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The Future of U.S.-Cuba Relations, a Policy Shift from the Helms-Burton Act

Andrew José Rosell*

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I. Introduction

On Wednesday, October 18, 2000, Congress passed the first significant piece of legislation regarding the economic embargo against Cuba since 1996. The legislation, however, was not a re-enforcement or an extension of the embargo. It was, instead, a reversal of policy. The provision, a part of an agriculture appropriations bill, allows for Americans to sell food and medicine to Cuba. The law is partly handicapped because it does not provide for the extension of credit to Cuba from the U.S. government or U.S. financial institutions. It is, however, a first step toward normalizing relations between the two nations. The law is a big win for American farmers and agribusiness.

The law is partly handicapped because it does not provide for the extension of credit to Cuba from the U.S. government or U.S. financial institutions. It is, however, a first step toward normalizing relations between the two nations. The law is a big win for American farmers and agribusiness.

It also may be seen as a loss or a win for supporters of the embargo. Clearly, the bill is a step away from the hard-core economic embargo, but the original bill would have allowed for government-backed credit; as passed, the bill forbids any credit to the government of Cuba. This may render the bill substantially useless. Thus, the politically powerful anti-Castro movement may see this bill as dead.

This legislation marks a turn from the congressional codification of the Cuban embargo in the Helms-Burton Act of 1996. That legislation was a clear tightening of the embargo; the current legislation may have opened the door to normalization.

2. Id.
3. The President signed the bill in October 2000.
5. See Jim Landers, Fight over Cuba Trade Bill Has Many Twists and Turns, DALLAS MORNING NEWS, Oct. 2, 2000, at 1D.
Where does the United States stand on its policy toward Cuba? Clearly, the United States is not as firm in its policy as it was just four years ago. But, will the United States forgive and forget?

This article uses this latest legislation as a springboard into the wakening debate over American-Cuban relations. This article will review the Helms-Burton Act and give an overview of some recent suggestions for changing policy. Further, the article will present both sides of the debate and examine the validity of their points.

II. The Helms-Burton Act

A. Overview

In March of 1996, President Clinton signed the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (also known as the Helms-Burton Act). The purpose of this act was to codify the existing economic embargo against the Castro regime in Cuba. Prior to the act, the embargo was a conglomeration of executive orders from previous presidents. The presidential rights are derived from several statutes, including the Trading with the Enemy Act, the Foreign Assistance Act of 1961, and the Cuban Democracy Act of 1992. Because the Helms-Burton Act consolidates the above statutes, an independent discussion of these acts is not required.

The law marked the pinnacle of U.S. resistance to the Caribbean Communism of Fidel Castro. Senator Jesse Helms introduced the law in early February 1995. The policy was contrary to the Clinton administration's position, but a year later in 1996, public outcry over the deaths of four Cuban-Americans who were shot down by Cuban MiGs a month earlier was too great to hold the legislation back.

Now that the embargo is codified, relaxation of sanctions requires an act of Congress. But a more careful analysis of the governing legislation reveals that, “the President may, after the appropriate reports to Congress, lift the embargo” with a presidential decree.

13. Id. at 746. It also appears that President Clinton may have signed the bill because the 1996 election was around the corner and Cuban-Americans hold a large block of power in the “electoral vote rich” state of Florida. See Lee, supra note 1.
Beyond the embargo, the Helms-Burton Act codifies American claims to property confiscated by the Castro regime.\textsuperscript{15} This law protects U.S. nationals’ claims to property that was confiscated and expropriated during the early years of the Castro revolution.\textsuperscript{16} But most significant is the inclusion of Cuban nationals who later became U.S. citizens after the revolution in this class of individuals.\textsuperscript{17}

\textbf{B. CONFLICT WITH INTERNATIONAL LAW PRINCIPLES}

Well-founded international law principles dictate that a country cannot advocate claims of non-citizens.\textsuperscript{18} However, the drafters of the Helms-Burton Act may have been relying on precedent created by the 1981 U.S.-Czechoslovak Claims Settlement Agreement. At the end of World War II, Czechoslovakia expropriated property from foreign and domestic corporations, as well as foreign and domestic individuals.\textsuperscript{19}

The United States and Great Britain retained gold that belonged to Czechoslovakia (the gold had been stolen by the Nazis during their occupation of Czechoslovakia).\textsuperscript{20} So the United States used the gold to bargain a settlement with the Czechoslovakian government. In the settlement, the U.S. Congress included the claims of former Czechoslovakian nationals who had gained their U.S. citizenship after the seizures.\textsuperscript{21} During deliberations, the State Department urged against this inclusion because it went against a well-founded principle of international law:

Under well-established principles of international law, to which the United States adheres, the United States cannot espouse claims against foreign governments for injuries inflicted upon persons who were not U.S. citizens at the time of the injury.\textsuperscript{22}

Despite this warning, Congress included the claims of that class of U.S. citizens. Congress did, however, include a disclaimer: “in making payments under this section, the Congress does not establish any precedent for future claims payments.”\textsuperscript{23}

It would appear that, regardless of the disclaimer, the 1981 U.S.-Czechoslovak Claims Settlement Agreement provided a model for the drafters of the Helms-Burton Act,\textsuperscript{24} because the Cuban nationals were not actual citizens of the United States at the time of the takings.

\textsuperscript{16} See Lucio, supra note 7, at 328--29.
\textsuperscript{17} Id. at 329.
\textsuperscript{19} Id. at 640.
\textsuperscript{20} Id. at 643--44.
\textsuperscript{21} Id. at 649.
\textsuperscript{22} Id. at 649--50.
\textsuperscript{23} Id. at 650 n.57.
C. A Federal Cause of Action against Those “Trafficking” in Confiscated Property

The Helms-Burton Act also attempts to thwart other countries from investing in Cuba. The Act provides U.S. nationals a federal cause of action against any person or corporation that engages in the trafficking of wrongfully obtained property that is claimed by U.S. nationals.26 The U.S. government can take action against these individuals (or in the case of corporations, their officers).26 The government can deny or revoke visas and deny access to U.S. markets. The United States has taken action against at least two foreign corporations.27 Sherrill International Corp. from Toronto invested in a chemical plant in Cuba that was formerly the property of an American corporation.28 The executives and their families were denied entrance into the United States as a response.29 In addition, after investing in the Cuban telephone company, officers of the Mexican corporation Grupo Domos were denied visas to the United States because many of the assets of the Cuban telephone company were expropriated from ITT Corporation.30

D. Movement to Repeal

As this article will demonstrate, there is a clear movement for change in U.S.-Cuba relations. This movement is taking form in many different areas and in many different ways. Many observers and commentators have voiced the idea of repealing the Helms-Burton Act as a way to progress normalization. Policy observers view the Helms-Burton Act as a foolish, reactionary form of legislation that left no room for compromise.

In effect, the law against trafficking internationalizes the embargo and irritates our allies.31 The internationalization of the embargo creates resistance from many sources as discussed above, but almost as important, the legislation gives fire for Castro’s propaganda war against American imperialism, a cause that has many international supporters. Castro’s private war against the lone superpower has been one of the only themes he has used successfully to court international support and alliances. His alliances include a recently renewed union with Russia. During a visit to Cuba in December 2000, President Vladimir Putin concurred with Castro’s sentiments when he stated, “The unipolarity [sic] that we oppose is an attempt to monopolize and dominate world affairs. History has seen several such attempts. And what came of these attempts is well known. There is no place for monopolism [sic] in today’s world.”32 Also among Castro’s allies is Hugo Chavez, president of Venezuela. During President Chavez’s visit to Havana, the

25. Id. §§6082–83.
26. Id.
27. Id.
29. Id. at 505.
30. Id.
two negotiated discount crude prices and closer relations. Chavez, who has taken an increasingly authoritarian hold on Venezuelan government, looks to Castro as a model, recently proclaiming his "identification" with Castro's revolution.

Castro's alliances with Putin and Chavez are especially troublesome for the United States. The importance of Russia is obvious. But recently, relations with Putin have become tense over the United States' desire to build a National Missile Defense system. Further, Venezuela is a member of the Organization of Petroleum Exporting Countries (OPEC) and the United States is critically aware of the need for stability among the member countries. The United States cringes at the idea of Castro having influence over such an important leader.

The other reason why the Helms-Burton Act is seen as a block to normalization is its shift of control over the embargo from the president to Congress. This shift of power gives the president less negotiating power. The president, if the Helms-Burton Act was repealed, could use his executive power to make concessions to Cuba, in exchange for a resolution of the property issue or any number of items necessary for easing relations.

