights and pro-democracy efforts toward Cuba. The LIBERTAD Act raised the stakes on Cuba and has advanced US strategy to win unprecedented multilateral support for common goals in Cuba.

Another objective of the Act is to prompt the US Government to prepare for Cuba's inevitable democratic transition. Prior to the enactment of the LIBERTAD Act, the US Government had done no formal planning to support Cuba's transition. It had contingency plans to deal with another Mariel exodus, but no plans to address the broader and more important question of democratic change in Cuba.

The LIBERTAD Act's authors wanted to send a clear message to the Cuban people that the United States is prepared to assist fully a democratic transition on the island, while respecting the Cuban people's right to self-determination. Indeed, the Act allows the President to lift the embargo, without further congressional action, once he determines that a democratic government is in place in Cuba. On 28 January 1997, the President released a report on "Support for a Democratic

Transition in Cuba,” as mandated by the LIBERTAD Act, outlining the areas where the United States is prepared to help the Cuban people meet the challenges of democratic governance. As President Clinton noted in his preface, “It is my sincere hope that it will contribute to a better understanding of the international community’s potential role in a transition to democracy and underscore the strong commitment of the American people to support the Cuban people when they embark upon that process of change.”

Not surprisingly, Castro’s reaction to the plan was immediate and “indignant,” reported the *Miami Herald*. “Comparing Cuba to a lamb facing a US dragon, Castro declared, ‘You will never devour this lamb ... because this lamb is smarter than you, and its blood has and will always have only venom toward you.’”³³ While subject to review and adaptation to an evolving situation on the island, the plan represents the first significant effort of the US Government to deal with Cuba as something other than an immigration problem.

Finally, there is the Act’s objective to complicate Castro’s quest for hard currency while promoting the protection of property rights. In discussing the objectives of the LIBERTAD Act, I have made reference to the bill having a “macro” and a “micro” component when it comes to property rights. The “micro” aspect was the effort to shut off Castro’s escape route by complicating his foreign investment schemes. In this area, the LIBERTAD Act has scored some successes.

For example, prior to first the introduction and then enactment of LIBERTAD, the number of joint ventures was increasing steadily: Cuba entered into 11 such joint ventures in 1991, 33 in 1992, 60 in 1993, and 74 more in 1994. Just the introduction of the LIBERTAD bill in the US Congress in 1995 sent a chill through the foreign investment community: In 1995, only 31 new ventures were formed, and this at a time when Castro was trumpeting a new foreign investment law.³⁴ The drop in the number of new joint ventures from 1994 to 1995 was attributable, in part, to the LIBERTAD bill.³⁵

Since its enactment, reports continue to show that the LIBERTAD Act’s objective to complicate Castro’s foreign investment schemes is working. The Castro government claims to have entered into more than 50 new joint venture agreements in 1996. While this number is up from the 1995 level, there remains uncertainty in the international investment community as to whether Cuba is worth the risk and it remains difficult to verify Cuban Government statistics.³⁶ Cuban officials, for their part, have acknowledged that the LIBERTAD Act is working.³⁷

Since enactment of the LIBERTAD Act, at least 19 companies have ended or curtailed their business operations in Cuba (according to the State Department and press reports),³⁸ including the following:

- Banco Bilbao Vizcaya, a Spanish bank, has backed out of co-financing with ING packages worth nearly \$60 million a year. This action forced Cubans to accept terms from other European investors at rates as high as 20 percent.

- ING Groep NV, a Dutch banking and insurance group, announced on 4 July 1996, that it was ending its involvement in the Cuban sugar industry after it was discovered that 45 mills the group financed were claimed by Americans. It also backed out of co-financing with Banco Bilbao Vizcaya packages worth nearly \$60 million a year.
- While Cemex, a Mexican cement company, owned no property in Cuba, it did have an agreement to market Cuban-produced cement and provide technical assistance to the Mariel cement plant. Cemex cancelled its contract with Castro and withdrew its personnel
- Occidental Hotels, a Spanish hotel firm, pulled out of a contract with Cuba to manage four hotels in Varadero.
- Paradores Nacionales, a Spanish hotel firm, suspended a \$16 million deal to create and manage eight hotels totalling 500 rooms.
- Redpath Sugar, a Canadian sugar producer and the largest Canadian importer of Cuban sugar, announced, in March 1996, that it would no longer use Cuban sugar. Redpath is a subsidiary of Tate & Lyle International (UK).
- Aéro República, a Colombian airline, ended its twice weekly flights to Cuba.
- Gencor, a South African mining company, has put on hold its operations in the province of Pinar del Rio.
- Grupo Vitro, a Mexican glass conglomerate, initially had plans to start a glass factory, but has since announced that it will not continue the project.
- Petroleros Mexicanos (PEMEX), the Mexican national oil and gas company, has halted its project involving the Soviet-built oil refinery at Cienfuegos.

The Act's intent to deter third-country nationals from seeking to profit from wrongfully confiscated properties and to deny Castro a source of hard currency is working. Both the right of action (Title III) and the denial of entry (Title IV) provisions have complicated the math for those who are attracted to the unsavoury benefits of doing business in Castro's Cuba. These provisions also have had the effect of elevating international sensitivities about property rights, generally, and the rights of American property claimants, specifically.

Although President Clinton suspended the right of American citizens to bring suits under Title III, he did allow the civil wrong of "trafficking" — the unjust enrichment of a third party through the unauthorized exploitation of a property wrongfully taken from an American citizen — to go into effect. This historic step recognized the harm that continues to be perpetrated against American citizens by the actions of Castro and those who would seek to benefit economically at the expense of a property's rightful owner.

While many in the international community have cried "foul" about these provisions, the debate generated has prompted increasing recognition that international law lacks effective mechanisms to protect property rights and that the system

needs to evolve to better defend these rights. The most significant step in this regard has been the 18 May 1998, EU-US “Understanding with Respect to Disciplines for the Strengthening of Investment Protection” (also known as the EU-US Property Disciplines).

In April 1997, the EU and US agreed

to step up their efforts to develop agreed disciplines and principles for the strengthening of investment protection, bilaterally and in the context of the Multilateral Agreement on Investment (MAI) ... [with these disciplines seeking to] inhibit and deter the future acquisition of investments from any State which has expropriated or nationalised such investments in contravention of international law, and subsequent dealings in covered investments.³⁹

The fact that the EU was willing to discuss property “disciplines” confirmed one of the underlying assumptions of the LIBERTAD Act — that current international property standards were inadequate. The disciplines, as negotiated, appear to further confirm, and affirm, the LIBERTAD Act’s finding that

the international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property (sec. 301(8)).

The disciplines should have an additional chilling effect on investment in Cuba, specifically. The EU-US Property Disciplines apply, *inter-alia*, to a country with a record of repeated expropriations in contravention of international law, as viewed by the United States or an EU member, in which case each party to the disciplines is expected to make diplomatic representations against the expropriating state, as well as deny government support or government commercial assistance for “covered transactions” in expropriated property. This includes a denial of government loans, grants, subsidies, and guarantees.⁴⁰ This would be the first instance of any multilateral mechanism being put in effect for property claimants.

The EU and US also agreed to establish a registry where claimants may file their claims regarding property taken in contravention of international law. Filed claims must be reviewed by the parties to the Disciplines before proceeding with government assistance to a project involving that property. The registry would represent the first time that an international mechanism has been established through which claimants could provide notice of an expropriation/confiscation claim.

US officials argue that this is the best deal the US can get; that, while it does not reach investments made prior to 18 May 1998, it establishes an enforceable mechanism by which to deter investments in properties taken in contravention of international law. Under Secretary of State Stuart Eizenstat testified before Congress that for the first time the US had established multilateral disciplines among major capital exporting countries to inhibit and deter investment in properties which have been expropriated inconsistent with international law. While the EU-

US disagreement over Cuba was the genesis of the disciplines and its provisions on states with an established record of repeated expropriations, and arguably apply to Cuba, the global extent of their applications cannot be overlooked.

Congress has raised several concerns about the disciplines conceptually and how they will be implemented. For example, the United States is required not only to recognize investments prior to 18 May 1998, but must also accept that those investors remain eligible for governmental commercial assistance. And, the United States must agree that wrongfully taken property remains immune from sanction in perpetuity (or, effectively, until a new Cuban government decides how to deal with Castro's confiscations — a decision, which given Castro's efforts to cloud title, may cause further complications and lead to charges of a wrongful taking of the rights of the Castro-period foreign claimant).

Some in Congress, including Senator Helms, have argued that the United States, in the case of Cuba, should not condone wrongful takings that occurred under the previous or current regimes. On the contrary, the clearly targeted, discriminatory takings engaged in by the Castro regime against both Cuban and foreign nationals should be taken into account by the United States, the EU, and the disciplines. The United States should not be engaging in a process that allows the international community to legitimize the taking of property against norms that reject governmental actions against individuals based on race, religion, or personal beliefs.⁴¹ Congress and the Administration continue to discuss the disciplines as this is being written.

Conclusions

United States policy towards Cuba, once neatly defined in terms of the "Cold War" against Soviet communism, has become less clear to many outside the American political system. Having originated as a response to the Castro regime's internal repression and the confiscation of American-owned properties, the embargo's rationale was later adjusted to use it as an instrument directed more at Moscow than Havana. Its objective became to increase the costs of empire to the Soviet Union. In this regard, the isolation of the island from its natural economic partner (based on geography) exacerbated the contradictions of the Soviet system. As one Soviet official concluded, "the [Soviet] alliance with Cuba had been an enormous, constant drain on the Soviet Union's national resources and was one of the factors that accelerated its economic and political demise."⁴²

With the Soviet Union's demise, and the attention of the US executive branch on events in Central and Eastern Europe, congressional frustrations increased as opportunities were lost to effect the same type of regime change in Havana. Whether these opportunities really existed remains open to debate. But members of Congress concluded that US inattention to Cuba — or the wrong kind of attention — was contributing to the continuation of the Castro regime as its patrons and

benefactors were falling. In the new order emerging from the Cold War, with its emphasis on “geoeconomics,”⁴³ a tightening of the economic pressures on Cuba was expected to force Castro either to open the system or force him from power altogether.

To some extent, this pressure has contributed to change in Cuba. With the loss of Soviet subsidies and no clear or sufficient alternative with which to replace them, Castro has been forced to reduce the size of the military and the regime’s military adventures, to reduce the state payroll by an estimated 800,000, to open up farmer’s markets, and allow for some autonomy for agricultural co-operatives. He has also legalised the American dollar as well as self-employment. Although it retains a secret police, out of necessity and as a tactical manoeuvre, the regime has sought to attract foreign capital and present itself as a venture capitalist with a socialist face and vocabulary.

These changes have prompted analysis of US policy towards Cuba in terms of a Cold War relic, driven by Cold Warriors and exiles stuck in a time-warp, or as simply the product of “special interest” exile politics for politicians who see Castro as a “freebie.”⁴⁴ The presumption is often that US Cuba policy has little, if anything, to do with the behaviour of the Castro regime, but is rather the victim of a mindset bounded by the Potomac and Anacostia Rivers (which partly separate Washington, DC, from Maryland and Virginia), if not Miami, Florida, and Union City, New Jersey.

First, if the policy is a relic, then so is the regime and system at which it is directed. Castro and the Cuban political and economic structure remain largely relics. This prompts the question that if the Cuban relic has not changed in any fundamental way, then why should US policy change significantly? Second, that representational notions underlying American democracy are all right for US policy in places other than Cuba seems to be a given. Irish-Americans have a large influence on US policy toward Ireland; Greek-Americans are a strong factor in US Mediterranean policy; African-Americans are a force in US policy towards Africa, and the list could go on. Somehow when it comes to Cuba, the same deference given other hyphenated Americans is determined to be wrong-headed. Representation and involvement through legal electoral means by Cuban-Americans is deemed to be unacceptable.

Apart from these inconsistencies, this approach to analyzing contemporary US policy towards Cuba totally misses an essential element of American foreign policy, that is, the views of a significant segment of the foreign policy elite of America’s mission in the world and how this “mission” is played out through the structure and interaction of the policy-making institutions. There is a fundamental Wilsonian undercurrent of American foreign policy “to make the world safe for democracy.” US foreign policy contains a “democracy agenda,” especially in its relations towards the Western Hemisphere.⁴⁵ The United States, in the name of “anti-communism,” may have supported or tolerated right-wing military regimes, but it also played an instrumental role in helping democratize the Western Hemisphere

through political and economic policies designed to support the creation of representative, transparent institutions and free markets. These policies are premised upon the desire for government based on the consent of the governed and operating on popular elections, with some degree of governmental and electoral transparency and open to all political currents, in combination with economic policies based on equality of opportunity.

This does not mean that other systems must “look like us,” or that alternative governmental and economic structures cannot be implemented. It does mean that freedom should be a criterion by which to judge other systems. And it involves a fundamental belief in the nature of the relationship between the individual and the State, while recognizing that perfection in balancing that relationship, in attaining democratic values, is an ongoing process — sometimes progressing peacefully, sometimes requiring struggle. For both proponents and opponents of the Cuban embargo, this is at the heart of US foreign policy.

Specifically, for embargo proponents, the Castro regime fails in reaching this threshold and should not be given a “Cuba exception” or “free pass” card and accepted by the United States. Acceptance by the United States, including lifting the embargo in its entirety, should only come when freedom or its antecedents take root: when political activity is legalised for all currents, when political prisoners are released and allowed to remain on the island, when the mechanisms of political enforcement (such as state security, committees in defence of the revolution (CDRs), and rapid reaction brigades) are abolished; when free and fair elections, open to international observation, are promised; when the press is unshackled; when an independent judiciary is established; and when the Castro brothers either give up power or submit themselves to popular consent.⁴⁶

An understanding of how pursuit of this “mission” is played-out requires an understanding of the structure of and interaction among US policy-making institutions. One scholar described the US Constitution as “an invitation to struggle for the privilege of directing American foreign Policy.”⁴⁷ A more recent observer has likened the inter-branch struggle to a tug-of-war.⁴⁸ While these may sound like clichés, the tension between the two branches of government is real and has remained a factor irrespective of unified or divided governments.⁴⁹ The Executive Branch dominated US foreign policy during the Cold War but with the end of the Cold War, Congress has been less willing to be an observer and more willing to be an active policy-maker. This is especially the case in Cuba policy. Admittedly, domestic politics plays a role in this. That, however, is neither a totally satisfactory or complete explanation for US policy.

To conclude, both the CDA and LIBERTAD Acts were passed with bipartisan majorities. While “politics” is always at play in Washington, there were genuine policy frustrations in Congress with the executive’s lack of attention to the Castro regime. For Congress, foreign policy includes two components: first, there is the effort to articulate a clear US position on a particular question, country, or regime;

second, there is getting the Executive Branch to act on that policy. The first is easier to achieve than the second, which includes the search for the right mechanisms to move the Executive. The LIBERTAD Act sought to enunciate a clear US position and create incentives so that the Executive Branch could not avoid the issues. In this regard, the Act is working, albeit not necessarily as the authors of the legislation originally envisioned it.

The question now, nearly three years after LIBERTAD's enactment, is what next? Foreign investment has not turned out to be the panacea for Cuba's economic ills. This is because of the regime's ineptitude, ideological rigidity, and the potential legal complications created by the LIBERTAD Act. The EU-US Property Disciplines may have complicated the situation even further by bringing the EU into a process that recognizes that some of the Castro regime's takings were in contravention of international law.

The Pope's visit in January 1998 and the new activism of the Cuban Catholic Church also add a dimension that still is open to interpretation. Did Castro gain more from the Pope's visit than he lost? How much space will the church have to engage in religious activities? How do those outside Cuba support such openings? These remain questions that are impacting the policy debate within the United States. One response has been for LIBERTAD's congressional supporters to offer legislation to provide humanitarian assistance to the Cuban people,⁵⁰ although this does not include a lifting of the embargo. There also has been a renewed debate about the direct sale of food and medicines to Cuba. A bipartisan Senate majority has supported exempting food and medicine from US sanctions in certain instances.⁵¹ While these do not represent massive shifts in Congress, they do reflect a recognition that other avenues need to be pursued. What is significant about this debate is that the question is how to aid the Cuban people directly, not whether the United States should be doing so.

The other notable shift is occurring within the Cuban-American community. For years, Cubans celebrated exile. The litmus test of opposition to Castro's regime was whether one left the island, not whether one remained in Cuba and challenged the regime by whatever means seemed appropriate. This attitude is beginning to change, especially among a younger generation of Cuban exile activists. They are returning to Cuba to visit and find their family roots, if not actually renew family ties once divided by the Revolution. This type of exchange, between younger Cubans in exile and Cubans on the island, offers a potent antidote to Castro's propaganda and hold over the population. If increased contacts are a key to Cuba's political evolution — and most observers regardless of where they stand on the embargo agree that this is the case — it is the Cuban diaspora that can exercise the greatest depth and breadth of such contacts. Cubans in exile dealing with Cubans on the island will exert the greatest influence over the island's political and economic evolution. It is Cubans in exile who have travelled outside Havana and the resort areas, and they will continue to do so. They are the

“proof” for the Cuban people that there are other alternatives for organizing society and government on the island in ways different from the structure imposed by Castro.

Both Castro’s and the embargo’s end are inevitable. The question is, when? Admittedly, US policy may have both threatened and sustained the regime at various periods. The contradictions of US policy may serve as a sort of balancing apparatus for the regime. In closing, I suggest that American resolve against closed political systems has not been found to be anything but positive for indigenous pro-democracy forces. Cuba may prove to be an exception. In the final analysis, the embargo may produce the realization that reconciliation and political evolution are dependent on the Cuban people, both those on the island and in exile, and not on some external factor or relationship. A primary role of the embargo is to signal that the Castro regime is on the “wrong side of history” while the Cuban people sort out how their history should progress.

Notes

1. Howard Wiarda, *Cracks in the Consensus: Debating the Democracy Agenda in US Foreign Policy* (Washington, DC: Centre for Strategic and International Studies, 1997).
2. Public Law 102-484, 106 Stat. 2315, 23 October 1992. The Cuban Democracy Act was approved as title XVII of the Fiscal Year 1993 National Defence Authorization Act.
3. Public Law 104-114, 110 Stat. 785, 12 March 1996. This Act is more popularly known as “Helms-Burton” or the LIBERTAD Act.
4. The US constitutional system has been described as “an invitation to struggle for the privilege of directing American foreign policy” (Edwin S. Corwin *The President: Office and Powers*, 4th rev ed., (New York, New York University Press, 1957) p. 171.
5. The most significant appointees were Anthony Lake, National Security Advisor to the President, Peter Tamoff, Under Secretary of State for Political Affairs, Richard Feinberg, a member of the National Security Council staff responsible for Western Hemisphere issues, and Morton Halperin, who after failing to be confirmed for a senior position at the Department of Defense, was given a position on the staff of the National Security Council. Prior to their appointments to positions in the Clinton Administration, each had voiced objections to existing US policy towards Cuba, and some had specifically called for the normalisation of US-Cuban relations.
6. Within the Executive Branch, opposition to US-Cuba normalisation came from career State Department officers who objected to any fundamental policy changes without significant democratic steps by the Castro regime. This disagreement within the Administration over Cuba policy between the “politicos” and career officers was known to many in Congress. In early 1995, the internal policy struggle became public when the Administration refused to send a State Department official to a

hearing of the House of Representatives Subcommittee on Western Hemisphere Affairs. Shortly after this, the senior State Department official with regional responsibilities for Cuba, Ambassador Mike Skol, resigned from the US government. See, "Cuba and US Policy," *Hearing before the Subcommittee on the Western Hemisphere of the Committee on International Relations, House of Representatives*, 104th Cong., 1st Sess., 23 February 1995. Also, see "Clinton May Ease Sanctions on Cuba," *Washington Post*, 7 March 1995, p. A1.

7. A specific action that increased congressional suspicion of Administration policy was its behind-the-scenes efforts to keep Cuba off the legislative agenda in 1993-94 (the 103rd Congress), when Democrats were still the majority party. Until the introduction of the LIBERTAD Act in February 1995, the most significant initiative on Cuba during the first two years of the Clinton Administration came from Congress in the drafting of the "Free and Independent Cuba Assistance Act of 1993" (H.R. 2758), written and introduced by Congressman Bob Menendez (D-NJ). The Subcommittee on the Western Hemisphere of the Committee on Foreign Affairs, US House of Representatives, held a hearing on this legislation on 24 March 1994. With the approval and support of the Clinton Administration, House Foreign Affairs Committee Chairman Lee Hamilton (D-IN) kept the legislation bottled up in committee. At the time, I was a member of the Republican staff of the Foreign Affairs Committee and involved in bipartisan efforts to have the full committee and then the House consider the Menendez legislation.
8. Jeane Kirkpatrick, "Haiti But not Cuba?," *New York Post*, 4 October 1995.
9. US initiatives towards Haiti are referenced in two sections of the LIBERTAD Act. Section 2 (Findings) notes that:
 - (25) In the case of Haiti, a neighbour of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.
 - (26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorised the use of "all necessary means" to restore the "democratically elected government of Haiti," and the democratically elected government of Haiti was restored to power on October 15, 1994.
 - (27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years.

