

Enemies Evermore: US Policy Towards Cuba After Helms-Burton

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When Cuban MiGs blasted two civilian planes out of the sky over the Straits of Florida on February 24 1996, they also destroyed any chance of improved relations between Cuba and the United States as long as Fidel Castro remains in power. In Washington, outrage over the shoot-down resurrected the Helms-Burton bill, the most punitive legislation on Cuba since the early 1960s. On 12 March, President Bill Clinton signed the bill into law as the Cuban Liberty and Democratic Solidarity Act of 1996. In addition to assorted sanctions aimed at foreigners doing business in Cuba, the most consequential provision incorporates the US economic embargo into law. Heretofore, the embargo was based on presidential executive orders; it could be tightened or loosened at the president's discretion as conditions warranted. Under Helms-Burton, no president can lift or even relax the embargo until Fidel Castro and the existing Cuban regime fall from power. At a time when Cuba's domestic social and economic system is changing at break-neck speed, Washington's 35-year-old policy of hostility has just been chiselled in stone.

Why Did Castro Do It?

Why did Castro decide to shoot down the planes piloted by the exile group Brothers to the Rescue? Theories abound. They range from the kremlinological (it was intended to fuse an hypothesised split in the armed forces), to the personal (Fidel was taunted beyond tolerance by the Brothers' bragging about repeated incursions into Cuban air space), to the bureaucratic (the air force was embarrassed by its failure to stop previous incursions).

The most plausible explanation centres on Cuban domestic politics. For

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the past eighteen months, political space in Cuba – never large to begin with – has been shrinking. In December 1995, Castro gave a speech complaining that recent economic reforms had spawned a ‘new class’ of Cubans hostile to the values and institutions of state socialism. The government’s crack-down culminated a week before the fatal plane flight when police arrested dozens of leaders of *Concilio Cubano*, a coalition of opposition groups that had been planning a rally for 24 February 1996. In Miami, Brothers to the Rescue had cast itself as a supporter and fundraiser for *Concilio Cubano*.

Fidel Castro has long been a master of rallying domestic support by appealing to anti-Yankee nationalism. When Cuba confronts the United States, the annoyances of everyday life are eclipsed by the heroic struggle for Cuban dignity and sovereignty. Cubans, like people everywhere, rally round the flag. And in the menacing light of external threat, dissidence begins to look like treason. By shooting down the Brothers’ planes, Castro was certain to provoke a confrontation with Washington. He chose to sacrifice the gradually (albeit glacially) warming climate of US–Cuban relations for a quick fix of domestic patriotism.

Why Did Clinton Do It?

Why did President Clinton decide to support Helms-Burton after he argued for months that it contradicted international law and would clog the federal courts? He, too, was moved by domestic politics.

Clinton initially opposed the bill because it would punish foreigners doing business with Cuba, and was therefore bitterly resented by US allies and trade partners. Helms-Burton allows US nationals (including naturalised Cuban–Americans) to sue foreigners for damages in US courts if the foreigners ‘traffic’ in property confiscated by Castro’s government. Trafficking is defined so broadly that it includes not only investments in Cuba, but also commerce involving goods produced by confiscated property. Foreign traffickers and their families are barred from entering the United States, as well. The explicit aim of these provisions is to deter foreign corporations (mainly Europeans, Canadians, and Mexicans) from investing in Cuba.

Additional provisions reduce US contributions to any international financial institution that makes loans to Cuba, and reduce US economic assistance to any country that aids Cuba’s effort to build a nuclear power plant, or aids Cuba in exchange for access to military installations (referring to Russia).

The European Union denounced Helms-Burton when it was before Congress and has filed a complaint against the United States in the World Trade Organisation. Canada and Mexico joined with the Europeans

to lobby against the bill, arguing that it violated the North American Free Trade Agreement (NAFTA). Allied leaders warned of retaliation against US corporations if Washington tries to enforce the law's extraterritorial provisions.

Before the shoot-down, Clinton's threatened veto was enough to stall Helms-Burton in Congress. Republican conservatives backed the tough, unvarnished version passed by the House of Representatives; Democrats and moderate Republicans held out for the much milder version (without the trafficking sanctions) passed by the Senate. The death of the four Brothers rescued Helms-Burton from legislative limbo. Calculating that the tough version of the bill was likely to pass, Clinton adeptly jumped in front of the parade, announcing that he, too, would now support it.