III. A Relaxation of U.S. Policy May Come as a Response to International and Domestic Pressure

The Helms-Burton Act has set the prevailing attitude toward Cuba, until recently. In January of 1999, President Clinton began trying to ease relations with Cuba through various people-to-people programs. Further, public sentiment has drifted toward a desire to normalize relations. This may be a result of the internationally covered Elian Gonzalez episode. Also, the Helms-Burton Act has not received a warm welcome from most of the United States' trading partners.

A. International Resistance

Because the Helms-Burton Act imposes penalties on individuals and corporations outside the jurisdiction of the United States, many different countries and organizations have voiced their opposition to the legislation.

1. The European Union

The European Union (EU) countries have complained to the World Trade Organization (WTO). They want the WTO to examine the legality of the Helms-Burton

33. See Tad Szulc, Bush, U.S. Should Be Wary of This Troublesome Trio, MILWAUKEE J. & SENTINEL, Jan. 2, 2001, at 9A.
34. Id.
36. Id.
37. Id.
38. Cuban Officials Visit the United States for a Tour of Farms and Agricultural Businesses in Texas and the Midwest (National Public Radio, Sept. 17, 2000), transcript can be found in LEXIS news archive.
40. See Shamberger, supra note 28, at 507.
Act under international law.\textsuperscript{41} The EU has also enacted retaliatory legislation that allows European corporations to recover any financial losses due to litigation under the Helms-Burton Act.\textsuperscript{42}

2. \textit{The United Nations}

The United Nations, in response to widespread opposition to the Helms-Burton Act, passed a resolution condemning the United States' passage of the Helms-Burton Act and urging the United States to end its embargo of Cuba.\textsuperscript{43} The vote was 138 to three.\textsuperscript{44}

3. \textit{Mexico}

In response to the Helms-Burton Act, the Mexican Chamber of Deputies passed retaliatory legislation that requires Mexican companies to follow Mexican law first.\textsuperscript{45} Further, the legislation gives Mexican citizens and corporations a cause of action in Mexican courts against any U.S. claimant if U.S. courts award damages.\textsuperscript{46} Thus, when ITT Corp. brought a cause of action against Grupo Domos, mentioned above, for trafficking in its expropriated property and recovered damages, then Grupo Domos could bring a cause of action against ITT in Mexico to recover those costs.\textsuperscript{47} They could then place a lien on ITT property in Mexico, specifically on ITT's Sheraton hotels.\textsuperscript{48}

4. \textit{Canada}

Like Mexico, Canada also passed retaliatory legislation, ordering Canadian companies, including Canadian subsidiaries of U.S. corporations, to trade with Cuba.\textsuperscript{49} The legislation requires a company to file a statement if they have not involved themselves in trade with Cuba.\textsuperscript{50} Thus far, subsidiaries of U.S. corporations have skated by penalties, citing "other reasons" for not pursuing trade with Cuba.\textsuperscript{51}

Canada has also alleged that the Helms-Burton Act violates the North American Free Trade Agreement (NAFTA).\textsuperscript{52} This may allow Canada and its citizens to seek reparations and perhaps defeat the Helms-Burton Act under NAFTA's arbitration structure.\textsuperscript{53}

Canada has always been a vigorous trading partner with Cuba and insists on growing its trade. In 1990, Canadian business in Cuba amounted to $219 million. In 1995, trade had grown to $500 million.\textsuperscript{54}

\begin{itemize}
\item \textsuperscript{41} Id.
\item \textsuperscript{42} Id. at 509.
\item \textsuperscript{43} Id. at 507.
\item \textsuperscript{44} Id.
\item \textsuperscript{45} Id. at 513.
\item \textsuperscript{46} Shamberger, \textit{supra} note 28, at 513.
\item \textsuperscript{47} Id.
\item \textsuperscript{48} Id. at 514.
\item \textsuperscript{49} Id. at 510.
\item \textsuperscript{50} Id. at 511.
\item \textsuperscript{51} Id.
\item \textsuperscript{52} See Shamberger, \textit{supra} note 28, at 511.
\item \textsuperscript{53} Id.
\item \textsuperscript{54} See Deborah Ramirez, \textit{In Canada, U.S. Finds Friendly Foe; Neighbors Ignoring Helms-Burton Law}, \textit{SUN-SENTINEL}, Nov. 29, 1996, at 1A.
\end{itemize}
B. People-to-People Exchanges

In recent years, there has been a surge of interaction between Cubans and Americans. This interaction is the direct result of President Clinton's people-to-people program initiative. Recently, the interaction has been over agriculture. Alimport, Cuba's state-owned importing business sent its president, Mr. Pedro Alvarez, to the United States for an investigative trip. The trip was sponsored and paid for by Archer Daniels Midland (ADM). Mr. Alvarez brought a pen with him willing to ink a contract on the spot to buy southeast Texas rice. Although probably a publicity stunt, Mr. Alvarez and his country are eager to reestablish their American supply line of rice and other food products.

C. Momentum for Change

Beyond the international backlash against the Helms-Burton Act and the embargo in general, it seems that discussion for change has begun in several different areas. On the domestic front, the major force (a group with money and political clout, along with a legitimate cause) for change has been individual American farmers and their corporate counterparts: the so-called agribusinesses. Farmers see expansion into new markets as a necessity for their survival. Farmers look to the close proximity of Cuba as a perfect place to sell their excess grain. Farmers seem to think that they have been punished by legislation that has not served its purpose. As discussed below, the new agricultural bill is a first step for farmers, but it seems that farmers will not be satisfied until they can freely sell their products to Cuba and have the sales financed domestically. The corporate farmers are doing their part, too. ADM has sponsored visits and pressed Congress for the recent legislation. American farmers are leading the fight for normalization and they are doing it for a reasonable purpose. Their arguments do not contain any rhetoric, just simple economics of supply and demand.

During his last days in office, President Clinton reflected on Cuban relations and expressed his thoughts on the future. President Clinton believes that the Helms-Burton Act was a mistake. Reflecting on why he signed the act, President Clinton confirmed

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55. See National Public Radio Broadcast, supra note 38.
56. Id.
58. See Doreen Hemlock, Cuban Aide Seeks to Dent Embargo; Visit Is Part of Bid to Change U.S. Law, SUN-SENTINEL, Sept. 15, 2000, at 1D.
59. See Wallach, supra note 57, at 1.
60. Id.
61. See William Neikirk, Cuba's Hunger for U.S. Grain; If Congress Ever Relaxes the Trade Embargo, Farmers Can Claim Credit, SUN-SENTINEL, Oct. 15, 2000, at 3A.
62. Id.
63. Id.
64. See President Clinton's Interview with Jose Diaz-Balart of Telemundo, 36 WEEKLY COMP. PRES. DOC. 2819, 2830 (Nov. 20, 2000).
that it was a reaction to the Cuban MiG attack on the Brothers to the Rescue airplanes.65

"I think it’s a great mistake, and I hope the next Congress will correct it, to put the
President in a position where he can promote positive change in Cuba," stated Clinton.66
Clinton asserted the need for negotiating tools, what he called “carrots and sticks.”67
Clinton believes that the president should have some tools to negotiate with Cuba; this
will give the president more flexibility.68 Clinton also stressed the importance of people-
to-people programs and personal contact.69 Clinton’s comments express an increasingly
popular point of view among Cuba observers: that the embargo, in and of itself, has
brought little to no changes in Cuba and the future of Cuban relations should focus
on reality-based negotiations. Clinton discussed Serbia as an example. He said that he
had the power to encourage elections and that he had the power to end the embargo if proper elections were held.70 After Mr. Kostuica won, Clinton was able to ease the
embargo and continue to work for progress in that country.71 Finally, Clinton recognized
that attitudes among Cuban-Americans are changing to favor easing tension between the
two countries, and he regretted not doing more to progress relations.72

President Clinton’s former Secretary of State, Madeleine Albright, has also reflected
on Cuban policy. Albright sees Castro as an anomaly in the history of Communism;
he is both the creator and the inheritor of Cuban Communism.73 Albright, probably
compensating for her own failure to further relations, believes that only biology (i.e.,
death) will rid Cuba of Castro.74 The worst attitude to have while involved in foreign
relations is pessimism.