LIBERTAD Section 101 expresses the sense of Congress that "the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory international embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti."
10. See *Confiscated Property of American Citizens Overseas: Cases in Honduras Costa Rica and Nicaragua: A Republican Staff Report, US Senate, Committee on Foreign Relations*, S. Prt. 103-77, March 1994.
11. One of the objectives of the LIBERTAD Act, discussed more fully later, was to move the agenda on the protection of property rights. That process had gained

momentum in 1994 with the enactment of a Helms' amendment (Section 527 of the Foreign Relations Authorization Act for fiscal years 1994 and 1995, P.L. 103-236) to sanction nations that had engaged in uncompensated takings by conditioning US bilateral assistance and support in the international financial institutions (IFIS) on the willingness of those nations to remedy the situation.

12. For a discussion of "self-employment" see the work of Philip Peters, Senior Fellow at the Alexis de Tocqueville Institute, Arlington, Virginia, including "Cuba's Small Business Experiment: Two Steps Forward, One Step Back," *Cuba Briefing Paper Series*, No. 17 (Washington, DC: Georgetown University, March 1998).

For earlier articles on self-employment see the following from *The Economist*: "Keeping the faith," 9 October 1993, pp. 46-48; "Cuba lives, in a fashion," 3 September 1994, pp. 43-44; and "The doors inch open in Castro's Cuba," 19 November 1994, pp. 45-46.

13. See, for example, "Cuba's Economy, Cast Adrift, Grasps at Capitalist Solutions," by Tim Golden, *The New York Times*, 12 January 1993, pp. A1, A5; "Cuba goes fishing for foreign investment," *The Economist*, 25 June 1994, p. 41; and "The graying revolution: Cuba's economy is a mess, its people restive, but Castro remains defiant," *US News & World Report*, 26 September 1994: 5563.

A brief discussion of the importance of foreign investment to Cuba also is found in Gillian Clissold Gunn, *Cuba in Transition: Options for U.S. Policy* (New York: Twentieth Century Fund Press, 1993); and Ernest H. Preeg, with Jonathan D. Levine, *Cuba and the New Caribbean Economic Order* (Washington, DC: Center for Strategic and International Studies, 1993).

For a more recent analysis of foreign investment, see Maria C. Werlau, "Foreign Investment in Cuba: The Limits of Commercial Engagement," in *Cuba in Transition*, Vol. 6, Proceedings of the Fifth Annual Meeting of the Association for the Study of the Cuban Economy (ASCE), held at the University of Miami, Miami, FL., August 8-10, 1996 (Washington, DC, 1997), 456-495. Werlau notes that "the most decisive element of this [Cuba's] economic opening has been a drive to attract foreign capital, essentially in the form of joint venture and economic cooperation agreements between state enterprises and foreign investors" (p. 457).

14. *Americas Watch*, "Perfecting the System of Control: Human Rights Violations in Castro's 34th Year, January 1992 - February 1993," Vol. 5, No. 1, 25 February 1993. *Americas Watch* wrote: "Cubans are all too familiar with their government's perennial campaigns to 'perfect' all aspects of Cuban society. Yet after more than three decades in power, Fidel Castro's government has succeeded in perfecting nothing so much as its pervasive system of control. With the collapse of world communism and the Cuban economy in free fall, this system of control has increased in importance as a foundation for the government's maintenance of power..."
15. The first discussions I had with Helms' committee chief of staff occurred in the spring of 1994 during our conversation about my taking a job with the Foreign Relations Committee. At the time, I was a professional staff member of the House's counterpart committee responsible for foreign policy issues. The general outlines of LIBERTAD came together before the November 1994 elections, which thrust Helms into the Senate Foreign Relations Committee Chairmanship. What was introduced in February 1995 as the Chairman's legislation would have been introduced regard-

less of a Republican majority. Of course, the attention given the bill and its chances of enactment increased appreciably as a Majority party piece of legislation rather than as representing another Minority party viewpoint.

16. A RAND study also noted that Castro “has made the embargo’s lifting his number-one foreign policy priority. He has more confidence than do some US policy critics that his regime can withstand the corrosive effects of the embargo’s lifting on society while benefiting from the new infusion of American tourist and investment dollars” (Edward Gonzalez, *Cuba: Clearing Perilous Waters?* Prepared for the Office of the Secretary of Defense (Santa Monica, CA: RAND, 1996), 74. (This is to not to imply RAND’s or Edward Gonzalez’s endorsement of the LIBERTAD Act or a particular approach to US policy toward Cuba.)
17. A recent Canadian example of this engagement policy occurred in April 1998 with the visit of the Canadian Prime Minister to Cuba. The “success” of Canada’s policy was clearly articulated by Castro after seeing-off Prime Minister Chrétien: “We are not going to change; we are going to continue defending our cause and our socialism.” See “Castro Rebuffs Canadian’s Reform Plea,” by Andrew Cawthome, Reuters, *The Washington Post*, 29 April 1998: A27. Despite his send-off by Castro, the Canadian Prime Minister apparently saw “signs of political progress” during his Cuba visit, but that “progress” appeared to be more along the lines that “American business organisations were now pressing for an end to the blockade [embargo]” than anything of substance in Cuba itself. See, Paul Casciato, “Canada’s PM tells Clinton of progress in Cuba,” *Reuters*, 18 May 1998. Also, see, Mark Falcoff, “Northern Fidelity,” *The American Spectator*, October 1998, 42-49. Falcoff argues that “under Prime Minister Jean Chretien, Canada has come into its own as a defender and sponsor of Fidel Castro — all because it can’t stand remaining loyal to the United States.”

The record of European and Latin American engagement is not much better.

18. Werlau, “*Foreign Investment in Cuba: The Limits of Commercial Engagement*,” 471 and 484. Not only is the government the investor’s “business partner,” but this is actually advertised as something positive. In April 1996, *The Economist*, which is not usually known for its starry-eyed assessments, noted that one of the benefits of having Castro as your business partner is that it makes it “easy to hire, fire, and control workers.” “Cuba Survey,” *The Economist*, 6 April 1996, p. 13.
19. “Remarks of the Honourable Howard H. Baker, Jr., Leader’s Lecture Series,” *Congressional Record* (daily edition), 16 July 1998, pp. S8374-S8376. Howard Baker was a Republican Senator from Tennessee who was Republican Senate leader from 1977 until 1984.
20. In the Senate, specifically, we sought to have as early co-sponsors key committee chairmen who may have jurisdictional, not necessarily substantive concerns, with the bill. In the House, a similar tactic was pursued, as was early endorsement by the the Republican Congressional leadership.
21. In early 1994, *The Economist* had reported that “the IMF made an ‘unofficial’ visit to Cuba at the invitation of its central bank” (“Not Just Yet,” 5 February 1994, p. 46). During LIBERTAD’s drafting, the committee received reports of additional IMF-Cuban contacts, some occurring in Spain, as well as of exchanges between Cuba and other IFIs to which the United States was a member and made contributions.

22. "In the Americas: Russia to Keep Spy Station Open," *Miami Herald*, 13 November 1994, p. 23, and "Postscript: CUBA/Russian Spy base," *Latin American Weekly Report*, 24 November 1994, p. 540.

There is not much unclassified information on the Lourdes facility, but a good overview of it and its strategic importance can be found in Desmond Ball, "Soviet Signals Intelligence (SIGINT): Intercepting Satellite Communications," *Canberra Papers on Strategy and Defense* No. 53, Strategic and Defense Studies Centre, Research School of Pacific Studies, the Australian National University, 1989.

The strategic importance of the Lourdes site was re-emphasised in the Spring of 1998 when the *Miami Herald* reported that Moscow intercepted, from Cuba, US strategic communications during the Persian Gulf War in 1991. The same article noted that Cuba wants to increase the "rent" it receives from the facility from \$200 million to \$1 billion annually in oil, weapons, and military spare parts. See, Juan O. Tamayo, "Soviets Spied on Gulf War Plans from Cuba, Defector Says," *Miami Herald* 3 April 1998.

23. In the Unilever case, individuals representing one of the American corporate claimants brought the case to the Foreign Relations Committee's attention. We did not learn about the Cuban-American claim to the property until after the LIBERTAD Act was enacted. It is my understanding that, after the introduction of the LIBERTAD legislation, Unilever decided not to pursue an investment in Cuba in the property claimed by the US citizens.
24. In an interesting twist, one American claimant of sugar properties in Cuba came to the Foreign Relations Committee in support of Title III — if it was only for US citizens at the time of the taking — because this claimant wanted to have clear rights to its previously-held property in order to develop it as a resort area. This claimant wanted the right-of-action provision to deter third-party investors from looking at the particular piece of land.
25. The Bush Administration had opposed restrictions on third-country US subsidiary trade and some tightening of the sugar quota. Congress dropped the sugar restrictions, but kept the restriction on US subsidiary trade and added conditions on US policy towards both a transitional and democratic Cuban government.
26. There seems to be a tendency, especially in the United States, to portray enemies to be more sophisticated than US policymakers and as doing things for more complicated reasons than may be the case. Those outside the Cuban power structure may never know why the planes were shot down. We do know that the Brothers to the Rescue overflights of Cuban territory on previous occasions, in which they had dropped leaflets urging that Cubans demand freedom, were seen as a threat to the regime. And we know that the February 1996 flights coincided with a new round of internal repression against Concilio Cubano, a nascent attempt to unify autonomous and dissident groups on the island.
27. *Congressional Record* (Daily edition), 5 March 1995, p. SI493.
28. In early February 1996, there was still the question as to whether we had the 60 votes needed to break a filibuster of the conference report. We had reports that Alan Simpson (R-Wyoming) would not vote with us to end a filibuster, but that another, Jay Rockefeller (D-West Virginia), had signalled he would be supportive. (Simpson

strongly disliked Mas Canosa and CANF, and the general leniency in US immigration policy accorded Cuban refugees. However, he also was close to Bob Dole and the calculation was that he would not hurt Dole on such a vote if it was critical to Dole's election). Both Simpson and Rockefeller voted to approve the conference report.

29. We were looking for things to make the bill more palatable for the White House, but which allowed us to keep certain core provisions in any final product. We had repeatedly been given signals from the White House that if the bill made it to the President's desk he would be hard-pressed to veto it; they would not support it or help on it including suggesting "fixes" (that would tie them in to the process if their fixes were accepted: "you said you had problems with "X" and we fixed it, so now why won't you support it?" is a constant game in these executive-legislative struggles). We operated from the perspective that the State Department had a free hand to kill the bill or water it down, but without the active backing of the White House.
30. These were the individuals who were US nationals at the time of the Castro regime's takings and who had claims adjudicated by the Foreign Claims Settlement Commission; see footnote 31.
31. A claim is espoused by the United States when the Government of the United States, usually through diplomatic channels, makes it the subject of a formal claim for reparation to be paid to the United States by the government of the state responsible for the injury (Restatement (Second) of the Foreign Relations Law of the United States, sec. 211, comment b(1965). Under customary international law, the practice is for the states to espouse the claims against another state of those persons who were a national at the time the claim arose and remained a national continuously thereafter to the date of the claim's presentation. In the United States, a specialised agency, the Foreign Claims Settlement Commission (FCSC) has been established to determine the validity and amount of claims of the US nationals for the loss of property in foreign countries. The FCSC, however, cannot make these determinations until specifically authorized by the US Congress. In two instances, the Congress has authorized the Commission to make determinations of claims for US citizens who were not nationals at the time of the takings. These expansions of claimants have been held to constitutional when challenged in US courts. These precedents were not lost on the drafters of the LIBERTAD Act. The question remains open as to whether a judgement in a law suit rises to the level of espousal. The authors of LIBERTAD concluded that it did not, unless the judgement was the subject of a formal claim for reparation to be paid to the United States (Government) by the government of the state responsible for the injury. There was no authority in the LIBERTAD Act for such a formal claim to be made by the US Government. LIBERTAD authorized subject matter jurisdiction to US Federal courts for private rights-of-action, and the burden of collection on any award resulting from such as lawsuit remained with the private litigant, not the US Government.
32. House Report 104-468, 104th Cong., 2nd Sess., at 46 (1996).

A "conference report" accompanies a piece of legislation that is being sent to the President for approval or veto. The report lays out how the House and Senate resolved their differences and offers congressional expectations or guidance as to how the law is to be implemented. While a conference report has no legal standing — the

implementing agency can ignore this congressional guidance, but it does so at its own peril. In this sense, the report is largely a political document. However, there are numerous instances in which agencies that have failed to respect congressional direction contained in a conference report have found this guidance written into permanent, statutory law.

33. "Castro condemns US promise of aid," *Miami Herald*, 30 January 1997.
34. Joint venture statistics for 1991 to 1995 period, are taken from Gareth Jenkins, "European Investment in Cuba: Scope, Opportunities and Challenges," remarks prepared for the *Cuba Transition Workshop, Foreign Investment in Cuba: Past, Present, and Future*, sponsored by Shaw, Pittman, Potts & Trowbridge and Oceana Publications, Inc., Washington, D.C., 26 January 1996. In his spoken remarks to this workshop, Jenkins attributed the drop in joint ventures in Cuban to the LIBERTAD bill, then pending before the US Congress.
35. For example, see, "Cuba's appeal as investment is cooling off," *Miami Herald*, 23 June 1995, and "Helms to Cuba: See You in Court," *National Journal*, 10 July 1995.
36. The continuing complications of the LIBERAD Act were referenced in "Development of Foreign Investments in Cuba, Business Opportunities and their Prospects," by Dr. Miguel Alejandro Figueras, an advisor to the Cuban Ministry for Foreign Investment and Economic Collaboration, in *Business Tips on Cuba*, September 1997, 17-23. *Business Tips on Cuba* is a publication of the National Office in Cuba of the Technological Information Promotion System (TIPS), a project of the U.N. Program for Development (LJNDP).

What is of note is that Figueras' statement places the total number of "associations" between Cuba and foreign investors at 260, but later makes reference to "functioning associations" (p. 21). Werlau, op. cit., concluded that "it has been impossible to arrive at actual figures for overall materialised and direct foreign investment in Cuba" (p. 461), further noting that Cuban figures may include "announced investments which may be contingent on events that do not materialise... [and] cancelled deals" (p. 463).

37. For example, see, "Cubans Blame Slowdown on Helms-Burton Act," *Washington Post*, 25 January 1997, at A1 6; Radio Rebelde: Straight Talk (Havana Radio Rebelde Network broadcast, 29 January 1997) (transcript from *Foreign Broadcast Information Service*, FBIS-LAT-97-021, 29 January 1997); "Cuban economy feels blow of U.S. law; Investors scared off by Helms-Burton," *Miami Herald*, 28 November 1996; "Cuban economy 'will survive US sanctions,' Washington's Helms-Burton law will not stop growth, Vice President Carlos Lage tells Pascal Fletcher," *Financial Times*, 18 July 1996, at 6; and "Rising Expectations Blur Cuban Economic Revival," *Washington Post*, 27 August 1996, at A1 2.
38. The EU-US Understanding with respect to Disciplines for the Strengthening of Investment Protection, 18 May 1998, quoting the Understanding Between the United States and the European Union (14 April 1997). The text of the EU-US Property Disciplines can be found at <HYPERLINK <http://presid.fco.gov.uk/news/1998/may/18/nvest.txt>>.
39. *Eu-US Property Disciplines, part I, paragraph B. 1 and 2.*

40. Since this list is based upon public reports, it is possible that some of the listed companies have quietly re-entered the Cuban market, not publicising their importance or using subsidies. Both foreign investors and the Cuban Government have been looking for ways to reduce a foreign investor's vulnerability to potential LIBERTAD sanctions. For example, see "Investors Find Ways to Limit Sanctions Risk," *CubaNews*, September 1997, p. 7
41. *The EU-US Property Disciplines* are discussed more fully in Daniel W. Fisk, *The EU-US Agreement and Protection of American Property Rights in Cuba, Occasional Paper Series*, Vol. 2, No. 2 (Washington, DC: Institute for US-Cuba Relations, 23 July 1998). Also see, Ralph Galliano, ed. Policy Forum Remarks: *The EU-US Agreement and Protection of American Property Rights in Cuba*. (Remarks by participants at the Institute for US Cuba Relations Policy Forum held in the Capitol Building, Washington DC, 23 July 1998, Washington DC Institute for US Cuba Relations, 1998).
- Representatives from the State Department, European Union, House International Relations Committee, and the American property claimant community discussed the proposed EU-US agreement at this forum.
42. Yuri Pavlov, *Soviet-Cuban Alliance, 1959-1991* Miami, FL: University of Miami North-South Centre, 1994), 261.
43. Jacob Heilbrunn, "Mr. Nice Guy: Sandy Berger's sunny foreign policy," *The New Republic*, 13 April 1998, 19. Heilbrunn, in describing Clinton Administration foreign policy (which could also describe George Bush's policy as well), notes that "its focus is on creating a new global community that binds nations into a web of economic interests, military institutions, and political organisations... [The] theory holds that the old order has passed and traditional security concerns have given way to a world in which countries have more to gain from cooperation than from confrontation. Economic modernization leads ineluctably to political freedom; the zero-sum game of realpolitik can give way to win-win Geopolitics. It is geopolitics by way of geoeconomics."
44. See, "Cuba In Evolution: Trying to Reconcile," *Dallas Morning News*, September 27, 1998, Section R.
45. See, Howard J. Wiarda, *Cracks in the Consensus*; and Tony Smith, *America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century*, Twentieth Century Fund Book (Princeton, NJ: Princeton University Press, 1994).
46. Many of these conditions were codified into law with the enactment of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, at sections 205 and 206 (22 USC 6065 and 6066).

Currently, the law requires that neither Fidel nor Raul Castro be part of any transition government. Debate, however, continues as to whether the embargo should be tied to their willingness to stand for and accept the results of a popular election in return for a lifting or suspending of the embargo. The premise is that the US is prepared to accept a democratically-elected Castro government should he (or his brother) win. Others hold that there can be no democratic process as long as Castro remains on the island.

47. Edwin S. Corwin, *The President: Office and Powers*, 171.
48. Jeremy D. Rosner, *The New Tug of War: Congress, the Executive Branch, and National Security* (Washington, DC: Carnegie Endowment for International Peace, 1995).
49. “Unified government” is when the same party controls both the executive and legislative branches of the federal government; “divided government” is when one political party controls one branch of government but does not completely control the other branch, namely Congress. For a discussion in the American political science literature on this phenomena see Morris Fiorina, *Divided Government*, 2nd ed. (Boston: Allyn and Bacon, 1996).
50. On 14 May 1998, Helms, and 21 Senate colleagues, introduced the “Cuban Solidarity Act,” also known as SOLIDARIDAD. It would provide \$100 million over four years in humanitarian assistance to the Cuban people.
51. In July 1998, the Senate approved an amendment that would have exempted food and medicine from US sanctions unless a country has supported acts of international terrorism or systematically denies access to food and medicines on the basis of political beliefs or as a means of coercion. *Congressional Record* (daily edition), 15 July 1998, pp. S8226-S8227.

The original language exempted food and medicines without qualification. This language was offered by Senator Chris Dodd (DConnecticut) a strong opponent of the US embargo against Cuba. Embargo supporters then added the perfecting language, which would have the effect of limiting food and medicine to the Castro regime, which remains on the US State Department’s list of “terrorist countries” and which uses access to food and medicine for coercive purposes. Existing legal authorities contained in the Cuban Democracy Act, however, allow for the provision of food and medicines to the Cuban people. The food and medicine provision was dropped in its entirety from the legislation that went to the president for approval at the end of the last Congress. A bill similar to the Dodd amendment has been introduced in the Congress that convened in January 1999.

4. *Canada, Cuba and “Constructive Engagement” in the 1990s*

Peter McKenna and John M. Kirk

Introduction

While recent changes in US policy toward Cuba appear to signal an improvement in the overall tone of the bilateral relationship — including decisions to expedite the granting of licenses to ship medical supplies to the island, to allow Cuban-Americans to remit up to \$1,200 annually to relatives in Cuba, and to resume direct charter flights between the United States and Cuba — the two countries still remain locked in a veritable Cold War time-warp. As US Secretary of State Madeleine Albright indicated shortly after announcing these same changes: “Nothing has changed in terms of US policy toward Cuba.”¹ Accordingly, officialdom in Washington continues to be wedded to an increasingly out-dated policy of isolation and confrontation, and thus the US-Cuba relationship remains bred in mutual enmity and distrust. Canada, on the other hand, has successfully turned the page on the Cold War and is actively engaging the Cubans on a wide variety of fronts, and has been doing so since the beginning of the Chrétien government.² Clearly, Prime Minister Chrétien’s high-profile visit to Cuba in April of 1998, preceded by Cuban Vice-President Carlos Lage’s official visit to Ottawa in mid-February, are symptomatic of a close and constructive Canadian-Cuban relationship.