The timing of the crisis added to the political pressure on Clinton. Coming just two weeks before the Florida presidential primary, it gave Republican candidates a golden opportunity to solicit Cuban-American votes by castigating Clinton for 'coddling' Castro. Reversing his stance on Helms-Burton enabled Clinton to mute the Republican attacks, and perhaps win enough Cuban-American votes in November to swing a tight race in Florida or New Jersey.¹

In exchange for supporting Helms-Burton, Clinton won one significant concession: the right to suspend the trafficking provisions (Title III) for six months at a time, renewable indefinitely. On 16 July, at the last possible moment before Title III was due to take effect, Clinton exercised his waiver option, delaying implementation for six months. After a sharp and prolonged internal debate, Clinton's economic advisers, who feared allied economic reprisals, prevailed over his campaign advisers, who feared Cuban-American political reprisals.

To blunt the political aftershocks, Clinton endorsed Title III in principle, despite delaying it. The six month interregnum, he argued, would be used as a 'lever' to persuade US allies to join Washington's economic sanctions against Cuba. To this end, Clinton appointed Stuart Eizenstat, former US ambassador to the European Union, as his special envoy. After a quick stop in Miami to confer with Cuban-American leaders, Eizenstat headed off to Mexico, Canada, and Europe to lobby singularly unreceptive US allies – a task dubbed 'Mission Impossible' by one administration wag. Indeed, it was: Eizenstat was rebuffed

¹ Cuban-Americans make up about 7% of the voting population in Florida (less in New Jersey), and only 18% of them voted for Clinton in 1992. If, optimistically, Clinton could double his Cuban-American vote, he would increase his state-wide total by 1.2% – enough to win a close race. This strategy worked, after a fashion. Clinton did win over 40% of the Cuban vote in Florida, but the key issue proved to be Medicare, not Cuba, and Clinton carried the state handily: 48% of the vote to Bob Dole's 42%.

everywhere, leading Clinton to acknowledge during the presidential debates, ‘Nobody in the world agrees with our Cuba policy now’.

‘Adios, Fidel’

Passage of the Cuban Liberty Act would be ‘the last nail in Fidel Castro’s coffin’, Congressman Dan Burton predicted. ‘Adios, Fidel’, chortled co-sponsor Senator Jesse Helms.

Realistically, the economic impact of Helms-Burton on Cuba is likely to be much more circumscribed. If President Clinton suspends the trafficking provisions, the law will have little impact. Even if the trafficking provisions take effect, it is uncertain how many Cuban-Americans will file suit, or how many foreign corporations might be hauled into US courts.

Certainly, the threat of law suits may deter some potential investors in Cuba. On the other hand, investors who are not involved with confiscated property or who have no business in the United States will be unaffected. Some might even be encouraged to invest. Knowing that the US embargo will remain in place indefinitely, they face no danger of being displaced by a sudden influx of US competitors. Ultimately, most investors will decide whether to risk their capital based on the business climate in Cuba and the potential return – factors controlled by Havana, not Washington.

Politically, passage of Helms-Burton looks like a boon to Fidel Castro. If Castro did, in fact, order the shoot-down of the Cessnas to provoke a confrontation with the United States and thereby rally flagging domestic support, Helms-Burton plays to Castro’s strong suit. In 1995, when the bill was making its way through Congress, the Cuban press featured it prominently and the Communist Party held public rallies to denounce it. Because Helms-Burton calls for the return of confiscated property to previous owners, Castro can plausibly argue that Washington’s purpose is to return Cuba to the pre-1959 *status quo ante*. If the United States prevails, Castro warns, the (white) Cuban upper class will return from Miami, reclaim their property, and reimpose all the social and economic inequities of the *ancien régime*.

Presidential Indiscretion

Although the trafficking provisions of Helms-Burton have received the most press attention because of their potential for diplomatic mischief, the bill’s most important title is the one that writes the US economic embargo into law. Apart from his ability to suspend the trafficking provisions of Helms-Burton, Clinton is left with almost no discretion in formulating US policy towards Cuba. That a president would knowingly surrender so completely his ability to make foreign policy is astonishing. Previous

presidents have fiercely resisted such constraints, often vetoing them. In negotiating with Congress over the final version of Helms-Burton, the White House tried to eliminate the provision locking the embargo into law, but finally gave in to Republican adamancy.

Nothing demonstrates more clearly how insignificant Cuba has become as a *foreign policy* (as distinct from a domestic) issue. It is inconceivable that Clinton would have passively accepted such a Congressionally-imposed straight-jacket on policy towards the Middle East, Russia, China, or Japan.