Even Fidel Castro has recognized the growing tide of change among Americans.
Castro has mentioned that American business people, specifically farmers, are anxious
to trade with Cuba.75 Castro pointed to the influx of other foreign investors as a sore
spot for the United States. He also said that most nations condemn the U.S. blockade,
as well as a majority of American citizens.76 It should also be noted that Fidel Castro
recently unveiled a new monument to Lennon, that is, John Lennon, former Beatle and
peace activist.77

65. In early 1996, two civilian aircraft were shot down over the Straits of Florida. The planes
were flown by members of the Cuban exile group, Brothers to the Rescue, who frequently
flew over the Caribbean searching for stranded immigrants.
66. Interview with Jose Diaz-Balart of Telemundo, supra note 64, at 2830.
67. Id.
68. Id.
69. Id.
70. Id.
71. Id.
72. See Interview with Jose Diaz-Balart of Telemundo, supra note 64, at 2830.
73. See R.C. Longworth, Madeleine Albright; Outgoing Secretary of State, CHI. TRIB., Jan. 21, 2001,
at 3C.
74. Id.
75. See Cuba: Castro Tells Russian TV That He Does Not Worry About His Place in History (BBC
76. Id.
77. Id.
Besides Fidel Castro, there is also his brother Raul who thinks the time is right for Americans to begin easing tensions with Cuba. General Castro is Cuba's defense minister and is more of a hardliner than his brother. He said that relations should be normalized while Fidel is still in power and before it became any harder for the nations to bridge the gap between them.

Further, Fidel Castro has authorized his diplomatic corps to gather international support against the U.S. imposed economic embargo. Their first stop was Africa and the Middle East. "Our primary priority for 2001 is to continue battling against the North American blockade," stated Foreign Minister Felipe Perez Roque.

It seems that Cuba has started 2001 with the intent of ending the embargo. This perhaps has been brought along because of the start of the new U.S. administration, or because of the recent debates in Congress regarding the embargo and the sale of food and medicine. Whatever the cause, it would be imprudent for the United States to ignore these recent invitations for change.

IV. An Analysis of the Embargo and the Current Cuban Economy

Proponents of normalization also point to the results of the forty-year-old embargo. It is, therefore, important to review the embargo, its implications on Cuban-Soviet relations, and the subsequent roller coaster Cuban economy.

A. The Embargo as a Cause of Suffering of the Cuban People

Many observers have made the astute conclusion that economic embargos lead to massive suffering of the people inhabiting the target country. Cuba is no different, although the suffering may have been delayed for thirty years. When the United States first commenced the economic embargo against Cuba, it did not take long for Castro to begin an alliance of necessity with the Soviet bloc countries. In fact, the Cuban economy was sure to have been destroyed but for the Soviet aid. Thus, because Cuba had the vast resources of the Soviet Union behind it, the U.S. embargo did not take full effect until 1990, when the Soviet Union and its eastern European communist allies cut off aid to Cuba.

78. See Around the World; Cuba: Castro's Brother Urges Normal U.S. Ties, DALLAS MORNING NEWS, Jan. 6, 2001, at 23A.
79. Id.
81. Id.
84. See Mowry, supra note 14, at 236.
B. THE DEMISE OF THE CUBAN ECONOMY IN THE EARLY 1990s

When the Soviet bloc cut off aid to Castro, the Cuban economy shattered. The economy declined as much as 50 percent between the years of 1991 and 1994. This lent empirical evidence to embargo supporters that their plan would work. In fact, it seems that embargo supporters saw this opportunity to tighten the noose on Cuba and see if Castro would finally hang. In 1992, President Bush signed the Cuban Democracy Act of 1992 (CDA). The CDA allows the president to place sanctions on countries receiving U.S. aid if they help Cuba. The CDA, without apology, seeks a transition from Castro and communism to democracy for the people of Cuba. It specifically states criteria for a transition government in Cuba. And so embargo proponents felt victory at hand.

Much to their disappointment, Castro survived the tightening of the embargo. In 1995, Cuba began a series of moves towards entering free markets. Law 77 was enacted to stimulate foreign investment. Law 77 allows foreign investors to partner up with Cuban government-sponsored entities. As a result, Cuban officials claim that foreign investment in Cuba had grown to $2 billion.

Even with major shortages of everything, from rice and grain to oil, Castro's Cuba managed to survive, even if it meant that the population would forego their automobiles for "Flying Pigeons," that is, bicycles from China.

C. THE REAL IMPACT IS ON THE HEALTH OF THE CUBAN PEOPLE

Castro's hold on the political power of the island is so firm even the contraction of his economy to half of its former self cannot drive him out of power. The embargo does have several real impacts and victims. Cuba is currently the only country that is refused medicine as part of an economic embargo. The people of Cuba are suffering first hand from this action. Outside observers like the New England Journal of Medicine have commented on the strictness of the embargo; even the visitation of medical delegations and the mailing of medical journals are prohibited. As can be imagined, this has had an immeasurable effect on the people of Cuba.

When the Soviet Union cut off economic aid to Cuba beginning in 1992, Cuba's ability to feed its people was almost completely crippled. Prior to the collapse of the Soviet aid, Cuba imported 100 percent of its wheat and 50 percent of its rice. Without hard currency, Cuba was unable to provide essentials for its citizenry. These types of unanswered atrocities have led many observers to conclude:

85. See Schwab, supra note 83, at 79.
86. See Cuban Democracy Act, supra note 11.
87. See Travieso-Diaz, supra note 8, at 16.
88. Id. at 17.
89. See Matias F. Travieso-Diaz, So Your Client Wants To Go To Havana..., 6 NAFTA: L & Bus. REV. AM. 277, 279 (2000).
90. See Mowry, supra note 14, at 240.
92. Id. at 54.
93. Id.
94. Id. at 79.
The primary goal of U.S. sanctions against Cuba was always from the earliest the removal of Fidel Castro, a leader Washington was unable to 'orient in the right direction.' Nixon's injunction injudiciously spelled out quite clearly that it was control of the man and the country he led, rather than the inherent fear of communism, that fundamentally led the United States to take the fateful first steps in its anti-Castro crusade.95

V. The Future of U.S. Relations with Cuba

The last couple of years have witnessed remarkable activities between the United States and Cuba from the saga of Elian Gonzalez to the recent debates in Congress over trade with Cuba. This section of the article will review some of the most current events and look to the future of U.S.-Cuba relations.

A. DISRUPTION OF PHONE SERVICE BETWEEN THE UNITED STATES AND CUBA

Most recently, Cubans and Americans alike have suffered from a diplomatic dispute involving a tax on telephone calls between the two countries. In the middle of December 2000, Castro tried to impose a 10 percent tax on phone calls between Cuba and the United States.96

In 1994, the United States and Cuba concluded an agreement that allowed for direct phone connections between the two countries.97 The Clinton administration forbade the U.S. phone companies from paying the tax because it was not part of the original bilateral agreement.98

The Cuban government is arguing that this tax is the only way for the country to raise the $58 million dollars to be paid to the families of the victims of a Brothers to the Rescue plane accident.99 In 1996, the Cuban military shot down a civilian airplane that was flying over the Florida Straits looking for stranded immigrants in rafts. The United States may allow the money to be paid out of $120 million of frozen Cuban assets.100

In response to the U.S. phone companies' failure to pay the tax, the Cuban government has blocked incoming phone calls from the United States.101 The problem is likely to fester into the opening days of the new Bush administration. This will likely be the first chance for President Bush to address foreign relations with Cuba.102 Many Cuban-Americans are hoping that Bush will take a hard line toward Castro. The answer will likely come quickly.

95. Id. at 165.
96. See Doreen Hemlock & Vanessa Bauza, Castro Disconnects Phone Calls from U.S.; Cuba Demands American Companies Pay Tax, SUN-SENTINEL, Dec. 16, 2000, at 1A.
97. See Ending Link No Solution; Surcharge on Calls Not Part of Agreement, SUN-SENTINEL, Dec. 12, 2000, at 3A.
98. Id.
99. See Hemlock & Bauza, supra note 96.
100. See Ending Link, supra note 97.
101. See Hemlock & Bauza, supra note 96.
B. The Cuban-American Community Weighs In

The recent spat over phone connections has given observers an opportunity to speculate and review the political stances of President George W. Bush and the stubborn Cuban-American community. It is clear that President Bush is acutely aware of the Cuban situation because his brother Jeb is the governor of Florida, the state that gave Bush the final push in the Electoral College vote. The question is how will President Bush react to the political prodding of the Cuban-American community.