Although the overall relationship has had a long and storied history, the Chrétien government has focused a considerable amount of political energy and attention on the Cuban file. In part, the prime minister’s interest in things Cuban is likely a function of his desire to leave his own mark on Canadian foreign policy — and

thus something for the historians to write about after he departs the political stage.³ It is also true that the Canadian-Cuban relationship has presented Chrétien with an excellent opportunity to differentiate his government, especially in terms of relations with the United States, from the supposedly “camp-follower” approach of Brian Mulroney’s Conservative government. (One should not dismiss lightly, or underestimate the significance of, the fact that taking a position on Cuba which is at variance with that of the United States engenders a considerable amount of popular support in Canada). Equally important, however, has been the personal commitment of Foreign Minister Lloyd Axworthy to give the bilateral relationship a higher profile at both the political and departmental levels, as he has with the wider inter-American agenda as a whole. (Axworthy’s January 1997 visit to Havana, in the face of stiff US opposition, actually set the stage for subsequent high-level meetings).

It is instructive to note that interest in the relationship has stemmed in large part from the March 1996 passage of the *Cuban Liberty and Democratic Solidarity Act*, commonly referred to as the Helms-Burton law. From the very beginning, the Canadian government has criticized the anti-Cuba law as a blatant violation of long-standing international (OECD) trade and investment rules.⁴ In effect, the promulgation of the law, along with its potentially detrimental impact on the Canadian business community, placed the Canadian-Cuban relationship near the top of the Liberal government’s issue-agenda. More significant, of course, has been the historically crucial factor of seeking to capitalize from a trade and investment standpoint, on the virtual US absence from the Cuban marketplace. Indeed, it is no accident that Canada is one of Cuba’s largest trading partners (with bilateral trade increasing from \$305 million to \$641 million between 1993 and 1996) or that Canadians comprise the single largest group of foreign investors on the island, particularly in the mining sector. High-level visits by Chrétien and Axworthy to Cuba, then, are designed specifically to ensure that Canadian business people hold onto what market niche they have carved out for themselves in revolutionary Cuba — especially given that the US business community is positioning itself for the inevitable removal of the economic embargo.

These official visits are a highly visible and symbolic component of Canada’s present Cuba policy, of constructive engagement or “principled pragmatism.”⁵ Although this approach differs sharply from that of the United States, there is a fair amount of debate about the efficacy or effectiveness of engaging the Cubans in dialogue and high-level diplomatic exchanges. At the heart of the debate is the fundamental question: what is the best strategy or approach for bringing about meaningful political and economic reforms in Cuba? It is important to note from the outset that the objectives of this paper are modest in nature, with no attempt to break new theoretical ground. The paper begins by outlining the nature and extent of Canada’s interaction or engagement with Cuban authorities since the mid-1990s. Secondly, it seeks to grapple with the debate surrounding constructive engagement and to assess or evaluate the results, or lack thereof, of Canada’s engagement

strategy vis-a-vis Cuba. Lastly, it concludes with some observations about constructive engagement and the direction which Canadian-Cuban relations are likely to take in the new millennium.

Chrétien Engages Castro's Cuba

The Chrétien government's policy of engagement began to take shape in mid-1994, and was subsequently entrenched with the appointment of Lloyd Axworthy as Foreign Minister in early 1996. Meanwhile, addressing the June 1994 annual General Assembly of the Organisation of American States (OAS) in Belém, Brazil, then Secretary of State for Latin America and Africa, Christine Stewart, reiterated Canada's desire to see Cuba reintegrated into the inter-American family. In her prepared remarks to the Assembly, Stewart stated pointedly that Cuba's continued "exclusion" from the hemispheric forum — which had been undertaken at the behest of the United States in 1962 — was an unhealthy situation for all of the countries of the Americas.⁶ In an obvious reference to US policy toward Cuba, Ms. Stewart went on to say: "It is in all our interests, individually and as an organisation, as well as in the interests of the people of Cuba, that we support a process of change in Cuba that is positive and orderly."⁷ A few weeks later, while attending a conference in Havana organized by *The Economist* magazine, she announced that Cuba would once again be eligible for Canadian development assistance — which had been suspended by the Trudeau government in 1978 over Cuban involvement in the war in Angola. As Ms. Stewart indicated in her comments, Canadian NGOs operating in Cuba have asked Ottawa to do more at the official level and what "they are telling us is that Cuba is at a point when it is more important than ever for governments to remain in contact."⁸ Most of the \$1 million in aid, however, would be funnelled through Canadian non-governmental organizations (NGOs) in Cuba so as to deflect US criticism of propping up an autocratic regime.

Clearly, Canada's development assistance approach to Cuba has taken on a renewed vigour since June of 1994, and it has included a number of interesting and unique components. After a rather protracted series of negotiations, both countries agreed, in March of 1996, to establish a formal government-to-government bilateral aid programme, which amounted to some \$30 million over a five-year period. As a result, Canada quickly became one of the largest donor countries in Cuba today, and thus is in a position to influence Cuban policy-making, if only marginally.⁹ Some of the funding was to be earmarked for strengthening "civil society" in Cuba — including funding for Cuban NGOs, human rights institutions, and various ministries within the Cuban government. Most important, however, was the fact that the development assistance programme was not specifically linked to any appreciable progress on increased political and economic liberalization in Cuba.

While it is true that the reinstatement of the aid programme was in response to public pressures from the NGO community in Canada, the most significant factor was the push from an over-anxious Canadian business community. As a result, the overall programme itself reflects the bilateral relationship's long-standing emphasis on economic and commercial considerations. As is often the case with respect to Canada's ODA these days, humanitarian concerns and poverty-alleviation get short shrift, while trade and investment opportunities are highlighted.¹⁰ In fact, CIDA INC. funding was provided to private sector businesses to conduct a host of feasibility studies in Cuba and to help Canadian companies undertake training programmes for those Cubans working on construction of the recently inaugurated Terminal 3 at José Martí International airport. In addition, some of the money is being used to implement a number of measures geared toward improving Cuba's current business and investment climate. For instance, CIDA is assisting the Cuban government with regard to creating a more modern tax administration regime, offering much-needed training and advice for officials of the Bank of Cuba, and providing technical assistance to policy-makers in the Cuban Ministry of Economy and Planning.

Canada's policy of engaging the Cubans — as in the case of Canada's modest aid programme for the country — was clearly on display at the initial December 1994 Summit of the Americas in Miami. The high-level gathering brought together the leaders of all the countries of the Americas, with the notable exception of Cuba's President Castro. In response to President Clinton's disparaging comments about Cuba's lack of democratic pluralism, PM Chrétien wasted little time in challenging the prevailing US view of constantly seeking to ostracize and isolate Cuba in this hemisphere. He went on to explain: "We have a right to disagree with that position. For us, it is the normalisation [of relations] that will lead to more democracy."¹¹ Highlighting once again Canada's constructive engagement line of thinking, then-Secretary of State Christine Stewart indicated that Canada "would hope that when other summits are held in the hemisphere that Cuba be present at the table. We as a nation will work to see that happens, and we will work with others in the hemisphere to see that happens."¹²

Dialogue at the ministerial level continued with the marking of the 50th anniversary of diplomatic ties between Canada and Cuba in March of 1995. On a working visit to Ottawa, Cuban Foreign Minister Roberto Robaina met with a group of senior Canadian officials — then-Foreign Minister André Ouellet, Minister for International Trade Roy MacLaren and Secretary of State Stewart.¹³ While the visit did draw sharp criticism from some members of the US Congress, the bilateral meetings went ahead in a cordial and professional manner. The discussions, for the most part, focused on trade and investment considerations, international political developments and questions about economic development and fisheries cooperation. As is customary, Canadian officials also raised the thorny question of democratic development and respect for human rights.

Canada's focus on engaging the Cubans and reintegrating them hemispherically continued at the June General Assembly of the OAS in Montrous, Haiti. Once again, Secretary of State Stewart carefully outlined Canada's approach: “Canada's policy toward Cuba has been one of constructive engagement — we believe that political and economic advances can be encouraged by maintaining a dialogue with the Cuban people and government.”¹⁴ While pointing out that progress needs to be made in Cuba in areas such as democratic development and human rights, she went on so say that “we believe that the OAS should begin to examine ways of opening up a similar dialogue with Cuba, looking toward the day when conditions will be appropriate for its reintegration into the inter-American system.”¹⁵

Moreover, at the June 1996 OAS General Assembly in Panama, in the wake of the deplorable 24 February downing of two civilian Cessnas by Cuban MG fighter jets, Stewart was just as adamant about the ineffectiveness of ostracizing Cuba. She pointed out that “policies of isolation do not prevent such tragedies; indeed, they only give rise to the hardening of militant policies and reinforce the wrong kind of nationalism and political rigidity.”¹⁶ It is worth noting that the profile of Canadian-Cuban relations was enhanced even further by the early 1996 appointment of Lloyd Axworthy as Canada's new Foreign Minister. With a personal interest in the Cuban file, and a strong supporter of engaging the Cuban government constructively, Axworthy was anxious to hold discussions with senior Cuban officials.

The first such meeting took place in Ottawa in mid-May between Axworthy and Cuban Foreign Minister Robaina, who was participating in a symposium on Helms-Burton — which had been organized by the Canadian Foundation for the Americas and the Washington-based Centre for International Policy. Besides exchanging notes on the implications of Helms-Burton, both ministers dealt with a variety of issues on the bilateral agenda, including human rights. The next high-level meeting took place in late October, when Cuban Vice-President Carlos Lage visited Ottawa for additional bilateral discussions. After meetings with Axworthy and Prime Minister Chrétien, it was announced that Canada would provide relief to Cubans who were negatively affected by Hurricane Lili.

One of the most interesting elements of Canada's constructive engagement approach toward Cuba took place in late January 1997, when Axworthy undertook a two-day visit to Havana — where a highly-touted 14-point Canada-Cuba Joint Declaration for bilateral cooperation in a variety of areas (including human rights) was signed. This rather extraordinary trip, which undoubtedly was vigorously opposed by officialdom in Washington, marked the first time in almost 40 years that a Foreign Minister from Canada had actually visited the island. Like former Prime Minister Trudeau's 1976 state visit to Cuba, Axworthy's meetings with President Castro and senior Cuban officials engendered a good deal of media coverage in Canada, which was largely negative in tone.¹⁷ But it also created a fair amount of media and political attention in Washington — a city which tends

to accord things Canadian scant coverage at best.¹⁸ In unusually blunt diplomatic parlance, US State Department spokesperson Nicholas Burns harshly criticized Axworthy for undertaking the visit in the first place. As he went on to note: “It doesn’t make sense to reward a dictator in our hemisphere who is completely behind the times. You reward him by sending your foreign minister down to visit, by having visits as usual, by trading. And we think that’s wrong.”¹⁹ Virulent anti-Castro campaigner Senator Jesse Helms was even more livid about the visit and did not hide his displeasure with the Canadian government. In using the bizarre analogy of Canada’s dealings with Cuba being the 1990s equivalent of British Prime Minister Chamberlain’s appeasement of Adolf Hitler in 1938, Helms explained the following: “You had someone named Neville Chamberlain, he went over and sat down with Hitler and came back and said, ‘We can do business with this guy,’ and you saw what happened. Now, if we’re going to forget all principle and let Fidel Castro get by with all of his atrocities, then we [had] better look at the status of our principles and Canada certainly should look at hers.”²⁰

Not surprisingly, Senator Helms’ hyperbole did little to dissuade or dampen Canadian enthusiasm for engaging the Cubans in a variety of areas. The differing Canadian and American philosophies or approaches toward Cuba were clearly brought to the fore during Prime Minister Chrétien’s first — and to date only — official visit to Washington in early April of 1997. Both Clinton and Chrétien politely agreed to disagree over Cuba — particularly over the best strategy for dealing with Cuba and the anti-Cuba Helms-Burton law. President Clinton’s position had changed very little from what he had indicated in January, when he stated boldly: “I’m sceptical, frankly, that ... the recent discussions between the Canadians and the Cubans will lead to advances. I believe that our policy is the proper one.”²³ In his discussions with the congressional leadership on Capitol Hill, Chrétien was just as convinced that the Canadian approach was the only way to go. He told Senate majority leader Trent Lott: “If you want to have an isolationist policy, that’s your business. But don’t tell us what to do. That’s our business.”²⁴

Three months into the new year, and while attending the first OAS Washington Conference on the Americas, Foreign Minister Axworthy once again reiterated his support for Canada’s policy of dialogue and exchange with the Cuban government. In his closing keynote address, he noted the following: “It is time to start building bridges with Cuba and engaging it on issues of concern, in order to encourage positive change.”²¹ He pointed to the recent visit to Ottawa of Vice-President Laga, and Canada’s agreement to accept a number of Cuban political prisoners as evidence that dialogue and engagement produces positive results. Axworthy also reminded his audience of Canada’s continued support for Cuba’s full reintegration into the inter-American fold, and the role that the hemispheric forum could play in engaging the Cubans. According to Axworthy, “surely the time has come for all OAS members to consider when the suspended 35th member of the organisation, Cuba, could once again be seated at the table.”²²

Arguably the most significant component of Canada’s policy of constructive engagement, which took it to a new level, was the announcement at the April 1998, Santiago Summit of the Americas that Prime Minister Chrétien would be making an official visit to Cuba toward the end of the month. Leaked by the US delegation to the Summit, and harshly criticized by President Clinton’s National Security adviser Sandy Berger, an angry prime minister was forced to disclose the details of the surprise trip to a clutch of Canadian reporters.²⁵ According to the prime minister, President Clinton had been notified of the impending trip some ten days prior to the Summit meeting, and at that time, did not indicate his disapproval of the visit. In his closing remarks at the final news conference, Chrétien noted that most of the leaders at the meeting “talked to me very positively about this decision” and he thought that “in consultation with the Vatican, that it was good to go at this time.”²⁶

Meanwhile, the two-day visit itself did not lead to any ground-breaking agreements between the two countries, it did solidify an already close and cordial bilateral relationship.²⁷ Both sides derived certain tangible benefits from the visit, including the point that engagement and dialogue — unlike isolation and hostile rhetoric — is the most appropriate avenue for inter-American diplomacy vis-a-vis Cuba. From Canada’s standpoint, it further cemented a burgeoning trade and investment stake in Cuba, facilitated the negotiation of an investment protection agreement, and handed the Liberal government a golden opportunity to score a number of domestic political points. In turn, the Castro government strengthened a growing political, commercial and technological relationship with a leading member of the G-8, acquired a certain amount of international legitimacy and credibility from the visit, and was given another public forum from which to condemn the US embargo against Cuba as tantamount to “genocide.” There was, however, no major progress on the human rights front, despite a vague promise from President Castro to “consider” signing the UN International Covenant on Economic, Social and Cultural Rights. Still, Chrétien lectured the Cuban leader, in what were reportedly some tense exchanges, on the kinds of political and economic reforms that Cuba would have to adapt if it hoped to be welcomed warmly back into the hemispheric family.²⁸ Lastly, the Prime Minister asked for the release of four prominent political prisoners, had some of his officials meet with a select group of Cuban dissidents, and met personally with Cuba’s Catholic Cardinal, Jaime Ortega.

Canada’s Constructive Engagement: Strengths and Weaknesses

In the wake of the prime minister’s Cuba visit, there is no shortage of opinions — from government officials, representatives of the NGO community, the media,

and the general public — on the efficacy and effectiveness of Canada’s policy of “constructive engagement” or “principled pragmatism.”²⁹ The term constructive engagement actually originated during the waning years of the Carter Administration, when a frustrated President Carter came to the realization that it was complicated and difficult to make human rights considerations the centrepiece of US foreign policy. The concept was subsequently picked up by the Reagan Administration in the mid-1980s, and became the guiding principle for its policy toward apartheid South Africa. The idea was to engage the South African government in dialogue, commerce, and support for civil society and, in doing so, to foster meaningful change and the eventual dismantling of the pillars of apartheid. In the case of South Africa, though, the strategy was heavily criticized and, as events in the country would prove, was largely seen as ineffective and, worse, a life-line to the apartheid regime.³⁰

Like the US approach toward South Africa in the 1980s, Canada’s policy of constructive engagement toward Cuba in the 1990s maintains the same overriding assumptions and thinking with regard to means and goals. First, it begins from the premise that engaging the targeted state is the most effective means or strategy for altering the (mis)behaviour of that same government, and it does so through the maximization of a variety of linkages. Secondly, it accepts as a given the fact that the government in question is not only rationale and pragmatic, but that it is also interested in introducing structural reforms of a more open and liberal-democratic nature. Thirdly, it operates on the basis of an inevitable choice — rightly or wrongly — between engagement or isolation, and the use of a “carrot” as opposed to the wielding of a “stick.” Fourthly, it is underscored by a belief that “quiet diplomacy” rather than the “megaphone” variety (and its attendant threats of punitive measures) is a more suitable means of moving a repressive or “illiberal” regime along the path of creating more political space.³¹ Lastly, it assumes that meaningful change and reform instituted by the engaged country will not be immediate or necessarily recognizable over the short term, but will eventually and inevitably take place over a longer period of time — and in a more gradual and incremental fashion.

In terms of the relationship between means and goals, the proponents of engagement profess to offer a more realistic and effective strategy for promoting positive change. Constructive engagement is essentially a more pragmatic, non-ideological, and ultimately more realistic approach to fostering political and economic reform in a country such as Cuba. Accordingly, it avoids catering to a basically easier, politically expedient (and electorally popular), and intuitively satisfying approach of punishing a country for “wrong-doing” and “misconduct.”³² Indeed, the process of change can best be initiated only when a country is engaged with (rather than estranged from) the targeted country — where it can express its concerns about the lack of political freedom, systematic torture, and poor prison conditions face-to-face with the government in question. Isolation, so the argument goes, accomplishes very little, and effectively denies you any ability or

capacity to prod or cajole a country toward initiating reforms. The argument here, of course, is that by engaging a country you acquire more leverage to influence the behaviour of the rights-abusing state. Dialogue, political interaction and commercial exchange, then, create a strong incentive for the offending regime to begin to walk along the reform path so as not to jeopardize the benefits and advantages accruing from that very engagement.

In theory, engaging a country such as Cuba is supposed to foster change through the very act of engagement — and the ancillary opportunities which that offers.³³ At the core of this argument is the contention that engagement will invariably lead to an infusion of liberal ideas and values (at the elite and mass level) in the targeted societies. From dialogue at the political level, then, world leaders can educate or sensitize a leader of an authoritarian state on the finer points and advantages of democratic pluralism, respect for human rights, and greater political freedom. And when representatives from a foreign country meet and speak with university professors, lawyers, spokespeople for NGOs, and students — or provide support to other groups within civil society — it helps to encourage positive change from within. By offering resources to grassroots organizations and reform-minded people on the ground, the real forces for social change, the hope is that these same groups and individuals will press the government for more political space and accountability.

Furthermore, from greater economic or commercial exchange, it is hoped that the Cuban government will eventually introduce additional positive reforms. This argument is underscored by the idea that economic liberalization and free markets in the targeted country will necessarily contribute to political liberalization.³⁴ As Donnelly explains: “Economic support that appears to help stabilise repression actually undermines it.”³⁵ The opening of markets, and the introduction of free enterprise, will have — over a period of time — a salutary effect in terms of improving the human rights climate in revolutionary Cuba. And sustained economic growth in Cuba will set in motion a host of powerful economic and political forces — including a reduced role for the state (as both an employer and benefactor), the dismantling of the existing order and the sharing of authority, and the growth of a liberal-minded middle class.³⁶ With an expanding middle class, and its accompanying stake in the existing system, it will eventually press for change and a voice in the polity, for governmental accountability, and for greater political space. Lastly, expanded commercial contact, especially with western (enlightened) commercial enterprises, can infuse not only its Cuban workforce, but also the political leadership in Cuba with ideas about greater personal freedom.³⁷

In point of fact, the theory is not wholly applicable to the Cuban scenario for a variety of reasons. In the first place, the revolutionary government in Havana is fearful of how the United States — just 90 miles away — would seek to exploit any attendant political and economic space that might result from greater liberalization in Cuba. It is understandably concerned given the fact that successive US administrations have sought to destroy the Cuban revolution, to assassinate Fidel

Castro, to turn a blind eye to (illegal) activities of armed Cuban exiles, and to pressure numerous governments to break relations with Cuba. Indeed, the so-called “Trading with the Enemy” act stands as a potent reminder to Cubans of the enmity which the United States still feels toward Cuba, some 38 years after it broke diplomatic relations with Havana. This is something which proponents of constructive engagement in Cuba need to bear in mind at all times.

Still, it is very clear that in recent years there have been a series of necessary or forced economic liberalization measures of particular significance — including the legalization of hard currency in 1993. This was followed shortly by the re-opening of the farmers’ markets, the transformation of state farms into cooperatives; the allowing of some 200,000 Cubans to work for themselves, the opening of small restaurants; the establishment of chains of hard currency stores, and an open invitation to foreign investors to set-up shop in Cuba. On the political front, however, the changes have been noticeably limited. It is undoubtedly true that the visit of Pope John Paul II in early 1998 allowed Cuba to become the focus of international media attention, and has had a salutary effect on Church-State relations. It is also true that the number of political prisoners has decreased dramatically in recent years — from more than a thousand in early 1997 to 482 a year earlier, and now approximately 381.³⁸ These are not insignificant changes in Cuba. Indeed, they are ones that should be recognized and encouraged further by foreign governments. It is highly unlikely, however, to expect the revolutionary government — at least in the short term — to undertake dramatic changes in Cuba’s political structures, to allow opposition media to function freely, or to radically alter Cuba’s socialist constitution.