Helms-Burton demolishes Clinton's policy of 'calibrated response', developed after the 1994 Cuban refugee crisis. Announced that August by Secretary of State Warren Christopher, 'calibrated response' meant that Washington would respond proportionately to Cuban reforms. Small changes in Cuba would be met with small US responses; large changes with large responses. This approach had the attraction of requiring no actual negotiations between Washington and Havana, thus mitigating the ire of Cuban-Americans. Still, it was a flexible policy that held out to Cuba the carrot of improved relations, and in so doing bolstered the advocates of reform within the Cuban political elite.

Helms-Burton nullifies 'calibrated response' by eliminating the president's ability to respond positively to anything except the fall of the Castro government. The law stipulates that the US economic embargo can be lifted only when a 'transition government' has come to power in Havana. A transition government is defined as one that legalises all political activity, releases all political prisoners, holds free internationally supervised elections, respects private property, promises to restore confiscated property to its pre-1959 owners, and excludes both Fidel Castro and his brother Raúl, Minister of the Armed Forces.

If Fidel Castro himself were to initiate a process of democratic opening (unlikely as that may be), the United States would be powerless to facilitate it. Likewise, if a post-Castro government were to attempt a gradual decompression of the regime, it still would not qualify for a relaxation of US sanctions. Even a democratically-elected government that refused to turn back the clock to 1959 by restoring the exiles' property would continue to suffer under the US embargo.

If this last scenario seems far-fetched, recall that Senator Helms's attitude towards Nicaragua has been exactly parallel. He repeatedly used his Senatorial prerogative to block US aid to the democratically-elected government of Violeta Chamorro because it was not moving fast enough to return to Nicaraguan exiles property confiscated by the Sandinistas. The Cuban Liberty and Democratic Solidarity Act makes such sanctions obligatory against Cuba.

The requirement that Fidel Castro disappear from government before US sanctions can be lifted makes explicit a facet of US policy that has long been *sub rosa*. What Washington hates most about the Cuban regime is not Communism (which is fast melting in the heat of Cuba's economic reforms), not the strategic threat once posed by the Soviet alliance (which disappeared at the close of the Cold War), and not even Cuba's poor human rights record (which is still better than China's). What Washington really hates about Cuba is Fidel Castro.

It is probably best left to psychoanalysts to divine the origins of this obsessive antagonism towards Castro personally. Perhaps it is because he and his band of scruffy *barbudos* robbed us of our Caribbean playground (though the rejuvenated Cuban tourist industry would love to have us back). Perhaps it is because the charismatic Castro has so personified this nettlesome regime. Or perhaps it simply reflects Castro's own stubborn hostility towards the United States. In any event, the personalisation of US policy has been magnified by the emotions of Cuban-Americans who feel betrayed and aggrieved by Castro's revolution. But does it make sense to base US policy on the fate of a particular individual, and then lock that policy in place indefinitely by statute?

If Washington will respond to nothing short of the ouster of Fidel Castro, what incentive does Castro have to cooperate on issues of mutual concern – especially ones, like immigration, where Washington's interest is more acute? In September 1994, Cuba ended the refugee crisis by agreeing to halt the flow of 'rafters', despite Washington's refusal to broaden the negotiating agenda to discuss the embargo. One reason Castro accommodated the United States on immigration was the prospect of dialogue on other issues down the road. A second immigration agreement signed in May 1995 coincided with Clinton's announcement that he would oppose Helms-Burton. Such tacit agreements are now impossible. If another immigration crisis erupts, Cuba has no reason to respond to US interests.

Foreseeing this dilemma, the Helms-Burton Act directs the president to regard any future wave of immigrants as 'an act of aggression' to be met, presumably, by military force. Extreme as this may sound, it makes a certain kind of sense: nearly every sanction short of military force has already been applied, and the new law prevents the president from offering any positive inducement. Force is the only arrow left in the quiver.

Some veteran Cuba-watchers think that Fidel would like nothing better than to go out in a blaze of glory, a latter-day José Martí battling Cuba's age-old nemesis, the Colossus of the North. Such an heroic destiny fits Fidel's persona better than fading into retirement while his dream of a socialist Cuba is replaced by neo-capitalism *à la* 'China model'.

The most virulently anti-Castro exiles, including the Cuban American National Foundation's Jorge Mas Canosa, are eager to foster such an apocalyptic *dénouement*. At every opportunity they call for a US military blockade of the island, insisting that Clinton be as tough on the Castro regime in Cuba as he was on the military regime in Haiti.

In reality, the likelihood of armed conflict between Cuba and the United States is small. The Cuban military, even without Soviet assistance, is a well-trained, well-armed force with African combat experience; in Latin America, only Brazil's army is larger. The Pentagon does not relish the prospect of fighting the Cubans. But then, it did not relish the idea of invading Haiti, either; events spiralled out of control, leading inexorably to an intervention no one really wanted.