1. The Political Muster of the Cuban-American Community

There is empirical proof that Cuban-Americans "won" the 2000 election for Bush. Before continuing, it is clear that every vote "won" the election in Florida, and it is not necessary to wade into the "Florida Fiasco" to prove the points of this article; but because the Cuban-American community will undoubtedly help mold future Cuban policy, it is important that their political power be analyzed.

In the 1996 election, President Clinton received 40 percent of the Cuban-American vote.103 Even though Gore publicly separated himself from the administration's decision to seize Elian Gonzalez, Cuban-Americans retaliated against the Vice President at the voting booth. According to exit polls, Gore received only 19 percent of the Cuban-American vote.104 Because of the close race in Florida, it is very apparent that all political groups in Florida—from the elderly to Cuban-Americans—will gain real power over the new Bush administration.

The Cuban-American community, however, does have its own public relations battles to win, in order to maintain its political clout. After the Elian Gonzalez saga, the Cuban-American community was left with some egg on its face. And they may now be politically vulnerable.105 But many Cuban-Americans see the aftermath as an indication that the American public does not understand their cause, and see this as a chance to continue, even stronger, their quest to educate the public at large.106

2. George W. Bush’s Policy Stance

Although it may be too early to tell, President Bush is likely to maintain a hard-line stance against the Castro regime. Bush has constantly reinforced his alignment with anti-Castro Republicans, especially those from South Florida.107 And one of his first appointments was Mel Martinez, a Cuban-American from Miami.108 But Bush also has strong ties to global corporations that want to compete in Cuba.109 Corporations and lobbying groups like ADM and the Farm Bureau are already pushing for trade with Cuba.110 These groups are the primary backers of recent agricultural legislation that is

103. See Susan Page, What If?, USA TODAY, Nov. 24, 2000, at 1A.
104. Id.
105. See David Cazares, In the Aftermath, Wounds Are Still Festerling, SUN-SENTINEL, Nov. 24, 2000, at 18A.
106. Id.
107. See Chacon, supra note 102.
108. Id.
109. Id.
making a dent in the economic embargo against Cuba; this legislation will be discussed below.

Not only will President Bush feel pressure from corporate lobbyists, but also the general public is beginning to form an opinion against the mainstream ideas of the Cuban-American community. Public opinion polls show a clear majority of people disagrees with America's current policy towards Cuba.\footnote{See Wayne S. Smith, \textit{A Policy for the Minority?}, \textit{Sun-Sentinel}, Jan. 15, 2001, at 19A.} Further, some observers see the Cuban-American community as a roadblock to progress.\footnote{See What Florida Needs from President Bush, \textit{The Palm Beach Post}, Jan. 21, 2001, at 1E.} But what they want is not necessarily an end to the embargo, but rather, a sound policy toward Cuba\footnote{Id.} that will bring about the shared goals, a better Cuba that includes democracy (and probably not Fidel Castro).

Bush's advisors have begun to signal a shift in policy. During the Senate confirmation hearings of Secretary of State Colin Powell, Cuba was a hot topic. Senators from both sides of the aisle questioned the former head of the Joint Chiefs of Staff on his views about Cuba and Fidel Castro. Powell maintained his support for the embargo.\footnote{See Confirmation Hearing on Secretary of State-Designate Colin Powell before the Senate Comm. on Foreign Relations, 107th Cong. (2001) (statement by Colin Powell).} He did, however, voice his hope that actions could be taken to help the Cuban people directly.\footnote{Id.} Powell also spoke generally on the matter of embargos and said that embargos are not always the most efficient vehicle for change and that they should be limited in use.\footnote{See Embargo Era May Be Ending, \textit{Dallas Morning News}, Jan. 22, 2001, at 8A.}

So, the political power of the Cuban-American community may have an ally in President Bush, but they will have to fight hard for his ear, and will have to prove their political worth against some fierce competitors. Further, they will have to make a great stance to defend their unpopular view amid the rising wave of moderates who would like to re-examine the U.S. policy toward Cuba. This struggle will likely have a tremendous effect on the future relations between Cuba and the United States.

3. \textit{A Shift in the Community}

More important than Cuban-Americans' current political power is its internal unity. The Elian Gonzalez saga exposed some tension between certain Cuban groups. The American public is probably not aware of the diversity of opinions among the Cuban-American community. Some groups favor immediate trade with Cuba;\footnote{Id.} other groups favor the current embargo.

The anatomy of the Cuban-American community is what truly shows the possible change in opinions, specifically the age demographics. The hardliners are mainly composed of the oldest Cuban exiles that came to America right after Castro took over in 1959. They were in their twenties and thirties then; now they are in their sixties and
seventies. As that segment grows older, the political power will be handed down to their children, most of who were born in the United States. These Cuban-Americans are more American than Cuban, and they only know Castro from their parents' stories. This segment of the community is more moderate, but is still very much against Castro.

The other major segment of the Cuban-American population is composed of exiles of all ages that have come over throughout the years. These individuals have joined the community and generally align with the hard-line opponents of Castro. The major wave of these Cubans came over in 1980 during the Mariel boatlift and again in 1994 when Castro suggested that those wishing to leave were free to do so.118

This aging of the community has led to differences of opinion and strategy. "The goal of having a free and democratic Cuba is shared by most exile organizations. But when it comes to choosing the road to get there, they disagree vehemently."119 This tension will surely heat up as the debate over Cuba continues. Hopefully, the Cuban-American community will have the wherewithal to proactively and peacefully participate in the debate.

C. THE 2001 AGRICULTURE APPROPRIATIONS BILL

In October, the U.S. Congress began debating the first significant legislation regarding Cuba since the Helms-Burton Act. Representative George Nethercutt, a Republican from Washington, sponsored a bill that would allow Cuba to buy food and medicine from the United States.120 The idea was met with great resistance from the conservative Republicans led by Florida Representatives Ileana Ros-Lehtinen and Lincoln Das-Balart, who had nearly created a global crisis while objecting to the testimony of a Cuban official in a special federal commission hearing a month earlier.121

The bill eventually passed and was signed by President Clinton.122 But the final version made drastic concessions to opponents that are expected to render the program ineffective. The final version bars public and private financing of Cuban purchases. This means that if the Cuban government wants to buy American agricultural products it must pay cash up front or obtain financing from third countries.123

Major supporters of the bill were farming lobbyists and large agricultural-based companies, specifically ADM and the Farm Bureau.124 These farmers and agribusinesses

118. See Schwab, supra note 83, at 91.
119. Jose Dante Parra Herrera, Discord Divides Cuban Exile Groups; Goal Is Similar, But Rivalries Block Way, Sun-Sentinel, Jan. 14, 2001, at 1B.
120. See Landers, supra note 5.
121. See Jim Landers, Cuban Diplomat Calls Embargo ‘Genocidal Aggression’; 2 Lawmakers Object to Official’s Testimony before Trade Panel, Dallas Morning News, Sept. 20, 2000, at 21A.
122. See Adriel Bettelheim, Agriculture Spending Bill Sent to Clinton, CQ Weekly, Oct. 21, 2000, at 2481.
124. See Lanier, supra note 4; see also Wallach, supra note 57.
want to tap into the one billion dollar a year food import market of Cuba. Looking at an example, Cuba currently buys most of its rice from China, $100 million worth per year. Because China is so far away from Cuba, the average cost is $45 per ton, and a shipment takes six weeks to arrive. If Cuba bought that rice from South Texas, like it used to do in the 1950s, the average cost would be between $12 and $15 per ton, with shipments arriving in about three days. The Cuban market could be a much-needed boost in the wallets of American farmers. ADM, alone, could make $100 million in sales to Cuba.

Many experts do not agree on the instant market in Cuba. Ms. Vicki Huddleston, who is in charge of the U.S. Interests Section in Cuba, recently commented that Cuba is a poor country and what little privatization has taken place has been heavily guarded by the government. Others say the market in Cuba just is not that big and moving into that market will be a slow process.

125. See Landers, supra note 5. This amount seems to be an overestimate when compared to estimates reached by the U.S. International Trade Commission (ITC) in a study released in February 2001. The ITC estimates that the entire value of trade with Cuba would be between $658 million and $1 billion, annually. See United States International Trade Commission, The Economic Impact of U.S. Sanctions with Respect to Cuba xiv (2001).

126. See Wallach, supra note 57.

127. Id. The ITC's report seems to validate this claim. The ITC estimates that total U.S. rice exports to Cuba would be between $40 and $59 million annually. See United States International Trade Commission, supra note 125, at xviii.