Not surprisingly, there is no shortage of arguments against the strategy of constructively engaging rights-abusing states such as Cuba. On the face of it, though, it is hard to disagree or find fault with an approach that is not intended to produce dramatic or immediate results in the country being engaged. Still, critics point out that engagement is really little more than a clever, convenient, and ultimately morally bankrupt approach to states that violate the rights of their citizenry. For some, this approach offers a form of political cover for governments to continue to operate on a “business-as-usual” plan (or in collusion) with repressive regimes, or provides them with a certain degree of legitimization for an essentially “do-nothing” policy. In short, it basically rewards rather than penalizes states for their misconduct, and thus sends out the wrong message to the international community, to states contemplating similar types of behaviour, and to international human rights NGOs. Additionally, engagement does not exact influence for the engaging country, but actually amounts to a forfeiture of any leverage against the offending regime. And according to Irving Brecher, an emeritus professor of economics at McGill University, “the human rights impact of dialogue without leverage is monumentally unimpressive.”³⁹

One could argue that Canada’s approach of constructive engagement or principled pragmatism is underscored by a genuine commitment to make a difference

on human rights issues in Cuba. But a more cynical interpretation would suggest that this approach is largely intended to “defend” Canada’s human rights record and to “explain” why it is engaging a host of rights-abusing states. The Liberal government can, however, point to its engagement and initiatives with Cuba and China as proof of the political importance which it attaches to human rights concerns, and thus be “seen” by the Canadian public as doing something in this area. In other words, it provides the government with ammunition to use against critical NGOs and a public perception — reinforced by Ottawa’s handling of the November 1997 APEC Summit in Vancouver — that trade takes precedence over human rights considerations. In the final analysis, though, engagement does not bring about positive change in the targeted country in the short or long term. In fact, it merely serves to maintain an authoritarian state in power and does little to change the human rights climate — since there is no pressure on the regime to do so. States will only change their abusive behaviour because they have to (e.g., in order to hold on to political power); and not because they want to or because those engaging them are asking them to do so.

Has Constructive Engagement Worked?

From the early days of the Chrétien Liberals coming to power, Canada’s Cuba policy has embraced commercial exchange, mutual respect, and diplomatic dialogue and eschewed the long-standing US strategy of economic embargo, the mentality of viewing Cuba as a “rogue state,” and international political ostracism of Cuba. During the April 1998 Santiago Summit of the Americas, Chrétien reiterated this view when he noted: “The policy of positive engagement is one I’ve practised for a long time.”⁴⁰ And, just prior to his departure for Havana in late April, he explained once again: “Isolation leads nowhere. But if we are engaging them, discussing with them, offering help ... the people of Cuba and the president of Cuba will certainly be happy to have a dialogue.”⁴¹ Not unexpectedly, then, Canadian officials have indicated on numerous occasions their endorsement of constructive engagement and “business-as-usual” relations — especially at a time of seeming transition in Cuba — over isolation and high-pitched rhetoric.⁴² This approach was given more emphasis, however, when Lloyd Axworthy was appointed Foreign Minister in early 1996, whereupon the official government line crystallized around the idea that engagement was far more likely to achieve positive results and change in Cuba than the US policy of sanctions and confrontation — which has failed to bring about a regime change and fundamental reform after forty years of application.

Upon returning from his January 1997 visit to Cuba, Axworthy was fairly blunt in stating: “The reality is that I think we’ve gone further than anything they have been able to accomplish, by building those bridges”⁴³ and more successful than “holding a megaphone in a Senate committee room.”⁴⁴ More recently, during a

press briefing after attending an OAS conference in Washington in early March of 1998, he stated boldly: "The whole embargo and the Helms-Burton bill is totally counterproductive. It just doesn't work."⁴⁵ Further to this, and just a month or so before Chrétien's visit to Cuba, Axworthy wrote: "To criticise the U.S. economic embargo against Cuba, and the Helms-Burton legislation, is not to argue for the status quo in Cuba. Rather, it is to react to an approach that runs contrary to our own. It is to criticise a policy that has proven unsuccessful in achieving its own stated goals, and that is the source today of much suffering among the Cuban people."⁴⁶

Of course, if as Axworthy says, the US approach has been unsuccessful and counterproductive, then this raises the obvious question for Canada's policy of constructive engagement: Has it successfully achieved its stated objectives in Cuba? Those objectives were succinctly outlined by Christine Stewart, then-Secretary of State for Latin America and Africa, while attending a 1994 conference in Havana organized by *The Economist* magazine: "First, we are here to promote several concrete Canadian interests, especially in terms of commercial activities. Second, we wish to support positive, peaceful change in Cuba, both political and economic."⁴⁷ She then went on to say that Canada wished "to encourage Cuba's full, constructive participation in international affairs." Stewart concluded by noting: "Finally, we want the Canadian government not to be an impediment, standing in the way of Canadian organisations and individuals pursuing their own activities and dialogues with Cubans because of historic restrictions on official development assistance."⁴⁸

Moreover, Axworthy himself recently summarized Canada's policy by explaining: "Our engagement is designed to provide Cuba with the assistance and support that will be needed if a peaceful transition is to occur with full respect for human rights, genuinely representative government institutions and an open economy."⁴⁹ As part of Canada's policy of constructive engagement, and in an effort to secure these stated objectives, a variety of measures have been undertaken. Most of them have come under the auspices of the January 1997 Joint Declaration of the Ministers of Foreign Affairs of Canada and Cuba, which created the Canada-Cuba Joint Committee on Human Rights (whose members include Canada's Ambassador to Cuba, Keith Christie, and the Director of North American Affairs in the Cuban Foreign Ministry, Carlos Fernández de Cossío). Among other things, both countries agreed to hold joint seminars on human rights issues in Canada and Cuba, as well as promote reciprocal exchanges of judges, legislators, academics and other professionals.

As well, in May of 1997, Canadian officials went to Havana to participate in the inaugural Canada-Cuba seminar on children's rights.⁵⁰ One month later, Axworthy and Diane Marleau, Minister Responsible for International Cooperation and la Francophonie, welcomed a Cuban delegation to Ottawa to engage in a two-day session on women's rights. And in October, a high-level delegation of

Cuban National Assembly members met with their Canadian counterparts in Ottawa, as part of the Canada-Cuba parliamentary exchange/seminar programme.⁵¹

In mid-December, Canadian officials met with representatives of the Cuban government to take stock of the 14-point Joint Declaration and to lay the ground work for Chrétien's April 1998 visit. Two months later, high-level discussions continued with the arrival in Ottawa, once again, of Cuban Vice-President Carlos Lage. Both sides once again sat down to assess the progress made on the 14-point Joint Declaration signed by the two countries during Axworthy's visit to Havana in January of 1997.⁵² In addition, both countries signed a new Air Transport Agreement and renewed an Anti-Hijacking Treaty, while discussing a host of measures to enhance regional and global stability. But the most significant aspect of the visit revolved around serious discussions over the release of Cuban political prisoners and Ottawa's willingness to offer them exile in Canada. In late February, Prime Minister Chrétien announced that Canada had agreed to accept some 19 Cuban prisoners of conscience (among over 100 political prisoners released by Cuban authorities), who were included on a list presented to the Cuban government by Pope John Paul during his January visit to Cuba. The Prime Minister was quick to point out that Canada's acceptance of these prisoners, however, would be subject to the normal security and medical checks.⁵³

With the exception of the release of political prisoners — directly linked to Canadian intervention — there has been little progress on human rights and political freedoms in Cuba. There continues to be a lack of press freedom, the absence of a multi-party political system, and restrictions on individual civil and political rights. While there has been some lessening of restrictions on religious freedoms, political dissidents and opponents of the regime continue to be detained and harassed. It remains to be seen whether the frequency of those detentions or re-arrests decline appreciably in the coming months. In one area, however, Canada has sought improvement on the human rights front by advising the Cubans on the establishment of an infrastructure for a bona-fide citizens'-complaint process which would permit Cubans to criticize government officials. The hope by both countries is to create an institutional entity with a mandate to undertake independent investigations, to access government records, and to disseminate its findings publicly.

In defence of the slow progress to date, Canadian officials point out that they have engendered a degree of confidence and chemistry with their opposite numbers in Cuba, which will be helpful over the long term. According to Canada's Ambassador to Cuba, Keith Christie, the Cubans "are now committed to talking to us on issues they won't talk about very openly with anyone else."⁵⁴ (Canadian officials will no doubt continue to meet regularly with human rights activists and to monitor trials for Cuban dissidents.) There has also been progress in such areas as bilateral cooperation on economic reform, environmental protection and public health.⁵⁵ In addition, the Cubans have indicated a willingness to sign a host of agreements on combating international terrorism. Commercially speaking, of

course, the relationship has improved steadily, with Cuba standing as Canada's largest trading partner in the Caribbean.⁵⁶

During his attendance at the mid-May 1998 G-8 meetings in England, and in the wake of his trip to Cuba, Prime Minister Chrétien suggested that Canada's policy of engagement had helped to create a rapprochement between Washington and Havana. Speaking to reporters after a 45-minute private meeting with President Clinton, Chrétien remarked: "What I can say, is that my trip to Cuba didn't create as much controversy as some had expected that we'd have ... The reaction of the president and his spokesman were very moderate under the circumstances."⁵⁷ When pressed a little further on his contention, he pointed out that the US Chamber of Commerce is calling for openness with Cuba, along the lines of the Canadian position. He then went on to quip: "I guess they understood my argument when I said don't rush, you guys, one day you will recognise Cuba, but don't rush because by the time you are there, you'll be welcome in Canadian hotels."⁵⁸

Critics of Canada's engagement strategy would likely begin where Chrétien actually left off — that is, with his reference to Canada's commercial stake in Cuba. Stated differently, constructive engagement can be seen as little more than a cover for camouflaging continued trade relations with a dictatorial regime and, worse, a justification for inaction on the human rights front. According to political scientist Yvon Grenier, the Chrétien government's policy toward leaders such as Fidel Castro is "openly cynical and self-serving" and our Cuba policy reflects "our total indifference to the lives of Cubans." He went on to say disparagingly: "Foreign Minister Lloyd Axworthy has yet to meet a dictator he doesn't like."⁵⁹ In terms of fostering democratic development in Cuba, Grenier was equally piercing in his criticism when he stated: "Conveniently, 'democratisation' is a perfect Axworthy slogan: empty, open-ended, no strings attached. And let's do business as usual."⁶⁰ Other critics might focus on the new level of engagement manifested in Chrétien's April visit to Cuba, and the lack of results to show for it. Clinton's National Security adviser, Sandy Berger, sounded a discordant note when he opined: "We have not seen much evidence that constructive engagement with Cuba has produced any material results with respect to human rights or democracy."⁶¹ What the prime minister should have demanded, critics contend, was the immediate release of political prisoners and dissidents and the right to speak openly and critically about the value of political freedom. As Marcus Gee explained: "Mr. Castro gave Mr. Chrétien almost nothing for the trouble of coming to Havana. His only concession, if you can call it that, was to consider the release of four prominent dissidents."⁶² Moreover, the opponents of engagement would not likely be satisfied or silenced by the release of a handful of political prisoners — and will undoubtedly continue to challenge the efficacy of Canada's Cuba policy. Those who criticize Havana's human rights policy, however, often do so in a void — without any reference to a hostile US policy or the role of bitter Cuban-American opponents. For many critics, nothing less than the overthrow of the Castro government is acceptable — and any attempt at dialogue is therefore rejected out of

hand. This, in turn, has a tendency to lead to “hardliners” in both ideological camps effectively playing into the hands of their foes.

Summary

As the previous discussion demonstrates, it is exceedingly difficult to know with any certainty which is the best strategy or approach for precipitating meaningful political and economic reforms in Cuba. An argument could be made cogently for either engagement or punishment — and both of these positions have validity and appeal as well as weaknesses and pitfalls. In the insightful words of author Michael Ignatieff, although referring to a different context and to individual morality and engagement, “no one is quite sure whether our engagement makes things better or worse; no one is quite sure how far our engagement should extend; no one is quite sure how deep our commitments really are ... and our engagement may be intense, but shallow.”⁶³ And there is no guarantee that dialogue and constructive engagement will eventually lead to greater political space in Cuba; just as there is no guarantee that sanctions and isolation will bring about those same reforms (although obviously four decades of this latter approach have clearly been a failure). In addition, it is impossible to know the degree to which engagement, operating on its own, has been responsible for any recent changes in Castro’s Cuba. It is probable, however, that engagement — in conjunction with a variety of other diplomatic measures — would be more likely to contribute to positive change in Cuba than estrangement. Significantly, those other options should not exclude the possibility of imposing an escalating series of punitive sanctions, if no progress is forthcoming on the human rights front.

In the specific case of Cuba, and unlike the China situation, engagement seems to offer a more effective, albeit slower, means of moving Cuba along the transitional path. Given its size, the nature of its economy, and its proximity to the United States, Cuba would appear to be more susceptible to engagement rather than isolation. Although it certainly does not possess any magic formula and clearly carries with it real potential for major setbacks, dialogue and exchange does open a window of opportunity almost by default — especially given the failure of US policy toward Cuba since the early 1960s. Clearly, threats and harsh rhetoric alone have been exposed as an ill-advised and doomed approach, and one that has only served to galvanize Cubans around the Cuban flag and the Castro government itself. The key to unlocking the door to real change in Cuba is not through hostility and antipathy, but will necessarily require a build-up of trust, confidence and mutual respect — the hallmarks of any engagement strategy. But one should be careful not to base their support for engagement solely on the basis of an ill-conceived and failed US policy. In the end, advocates of engagement need to demonstrate eventually some tangible results from their strategy, rather than simply waiting passively on the sidelines.

Still, there is the vexing question of why Canada's policy of constructive engagement has yet to bear significant results in the area of political liberalization in Cuba. It is important to remember from the outset that altering the behaviour of any authoritarian or autocratic state is often a Herculean task, as the cases of Iraq and China clearly attest. While not an excuse for inaction, but rather a cautionary reminder, efforts to change a regime are invariably plagued by international reticence and a lack of staying power, "leaky" sanctions, and wrenching moral dilemmas and attendant human costs. In other words, there are no "quick fixes" here, only a panoply of diplomatic options — many of which are not particularly effective or attractive, instrumentally and morally. The real challenge, of course, is to locate a workable balance that delivers measured progress, holds out a reasonable chance of long-term structural change, has widespread international endorsement and is morally defensible.

Even when some of these qualifications are within reach, as in the Cuban case, there are still problems with the strategy of constructive engagement. Canadian officials themselves are very cognisant of the fact that wholesale political change in Cuba is not going to happen over-night or in the immediate future. Axworthy himself has argued that engagement with Cuba is a long-term process, and the joint declaration is a work in progress.⁶⁴ Additionally, the Cubans themselves will be insistent, as they are on many things, in moving forward the "Cuban way" — at their pace, on their terms, and without conditionality. Vigorous denunciations of both the speed and substance of Cuba's reforms, however, could jeopardize Canada's goodwill in Cuba. Pushing the Cubans into a corner would likely prove counterproductive. And as long as Fidel Castro remains in power, and there exists no serious organised political opposition, he is unlikely to implement reforms in the face of pressure tactics, as nine US presidents have witnessed personally. However, the critical question about Castro, especially given his dominant role in the policy-making process in Cuba, may not be whether he champions reform himself, but if he stands in its way.

As the new millennium quickly approaches, there is unlikely to be anything fundamentally new about the Canadian-Cuban dynamic. The overall bilateral relationship will continue along in the same vein — cordial, mutually respectful and engaged politically and economically. Of course, Canada's strategy of constructive engagement will undoubtedly continue, and will do so for the foreseeable future, unless progress on the human rights agenda is halted entirely, or there is some ominous external development (e.g., military confrontation with the US) to necessitate a re-evaluation. In the meantime, at every opportunity, Canadian officials will raise the issue of human rights and democratic development with their Cuban counterparts. There will also be periodic evaluations of the 14-point Joint Declaration at the official level and ongoing discussions on how best to ensure its full implementation. But as Jack Donnelly concluded in his discussion of constructive engagement: "In engaging others, we must not become disengaged from

our values and day-to-day efforts to realise them.”⁶⁵ This is trenchant advice which the Canadian government would do well to remember.

Notes

1. CNN Live Broadcast, Albright press conference from the US State Department, 20 March 1998.
2. In many ways, Canada has consistently maintained in some form or another — and with varying degrees of commitment — a policy of engaging the Cubans since the early 1960s. For historical background on the relationship, see John M. Kirk and Peter McKenna, *Canada-Cuba Relations: The Other Good Neighbor Policy* (Gainesville, FL: University Press of Florida, 1997).
3. Paul Knox, “Chrétien legacy tied to Havana,” *The Globe and Mail* 30 April 1998, p. A15.
4. See, Peter McKenna, “Canada and Helms-Burton: Up Close and Personal,” *Canadian Foreign Policy* 4.3 (Winter 1997), pp. 7-20.
5. The term “principled pragmatism” was first articulated by Foreign Affairs Minister Axworthy during his October 1997 speech at McGill University. See, Department of Foreign Affairs and International Trade, “Notes For An Address By The Honourable Lloyd Axworthy, Minister Of Foreign Affairs, At McGill University: Human Rights And Canadian Foreign Policy: Principled Pragmatism,” *Statement* (16 October 1997), pp. 1-11.
6. Government of Canada, “An Address By The Honourable Christine Stewart, Secretary of State (Latin America and Africa), To *The 24th General Assembly of the Organisation of American States*,” (7 June 1994), p. 4.
7. *Ibid.*
8. Government of Canada, “Notes For An Address By The Honourable Christine Stewart, Secretary of State (Latin America and Africa), To *The Economist Conferences Second Round Table With The Government of Cuba*,” (20 June 1994), p. 5.
9. For a recent treatment of Canadian assistance to Cuba, see, Michel Hogue, “A Canadian Approach?: Canada’s Official Development Assistance and Foreign Policy Towards Cuba,” (unpublished paper, March 1998), pp. 1-17.
10. *Ibid.*, pp. 3-4
11. “Cuba’s Absence at America’s Summit Skirts Formal Agenda” *Cuba INFO* 6:16 (1996), p. 3.
12. *Ibid.* As the host for the next Summit of the Americas in 2001, it remains to be seen whether Canada will invite the Cubans to attend the high-level meetings.
13. Department of Foreign Affairs and International Trade, “Robaina Visit to Mark 50 Years of Diplomatic Ties Between Canada and Cuba,” *News Release* No. 56 (17 March 1995), p. 1. During this same year, the Cuban Minister of Foreign Investment and Economic Co-operation, the President of the National Bank of Cuba, and the President of the Cuban National Assembly all visited Canada for bilateral talks.

14. Department of Foreign Affairs and International Trade, "Notes For an Address by The Honourable Christine Stewart, Secretary of State (Latin America and Africa), To The 25th General Assembly of the Organisation of American States," *Statement* (6 June 1995), p. 3.
15. Ibid.
16. Department of Foreign Affairs and International Trade, "Notes For an Address by The Honourable Christine Stewart, Secretary of State (Latin America and Africa), To The 26th General Assembly of the Organisation of American States," *Statement* (3 June 1996), p. 7.
17. For instance, see the 23 January editorial by *The Globe and Mail*: "Canada's Gift to Mr. Castro."
18. Drew Fagan, "Our Man in Havana Wakes Up Washington," *The Globe and Mail* 25 January 1997, p. D1.
19. Laura Eggerston and Paul Knox, "Cuba Law Swaying Canada, US Says," *The Globe and Mail* 22 January 1997, p. A1.
20. "Cuba Visit Likened to Appeasing Hitler," *The Globe and Mail* 24 January 1997, p. A8.
21. Ibid.
22. Robert Russo, "PM Rebukes Cuba-bashers" *The Halifax Chronicle-Herald* 9 April 1997, p. A1.
23. Department of Foreign Affairs and International Trade, "Notes For an Address by The Honourable Lloyd Axworthy, Minister of Foreign Affairs, to the Organisation of American States Conference of the Americas," *Statement* (6 March 1998), p. 5.
24. Ibid. See also Kathleen Kenna, "Canada blasts US on Cuba," *The Toronto Star* 7 March 1998, p. A2 and Paul Koring, "Axworthy, Helms aide slug it out on Cuba," *The Globe and Mail* 7 March 1998, p. A1.
25. See, Janice Tibbets, "Chrétien to visit Cuba," *The Sunday Herald* 19 April 1998, p. A19.
26. See, Heather Scoffield, "Summit maps path to free trade," *The Globe and Mail* 20 April 1998, p. A1.
27. For a critical assessment of the trip, see, Marcus Gee, "Chrétien's Cuban folly," *The Globe and Mail* 29 April 1998, p. A27.
28. See, Paul Knox, "Castro to consider rights cases," *The Globe and Mail* 28 April 1998, p. A1.
29. Initially, the term coined by Foreign Minister Axworthy was "effective influence," only to be replaced some time later by "principled pragmatism." See, Department of Foreign Affairs and International Trade, "Notes For An Address By The Honourable Lloyd Axworthy, Minister Of Foreign Affairs, At The Consultations With Non-Governmental Organisations In Preparation For The 53rd Session Of The United Nations Commission On Human Rights," *Statement* (5 Feb 1997), pp. 1-11 and Department of Foreign Affairs and International Trade, "Notes For An Address By The Honourable Lloyd Axworthy, Minister Of Foreign Affairs, At McGill Univer-

- sity: Human Rights And Canadian Foreign Policy: Principled Pragmatism,” *Statement* (16 October 1997), pp. 1-11.
30. See, Jack Donnelly, *International Human Rights Second Edition* (Boulder, Col.: Westview Press, 1998), pp. 103-107 and pp. 128-129.
 31. The term “illiberal” is borrowed from a recent article by long-time human rights scholar David P. Forsythe. See his, “Human Rights and Foreign Policy in the Next Millennium,” *International Journal* LIII: I (Winter 1997-98), pp. 113-132.
 32. The terms “wrong-doing” and “misconduct” are drawn from the work of Kim Richard Nossal. See his *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994), pp. 3-30.
 33. On this point, see Franklin L. Lavin, “Asphyxiation or Oxygen? The Sanctions Dilemma,” *Foreign Policy* 100 (Summer 1994-95), pp. 139-153 and Arych Neier, “The New Double Standard,” *Foreign Policy* 105 (Winter 1996-97), pp. 91-101.
 34. See, Jeffrey E. Garten, “Comment: The Need for Pragmatism,” *Foreign Policy* 105 (Winter 1996-97), pp. 103-106.
 35. Donnelly, p. 128.
 36. Lavin, p. 141.
 37. Garten, p. 106.
 38. Figures provided by Elizardo Sanchez, Director of the Comisión de Derechos Humanos y Reconciliación in Havana, and cited in John Rice, “Urgen a EEUU que afloje el cerco a Cuba,” *El Nuevo Día Interactivo* (San Juan, Puerto Rico), 12 July 1998.
 39. Irving Brecher, “Clinton and Chrétien on China: Ouch!” *The Globe and Mail* 18 June 1998, p. A23.
 40. Tibbits, “Chrétien to visit Castro.”
 41. Jim Brown, “Chrétien leaves on ‘in your face’ Cuba trip,” *The Sunday Daily News* 26 April 1998, p. 10.
 42. “Notes For An Address By The Honourable Christine Stewart Secretary of State (Latin America And Africa), To The 25th General Assembly of the Organisation of American States,” p. 3.
 43. “Cuba Visit Likened to Appeasing Hitler,” p. A8.
 44. Douglas Farah, “Cuba Signs Broad Pact With Canada,” *The Guardian Weekly*, 2 February 1997, p. 15.
 45. Koring, “Axworthy, Helms aide slug it out on Cuba.”
 46. Lloyd Axworthy, “Why Canada is involved so closely with Cuba,” *The Globe and Mail*, 19 March 1998, p. A23.
 47. “Notes for An Address By the Honourable Christine Stewart, Secretary of State (Latin American and Africa) to The Economist Conference’s Second Round Table with the Government of Cuba” p. 4.
 48. Ibid.
 49. Axworthy “Why is Canada so Involved with Cuba?”

50. That same month, imprisoned Cuban writer, Cecelio Sombra Haber, was released by Cuban authorities. According to Minister Axworthy, Sombra's release was "a result of both PEN Canada's efforts and Canada's policy of engagement and dialogue that allows us to discuss a wide range of issues with Cuba." Apparently, he had raised the issue of Sombra's detention with the Cuban leadership during his January visit. Department of Foreign Affairs and International Trade, "Axworthy Welcomes Release of Cuban Writer," *New Release* No. 86 (12 May, 1997).
51. Interview with a Deputy Principal Clerk of the Canadian Senate, 24 November, 1997.
52. There is some pressure on the Canadian government to demonstrate progress on the human rights agenda to sceptical US officials. On the question of progress, see Andrew Phillips, "Looking for Progress," *Macleans* 19 January 1998, p. 43.
53. In the end, Canada agreed to accept 11 political prisoners after they had successfully passed the checks and 3 more on the basis of ministerial permits. Government of Canada, "Cuban Political Prisoners Arrive in Canada," *News Release* No. 87 (6 April 1998), p. 1.
54. Paul Knox, "Canadian officials laud growing Cuban connection," *The Globe and Mail* 20 January 1998, p. A8.
55. During a Canadian International Development Agency (CIDA) workshop in Havana in early 1998, Cuban officials were apparently impressed with Saskatchewan's social democratic model and indicated that it might provide some insights for the future direction of Cuba. Mike Trickey and Julian Beltrame, "Chretien's Cuba trip yields little," *The Halifax Daily News* 29 April 1998, p. 1
56. An argument could be made that Canadian companies such as Sherritt International Inc., with its commendable labour and workplace record, make a positive contribution to the economic well-being of Cubans.
57. Helen Branswell, "Chrétien gives Clinton Cuba briefing," *The Sunday Herald* 17 May 1998, p. A9.
58. Tim Harper, "US-Cuba gap closing, Chretien says," *The Toronto Star* 17 May 1998, p. A11 and Aileen McCabe, "US and Cuba edging closer, Chretien says," *The Montreal Gazette* 17 May 1998, P.A10.
59. Yvon Grenier, "Cuba without Cubans." *The Globe and Mail* 13 March 1998, p. A21.
60. *Ibid.*
61. Tibbets, "Chrétien to visit Castro."
62. Marcus Gee, "Chrétien's Cuban folly," *The Globe and Mail* 29 April 1998, p. A.27.

5. *Canada and Helms-Burton: Perils of Coalition-Building*

Evan H. Potter

Introduction

Canada, as a middle power, has gained leverage and projected its interests in the past through the use of strategic coalitions of like-minded states. Yet, the use of extra-territorial legislation by the Clinton Administration to force divestment from Cuba is not an issue that is amenable to resolution through sustained pressure from coalitions. This paper shows the difficulties for Canada of engaging in mission diplomacy on a foreign policy issue that is driven by US domestic interests. It examines the forces at play when Canada, Mexico and the European Union (EU) attempted to forge a loose coalition in 1996-1997 to counteract the *Helms-Burton Act*. Importantly, how did the particular nature of the US's bilateral relations with the individual members of this coalition affect the success or failure of the extra-territorial application of this US law? Helms-Burton highlights both parallels and inconsistencies in the foreign policies of the US and its allies.

The essay's major finding is that while Canada may be a natural coalition leader, it faced particular difficulty building a coalition of like-minded states on a foreign policy issue that was driven by powerful American domestic interests. The paper describes the Clinton Administration's ability to blunt concerted international opinion on its Cuba policy and its ability to split, with relative ease, a coalition of its own allies.

The first section of the paper describes the *Helms-Burton Act* and its impact on the Cuban economy. The second section highlights the different perspectives on Helms-Burton in the United States, particularly the schism between the US administration and American "big business" on the use of sanctions. The third part of the paper analyses the responses of the EU, Canada, and Mexico to the Act.

The concluding section offers an explanation for the weakness of the coalition, including a close examination of why the Canadian government, contrary to its public rhetoric, did not take more aggressive action.

Historical Context

On 24 February 1996, Cuba shot down two unarmed civilian planes flown by anti-Castro dissidents from Miami. Under intense pressure from Cuban-Americans, United States President Bill Clinton signed the *Cuban Liberty and Democratic Solidarity* (LIBERTAD) Act, known as the *Helms-Burton Act*, into law on 12 March. This marked the beginning of a shrill diplomatic war between the US and some of its closest allies, a war over the right of one nation to decide the trading partners of other nations.

Well aware of Cuba's special place in the American psyche, US allies in Western Europe and the Hemisphere were nevertheless taken aback by the extra-territorial provision of the law. The Clinton Administration, for its part, accused the international community of complacency and hypocrisy towards Havana, comparing the "deafening silence" towards the Castro regime, the last undemocratic regime in the Hemisphere, with the sharp denunciations directed at dictatorships in Nigeria, Burma, and China. The administration did not, however, expect the legislation to dramatically disrupt the stable diplomatic and trading relationships it enjoyed with these same allies.

The lines of demarcation between the US and its allies over the US-Cuba policy soon became clearly drawn. The two sides agreed on the need to promote the transition to democracy in Cuba, but differed on the means. On one side was the EU, its Member States, and countries such as Mexico and Canada, who had longstanding ties to the island and believed the best way to encourage democratic development was through engagement. On the other side, alone, was the US, which had long advocated isolation as the only way of bringing down the Castro regime and reforming the economy and political institutions on the island.

In the course of a year, between 1996-97, positions shifted somewhat and raised questions about the durability of a coalition of like-minded states against the Act. The Europeans, through the EU, eventually attached greater conditionality to their bilateral approach of engagement with Cuba, for which, to their consternation, the Clinton Administration claimed credit. Canada, meanwhile, in keeping with its longstanding and independent Cuba policy, made conditionality less explicit, putting it at greatest odds with Washington.

The *Helms-Burton Act* and Its Impact

The *Helms-Burton Act* expands the already broad US economic sanctions against Cuba, primarily through measures directed against companies that invest in, or

profit from, property expropriated by the Cuban Government and subject to a claim by US nationals. President Kennedy issued the first economic sanctions against Cuba in response to a series of expropriations of US properties. Those sanctions have been strengthened several times since their initial enactment, and have long forbidden US corporations and nationals from investing in, trading with, or even travelling to, Cuba.¹ These provisions were further tightened in the *Cuba Democracy Act* of 1992 to cover foreign subsidiaries of American companies. It prohibited US interests from engaging in transactions related to Cuba, but did not attempt to regulate the conduct of entities not otherwise subject to US laws. This exclusive focus on American entities, however, changed with the passage of the *Helms-Burton Act*.

The *Helms-Burton Act* incorporates all regulations governing the US economic embargo of Cuba that were in effect on 1 March 1996. By doing so, the Act makes it harder to ease those restrictions in the future, not only because congressional approval will be more difficult than regulatory change but also because the Act sets difficult preconditions for lifting those sanctions. In essence, Helms-Burton makes the current level of sanctions the baseline for future action. More importantly for the purposes of this analysis, the Act extends the reach of Cuba sanctions to include the activities of firms and individuals not otherwise subject to US law. It does so primarily through two provisions. Title III governs civil liability and creates a private right of action in US courts against those who “traffic” in property confiscated by the Castro regime, if a claim to that property is owned by a US national. Title IV excludes “traffickers” from the United States.

To allow for a diplomatic settlement, the Act gives the President waiver authority under Title III. On 16 July 1996, in a politically motivated decision, Clinton permitted Title III to take effect on 1 August, while at the same time suspending for six months the right to file suit. The Presidential waiver was exercised again on 16 January, 1997, effectively postponing the filing of any Title III suits until 1 July. The President has extended the waiver ever six months since this time.

In essence, the Damocles sword of Title III hangs over the heads of foreign companies active in Cuba, threatening to drop every six months if the President does not renew the waiver of the right to file suit. The Clinton Administration’s use of the threat of Title III acts as a carrot and stick, to pressure third countries to take a greater interest in the removal of the Castro regime and to restore democracy to the island (Title II of the Act). In late 1996, Clinton appointed the then-Under Secretary of Commerce Stuart Eizenstat to negotiate with American allies, and suggested that future waivers could be country specific.

Although the Clinton Administration’s tactic was to exercise the waiver option, it was legally obliged to enforce Title IV, which excludes “traffickers” from the United States. The visa denial provision is both mandatory and broad and the vagueness of its terms potentially puts many executives of non-US companies, with interests in Cuba, at risk of being denied entry to the United States. In practice, the guidelines for the enforcement of Title IV are vague, which gives the

State Department considerable discretion, on a case-by-case basis, to determine who is excludable.² As a pressure tactic, the State Department notified executives of two companies — Sherritt International Corporation of Canada, the largest single investor on the island, and Grupo Domos of Mexico (owner of 40 percent of Cuba's telephone network) — that they were targets under Title IV and they, their agents, and their families were (and continue to be) barred from entering the United States.

In addition to the restriction under Titles III and IV, the *Helms-Burton Act* includes other significant provisions such as travel restrictions for US nationals and the continuing US policy of requiring assurances that sugar products that enter the United States are not products of Cuba. But perhaps the most significant other restriction is the ban on US-source financing for Cuba-related transactions that may significantly affect the ability of US financial institutions and other companies to deal with third-country companies that might be determined to be "traffickers." In effect, it reiterated the existing constraints imposed by the Cuban Asset Control Regulations. This provision underscores the Clinton Administration's desire to punish the Castro regime by denying it foreign capital. Because money is fungible, any money provided by a US firm to a third-country company with an interest in nationalized Cuban assets could potentially be brought within the reach of the Act if there is sufficient (read) political will on the part of the US government. The message was clear, the very fact that the US government chose to exercise the option of broad interpretation of the provision ensured that US financial institutions were very cautious in their lending when there was a chance of exposure to risk in Cuba. Foreign companies that sought financing for foreign direct investment were therefore discouraged from locating in Cuba.

Some of the US's closest allies, such as Canada, the EU, and Mexico, found the American policy of further entrenching the existing 35-year old US embargo against Cuba, and its encouragement of foreign divestment from the island, to be both contrary to the spirit of a liberal international trading order and, ethically, absolutely the worst way of bringing down the Castro dictatorship. A loose, very public alliance against Helms-Burton was thus anchored around these two positions. Canada, with both a historical track-record of opposition to the American embargo and significant commercial exposure on the island, took a particular interest in playing a leadership role in this coalition.

Given the avowed aims of the American embargo to force democratic change in Cuba through isolation rather than engagement as proposed by its major allies, it is useful to outline the real and potential impact of the Act on the Cuban economy before going on to examine national reactions to the US's secondary boycott.

The collapse of the Soviet Union left the Cuban economy in a shambles. Prior to 1990, Cuba received an estimated \$5 billion per year from the Soviet Union. The additional loss of its major East bloc trading partners meant that between 1989-1993 the value of its total trade fell from (US)\$13.5 billion to (US)\$2.9

billion. Cuba's almost total dependence on foreign energy sources further accentuated this economic vulnerability.

Post-Cold War geopolitics gave Havana no choice but to integrate Cuba into the global economy. Under a system of "capital without capitalism," Castro liberalized the foreign direct investment law, allowing foreign investors to own Cuban industries outright for the first time (a form of "capitalist apartheid" to his detractors) and authorized self-employment to support the exploding tourist industry.

What was the economic impact of Helms-Burton? The Cuban economy actually grew by about seven percent in 1996 — much of which was due to high sugar prices. Havana had also managed to reduce its budgetary deficit from five billion to 700 million pesos in the space of the three previous years. But for all the emphasis on foreign direct investment as a panacea for Cuba's economic woes, most of the country's economic growth was actually generated internally since total foreign direct investment into Cuba represented only a small portion of its gross domestic product.

This is not to say that the impact of the Act on Cuba's economy was negligible. There was an immediate "chilling effect" on large companies and, particularly, multinationals — for example, American Express and Pepsi Co. — which postponed investment.³ As mentioned, the ban on financing from US firms further discouraged non-US investment. Canada's major chartered banks, with their significant exposure in the United States, studiously avoided investing in Cuba. Other large Canadian companies such as Redpath Sugar of Montreal, given its large export sales to the United States, stopped importing Cuban sugar as a result of the Act.⁴

That being said, this initial chilling effect began to thaw by early 1997.⁵ While so-called "trophy" companies continued to be nervous, small and medium-sized enterprises were attracted to Cuba in ever greater numbers. The number of joint ventures with foreign investors climbed from 212 in 1995, to 260 by the end of 1996.⁶ Countries such as Germany, France and Italy, which had shown little commercial interest in Cuba, began to send business missions to the island. Therefore, despite the secondary boycott of the *Helms-Burton Act*, a segment of the business communities in Canada and Europe appeared willing to risk investing in Cuba.

The Clinton Administration's position was that a confrontational stance would lead to democratic change, through domestic pressure on Castro to step down as Cubans grew increasingly restless with the lack of economic progress. Once Castro was removed, so the official thinking went in Washington, the implementation of the measures of support under Article II of Helms-Burton would be made possible, including \$6 to \$8 billion of foreign investment in Cuba. In fact, American attempts to strangle the Cuban economy through the Act pale in comparison to the loss of subsidies from the former Soviet Union. More importantly, Castro was able conveniently to pin the blame for the continued dire state of the Cuban economy on tightened US sanctions rather than his failure to liberalize his country's

economy substantially. In other words, the US embargo fed a militant nationalism in Cuba that increased rather than lessened Castro's grip on power.

It is somewhat ironic that US intransigence on repealing Helms-Burton also fed nationalist sentiments among the coalition members. This was especially true in Canada and Mexico, but also in Europe, where there was an uneasy feeling that Helms-Burton and other US extra-territorial legislation was a symbol of "Pax Americana," transferred from the Cold War to the post-Cold War. The coalition against Helms-Burton in large measure rested on a latent, emotional, and somewhat ill-defined, anti-Americanism.

A Differentiated American Perspective

How the debate over Cuba is framed goes to the heart of explaining the differences between the US and its allies.⁷ It is also instructive to note that there are a number of "American" perspectives. Indeed, it is surprising how wide the gulf is between the Administration's/Congress's point of departure on the Act and that of the peak horizontal business associations such as the American Chamber of Commerce.

Cuba as a Security Threat to the United States

As late as 1997, the Clinton Administration insisted that Cuba was a threat to its national security (although the US military reversed this position in 1998). Its allies, while acknowledging the volatile history of Cuban-US relations before and during the Cold War, have had difficulty accepting that acrimony from this relationship should be allowed to spill over and become an irritant in their own bilateral diplomatic relations with Washington.

A litany of security concerns forms a backdrop to the legislation. According to American officials, for example, Cuba's unsafe nuclear facility represents a potential Chernobyl 90 miles off US shores. Russia continues to use the island as an intelligence listening post. There is a possibility of a mass migration of possibly one million Cubans to the US should the island collapse in economic and political chaos, and Havana is a national security⁸ threat in the league of such international pariahs as Libya and Iran. Finally, Cuba's name is also invoked by US officials when describing the global drug trade, although Mexico is surely a greater threat to US "security" interests in terms of migration and drug trafficking than is Cuba.

Because the United States contends that no dispute settlement panel of the World Trade Organisation (WTO) is competent to judge a country's self-definition of national security, the invocation of Cuba's threat to its national security was, and continues to be, a powerful American weapon to nullify any potential negative findings of such a panel.

US Business Reaction

There is a basic philosophical difference between the Administration and “big business” on the efficacy of unilateral sanctions. The three-million-member United States Chamber of Commerce, for example, has argued since 1922 against these types of sanctions, believing that they rarely bring about regime changes, are difficult to repeal, and invariably cede market share to competitors, namely, the business communities of other countries. It has lobbied against Helms-Burton.

What most concerned US industry and other countries was that the *Helms-Burton Act* was the latest in a growing trend of extra-territorial application of US law. Between 1993-96, 60 new US laws and Executive Decisions were created for implementing unilateral sanctions in 35 countries.⁶ The effect of this was that American firms were increasingly living under the stigma of unreliability, leading to a fear that there would eventually be a de-Americanisation of products because of the cumulative impact of all the sanctions. It was not lost on business that these types of sanctions were increasing at a time of growing economic interdependence, when US firms could least afford to be seen as political liabilities.

Multilateral approaches were deemed the only effective measures against Havana; “light-switch” diplomacy was perceived as a wasting asset. The Chamber’s position was certainly a high-wire policy balancing act: it had to position itself on the side of angels for a domestic audience by making clear that opposition to Helms-Burton was a continuation of its existing position on unilateral sanctions and in no way meant that it was pro-communist. Although this position was in many ways similar to that of the coalition members, attempts by the Canadian government to enlist the active support of American business proved fruitless.

Canada’s Independent Approach

Canada has taken an independent approach to Cuba since 1959,⁹ never severing relations as the United States did. In 1979, Canada cut off bilateral aid to Cuba because of Havana’s involvement in the war in Angola; aid was re-instated in 1994 through non-governmental agencies. Canada has always maintained full diplomatic representation with Cuba. Total trade between Canada and Cuba — while never significant when compared to Canada’s other trading relations — nevertheless doubled between 1992 and 1997 to \$600 million. At the same time, despite claims to the opposite from the Americans, Ottawa repeatedly raised its human rights concerns at the most senior levels in Cuba. Canada co-sponsored resolutions on human rights abuses in Cuba, at the United Nations Commission on Human Rights in Geneva.