128. See Lanier, supra note 4. The ITC notes that wheat sales to Cuba would total $34 to $52 million annually. Thus, agricultural exports would be a major piece of total trade with Cuba, with wheat and rice having the greatest share of sales, but the estimates of private corporations and parties involved seem inflated. See United States International Trade Commission, supra note 125, at xvii. The overall conclusion of the ITC was that sanctions "had a minimal overall historical impact on the U.S. economy." Id. at xiv. The main reason for the minimal effect is the relative size of the Cuban economy compared with much larger markets in Latin American countries. Id. at xiv. Another major reason for the conclusion is based on Cuba's reluctance to make any one country a major trading partner. This is to avoid economic dependence on one country. Id. at xv. The report also estimates that the United States would import $69 to $146 million worth of Cuban goods. Id. at xiv. Not surprising, one main product would be Cuban cigars, with an estimated import value of $15 to $30 million annually. Id. at xxi. The report, however, does not contemplate imports of Cuban sugar because the U.S. government heavily regulates sugar. The report concludes that sugar imports from Cuba would be uncertain and that the historical impact on both countries would have been minimal because both countries quickly made alternative trades. The United States shifted trade to other Latin American countries and Cuba shifted trade to the Soviet Bloc countries. See United States International Trade Commission, supra note 125, at xx.

129. See Bill Day, Envoy Doubts Cuba Change, San Antonio Express-News, Sept. 15, 2000, at 14A. The Special Interests Section is an American quasi-embassy in Havana. Ms. Huddleston, although not an ambassador, is a high-ranking diplomat. Ms. Huddleston's opinion seems to be backed by the ITC's report; increases in trade with the United States will come at the expense of Cuban trade with other countries. See United States International Trade Commission, supra note 125, at xvii-xviii.

130. See United States International Trade Commission, supra note 125, at xvi-xviii. The ITC's report seems to validate this claim by concluding that Cuba is still a small economy compared to other Latin American countries. Id. at xiv.
Regardless of the disagreement on size, Cuba does represent a new market. And for many farmers in America who contribute to a domestic surplus, Cuba represents a new market in their own backyard that just may be able to save their livelihoods.

The agriculture debate exemplifies both ends of the political spectrum that are likely to lobby hard for and against policy changes toward Cuba. On one side there are farmers and multinational corporations (like ADM). On the other side, as stated above, the Cuban-American community stands ready to resist any moves toward loosening the embargo against Castro. The future will hold many opportunities for these newly acquainted foes to go at it again.

**D. HUMAN RIGHTS WATCH WORLD REPORT 2001: CUBA**

In December 2000, the Human Rights Watch organization (HRW) released its report on Cuba. Although the organization did not note an improved human rights record for Cuba, it did note an attempt by the U.S. government to ease tensions between the two countries. The HRW speculated that this was a result of the Elian Gonzalez saga.

HRW noted specifically that the Cuban government aggressively prosecutes journalists and political activists. Specifically, journalists have been incarcerated for “insulting President Fidel Castro.” And demonstrators have been arrested because of their anti-abortion positions. Because human rights improvements are expressly part of the criteria for easement of the embargo, it is important to understand the specific violations with which the United States is concerned. It should be noted that none of the violations in the report are exclusive to Cuba. These types of violations are commonly found in countries that we actively engage in trade, like China, Indonesia, Turkey, and Vietnam. Analysis of the types of violations allows further insight into what will be the turning point in the battle to ease the embargo. Specifically, as we shall see later, although most of the legislation points to human rights violations for support of an embargo, the real motivation is something else. In the case of Cuba, the motivation is property and Castro.

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132. Id.
133. Id.
134. Id.
135. Id.
136. Id. The discussion of Cuba’s human rights violations should not be interpreted as an attempt to minimize Castro’s violations of and disregard for human rights. The conclusion is that normalization of relations with Cuba will probably not turn on human rights. This conclusion is drawn from the U.S. government’s historical negotiations with other communist countries like Vietnam, China, and North Korea. The government seems to indicate a preference for increased trade, then a focus on improving respect for human rights.
E. The United States Department of Agriculture (USDA) Reports on the Cuban Market

In December 2000, the USDA released a report on the Cuban market for exports from the United States.\footnote{137} The report states that Cuba would be a major export market for rice, coarse grains, beans, wheat flour, and animal products.\footnote{138}

Further, the report states that the United States could import sugar and seafood from Cuba.\footnote{139} The USDA reported that the sugar industry has been greatly affected by the collapse of Cuba's transportation industry and its lack of fertilizer, oil, parts, and equipment.\footnote{140} This obviously is a result of the end of Soviet aid and the lack of hard currency.

Finally, the report says that Cuban cigars would also be major imports for the United States.\footnote{141} The press release says that the USDA released the report in connection with the debate on Capitol Hill over the agriculture appropriations bill, discussed above.\footnote{142} With this report, it seems undeniable that Cuba would make a great market for U.S. goods, particularly basic goods from our agricultural industry. Again the empirical evidence seems to be lining up in favor of future relaxation of the economic embargo.

F. The Council on Foreign Relations' Independent Task Force Report

In 1998, the Council on Foreign Relations created a special task force to evaluate U.S.-Cuba relations.\footnote{143} The task force's main goal is to set out principles that it believes will progress U.S.-Cuba relations.\footnote{144} The task force issued its first report in January 1999. The report set out several initiatives that the United States could undertake to progress relations; among these recommendations was a lifting of restrictions on travel and lifting most restrictions on food and medicine sales to Cuba.\footnote{145}

Shortly after the report was issued, President Clinton announced his people-to-people programs. These programs helped increase American travel to Cuba. In 1999, upwards of 200,000 Americans visited Cuba, a major increase from the 40,000 visitors in 1998.\footnote{146} Further, the amount of temporary visas granted to Cubans increased from 9,000 to 40,000 over the same one-year period.\footnote{147} The Clinton administration also took several other steps, including the proposal of regular mail deliveries.\footnote{148} The State Department

\footnote{138}{Id.}
\footnote{139}{Id.}
\footnote{140}{Id.}
\footnote{141}{Id.}
\footnote{142}{Id.}
\footnote{144}{Id.}
\footnote{145}{Id.}
\footnote{146}{Id.}
\footnote{147}{Id.}
\footnote{148}{Id.}
subsequently announced that Cuba was not "involved in illicit drug production and transit, and are [sic] therefore eligible for U.S. government assistance only if certified by the president." 149

Congress also began looking at ways to progress relations. In March 2000, a resolution was presented to the Senate Foreign Relations Committee that would loosen sanctions on the sale of food and medicine. 150 And, as discussed above, the Fiscal 2001 Agricultural Appropriations bill allowed the sale of food and medicine to Cuba, but prohibited the extension of credit to the Cuban government. 151

As the task force began observing the new debate over Cuban relations, it was decided that the task force continue its observations. 152 And from this continued existence, the task force issued its second report in late 2000. 153 The recommendations of the task force . . .

seek to build and strengthen bridges between the Cuban and American people; promote family reunification; address current and future matters of U.S. national security; promote labor rights and facilitate resolution of property claims; and further expose Cuba to international norms and practices. 154

These recommendations are grouped in "baskets"; below is an analysis of the main recommendations.