The Canadian reaction to Helms-Burton was swift but, as will be shown, largely symbolic. Antidote legislation was passed unanimously by the Canadian Parliament in record time. The legislation allows companies found liable under the Act

to counter-sue in Canadian courts and to win judgements that would offset any penalties imposed in the US. It also authorizes “blocking orders” to prevent enforcement of US judgements in Canada. The law allows the federal government to impose fines of up to C\$1.5 million against Canadian companies, and up to C\$150,000 against individuals, for complying with the Act. On the international front, in June 1996 Canada supported a unanimous resolution at the Organisation of American States to have the Inter-American Juridical Committee assess the legality of the Act. The Committee later ruled that Helms-Burton did not conform to international law. Ottawa also argued that the Act was a violation of the North American Free Trade Agreement (NAFTA), since it would make Canadian investment in the US subject to less favourable treatment.

Having accused the previous Conservative government as a “camp follower” of the United States, Helms-Burton provided the Liberal government with a very convenient rallying point for the “independent foreign policy” that it had called for while in Opposition. The Chrétien Government was at this time also smarting from the public criticism of its trade-before-human-rights approach to China. Cuba became one of the few value symbols in Ottawa’s trade-driven foreign policy. With polls showing that 71 percent of the Canadian population was soundly behind the Government in its denunciation of the US legislation, the Canadian prime minister and his trade and foreign affairs ministers were all extraordinarily vocal on Canada’s Cuba policy. In a somewhat unusual display of partnership with the federal government, a coalition of Canadian NGOs led by Oxfam Canada, and including unions and national farmers’ groups, went so far as to launch a boycott-Florida campaign. As one senior Canadian official commented, Canada’s unified reaction to Helms-Burton was entirely predictable, “like mother’s milk,” in that it showed that Canada was independent from the United States.

In late January 1997, Foreign Affairs Minister Lloyd Axworthy and Secretary of State Christine Stewart made a 24-hour visit to Cuba to sign a 14-point declaration on human rights. For Axworthy, the trip signified Canada’s longstanding policy of engagement with the Castro regime, the belief being that it was better to “work from inside, talk across the table instead of pillorying (Castro) from a megaphone in a Capital Hill committee room.”¹⁰ It also reflected his attempt to position Canada’s foreign policy as one of “effective influence.”

The declaration in Canadian eyes was unprecedented because it committed the Cubans, for the first time, to work publicly with Canada on human rights and governance issues through initiatives such as judicial training, academic exchanges, and the strengthening of a Citizens’ Complaints Commission within the Cuban National Assembly. However, it cut very little ice with the Americans. Nor did subsequent seminars organized by Canada on children’s rights (in Havana) and on women’s rights (in Ottawa). Although Canada was careful in its public announcements to not link the brief visit with its rejection of Helms-Burton, the visit nonetheless was seen by both the Administration (“collaboration with a dictator” said the State Department’s spokesperson; “sincere but misguided” said

President Clinton) and Congress (“another finger in the eye of the US,” said a spokesman for Senator Jesse Helms) as yet another grenade lob by the Canadians in the diplomatic fire-fight between the two countries over the appropriate way of introducing democracy to Cuba. Clinton’s Special Envoy on Cuba, Stuart Eizenstat, was equally dismissive, suggesting that the Complaints Commission was a far-cry from an independent ombudsman and would probably end up dealing with such problems as electrical outages rather than human rights abuses. Given the Canadians’ apparent leverage with Havana, the Clinton Administration wondered out loud why it was that Ottawa did not insist on reforms of the Cuban penal code to eliminate political crimes, the establishment of independent NGOs, and the establishment of an independent press.

The war of words would continue with Canada’s riposte often being that the US was suffering a case of “selective indignation” given its refusal to impose equally harsh sanctions on another human-rights abusing regime — China. To this, the Americans would as often as not respond that they didn’t need any lessons on such indignation from a country that was intent on mobilizing the international community to punish Nigeria’s generals through the use of economic sanctions. The US response to another whirlwind visit to Cuba by Prime Minister Chrétien in the spring of 1998 was more muted, but also one of indignation at what it considered was unnecessary provocation (a “propaganda bonanza” for Castro) by its northern neighbour. In contrast, Pope Jean-Paul’s visit to Cuba a few months prior to the Chrétien visit was seen in a much more positive light by the US Administration. There is, of course, a delicious irony to this diplomatic contre-temps: had the Canadians succeeded in getting what the Americans would have considered more meaningful reforms out of the Cubans, then this would have put paid to the entire US strategy of using isolation to create democracy on the island. Canada’s “failure” to secure major reforms was in fact the best outcome for the United States.

On the surface, then, it would appear that Canada — having self-consciously decided that it would be, in the words of Foreign Minister Axworthy, an “active Western Hemisphere player” — was in a relatively strong position, morally and in international law, to lead an international coalition against Helms-Burton. The answers to why this leadership was weak and why there did not appear to be full commitment by the coalition’s members, lie in the complex bilateral relationships between the United States and the individual members.

Impact of Helms-Burton on Canada-US Relations: Tempest in a Teapot

Judging from the extensive media coverage, one could be forgiven for thinking that Helms-Burton had caused irreparable fissures in some of the US’s most important bilateral relations. But the Act’s impact should be put into perspective.

Although the United States probably did not anticipate such a visceral reaction from its allies, this should not be interpreted as the Act having altered the overall “tones” of the US’s relations with Canada, the EU, and Mexico.

The Clinton Administration understood as much. So did Ottawa, it just did not say so publicly. As Special Envoy Eizenstat quipped at a conference on Helms-Burton in 1997, the reaction to the Act had actually been a “tea party” when compared to other bilateral matters. To illustrate the point he claimed that Canada could have gone to the United Nations to attack American actions but chose not to. With the Pacific Coast salmon dispute looming, and on-going problems with softwood lumber (worth \$3 billion alone), the Canada-Cuba trading relationship amounting to hundreds of millions of dollars and, with the exception of Sherritt International, the relatively small Canadian investment was, economically-speaking, hardly worth drawing a line in the sand over. Indeed, despite the fact that the United States upped the diplomatic ante when it barred four more executives from Sherritt from entering the US in March 1997, and with the Cuban “pajama wars” at US subsidiaries of Wal-Mart in Canada, Ottawa was still unwilling to challenge its neighbour in the courts. There was some consideration in Ottawa of a “tit-for-tat” strategy in which Canada would have started to harass and ban US executives travelling to Canada, however this would have involved a potential amendment to Canada’s *Immigration Act*, and such a notion was soon dropped. (On what basis would only American business persons have been banned?)

Had it chosen to act, Ottawa certainly had recourse to some powerful, although somewhat untested, judicial procedures to challenge the validity of Helms-Burton. The Act violated the spirit and letter of NAFTA. As mentioned, it made Canadian investment in the US subject to less favourable treatment since the Canadian firms’ assets in the US would be liable, and it also was a violation of NAFTA’s expropriation clause. Third countries, such as Canada, were facing a growing number of secondary boycotts as a result of a plethora of American federal, state and municipal sanctions. For this reason all the steps were put in place for a NAFTA challenge. But why did action actually stop short of demanding a panel?

The procedural and technical reasons for not taking further action offer a useful camouflage for the more substantive political reasons. For instance, the procedural requirements for a NAFTA dispute resolution panel were not in place and, had the Canadians suggested panel members and the Americans refused, then there would have been no panel. This would surely have been embarrassing to Ottawa. Arthur Eggleton, the then International Trade Minister and his advisors felt that because the NAFTA panel was not as far advanced in terms of procedures as its WTO counterpart, calling for such a panel would potentially undermine the credibility of NAFTA as a whole, especially if the Americans were pushed to invoke a national security exemption.¹¹ Fundamentally, Canada did not wish to forsake the overall tone of its bilateral relations with the United States for the sake of one piece of extra-territorial legislation. But these technical reasons

would clearly not fly politically as a justification for pulling back. President Clinton, by agreeing to ongoing suspensions of Title III, gave Ottawa just the out-clause that it needed, allowing it to both bluster *and* not pursue a more vigorous strategy that would have seen certain provisions of NAFTA litigated in international law.

Eizenstat was right. The *Helms-Burton Act* had not sent Canada-US relations off the rails. Unlike Canadian gun-boat diplomacy over the Spanish fishing vessel, *Estai*, in 1995, which was to have negative repercussions for Canada-EU relations, the Canadian stance on Cuba was longstanding and well-understood by Canada-watchers in Washington. The acerbic rhetoric on both sides was designed largely for domestic audiences.

The Canadian Government's lack of desire to push the United States too far, the European's negative reaction to Canada's reluctance to pursue the US under NAFTA, and Mexico's own unique history of bilateral relations with the United States (as well as its discomfort with some of the "democratic engagement" language surrounding the issue), all pointed to the difficulty of achieving anything more than a very loose coalition against Helms-Burton. There was a dilemma for Canada. On the one hand, its ability to lead a concerted coalition of like-minded states to fight Helms-Burton would solidify its reputation as a "player" in the Hemisphere, where the Americans were already complaining that they were "tripping over" Canadians: On the other hand, Helms-Burton was such a volatile American political issue (indeed it should probably be considered more of a domestic issue than a foreign policy one) that it had the potential, if Ottawa chose to pursue it aggressively, of doing long-term damage to Canada-US relations.

Europe and Mexico: Also Reluctant Partners

In response to the extra-territorial US legislation in 1996, Canada, the EU, and Mexico all enacted broader blocking statutes, which both barred compliance with and neutralized the effects of the US secondary boycott. They seemed destined to be natural allies in forcing if not a repeal of the Act itself, then at least in managing it.

There was general agreement among the three that the Act was a political and bilateral US-Cuba issue rather than a legal problem. It was clear that the US would never accept such extraterritorial application from another country. Indeed, the US had done just this on the Arab boycott of countries doing business with Israel). Moreover, while the Act may have negligible impact on world trade (there is more trade between Chile and Argentina than all of Cuba's world trade), its impact for the international system was far greater in light of what it said about growing US unilateralism or willingness to use secondary boycott legislation that defied the principles of a rules-based system international trading system. The Europeans were particularly concerned about the precedent that would be set if the US were to invoke security "so lightly" in a World Trade Organization (WTO)

dispute settlement panel. Hugo Paeman, the ambassador of the EU to the US in 1997, went so far as to state that it would be like “injecting a virus into the international economic system that could grow as other nations take reprisals of their own.”

The Europeans wasted no time in reacting. In May 1996 the European Parliament condemned the US legislation in a resolution. By the end of that year, the EU had requested and implemented a WTO settlement panel. (Its members were selected in early 1997). It had adopted national legislation to block the Act, changed procedures governing the entry of US firms to Europe, and had a watchlist of US companies who had filed for compensation.

As in the Canadian case, the Europeans had no desire to overly antagonize the Americans and create the potential for a recurrence of the type of nasty trade conflict characterized by the “chicken war” of the 1960s, which had spilled over into the political domain. The *Helms-Burton Act* came at a time when the post-Cold War trans-Atlantic architecture was being reconfigured and neither the Americans nor the Europeans had a desire to let this process unravel over Cuba. Similar to the Canadian strategy, the EU approach was not to attack the whole Act, but to target the secondary embargo provision and extra-territorial aspects (e.g., denial of transit, prohibition of loans to EU firms). In addition, in January 1997, the EU completed a cooperation agreement with Cuba, in which the Cubans reluctantly accepted conditionality between aid and political reform. This actually went further than any Canadian agreement with Havana in linking economic assistance to reform. Washington’s spin was that the EU had seen the light and was gradually shifting its position. In fact, as the Europeans reminded the Americans, such conditionality is a standard feature of all the EU’s cooperation agreements; Cuba had not been singled out for special treatment.

The Europeans were not at all happy with Canada’s reluctance to call for the NAFTA panel. They further felt that Canada was trying to ride their coat-tails by agreeing to be only an observer at the WTO panel. Ottawa’s official response was that if it had acted as a full member of WTO panel it would have eliminated its ability to make a NAFTA challenge.

Following high-level brinkmanship over Helms-Burton in early 1997, the US and the EU signed an agreement in April on the principles governing the extra-territorial application of law, which suspended the WTO panel until a later date. Over the course of the spring Ottawa had grown progressively more suspicious of European motives. The Commission, on the one hand was pushing Ottawa to launch a NAFTA challenge, while all along engaged in bilateral negotiations with Americans. The Europeans, after having supported Canada’s hardline stance in 1996, refused to trilateralise their agreement with the Americans to include Canada because of their continuing pique at Ottawa’s reluctance to proceed with the NAFTA panel. Or so they said. It was more likely that they realized they could get a quicker deal with two sets of negotiators rather than with three. The Americans were meanwhile giving Ottawa regular updates on the state of their negotiations

with the Europeans. Continuing to hang like a pall over Canada's relations with Europe was the "turbot war" which significantly undercut Canada's credibility as a champion of international law in the eyes of the Europeans. All in all, it appears that neither the Europeans nor the Canadians were entirely forthright about their true intentions, making it difficult to maintain a coalition.

In many ways the Mexican dimension of the story is much less opaque. With the signing of the NAFTA in 1993, Canada and Mexico saw each other as natural allies in any attempt to blunt the edge of American power in the Hemisphere. Helms-Burton offered just such an opportunity and, with European support, so much the better.

Most Canadian-Mexican cooperation on combating Helms-Burton occurred at the initial stages and peaked in 1996 with Canada's *Foreign Extra-Territorial Measures Act*. Following the example set by Canada, Mexico enacted its own "clawback" legislation. Canada took the lead on preparing for a NAFTA panel with Mexico providing support and anxious not to be seen as a "follower." At this point Ottawa and Mexico City presented a unified front.

However, Ottawa could not count on Mexico City's support for much beyond this. First, with its own problems in Chiapas, Mexico had no interest in the human rights dimensions of the conflict, while Canada clearly did. For Mexico, Helms-Burton was solely about the extra-territorial application of US law. A second disincentive for Mexico's deeper involvement was that it had fewer commercial interests in Cuba than did Canada. But perhaps the most important reason why Mexico could offer only limp support was the sudden and worsening turn in its own bilateral relations with the United States. Since the time of the peso devaluation in 1994, Mexico had to contend with a US Congress that would not authorize a multi-billion dollar emergency bail out and regular threats by Washington to de-certify it in the war on drugs.

As was the case with the Canadian and European policy makers, there did not appear to be a great enthusiasm among Mexican policy makers to adopt an offensive strategy against the Act since this would have further exacerbated existing bilateral tensions with the United States. Mexico lined itself up behind Canada, and if Ottawa was not going to take the plunge, neither was Mexico City.

Conclusion

All in all, Canadian policy makers came to the conclusion that although a NAFTA or WTO challenge could have turned into a moral victory for the EU, Canada and Mexico, it would nonetheless not have changed US domestic law. They worried that the processes would "lose steam within a year" with little results to show for them since Helms-Burton was a domestic political issue for Washington, not one of international trade. For this reason, the harassment tactic was favoured by Ottawa. "Keep the issue alive so long as we are not provoked to take action," remarked

one senior official.¹² That is, as long as no more companies were named under Title IV,¹³ Canada could blithely pursue a strategy of harassment that played well domestically but did not incur any real costs. Following this logic, Ottawa's strategy — despite pressure from the Europeans and with the Mexicans taking their cues from the Canadians — was to maintain the threat rather than carrying it out. This tactic also did not preclude Ottawa from eventually pursuing the WTO and NAFTA tracks or further "multilateralising" the dispute through the Multilateral Investment Agreement, since the US legislation was but the tip of a plethora of unilateral sanctions and secondary boycotts being deployed by the Americans.

What does the case of the *Helms-Burton Act* teach us about the effectiveness of coalition-building against the United States? That the US achieved a deal with only the EU can be explained by the lack of trust between Canada and the EU. The lack of desire on the part of the Mexicans to be too intimately involved in the process, and the fact that among the coalition partners only the EU had the weight to deal with the United States — highlights Canada's confusion about exactly where it wanted to be on the issue. Was it to be out in front as a Hemispheric leader (as it saw itself on Nigeria and landmines), or back at home tending to its bilateral relationship with Washington? Although the extra-territorial implications of *Helms-Burton* were clearly important to those opposing Washington's position, they were not so important as to imperil the bilateral relationships of the loose coalition.

The Clinton Administration has had the quiet satisfaction, with relatively very little effort, of making the Europeans and Canadians move human rights in Cuba higher on their respective bilateral agendas with Havana. But this is not to say that the countries who were engaged in a loose coalition against the US did not have any impact. Unlike at the time of the Act's issuance, the US is now encouraging remittances into Cuba. This is a shift in the US position.

Notes

1. From "US Economic Sanctions on Cuba, Iran and Libya: Helms-Burton and the Iran and Libya Sanctions Act" mimeo (p. 5) prepared by the firm Weil Gotshal and Manges LLP for a conference sponsored by the Centre for International policy *Helms-Burton; A Loose Canon*, 9-11 February 1997. Washington DC.
2. *Ibid.*, p. 9
3. John Kirk, "The Effectiveness of Helms-Burton, 1996-97: A Canadian perspective" paper presented at the conference *Helms-Burton; A Loose Canon*, *op. cit.*
4. *Ibid.*, p. 2
5. John Geddes, "Business Chill in Cuba Over, Says Canada's Ambassador" *Financial Post*, 31 January 1997, p. 8
6. "Joint Ventures Increase" *Cuba News*, Vol. 5, no. 1 (January 1997), p. 11. Cited in Kirk, *op. cit.*, p. 2

7. Wayne Smith, *Washington Post*, 1 March 1996, p. A8.
8. Marino Mareich, Director of International Investments and Finance of the U.S. Manufacturers Association, at the *Helms Burton: A Loose Canon?* Conference in Washington.
9. For a history of Canada-Cuban relations see John M. Kirk "In Search of a Canadian Foreign Policy Towards Cuba" *Canadian Foreign Policy*, Vol. 2, no. 2 (Fall 1994) pp. 73-84; John M. Kirk, Peter McKenna and Julia Sagebien "Back in Business: Canada-Cuba Relations After 30 Years," *The Focal Papers* (March 1998), pp. 5-28.
10. As quoted in "Canada Plans to Groom Relations with Cuba Foreign Minister Says." *Star Tribune* (Minneapolis) 14 February 1997, p. 8. On the transition from a more diffuse Canadian foreign policy to one that is more selective and effective see Evan H. Potter, "Niche Diplomacy as Canadian Foreign Policy," *International Journal*, Vol LII, no. 1 (Winter, 1996-7) pp. 25-38.
11. See discussion by Peter McKenna on the role of the US Branch in directing the position of the Department of Foreign Affairs and International Trade. Peter McKenna "Canada and Helms-Burton: Up Close and Personal." *Canadian Foreign Policy*. Vol. 4 no. 3, 1997.
12. Senior Official, Department of Foreign Affairs and International Trade, telephone interview, Ottawa, 5 June 1997.
13. However, unlike Title III, Title IV is not discretionary, which means that if it comes to the attention of Congress, the Canadian companies must be pursued.

6. *The Geopolitical Discourse of Helms-Burton*

Heather N. Nicol

Introduction

It has become clear over the past two years that if close neighbours such as Canada and the US agree on many issues of national and international concern, a consensus on Cuba remains an exception. American and Canadian perspectives on Cuba are ultimately constructed by, and related to, the broader cultural and value systems and geographically specific contexts in which decision-making occurs. This paper attempts to decode the geopolitical discourse surrounding the passage, in the United States, of the *Cuban Democracy Act* in 1992, as well as the *Helms-Burton Act* in 1996. Both Acts were passed amidst a fanfare of public hearings, debate, and discussion in the United States, and in Canada amidst a discussion of their potential impacts, legitimacy, and countermeasures. Decoding the discourse provides insights into the symbolism inherent in geopolitical referents deployed by Canadians and Americans. It allows us to describe and interpret the place of Cuba in the global system and permits us to follow the trail of these symbols as they attain mythic proportions. These myths are subsequently used to legitimize and give meaning to geopolitical discourse on Cuba, by contextualizing hemispheric metaphors in ways which reinforce Canadian and/or American perspectives on national interest and world power relations respectively.

In this paper, we concentrate our decoding efforts upon a variety of Hearings over the Cuban embargo, including those before the United States Senate, and the Congressional Committee on International Relations. We also explore supplementary materials comprised of various Conference and Staff Reports, as well as public statements made by key players in the drafting and passing of the Act. In

Canada, we have focused our efforts on examining the Canadian Parliamentary response to American embargo legislation by looking primarily within the House of Commons Debates — although we have attempted to use various official and unofficial responses of Canadian policy-makers to American geopolitical assertions regarding Cuba, wherever possible.