1. Basket One: Family Reunification and Migration

The main goals of basket one are to encourage family relationships and togetherness and to promote safe and legal immigration to the United States. 155 Under the current system, Cuban-Americans are allowed to visit family members in Cuba once per year. The task force recommends that this limit be lifted, which is consistent with the abilities of professional researchers and full-time journalists to travel limitlessly. 156 On this same note, the task force recommends that the limit on funds sent from America to families in Cuba also be lifted. 157

The task force also recommends that the U.S. government treat Cuban-Americans equally with other similarly situated U.S. residents. The task force recommends that Cuban-Americans be allowed to claim as dependents on their IRS returns family members in Cuba. U.S. residents are allowed to claim as dependents family members who are living in Canada and Mexico. 158 Further, it is recommended that the government allow Cuban-Americans to retire in Cuba and still be able to claim Social Security, Medicare,

149. See Council on Foreign Relations, supra note 143.
150. Id.
151. See Bettelheim, supra note 123.
152. See Council on Foreign Relations, supra note 143.
153. Id.
154. Id.
155. Id.
156. Id.
157. Id.
158. See Council on Foreign Relations, supra note 143.
and other pension benefits. This benefit is already afforded to residents who retire in other countries.\textsuperscript{159}

With regard to immigration, the task force suggests greater public education in both countries of the legal immigration methods. Further, the task force recommends a revision of the temporary visa program that allows Cubans to come visit the United States, specifically an extension of the stay period.\textsuperscript{160}

2. \textit{Basket Two: Increasing the Exchange of Ideas}

Perhaps one of the most important ways to improve relations and ease tensions between the two countries is through peaceful civilian contact. These exchanges are easy to arrange and manage; further, they have the greatest impact on the citizenry of the countries. Interaction among the people educates both groups about the others' culture, ideas, and hopes for the future. Specifically, the task force recommends that all Americans be given a general license to travel to Cuba.\textsuperscript{161} To this same end, the task force recommends that federal funds be put toward specific people-to-people programs. These exchanges should occur at all levels: from undergraduate programs to Ph.D. programs, from labor officials to corporate executives, from family farmers to professionals and artists.\textsuperscript{162} The task force also recommends that there be greater contact and coordination between organizations in Cuba and the United States that have similar goals, for example, non-governmental groups in favor of protecting and preserving the environment.\textsuperscript{163} To help enable the exchanges, there should be direct commercial airline flights and the establishment of an ocean-going ferry route.\textsuperscript{164}

The recommendations with the most political viability are clearly those that improve the relationship between the people of both countries. The governments have little responsibility and do not have to supervise the programs to any great extent. The benefit can be astronomical considering the impact that can be made on the people of both countries. Although it may be hopeful thinking, perhaps these cultural exchanges may spur a grassroots movement towards democracy in Cuba. Most important to the feasibility of the programs is that they can be created with little impact on the "hard-line" stature of the economic embargo.

3. \textit{Basket Three: Security}

It is important that the analysis does not overlook the military of Cuba when planning closer relations to the island. Like the Soviet bloc countries in the early 1990s, the military is likely to play a large role in any transition.\textsuperscript{165}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{159} \textit{Id.}
  \item \textsuperscript{160} \textit{Id.}
  \item \textsuperscript{161} \textit{Id.}
  \item \textsuperscript{162} \textit{Id.}
  \item \textsuperscript{163} \textit{Id.}
  \item \textsuperscript{164} See Council on Foreign Relations, \textit{supra} note 143.
  \item \textsuperscript{165} \textit{Id.}
\end{itemize}
\end{footnotesize}
We hope the Cuban armed forces will... accept civilian control in a future democratic state. We believe that as the Cuban armed forces gain confidence that the United States will not take military advantage of a political opening on the island (as government propaganda claims), the more likely it is that the armed forces will permit, or even support, such an opening in the future. We want to enhance the chances that this will happen.166

The idea of the military playing a role in a democratic transition government is not, after all, too far fetched. For example, in El Salvador, former Sandinistan military now work directly under democratically elected civilians.167

Specifically, the task force recommends military contact and cooperation over areas of mutual interest, like search and rescue in the Caribbean, drug enforcement, and disaster relief.168 There should be personnel exchanges at mid-level officer positions. These are important because the interaction will build bonds between individuals likely to have significant responsibilities in the near future.169

Cooperation among the military will be most important to the U.S. interest in stopping drug trafficking. Because Cuba is located in the middle of the Caribbean Basin, access to Cuban intelligence resources would be invaluable to the U.S. efforts to stop drugs from traveling to the United States.170 The task force suggests that Cuban and U.S. law enforcement personnel exchange information and work together on these efforts.171

It is clear that the United States should actively seek cooperation with the Cuban military community because it will no doubt play a role during the transition of power in Cuba. To ease paranoia of American military involvement in a transition period, the United States should create lines of communication to the Cuban military. These efforts will be beneficial immediately in the form of cooperative forces against drug trafficking and later in the form of closer communications and trust.

4. Basket Four: Trade, Investment, Property and Labor Rights

This basket is the “nitty-gritty” area of U.S.-Cuba relations. This section discusses trade, investment, and labor rights, while leaving the property discussion for later. The task force, as mentioned earlier, recommends the unfettered exportation of food and medicine to Cuba.172 But the recommendations go beyond these necessities. The task force suggests that the U.S. government should permit the exportation of information products, like books and movies. Further, U.S. companies should be permitted to invest in new information products for export specifically to Cuba.173

The recommendations also include the licensing of U.S. business activities in Cuba, specifically in four areas: “(1) news gathering or the procurement and creation of informational material; (2) providing on-the-ground services to capture the business resulting

166. Id.
167. Id.
168. Id.
169. Id.
170. See Council on Foreign Relations, supra note 143.
171. Id.
172. Id.
173. Id.
from increased American and Cuban-American travel; (3) activities related to the distribution of humanitarian aid and sales; and (4) activities related to culture. These endeavors for U.S. businesses will give the United States a basic, low-level presence in Cuba that will not antagonize the existing government but will provide a foundation for future activity on the island.

Addressing the Cuban labor system, the task force suggests a comprehensive study of labor in Cuba and its future. Currently, Cuba selects laborers to work in certain fields. Specifically, when a foreign investor comes into Cuba to run a Cuba-based business, it must contract with the government to hire labor. The foreign business pays the government directly in hard currency and the government pays the workers in pesos. The task force calculated the conversion as a 90 percent tax on the laborers’ wages. Beyond the reformation of this system of hiring, the task force also recommends that U.S. universities and the U.S. private sector create organizations for management training and education.

Last among the task force’s recommendations in this area relates to Cuban membership in international trade groups. The task force recommends that Cuba be given observer status in the World Bank and in the Inter-American Development Bank. This will expose Cuba to international procedure and lending methodology. The task force does, however, oppose Cuban membership in the Organization of American States (OAS). The task force believes that Cuba’s admission to the OAS would weaken the organization’s commitment to democracy in the Americas.

The Council on Foreign Relations’ independent task force on Cuba gives an excellent objective report on the status of U.S.-Cuba relations. Without taking a stance on the rightfulness of the economic embargo, the task force lays out some basic suggestions that would ease the tension between the two countries. Further, its recommendations would create a strong foundation for the progression towards normalization of relations between the two countries. But because the task force does not take a stance on the embargo, its analysis is less helpful when examining the sustainability of the embargo and the exact steps needed for its removal. The discussion of the task force was appropriate in this section, the future of U.S.-Cuba relations, because truly the most feasible and most probable changes in relations will come from gradual changes outlined above.

G. Increasing U.S. Tourism

Hesitancy should be exercised when using the words U.S. tourism. Increasing U.S. visits and U.S. exposure to Cuba is a more accurate description for this section. To be sure, the Cuban people would love nothing more (except maybe democracy) than a wave
of Americans coming to soak up the Cuban hospitality. Cuba’s fastest growing segment of its economy is tourism, grossing $1.9 billion in 1999.182

The recent debates in Congress over travel restrictions have many Cubans speculating on the imminency of the Americans’ arrival. Many Americans have already visited Cuba. Some estimate 100,000 Americans visited Cuba in 1999,183 mostly Cuban-Americans visiting relatives, which is allowed under current regulations; others, however, are visiting Cuba illegally.184 The Cubans are more than happy to accommodate the covert travelers. They will not stamp the Americans’ passports, thus leaving no proof of their visit.185

The recent debates in Congress focused on food and medicine restrictions, but for Cuba, the true mother-load is increased tourism.186 And it seems very apparent that the American public disagrees with the current policy toward Cuba; in fact, a vast majority disagrees with the hard-line policy, according to recent polls.187

Clandestine travel operations catering to Americans have already set up shop on the Internet. One site, Cubalinda.com, entices Americans into believing that it is safe to travel to Cuba, regardless of the laws against U.S. citizens’ travel.188 Curiously, this site was started by a former C.I.A. agent, Philip Agee.189 In 1975, the United States revoked his passport after he wrote a tell-all account of the C.I.A., including a list of C.I.A. operatives.190 This information is not to promote Mr. Agee’s business, but merely used to demonstrate an increasing level of defiance among those intent on traveling to Cuba.

H. Senator Jesse Helms’ Plans for Cuba

Recently Senator Helms, Republican of North Carolina and chairman of the Senate Committee on Foreign Relations, outlined his ideas for Cuba. In a speech delivered to the American Enterprise Institute, Senator Helms informed the audience that there would be a drastic shift in U.S. policy toward Cuba.191 Senator Helms and the new administration are planning a new stance on Cuba. Senator Helms blamed the Clinton administration and their lack of a clear goal to remove Castro from power for the failures of the U.S. policy.192

182. See State Dep’t, Background Note: Cuba (1999), at http://www.state.gov/www/regions/wha/cuba/country_info.html.
183. See Mike Williams, Cuba Awaits an Invasion—Of American Tourists; Resorts Rebuild as U.S. Eases Restrictions, The Palm Beach Post, Sept. 25, 2000, at 1A.
184. Id.
185. Id.
186. See Rafael Lorente, Clinton Getting Cuban Trade Bill; Travel; Finance Bans Still Remain, Sun-Sentinel, Oct. 19, 2000, at 16A.
187. See Smith, supra note 111, at 19A.
190. Id.
192. Id.
Senator Helms believes the model for successfully removing Castro is the 1980s policy to undermine Poland's communist government, a policy that encourages democracy among the people. Helms' plan includes humanitarian aid to Cuba totaling approximately $100 million. This aid would not be delivered to the Cuban government, but rather, would be administered through charitable institutions like the Catholic Charities organization.

There is no doubt that Senator Helms wants to maintain the embargo, "[w]ith the Bush election, the opponents of the Cuban embargo are about to run into a brick wall on the other end of Pennsylvania Avenue." And he seems to think that Bush is also for the embargo. But again, the senator makes the same point that his opponents make: the United States must rethink its policy toward Cuba. His idea is premised on the basic theme that Castro's demise should be brought about internally. Senator Helms would have the isolating embargo continue while feeding the Cuban people the ideals of democracy. Castro would analogize this policy to blocking the sun from the leaves of revolution, while poisoning its roots with American thought and imperialistic ideals. Senator Helms' ideas are meritorious and worth the attention of all advocates for change. The next section of the paper will discuss the termination of the embargo; it is an objective look at the issues that will face negotiators and diplomats.

VI. Changes Required to End the Economic Embargo Against Cuba

Because the Helms-Burton Act and the Cuban Democracy Act of 1992 (CDA) explicitly construct criteria for the termination of the embargo, it is not difficult to discern what Cuba and its next government must do to end the embargo. The following sections will analyze the requirements that are set forth in the legislation; further, the sections will set forth basic legal and business changes that would be required to establish foreign investment in Cuba.

A. Legislative Requirements, Briefly

The primary focus of the legislation is the removal of Castro and the formation of a transition government focused on democracy. The laws also address Castro's human rights record and the need for reform in Cuba. The Helms-Burton Act specifically defines what type of transition government is acceptable; for example, it must be a

193. Id.
194. Id.
195. Id.
196. Id.
197. See Mowry, supra note 14, at 257–58.
198. See 22 U.S.C. § 6065 (1996). The legislation calls for the organization of free and fair elections, held within eighteen months of the transition of power, with the participation of several freely organized political parties.
199. See Mowry, supra note 14, at 257.
government that does not include Fidel or Raul Castro. Other requirements include Cuban commitments to guarantees of free speech and freedom of the press.

B. Changes to Cuba’s Legal Infrastructure Necessary for Foreign Investment

Focusing on the transition period between Castro and a permanent form of government, to accommodate foreign investment, the Cuban political system must adopt several institutional changes as well as many individual legislative initiatives. Starting with the judiciary system, the Cuban laws must be reorganized to allow judicial independence. Currently, the judicial branch is not a branch at all; it sits below the executive authority and has little of its own power. Structurally, the judicial system will probably be able to function on a short-term basis, so long as it is independent of executive power.

Further, there must be a massive educational process for the current attorneys in Cuba. The majority of cases handled in the Cuban court system are divorce and probate proceedings. There is little commercial litigation; thus the attorneys will be severely unprepared for the litigation that comes along with a free market.

There will also be a need for alternative dispute resolution (ADR) in Cuba. Because there will undoubtedly be inefficiencies in a new judicial system and probably a backlog of cases, an ADR structure would serve the commercial disputes well. Further, the existence and success of an ADR system would encourage foreign investment.

C. An Overview of Necessary Legislation

Clearly there will be a need for a large amount of new legislation that will facilitate new foreign investment. Even before the new Cuban legislature gets started on economic, labor, and welfare reform legislation, it must enact basic laws that will allow investment. The Cuban legislature must create “[a] Bankruptcy code, [a] Corporations code, [a] Foreign investment code, Intellectual property protection codes, [a] Labor code, Tax codes, [and] Trade regulation and anti-monopolies codes.” The basics of the economic reform must focus around three principles: property rights, privatization, and laws addressing property claims.

D. Cuban-Russian Relations

Another issue that does not sit well with Americans is Russia’s renewed interest in Cuba. In December 2000, Russian President Vladimir Putin made a trip to Cuba. Fidel

201. Id. § 6065(b)(2)(A).
202. See TRAVIESO-DIAZ, supra note 8, at 52.
203. Id. at 52–53.
204. Id.
205. Id.
206. Id. at 54.
207. Id. at 54–55.
208. TRAVIESO-DIAZ, supra note 8, at 59–60.
209. Id. at 59.
Castro received him with the highest respect and honor. The visit started out with the signing of several agreements, including a legal assistance and relations agreement, a taxation agreement, a foreign trade protocol agreement, a foreign relations protocol agreement, and an agreement linking the health ministries of the two respective countries. The rest of the visit was meant to rekindle the brotherhood between the two countries.

President Putin made a visit to the Russian embassy where he was greeted by twelve Russian diplomats and a giant statue of Lenin, both a symbol of great irony for the Russian leader. During the heyday of the Soviet Union, 12,000 Russians were stationed in Cuba. And the Lenin statue, of course, is ironic because Russia is not a communist country anymore. The Russian president made a stern point that Cuba should repay its Soviet-era debt, estimated to be $11 to $20 billion. President Putin did offer to grant favorable payment terms and also offered an additional $50 million loan.

This renewed friendship leaves a sour taste in the mouths of American policy makers. In July 2000, the U.S. House considered a bill barring the rescheduling or forgiveness of the Russian debt until Russia completely pulls out of Cuba. And that raises the question: what Russian presence is still in Cuba? Apparently, the Russians have quietly been operating an intelligence center right outside of Havana. The center eavesdrops on U.S. communications and shares the information with the Cuban government.

Although Putin has not condemned the United States' embargo on Cuba, his comments are always supportive of Castro's struggle against "unipolarity [sic]." Further, Putin has strongly indicated that the intelligence center will continue operations and that it has been a success. This closer relationship will surely put pressure on any attempt to progress relations with Cuba. It also puts a great strain on U.S. relations with Russia at a time when the United States is trying to develop a National Missile Defense system.

VII. Discussion of the Expropriated Property Issue

The principal problem standing in the way of normalized relations between the United States and Cuba is the issue of property that was expropriated from U.S. corporations and individuals between 1959 and 1963, and property that was expropriated from Cuban nationals who left Cuba for the United States. The problem of property in

211. Id. at 3.
212. Id. at 1.
213. Id.
214. See Putin Tells Cuba to Repay Debt, DALLAS MORNING NEWS, Dec. 16, 2000, at 16A.
215. Id.
217. See Putin Tells Cuba to Repay Debt, supra note 214.
218. Id.
219. See Gornostayev, supra note 32, at 3.
220. See Putin Tells Cuba to Repay Debt, supra note 214.
221. See Mowry, supra note 14, at 235.
U.S.-Cuba relations is similar to the POW/MIA issue encountered during negotiations with Vietnam.222

The Cuban Claims Program (CCP)223 certified 5,911 claims of expropriated property against the Cuban government, with a total worth of $1.8 billion.224 Using simple interest of 6 percent per annum,225 from 1965, the current value of those claims is approximately $14 billion.226 These claims do not include the value of Cuban-nationals' property claims (Cubans and their descendents who are now U.S. citizens or residents). The "validity" of these claims was established in the Helms-Burton Act (see section II.B, supra for specifics on the problem the Helms-Burton Act may have trying to advocate these claims). Regardless of whether the Helms-Burton Act can actually make claims on the behalf of this group of Cuban-Americans, these exiled Cubans may have an independent claim under the laws and Constitution(s) of Cuba valid at the times of the takings.227 Nevertheless, the United States is promoting the claims of these Cuban-Americans.

It is clear that both sides are at a complete deadlock on this issue. For this reason the United States should take the initiative of opening a dialog for the resolution of this issue, as was the case in Vietnam.228 Progress towards normalization could start with this initiative.