Helms-Burton and Canadian/American Relations in the 1990s

In the early 1990s, the relationship between Canadian and American policy-makers seemed to be reaching new levels of accord. The Free Trade Agreement (FTA) and North American Free Trade Agreement (NAFTA) had been successfully concluded, while other military, economic and environmental issues appeared to be resolved in ways that were mutually beneficial or mutually agreeable.¹

The exception to the rule appeared, as always, to be the problem of Cuba. In the early 1990s, the Americans exacerbated their already poor relationship with Cuba through unilateral trade sanctions designed to isolate Cuba from its European and Canadian trading partners. Supplementing and replacing earlier legislation, such as the Hickenlooper Law of 1962, the Cuban Assets Control Law of 1963, or the Gonzales Law of 1971, was new legislation in the form of the *Cuban Democracy Act* (1992) and the *Liberty and Solidarity Act* (1996).² These Acts either tightened existing sanctions or created new ones. The *Liberty and Solidarity Act* of 1996 (also known as LIBERTAD or the *Helms-Burton Act*), targeting Cuba, was the most provocative of the two, and created shock waves among Canadians, Europeans and Latin Americans. Using this Act, American politicians hoped to further isolate Cuba by prohibiting not only bilateral trade relations, but multilateral ones as well. Consequently, new restrictions were imposed which applied not just to US citizens and territories, but also to their European and Canadian trading partners.³

In the Act, Cuban Americans were given new powers to resolve their claims within the American judicial system, and could sue those who operated businesses on their stolen properties in Cuba. The bill also restricted the activities of American businessmen in Cuba, and continued the unilateral embargo of Cuban goods that had been outlined in the *Cuban Democracy Act* some four years earlier. Moreover, those who drafted the new legislation were hopeful that it might apply to a number of Central American countries where the US had suffered setbacks during the Cold War, and if successful could serve as a precedent for the resolution of other concerns.⁴ Although in this latter goal they were to be disappointed, the outcome was that there *was* sufficient political will to tighten the Cuban embargo.

The *Cuban Democracy Act*, (or *Torricelli Act*), and later the *Helms-Burton Act*, were exhaustively debated by both the Senate and Congress. The discourse

surrounding the passage of the Acts was protracted and acrimonious, and at least one Conference Report was necessary to resolve issues and problems with the original versions of the bills. The rhetoric used by politicians, their advisors, and witnesses before the various committees struck to debate the bill, was colourful and virulent, and in general drew upon a wellstream of anti-Castro sentiment. Those who opposed the bill were accused of a variety of motives, by both ultra-Conservative politicians and by powerful Cuban lobby groups. The Cuban American National Foundation, a powerful anti-Castro lobby group, publicly condemned their opponents in what can only be described as extremely pejorative terms. For example, it was said of one politician that opposed the bill that “is sad to see a former member of Congress that [sic] had developed such a keen expertise in US security issues now mouthing slogans indistinguishable from the Castro lobby for just a paycheck.”⁵ Similarly, businesses, particularly the Canadian mining colossus Sherritt, were promulgated as environmental criminals whose disregard for human rights extended well beyond Cuba to the planet in general. Senator Lincoln Diaz-Balart told the Senate Sub-Committee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations, in June of 1995, that Sherritt Company “ships the nickel to Canada, and then ships the chemical waste — the poison — back to Cuba for dumping in a way that the laws of Canada would not let them do.”⁶

Politicians asserted that there was strong consensus on this issue, but until the spring of 1996, it is not clear that such consensus actually existed. Despite these indications of support from relatively powerful lobby groups and political actors, there were those who stolidly opposed the Act — within both Congress and the Senate. Although several early versions of what was eventually to become the *Helms-Burton Act* were discussed in Congress and in the Senate during 1995, politicians demanded a significant degree of modification and amendment. Indeed, until the spring of 1996, most Canadians, and many Americans were confident that the President would veto the *Helms-Burton Act*, since the Clinton Administration apparently shared Canadian concerns about the extraterritoriality and irregularity of the Act.⁷ Moreover, as those who drafted the bill with Senator Helms intimated, one of its most important outcomes would be to limit the President’s freedom in foreign policy making in Cuba, by reallocating the issue of compensation to the courts.

Given these events, as well as the apparent rising tide of resistance to the *Helms-Burton Act* which had surfaced outside the United States, by the end of 1995, many believed that the initiative would fail, precisely because of the political and economic impact that the extraterritorial provisions of the Act would have upon trading partners such as Canada or Europe. Moreover, although supported by powerful politicians, it still appeared to many that the *Helms-Burton Act* represented the thinking of a relatively narrow spectrum within both Houses.

In the spring of 1996, however, the controversial legislation passed easily in both Houses. The trigger which consolidated support was “the unjustified

destruction of two unarmed civilian aircraft and four human rights activists, three of them US citizens.”⁸

The shooting down of civilian planes prompted speedy passage of the *Helms-Burton Act*. This act was the catalyst that ensured bipartisan support for the *Helms-Burton Act* in the spring of 1996. Still, it is not difficult to imagine the surprise of Canadian and European decision-makers when not only did the Act come into force, but when the Clinton Administration — which had previously had some concerns about the bill — communicated that its support of the Act was no knee-jerk reaction, but a well-considered action which would mete justice to the enemies of democracy and serve as a guideline to America’s less morally evolved trading partners. Indeed, at a conference of Canadian, American and European policy-makers held in Washington in the spring of 1997, Stuart Eizenstat, President Clinton’s special envoy remarked to the European Union’s delegate that the American position on Cuba was taken because “we have a moral core to our foreign policies.”⁹ (The European delegate could be excused for wondering, for at least one brief second, whether this was the reincarnation of Thomas Jefferson, returning to reveal that he had developed his philosophy of American democracy not only as a reaction to the perceived decadence of 18th century European society, in the throws of a brutish restructuring of urban and industrial relations, but also with Cuba in mind!)¹⁰

In view of the fact that Eizenstat justified the Administration’s position on Cuba using a symbolism which conjured up founding myths, it is not surprising that Canadian policy-makers, at the same meetings, responded with some of their own. They argued that such moral high ground was unwarranted, based upon US treatment of British Loyalists during the American Revolution. Evoking their own national symbolism, Canadians brought to the table the terms of *Bill C-339, an Act permitting descendants of United Empire Loyalists (who fled the US after the American Revolution of 1776) to establish a claim to the property that was confiscated without compensation*. This Act had passed its first reading in the Canadian House of Commons in October of 1996, although it has not been given final reading — and probably never will.

Since then, exchanges between American and Canadian policy-makers, academics, politicians, and other interested parties have continued, becoming increasingly heated in the process. Canada’s Minister of Foreign Affairs made an official visit to Cuba in 1997, and has publicly reaffirmed Canada’s position of constructive engagement with Cuba. In 1998, Canada’s Prime Minister met with Cuban officials in Havana, much to the dismay of American politicians (see Chapters Two, Three and Four, this volume). Canadians continue to have had great difficulty in understanding the American justification for the Helms-Burton legislation, while Americans have grown frustrated with Canadian condemnation of their Cuban policies. No volley of Canadian indignation has had any significant impact upon American decision-makers, who measure their foreign policies by a different yardstick. Nor have Canadians become convinced that the *Helms-Burton*

Act represents a “new” and “moral” approach to Cuba, rather than an anachronistic throwback to the Cold War. Rather, each position, American and Canadian, represents a culturally specific system of meaning, a social and political construction, whose intelligibility depends upon the understanding and acceptance of shared meanings and systems of symbolism. Each discourse authorizes a culturally specific approach to Cuba, and to the sphere of international relations in general.

The Evolving Symbolism of the New World Order

The geopolitical discourse surrounding anti-Cuban legislation has more often been studied for what it says, rather than how it is said. Consequently, much of the academic and legal literature exploring the *Cuban Democracy Act* and the *Helms-Burton Act*, has focused upon the specific entitlements, restrictions and jurisdictional implications of the Act. What will be the impact of such measures upon Canadian and European business interests? Who will be denied visas? How has the Cuban economy responded to the embargo? The virulent language of the discourse, and the pejoratives utilized by supporters of the anti-Castro groups, is either dismissed by those who do not share the anti-Cuban sentiments, or evoked by those who do.

In paying little attention to how the discourse is structured, however, we miss opportunities to develop shared understandings, or to gain insights into those that are not shared. There are few contemporary examples of geopolitical discourse which demonstrate, so clearly, that culture and geographic perceptions are constitutive of geopolitical discourse itself. The geopolitical discourse surrounding Cuban issues demonstrates that places are deliberately endowed with specified political messages, intentionally encoded for reading by groups of inhabitants.¹¹ Moreover, at the root of understanding, and encoded within the written and spoken texts surrounding Helms-Burton are symbols, or word signifiers, which connote powerful myths. These give meaning and intelligibility to the discourse.

But what are myths? And, even more important, what are geopolitical myths? Barthes, in attempting to define the relationship between word meanings, discourse and myth, suggested that myths are made from historically and culturally contingent encoded meanings.¹² Geopolitical myths are powerful territorial or strategic myths, which encode the relationship between geographical space and politics. These strategic or geopolitical myths tend to be popularly embraced, and rarely disputed. Most familiar to us is the bipolar “Cold War” construction which oriented global geopolitical discourse from World War II to the present.¹³ Less well understood, however, are contemporary myths, which underlie the “new world” order. Yet the production of meaning in this new metaphor can be understood through textual analysis. This is true because myths are a system of communication and a mode of signification conveyed by discourse. It is understood

not by the object of its message, but by the way it utters its message or its “mode or representation.”¹⁴ Moreover, modes of representation are “implicit in practice, but are subject to revision as practice continues.”¹⁵

In keeping with this definition and understanding of geopolitical myth-making, in this paper we attempt to decode Helms-Burton discourse by breaking down the connotation system and identifying its “geopolitical referents.” Geopolitical referents are those works or word symbols that describe and situate Cuba within a broader global context, in terms of its landscapes, peoples and institutions. Indeed the modes of representation that inform the geopolitical discourse of the *Helms-Burton Act* (and its companion legislation the *Cuban Democracy Act*) become the semiotic elements or the sign vehicles for connective aspects of culture. In other words, these sign vehicles expose symbolic constructions of reality which inform the vocabulary of policy-makers, and substitute for reality. Nonetheless, there are no universal meanings: each symbol is socially specific to the particular purposes and interests which lie behind it, so that the discourse becomes a nested set of meanings, symbols and cultural constructions in which the intelligibility of the reality described changes with geographical scale and perspective.

This nesting can be understood more clearly if we realize that combinations of words, phrases and obvious meanings produce understandings at three levels or scales of significance. The first is at the descriptive level, where Cuba itself serves as a semiotic referent (“island of tyranny” for example). Cuban peoples are reduced to caricatures — victims of oppressive violence or perpetrators of violence, while the island is described by language, which is, to say the least, pejorative. The second is the national level where an internally constructed frame of referents is evoked (the Cuban American community, for example). At this level, the discourse is framed by referents to values, beliefs and communal consensus that are “American” and have meaning in relation to the American nation state as a frame of reference. When Americans speak of Cuban interests, or Cuban ethnicity, this is usually a construction derived from a specific frame of reference within the Cuban American community. The third frame of reference, and perhaps the most familiar, is the global level, where broader systems of political order are used as frameworks for connotation. In this case, “new world” order is used interchangeably, in the American vocabulary with “unipolar” world. And, as we shall see, the idea that “new world” order is synonymous with “unipolar world” is a point over which Canadians and Americans disagree.

American Perspectives of Cuba: An Overview of the Geopolitical Context

During the Cold War, the US perceived both Cuba and the Caribbean in geostrategic terms. At one extreme, Serbin claims, the US goal in the Caribbean had been to

make it into an American lake, in order to guarantee security along the US south flank, in the event of an East-West confrontation.¹⁶ During this period, geopolitical discourse was structured in accordance with the bipolar global metaphor, whose ideological underpinnings are well documented and had very clear implications for subsequent power relations.

When George Bush confidently announced the arrival of a “new world” order in September of 1990, he clearly envisioned a new level of hemispheric integration with Latin American countries to the south, as well as with the Caribbean basin. The new order, equipped with a new and expansive vision of hemispheric context, was clearly seen by Americans as the forum for a new set of hierarchical relationships, or a new round of hegemony: It was to be structured by the primacy of economic relations.¹⁷ Ironically, while the new integration offered great potential to restructure existing Cuban American relations, and to open the door to detente, its result was to retrench age-old hostilities within a new web of interdependencies within the Caribbean. It is precisely this legacy which has encumbered the efforts of CARICOM and other more recent efforts to effect a regional approach to economic development and middle power management.

Consequently, if US interests within the Caribbean region have changed in many ways since the end of the Cold War, there are some similarities in their practice of foreign policy — certainly as far as Cuba is concerned. Cuba has retained its geostrategic significance for American policymakers long after the utility of this focus has waned. Serbin observes that “the geopolitical configuration of the region as a unique subsystem with strategic military security implications contrasts sharply with the simultaneous emergence of differing views and definitions from the various regional actors.”¹⁸ He raises the puzzling question of why, given a growing need to direct its foreign policy to the regional level within the Caribbean, American decision-makers continue to isolate Cuba from its regional context.

Dominguez sees much the same problem with respect to American policies in Cuba. Commenting that in the 1990s, nowhere in this region are the issues of human rights and democracy more poignantly raised than in the case of Cuba, he asserts that it is around this issue that “the Cold War has not ended.” Dominguez suggests that “there had been an evolving Latin American and Caribbean consensus on the worth of fostering Cuba’s peaceful democratisation,” but that “the consensus has been torpedoed by US unilateralism¹⁹

How has the US torpedoed the prospects of an evolving peaceful democratization? By a volley of words, rather than deeds. The legislative basis of US unilateralism is implicit in the *Helms-Burton Act*. But equally powerful, are the semiotic referents or word vehicles encoded within Helms-Burton and companion legislation. These semiotic referents are derived from a well-established Cuban American discourse, and refer to Cuba as a geopolitical “locution” which is synonymous with illegitimate power, corruption and tyranny.

Americans Encode Cuba: The Cuban People and Places in Geopolitical Discourse

The hundreds of pages of text produced in both the construction and passage of the *Cuban Democracy Act* and the *Helms-Burton Act* are replete with word symbols and encoded meanings which orient the geopolitical discourse of decision-makers. Even a cursory analysis of these texts indicates that there are any number of commonly used pejoratives that describe location, economy and landscapes of Cuba. It is often called an “island of tyranny” or a “dreary communist outpost,” whose people survive as a nation of “soil tillers” and “potato harvesters.” It is a nation “reduced to bicycles” a reference to the shortage of inanimate-powered vehicles on the island. Moreover, it is “Castro’s Cuba,” rather than a nation of 11 million people. The result, according to one witness before the Senate Subcommittee on Western Hemisphere and Peace Corps Affairs, is that

the Cuban landscape today can be described as sombre — at worst hellish. The people of Cuba today enjoy no freedoms. They are barely able to eat to survive. They live under constant despair, never knowing when they may face the next challenge from the police state created by Castro.²⁰

Such images of Cuba contrast with the reality of the Island’s tropical and sub-tropical landscapes as much as they do with the reality of everyday life for many Cubans. “The bitter despotism of one-man rule in Cuba” is a descriptor, which constitutes geographical reductionism, and stands in contrast to the island’s complexity and new regional importance within an integrating Caribbean. Indeed, such images perpetuate, rather than terminate, the Cold War and impede the arrival of the so-called “new world order.”

It is clear, therefore, that the geographic referents within the texts of American policymakers are, in general, semiotically loaded. Cubans who remain on the island are regarded as a people who are backwards and whose government is illegitimate. There is misery on the island. If Castro is “a tyrant, “a caudillo,” “a dictator” and “a devil,” his people are “powerless victims of tyrannical oppression,” “enslaved” and “oppressed” at one end of the spectrum, and “murderers” at the other. No middle ground exists, and consequently, within the passages of the *Helms-Burton* and *Cuban Democracy Acts*, the people and their leaders emerge as caricatures.

But is not just the Cuban population that is belittled by these caricatures. The island itself is reduced to a less than sovereign state through the constant employment of associative geographical referents. Cuba, we are constantly told, is “only 90 miles from the US,” or “off the coast of Florida” — a subtle reminder not so much of the threat of the tiny island, but of its destiny as an extension of American interests. Taken together, the word vehicles or descriptors of Cuba which emerge in the *Helms-Burton* discourse suggest that the island is, all at the same time, a problem, a caricature, and illegitimate. It is, moreover, associated by location

with American interests: indeed, location becomes locution. Under these circumstances, American political supervision is only natural — a consequence of historical regional processes.

In the final analysis, these understandings are no more than geopolitical constructions. They are based upon geographical referents that encourage the appropriation of Cuba by American political institutions, and by a popularised geopolitical text, which is extremely selective in its symbolism.

The National Context of Geopolitical Discourse

Many Canadians argue that the American anti-Castro position is really an anti-Communist rhetoric fuelled by a wealthy Cuban American community in exile. As we have seen, the rhetoric of geopolitical discourse within the Caribbean seems locked within the Cold War, as far as Cuba is concerned. Consequently, many Canadians and European decision-makers dismiss the *Cuban Democracy Act* and *Helms-Burton Act* as an anachronism. Even Canada's minister of Trade was provoked to remark, on one occasion, that Helms-Burton "is a return to the good old days when governments believed that trade should be controlled according to circumstances and not according to agreed upon rules. It is a step backward, not a step forward."²¹

Many scholars also agree, arguing that Helms-Burton merely promulgates the outdated idea of the division of space into friendly and threatening parts. It is a discourse in which "universal modes of capitalist-liberal democracy and communism reigned free of geographical contingency: the same world where ideological conflict was naturalised by such notable concepts as containment, domino effects and hegemonic stability."²²

While there are Cold War overtones in the discourse, particularly in the virulence of the rhetoric, it is clear that the contemporary geopolitical discussion concerning Cuban-American relations *has* changed since the Cold War. One of the major reasons for change has been a cultural and demographic shift in the American political landscape, and the increasing relevancy of domestic issues within the foreign policy-making arena. A second reason is the important role played by exiled Cuban leaders who have dominated the voice of the Cuban community, and consequently, who have set the tone of the discourse.

The growth of the Cuban American community in the US has pushed American policies with respect to Cuba, and forced the reorganization of domestic issues to accommodate growing concentrations of Cuban American ethnic groups in Florida, New York, New Jersey, California and Illinois. Elements of the Cuban American community have used this changing political landscape to their advantage and have reframed the geopolitical discourse surrounding Cuba, moving it away from simple "Cold War" issues. The end result has been a relocation of concern regarding the Castro threat. No longer is geographical impetus for

geopolitical concern initiated by a threat emanating, ultimately, from Havana or Moscow. Rather it comes from concern over politics and political cultures located within the US itself.

How has the growth of the Cuban American community pushed American policies with respect to Cuba? Why has signification of the Castro problem undergone profound change? There are essentially two reasons for this change, the first being the growth of the Cuban American diaspora in the US during the 1970s and 1980s. Prior to 1962, close to 215,000 Cubans fled to the US from Cuba. Often called the golden exiles, these refugees consisted largely of political elite associated with the Batista government, as well as land holding aristocracy and urban middle classes.²³ After 1962, the rules of emigration and the sources of immigration changed. Over 300,000 Cubans came to the US between 1965 and 1973 and 38,000 between 1972 and 1979. These were not golden exiles, but political and economic refugees, freedom fighters and human rights activists. By 1980, continuing pressure on the Cuban government meant that several hundred thousand Cubans emigrated to the US in search of a better life. Indeed, during the 1980s thousands of Cubans floated, dead and alive, onto the beaches of South Florida. This alone changed the geographical landscape, giving a new internal combustion to American interests in Cuba. No longer an abstract or bipolar power concept, Cuba and Cubans became real — corporal entities in the most literal sense of the word. Even after 1980, the volume of Cuban émigrés rose dramatically, as embargo conditions tightened, leading to new agreements between the Clinton and Castro administrations to the effect that the US would return émigrés if certain assurances concerning their safety could be provided.

Secondly, the growth of the Cuban American community has pushed American policies regarding Cuba and has forced the reorganization of domestic priorities to accommodate significant concentrations of Cuban Americans. The Florida community is perceived as the most powerful — particularly that in Miami. It is this Florida community which has most often been the spokes-group for Cuban Americans, and consequently is targeted as the exile community whose interests in Cuba are elitist. New York Congressman Charles B. Rangel made precisely this allegation before the Senate Committee meetings on the *Helms-Burton Act*, charging that “it is in our interests to change current policy. While it may satisfy people in Florida politically, it is harming our reputation with our friends.”²⁴

The problem of the legitimacy and validity of the anti-Castro symbolism is important to our understanding of the Helms-Burton discourse. It is also instructive to note that there are a number of Cuban American perspectives, and that the concept of a universal consensus among the Cuban American community, using the terms of the Helms-Burton discourse, is problematic. Yet there is considerable confusion, within the American geopolitical discourse, of Cuban “exile” and Cuban “ethnicity.” Only certain groups of Cuban Americans (or certain sets of immigration experiences) are considered as pertinent to American foreign policies and programs in Cuba. Consequently, the Cuban American community is

perceived as a community in exile, a diaspora, rather than an ethnic community like any other. While it is clear that there is a large group of Cuban Americans who are exiles, it is not clear that the exile community is representative of the totality of Cuban refugee experience. Indeed, there are significant differences of opinion.

This was made very clear in comments made by Ernesto Betancourt, former Director of Radio Martí, who testified before the US Senate Sub-Committee on International Relations on the Helms-Burton Act. Betancourt identified himself as a Cuban American who had fought in the Cuban Revolution of 1959, and who had represented Castro's government in Washington during the early years. In confirming the diversity of opinion within the Cuban American community within Miami alone, Betancourt observed that it is not really an exile community but an ethnic community, where the dominant conservative groups have also had the dominant voice. Citing polls that suggest that only approximately 20 percent of Cuban-Americans would consider returning to Cuba if Castro were removed, Betancourt condemned what he perceived as the repressive actions of the Cuban American Foundation (CANF). He noted that the image that the present government has sent to the Cuban people is that the US Government's policies towards Cuba are influenced by Cuban exiles who want to reclaim power on the island. He argued that by supporting these groups in Washington, the administration was sending the "wrong message."

I left Radio Martí because of a disagreement with Mr. Mas, and his foundation. Afterwards, I found that many people in there, Miami, when I went down to speak or to do anything, were afraid of expressing themselves ... I think that we are facing a situation of constraint or threatened freedom of expression in the Miami community.²⁵

Similarly, A.M. Torres, Executive Director of the Cuban American Committee in Washington DC, supported by a report from America Watch, told Senate Subcommittee's Helms-Burton hearings that the CANF position was highly selective and did not represent the Cuban American community within Miami, much less the US. In privileging the CANF position within the *Cuban Democracy Act* and the *Helms-Burton Act*, policy-makers were advised that they were privileging the position of a narrow and Conservative Cuban exile community which was not definitive of the Cuban American community in general. The picture of a Cuban diaspora waiting to return, so united by powerful anti-Castro sentiments that other differences were inconsequential, may form the universe of Helms-Burton, but is not definitive of the Cuban ethnic community in general. It reflects a political perspective which through the use of artful semiotic signifiers, has seconded all other discourses and modes of representation at the national level.

Cuban Americans in southern Florida have, therefore, made significant contributions to the discourse. Indeed, it is their contribution that defines the tenor of the discourse. Cuban issues are constructed and identified within the United States, at least until quite recently, by powerful sectors of the Cuban American commu-

nity, such as The Cuban American Foundation (CANF), while average Americans know little about the island, and few have ever been there. Moreover, those Cuban American groups, of which there are many, who are more moderate in their positions than the CANF, have less access to power and money, and must often fight to be heard. Although very recent indications are that the visit of the Pope to the Island, in the winter of 1998, has tempered the discourse, the most powerful and vocal of the Cuban American lobby groups routinely use virulent symbolism, and use it artfully, to colour our understanding of issues and events. Not surprisingly, American policy-makers, particularly those who drafted the *Cuban Democracy* and *Helms-Burton Acts*, have incorporated the symbolism of the latter group within their own geopolitical discourse. They are, in many ways, responsible for much of the imagery of the Cuban-American verbal confrontation. For example, spokespersons from CANF appeared at hearings before Senate and Congress, for both the *Cuban Democracy Act* and the *Helms-Burton Act*, and argued that the Castro regime was corrupt, murderous, and repressive. CANF websites provide up-to-date reports of continuing repression, of unparalleled blood thirsty dictatorship, genocide, policies of terror and repression. The same sources argue that Castro has turned Cuba into his private property, thus divesting the country of any legitimate status.

How accurate are such representations? Are they not justifiable given the Castro legacy in Cuba? Is analysis of the semiotic basis of the Helm-Burton discourse merely an attempt to victimize legitimate Cuban refugees and their right to compensation? Are we not blaming the victims? Clearly considerations such as these are a deterrent to any critical analysis of geopolitical discourse, given the circumstances of Cuba's social and political situation. Nonetheless, it is clear from within the Cuban American community itself, that the virulent language of Cuban embargo legislation is semiotically loaded and does not reflect indisputable truths. The changing socio-economic basis of Cuban American immigration over the past three decades, as well as the comments of moderate Cuban Americans in front of the various Senate Committee Hearings during the first half of the 1990s, underscore the problems posed by the self-referring system of word vehicles within the geopolitical texts. In this paper, we assert that the national referent contained within the geopolitical discourse, that which directs American policies with regard to Cuba in the 1990s, is based largely upon the perception that there is a powerful and rapidly growing Cuban American community with an interest in American intervention in Cuba. The problem is, however, that the symbolic consensus of Helms-Burton is not inclusive of the whole population, and perhaps not even a large segment of it.

This interpretation is supported by other moderate Cuban community leaders like Alfredo Duran, President for the Cuban Committee for Democracy in Miami who argued that the appropriation of Cuban ethnicity by the symbolism of exile community is at the heart of the *Helms-Burton Act*. In his testimony before the Senate Committee Hearings, Duran suggested that the geopolitical discourse of

the Cuban American community evoked internally coherent and self-referring meanings only from the perspective of the most conservative elements of the Cuban American community. As such, it defined formal Cuban American geopolitical considerations from a relatively narrow spectrum. Moreover, it serves internal political “games” rather than hemispheric realities.

Helms-Burton and American Global Metaphors

When encoding the meaning of Cuba within global contexts, the American geopolitical discourse is extremely selective. American policy-makers use global symbolism artfully, to reinforce the rationale for American intervention. All references to the Western Hemisphere, for example, evoke a geopolitical space in which only democracy is legal. The Western Hemisphere is reduced to a series of multilateral agreements or spaces in which American foreign policies prevail, and in which American political cultures should.

Symbolic references are made to exploit the belief in the moral justification of American policy-makers in hemispheric domination, and their commitment to freedom, justice and democracy. Indeed, the belief that these values make up the psyche of the American people draws clearly upon the Jeffersonian founding myth evoked by Eizenstat and others. Prominent in the discourse are references to other similar myths. “This nation of ours is committed to those principals of freedom, justice and democracy”; “Cuba is unstable because the United States did not make plans for the Island’s future after independence”; “we may have stood alone, but we never profited from dictatorship.”

Such descriptions of a common American character — derived from the fact that a common geographical territory is shared — may seem incredulous to some, but they evoke very powerful national responses. They suggest an apparent naturalness of American supervision of the democratic transition in Cuba, and they are often evoked by supporters of the *Helms-Burton Act*. Indeed, as one Senator remarked during the Helms-Burton Hearings in 1995, “I do not believe that our European friends really disagree with what we are doing, but if they did we have a right to expect their deference.”

Certainly these images and representations are not necessarily new. They have characterized the American political perception of Cuba for decades. What is most interesting about the American discourse in the 1990s, however, is that in the so-called “new world order,” Cuba is not the only frame of reference from which American embargo policies actually gain force. Such policies, it may come as little surprise, gather equal force from American policy-makers’ own perception of their geopolitical status and their situation within the Western Hemisphere.

Justification for American foreign policy making because of the special characteristics of the Western Hemisphere is a common theme in the Helms-Burton

discourse. It reasserts the US position as a hegemon in a geostrategic forum. The Western Hemisphere is seen, quite literally, as a political territory in which American interests must prevail. Indeed, Agnew and Corbridge observe that American policy-making in the 1990s remains inherently competitive: States are meshed in a network of formal and informal regimes which contain their autonomy, and the result is a so-called world order in which geopolitical balance is maintained. Consequently there is a constant struggle for democracy and the justification of the United States self-imposed role as superpower and political hegemon. This is a powerful belief, which is implicit to much of the American intellectual and political tradition.²⁶

Even such a huge myth, however, requires some restructuring, some new geographic focus, in the face of a “new world order.” To a degree, this myth now takes its form with reference to the Western Hemisphere, in the shape of the Cuba problem. The myth relies upon a spatial symbolism, which mimics the Cold War order, yet does not require universality. The solution is to situate the Cuba problem within a hemispheric rather than bipolar context and to downscale notions of manifest destiny to fit a smaller and more contingent scale.

Consequently, the layers of geopolitical meaning, encoded within discourse, recombine to produce myths. In this case, the myth is the naturalness of American intervention in Cuba — and its justifiability on a moral or emotive level. Indeed, the symbolism combines to suggest that successive hegemony is the only option to freedom within the Western Hemisphere, and that the United States is the natural protector of western democracy. Although mindful of the contingency of symbolism, and being careful to avoid being categorical about its meaning, it is clear that such analysis provides the potential to make more transparent assumptions of geopolitical discourse — in this case the very fundamental geographical metaphor of the unipolar world led by an American hegemon.

The Framework of Canadian Geopolitical Discourse on Cuba

Over 20 years ago, James Eayers drew Canadians’ attention to the place of Canadian decision-makers within the hierarchy of world power. Although questioning the concept of middle power as a valid definition of Canadian foreign-policy initiatives, he recalled Mackenzie King’s 24 May 1938 statement regarding Canada as a geopolitical territory. According to Eayers, King argued that Canadian foreign policy was essentially interdependent, based upon a policy of

trying to look after our own interests and to understand the positions of other governments, while taking into account our political; connections, traditions and our geographical position, the limited numbers and racial composition of our people, our stage in economic development, our own internal preoccupations and necessities — in short a policy based upon the Canadian situation.²⁷

While much has changed since 1938, the fundamental observation that foreign policies are based upon Canadian situations remains valid. Consequently, Canada's reaction to Helms-Burton is not about Cuba per se, but about Canada's finding its place in an international and interdependent world (see Chapter Four, this volume). Canada's policies with respect to Cuba are framed with numerous references to the influence of "our neighbour to the south," and Cuba's "special relationship" with Canada.²⁸ At least one MP has also observed these similarities between Canada and Cuba are all the more potent because Cuba, like Canada, is in the so-called American sphere of influence. It "is supposed to behave like a good little neighbour."²⁹ Size, in this case, is a geopolitical descriptor which also describes power relations. (Canadian policy-makers have also been known to use biblical metaphors such as David and Goliath to express power differentials between the nations — David, in this case referring to Cuba, Goliath to the US).

More often, however, the Canadian geopolitical discourse regarding Cuba speaks directly to the issues of American policies and global interdependence, or Canada's relationship to Cuba within a global economic framework. This is a small, but telling detail. For example, Helms-Burton is contextualised by Canadian policy-makers against the backdrop of the other friendly trading nations in the Caribbean basin, thus exposing the American assertion that Cuba is isolated within the Western Hemisphere. This strategy is, to a large degree, a deliberate attempt by Canadian decision-makers to defuse the anti-Castro debate by refusing to engage in its rhetorical discourse and concentrating upon external points of geopolitical reference.

Indeed, one of the most forceful statements was made in March of 1996, by BQ MP Benoit Savague, who observed that

the dispute between Cuba and the United States provides a patent example of the complexities in the relationship among the countries of the three Americas ... the Helms-Burton Bill, through its extraterritoriality, violates international law and impinges on Canadian sovereignty in the area of foreign relations. This conflict also reveals the close weave of political, economic and commercial ties among the various trading partners of the continent.³⁰

Sauvague's statement reveals the Canadian commitment to interdependence — and to making one's way in the America's within a complex web of policies and practices. Even, Canada's former Trade Minister Art Eggleton publicly declared, with reference to the *Helms-Burton Act*, that Canadians had broken down too many barriers to begin constructing new ones. He urged them to work together to engage, rather than to isolate, Cuba and all the other Cubas around the world." Much of the Canadian geopolitical discourse surrounding the *Helms-Burton Act* connotes internal references concerning Canadian character, geography and history which have created special relationships with Cuba, and special characteristics which imbue it with the necessary power to act as an effective global mediator. Stressing linkages and fighting extraterritorial limitations imposed by actions taken by neighbours to the south, Canadian decision-makers have clearly

and deliberately constructed a geopolitical discourse which says as much about the proximity and relationship between Canada and the United States as it does about Cuba. Politicians and policy-makers have used various metaphors to describe the Canadian-American relationship in which Helms-Burton is situated. Although there remain numerous references to the issues upon which consensus is achieved, nonetheless the *Helms-Burton Act* evokes comparisons of the relationship to a roller coaster ride or a throwback. Indeed, the acrimonious structure of feeling that infuses Canadian policy-makers is encoded within the discourse, when Helms-Burton is compared to the Sword of Democles, hanging over the heads of Canadians. Although they live in an economy where countries are interacting more now than ever, Helms-Burton is seen as a work of “legislative thuggery,” by “our neighbour south of the border.” “Could this hypocrisy be possibly related to the fact that Cuba, like Canada, is in the so-called American sphere of influence?” asked more than one MP.

Further references to the interdependent symbolism of Canadian decision-makers are more closely tied to symbols of the so-called “new world order.” The deliberate attempt of Canadian policy-makers to keep geopolitical discourse focused upon global interdependence and international law has meant that references to Cuba are discouraged, except within the context of the impact of the bill on Canadian trade and international systems, and here condemnations are frequent. “Helms Burton is in contravention of the NAFTA agreement with the United States,” more than one legislator has claimed, “and it is also an affront to Canada’s right to set its own foreign policy.” Consequently, then Canadian Secretary of State, Christine Stewart, was quick to point out that

not only does Helms Burton brush aside international legal practice, it flies in the face of our new and vital trade regime, the North American Free Trade Agreement [NAFTA].... We broke new ground in negotiating rules on investment and movement of business persons. We are concerned that this new law could violate a number of those provisions.³¹

Canadians are quick to stress that in their adoption of countermeasures to Helms-Burton, they have consulted with friends around the world. They have launched a number of initiatives on a broad front. In the final analysis, however, the discourse evokes the symbolism of hemispheric integration, to promote engagement, cooperation and interdependence. “Engagement” is to be the tool of Canadian politicians and diplomats, while their goals are open trading systems, engagement, cooperation and mutual benefit.

Such goals are not possible, of course, without new definition of legitimate geopolitical spheres of influence. Rochlin comments that the Post-Cold War era has ushered in a new reality for hemispheric security, and that it represents a movement towards hemispheric economic integration alongside what appears to be the emergence of global tripolarity. The result, Rochlin argues, is that “inter-American security is more important than ever, but Ottawa’s political commitment to the hemisphere, as manifested in its full membership in the OAS, means that

Canada has a new responsibility for defining and resolving interAmerican security issues.”³² Consequently, the fact that Western Hemisphere agendas will be determined by Washington makes it all the more important for Canadians to encourage a more progressive stance with regard to inter-American security in general, and Cuba in particular.

Conclusions

Canadians and Americans differ appreciably in their understanding of, and approach to, Cuba. Both, in justifying their positions, rely upon clashing perceptions of world order — which are perceptually and culturally distinct from each other. Much of the difference is derived from the global metaphors used to build national identity and myth. The way in which such metaphors are linked to dialogue and policy formation are complex, as many have discovered, but it is still clear in the final analysis “that one nation clearly focuses upon the integrity and durability of cultural macroregions” while the other “has developed a vocabulary for analysing the interconnections between them.”³³

To Americans, the new world order is seen as a mandate for conformity within the Western Hemisphere under conditions in which American politicians are justified in taking unilateral action. Canadian policy-makers also evoke a Western Hemisphere metaphor to justify Canada’s position on Cuba. But, unlike the United States, the geographical references that situate Canada’s definition of Hemisphere are based upon concepts of interdependence and mutual cooperation. Both are essentially non-competitive and deterritorialised motivations. If the extraterritorial jurisdiction of the *Helms-Burton Act*, and its implicit demands for subordination to American values and interests have structured international discussions over Cuba, Canadian policy-makers have quite deliberately attempted to contain the discourse to a conversation regarding the extraterritorial nature of the Act, rather than the legitimacy of the Castro regime.

It is always surprising that such discordant notes arise in the discussion of such a relatively insignificant world power — or such a small island. But clearly the size of Cuba has little to do with the debate. Rather, the issues raised are played out on a much larger stage. To a large extent, this is a virtual stage — a place of geographic metaphor and geostrategic constructions: the discord over Cuba has little to do with the Cold War, and perhaps, in the final analysis, little to do with Cuba either. It is more concerned with the construction of new metaphors, rejecting a bi-polar world and entertaining a new engagement with various other forms of singular or multipolarity.

Understanding these differences, or cracking the coding of geopolitical discourse into symbolic words and phrases, which are themselves vehicles of meaning, reveals the world of difference in geopolitical strategies, perceptions and metaphors underlying Canadian and American foreign policy-making. These

differences are historical and geographical, but they are also cultural. Each country, Canada and the United States, deploys its own myths and cultural referents in making sense of the world and its own identity within it. To Americans, the Western Hemisphere is a geostrategic territory — a sphere of influence — in which American interests must be defended. To Canadians, it is a mesh of interdependent, less territorialised common interests.

Geopolitical discourses surrounding the *Helms-Burton Act* highlight such differences. They also suggest that we cannot ignore the fact that specific geopolitical discourses make specific historical and political claims. Differing texts authorize different approaches, while power relations are transposed into extremely resilient myths and metaphors. It is worth keeping this in mind when exploring the contours of the “new world order” and the implications of Helms-Burton.

Notes

1. J. Jockel, “Canada and the US: Still Calm in the Remarkable Relationship.” In *Canada Among Nations: 1996, Big Enough to be Heard*. Edited by Fen Osler Hampson and Maureen Appel Molot. (Carleton University Press, 1996), p. 111.
2. See US Senate Committee on Foreign Relations, *Staff Report. Confiscated property of American Citizens Overseas: Cases in Honduras, Costa Rica and Nicaragua. 1994. LIBERTAD Act. Public Law 104-114, State. 785. 1996.*
3. Wane Smith, 1997. “The Effects of Helms-Burton: Chasing Disaster.” Presentation to the Brookings Institute Conference *Helms Burton: A Loose Cannon?* Washington, DC.
4. See US Senate, Committee on Foreign Relations. *Confiscated Property of American Citizens Overseas: Cases in Honduras, Costa Rica and Nicaragua. A Republican Report to the Committee on Foreign Relations. 1994.*
5. See The Cuban American National Foundation, *Press Release. 24 April 1997. <http://www.cannfnet.org/english/press/p7904241.htm>.*
6. See US Senate Subcommittee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations, 22 May and 14 June 1995. p. 62.
7. J. Jockel, “Still Calm in the Remarkable Relationship” *op. cit.* p. 117.
8. See Statement of Alberto J. Moro On the Cuban Liberty and Democracy Solidarity (LIBERTAD) Act of 1996, before the US Senate Foreign Relations Committee, 30 July 1996.
9. Comments of Stuart Ezinstat to the “*Helms-Burton: A Loose Cannon?*” Conference, Brookings Institute, Washington 1997.
10. For a classic commentary on the linkages between Jefferson’s attitudes towards European society and his democratic philosophy, see Lucia and Morton White’s study *The Intellectual Versus the City*. (Cambridge, Harvard University Press, 1962).
11. G.J. Ashworth, *On Tragedy and Renaissance: The Role of the Loyalist and Acadian Heritage Interpretations in Canadian Place Identities*. (GEO PERS. 1986), p. 8.

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13. John Agnew and Stuart Corbridge, *Mastering Space, Hegemony, Territory and International Political Economy*, (New York, Routledge, 1995).
14. See R. Barthes, *Mythologies*, (London, J. Cape) 1973.
15. John Agnew and Stuart Corbridge, *op. cit.* p. 46.
16. Adres Serbin, *Caribbean Geopolitics: Towards Security Through Peace* (Bolder, Col., L. Reinner Publ., 1990), p. 7.
17. *Ibid.*, p. 22.
18. *Ibid.*, p. 31.
19. See J. Dominguez, "The Powers, the Pirates, and International Norms and Institutions in the American Mediterranean" p. 15, in Andres Serbin's *Cuba and the Caribbean: Regional Issues and Trends in the Post-Cold War Era*. (Wilmington, Del., SR Books, 1997).
20. See *Hearings Before the US Senate Subcommittee on Western Hemisphere and Peace Corps Affairs of the Senate Committee on Foreign Relations. Cuban Liberty and Solidarity Democratic Act*. 1992, p. 57.
21. See Canada. *Legislative Debates*, 1996. 9 October 1997. Ref. 4488.
22. See Agnew and Corbridge, *op. cit.*, p. 65.
23. Denis Conway and Paul Lorah, "The Cuban and Haitian Diasporas" in *Under Threat: Forced Migrations Since World War II*. Forthcoming, L.Y. Luciuk and M.S. Kenzer.
24. See *Subcommittee Hearings Before the US Senate Subcommittee on Western Hemisphere and Peace Corps Affairs*, 1996. p. 78.
25. Agnew and Corbridge, *op. cit.*
26. James Eyres "Defining a New Place for Canada in the Hierarchy of World Power," in *Towards a New World: Readings in The History of Canadian Foreign Policy*, R.L. Granatstein ed. (Toronto, Copp Clark Ltd. 1992), p. 82.
27. Canada. *Parliamentary Debates*. Ref 02-29-1996 p. 130-English.
28. Canada. *Parliamentary Debates*. Ref. No. 03-0401996 p. 550-Translation.
29. Canada. *Parliamentary Debates*. Ref. No. 09-20-1996 p. 4488-English.
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32. James Rochlin, *Discovering the Americas: The Evolution of Canadian Foreign Policy Towards Latin America*. (Vancouver, UBC Press, 1994). p. 203.
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