Some observers have suggested a termination of the embargo,229 others would like to see progress towards termination without the necessary requirements of Helms-Burton (specifically the requirement of a new government),230 and other groups have suggested

222. See generally id. Mr. Mowry believes that the United States should begin negotiations with Cuba to resolve the issues that preserve the embargo. Mr. Mowry believes that regardless of the thick U.S. legislation, the next president should take the initiative to normalize relations, using the Vietnam experience as a model.

223. Id. at 236. The CCP was established by the U.S. Congress in 1964 to process the property claims of U.S. corporations and individuals.

224. Id.

225. Id.

226. This is the value of the property at the time of the taking, compounded annually through 2000 at 6 percent. Id. at footnote 222.

227. See Matias F. Travieso-Diaz, Some Legal and Practical Issues in the Resolution of Cuban Nationals' Expropriation Claims Against Cuba, 16 U. Pa. J. Int'l Bus. L. 217 (1995); see also Juan C. Consuegra-Barquin, Cuba's Residential Property Ownership Dilemma: A Human Rights Issue Under International Law, 46 Rutgers L. Rev. 873 (1994). This article goes into great depth on the legal issues present in ownership claims. Mr. Consuegra-Barquin provides analysis of all the pertinent law governing the topic and provides several flow charts that show how the legal issue might play out under Cuban and international law.

228. See Mowry, supra note 14, at 260.

229. See Schwab, supra note 83. Mr. Schwab's book blames much of Cuba's current problems on the economic embargo and advocates the termination of the embargo.

230. See Mowry, supra note 14. Mr. Mowry believes that the embargo can end with Castro still in power. He believes that the legislation that governs the embargo does not completely tie the hands of the president: "The obstacles that prevent a President from lifting the embargo against Cuba arbitrarily would appear to be no more than a façade of legislation. If the President determines that it is prudent for the United States to once again open trade relations with Cuba, then the President may, after the appropriate reports to Congress, lift the embargo." Id. at 258. Mr. Mowry recognizes that the President would probably never act so
progress toward normalization by addressing the property issue.\(^{231}\) Regardless of the objective, the property issue is the major problem; therefore, it must be a priority for resolution of the tension between the United States and Cuba.

**VIII. Possible Roads Going Forward**

Now that all the issues have been presented, there are a few distinct possibilities for the future. This section will look at them and comment on their feasibility.

First, the United States could unilaterally lift the embargo. This option is laughable. The United States would probably not consider this option, nor is it advisable to do so, without assurances and guarantees from the Cuban government. No market opportunity is large enough for the United States to just forgive and forget.

Second, as the Council on Foreign Relations' task force suggests, the United States should take some initiatives, as described above, to progress forward. The task force report is neutral on the embargo.\(^{232}\) The Council does make unique suggestions for the progression of the property issue. The task force suggests that certified claimants under the CCP resolve their claims against the Cuban government by becoming partners with the Cuban government in a joint venture that covers the property taken.\(^{233}\) Recently, the Cuban government created joint ventures with foreign businesses to run certain Cuban enterprises, primarily resorts and hotels.\(^{234}\) In essence, the U.S. company would waive its claim in exchange for an equity position in a new joint venture. The task force claims that this would not violate Helms-Burton if the State Department certified the business endeavor.\(^{235}\) The idea is an original one, but it would meet great public scrutiny. Further, it does not address the claims of Cuban-Americans and other individual certified claims. The important fact is that there are possibilities that should be explored.

Third, the United States should adopt a plan similar to that started by President Clinton to address the embargo of Vietnam. President Clinton was able to take this "road map" and negotiate the end of the embargo and the beginning of normal relations. President Clinton negotiated a commitment from Vietnam on the POW/MIA issue and a withdrawal of Vietnamese troops out of Cambodia.\(^{236}\) This type of prospective is a very reasonable and probable method.

Fourth, Castro could resign, die, or be overthrown. This would bring about the type of transition that the United States has sought. This type of event would likely result in one of three scenarios. First, Fidel Castro's brother, Raul, would take over.\(^{237}\) Currently Raul is the Minister of Defense, and he would have the backing of the military, unless military generals overthrew him and Fidel. The United States would not agree with or back a transition government led by Raul.\(^{238}\) Second, absolute chaos could break out.

\(^{231}\) See Council on Foreign Relations, *supra* note 143.

\(^{232}\) Id.

\(^{233}\) Id.

\(^{234}\) Id.

\(^{235}\) Id.


This would probably result in massive immigration to the United States and certain U.S. military intervention. Third, the Cuban people could turn to democracy and allow new leadership to form a transition government. This reaction would certainly trigger U.S. support and encouragement.

Unless a transition away from Castro power (Fidel and Raul) takes place in the near future (within six months), the United States should begin a slow, but deliberate, plan to ease tensions with Cuba. This initiative should consider everything discussed above, specifically the recommendations of the Council of Foreign Relations' task force and the successful "road map" with Vietnam. Further, the Cuban-American community should play an active role in the process, but they should agree first with the goals of the initiatives: easing tensions with Cuba, even with Castro still in power.

The Bush administration, specifically Secretary of State Colin Powell, and Chairman of the Senate Foreign Relations Committee, Jesse Helms, have already made their stance clear: the embargo will remain in place. However, both men have indicated their interest in re-focusing policy toward Cuba. Senator Helms has begun advocating his humanitarian aid plan, while Secretary Powell has expressed his interest in new ideas and limiting the impact on the people of Cuba.

With these men dedicated to listening to ideas and focusing on change, it is likely that a new policy on Cuba will arise early out of the Bush years. Further, with all the new momentum and energy coming from so many groups interested in Cuba, it is likely that the new policy will encompass more than Senator Helms' humanitarian aid, but less than the Council of Foreign Relations' recommendations. With Bush's focus on bipartisanship and compassionate conservatism, there is a lot of hope that this will be the last president to have to deal with the Cuba question. In fact, Senator Helms has predicted that President Bush will visit Havana before his term is up.

Perhaps President Bush will choose the route that his father drew up for Vietnam or perhaps he will look to the United States' efforts to end communism in Poland; either way, Bush should look to the past for some guidance. He can look to successful plans for advice, and he should look no further than the forty-year embargo of Cuba for admonitions.

IX. Conclusion

The Bush administration has come into office at a time when there is great hope for progress in relations between the United States and Cuba. A new president always offers hope for change, but hope for Cuba is significantly more profound. It seems that every group interested in U.S.-Cuba relations has voiced a need for change. The groups vary from those that want to maintain the embargo, but with some significant changes, to groups that want to open trade up completely. The conservative Senator Helms' plan would maintain the embargo, but send massive amounts of aid directly to the Cuban people through U.S. charitable organizations. More moderate groups, like the Council on

239. See Day, supra note 39.
240. Id.
241. See Helms' Address, supra note 191.
Foreign Relations, would open up dialog with the Castro government and allow greater freedom for American travel.

One thing all the groups can agree upon is the need for a settlement agreement for expropriated property. This issue is significant to two groups, American corporations and Cuban exiles, who had their property confiscated when they fled the island. The legal and political issues are complicated and include Cuban, American, and international jurisprudence. The last piece of significant U.S. legislation, the Helms-Burton Act of 1996, only complicated the matter by recognizing the Cuban-Americans' claims in federal courts; this is a significant diversion from principles of international law.

The momentum for change has many sources that disagree on practical matters but have a general agreement on the goal: a democratic Cuba without Castro. The newest groups to enter the debate are American farmers and American agribusinesses. They see Cuba as a new market for their surplus products: beef products, corn and soy derivatives, and rice. They have significant lobbying power and have begun to chip away at the embargo as it relates to food sales. Some wind has been taken out of their sails recently with the release of the U.S. International Trade Commission's report on the Cuban embargo (see supra footnotes 125–129). This report seems to diminish their claims that trade with Cuba would significantly impact the U.S. economy. However, the report does boost their claim that agriculture would be the significant winner of trade with Cuba, especially rice and wheat.

On the opposite end of the spectrum are the Cuban-American groups. Although there are many different groups, they all have strong political influence through their Florida and New Jersey Congressional delegations. They stand opposed to any concessions to Castro. Although their political might weakened after the Elian Gonzalez saga, they have regained most of that with the tight presidential election in Florida. Cuban-Americans voted overwhelmingly for President Bush and they will expect to be heard.

At this time, the only prediction that can be made is that change is coming. President Bush, with Senator Helms, will likely seize the momentum and refocus the policy toward helping the Cuban people, while continuing the isolation of Fidel Castro.