On the Wrong Track

At the other end of the policy spectrum from armed force is the one type of engagement with Cuba that Helms-Burton does not proscribe – what has come to be known as 'Track II'. The idea of Track II originated in the Cuban Democracy Act of 1992, a forerunner of Helms-Burton that also tightened the embargo by extending US sanctions extra-territorially (and also annoyed the Canadians and Europeans).² Besides sanctions, the Cuban Democracy Act endorsed the idea of expanding people-to-people contacts between Cubans and North Americans. In Washington's quest to change the Cuban regime, the economic pressure applied by the embargo is Track I; the cultivation of non-governmental contacts is Track II.

Drawn from the experience of Eastern Europe, Track II is founded on the assumption that people-to-people contacts promote the diffusion of ideas, strengthen civil society, and erode the political control mechanisms of an authoritarian state. Presumably, non-governmental contacts would hasten Cuba's evolution toward democracy.

The Clinton administration has been much enamoured of this approach, largely because Clinton's former Special Adviser on Cuban Affairs, Richard Nuccio, authored the original Track II provisions of the Cuban Democracy Act when he worked for Congressman Robert Torricelli. Under the rubric of Track II, the Clinton administration has improved telephone links with the island, allowed Cuban-Americans to send money to their relatives, allowed US non-governmental organisations (NGOs) to provide aid to NGOs in Cuba, and provided US government funding to support Cuban NGOs involved in human rights work or other independent activities that strengthen civil society.

² The Cuban Democracy Act makes it illegal for foreign subsidiaries of US corporations to trade with Cuba, which sometimes puts the companies at odds with the law in their host country.

In principle, expanding people-to-people contacts with Cuba is laudable. It is a non-violent, non-coercive approach that serves the immediate interests of ordinary citizens on both sides of the Straits. At its best, it exposes Cubans to the example of democratic politics and civil society, and trusts that the idea of freedom will be contagious.

But the policy is Janus-faced. Its intent, after all, is to undermine the Cuban government's authority. In practice, Washington has been unable to resist trying to orchestrate Track II contacts to maximise their subversive effect. Travel to Cuba, for example, is more tightly regulated now than at any time during the Cold War. Almost no one is eligible for a general licence; travellers must submit justification and obtain the government's permission for every trip.

Similarly, any US NGO that wants to forge ties with a Cuban counterpart must get a specific licence from the US government. Licences are not granted routinely; applications must be vetted by a 'Support for the Cuban People Interagency Working Group' to ascertain that they advance US policy aims. US government funding for Cuban NGOs, channelled through Freedom House, represents an even more direct governmental intrusion into what ought to be unmediated people-to-people contact.

Why shouldn't the US government orchestrate and sponsor Track II activities? After all, Washington has a long history of exploiting whatever democratic space exists in regimes it dislikes in order to destabilise them. Overtly and covertly, the United States has funded and directed newspapers, trade unions, political parties and other NGOs in scores of countries. The strategy has an impressive record of success: it disposed of Mohammed Mossedegh in Iran, Jacobo Arbenz in Guatemala, Salvador Allende in Chile (where the policy was also called Track II), and the Sandinistas in Nicaragua. But exploiting democratic openings to foment subversion inevitably puts real democrats at risk.

Fidel Castro managed to survive Washington's enmity in the 1960s in part because he quickly eliminated all political space for opposition. It has not escaped his notice that Washington envisions Track II as an instrument of subversion. 'It seeks to destroy us from within', he declared in July 1995. 'These people want to exert influence through broad exchanges with diverse sectors they consider vulnerable.' Exactly so.

The Cuban Liberty and Democratic Solidarity Act does, after all, seek the overthrow of the existing Cuban government, and it prohibits any improvement in US-Cuban relations until that occurs. In this policy environment, how else should the Cubans understand Track II, especially when it is more government-directed than authentically people-to-people?

By trying to orchestrate non-governmental contacts to destabilise the Cuban government, the United States makes it less likely that Cuba's leaders will tolerate political dissidence. Cubans who try to exercise their rights appear to be agents of a hostile power and those who have contacts with US NGOs fall under particular suspicion. In March, Raúl Castro denounced Cuban intellectuals who had developed dangerously close ties with US groups and foundations. An ideological housecleaning of Cuban think tanks commenced forthwith. Perversely, a policy the USA designed to increase people-to-people contacts has had a chilling effect instead.

Certainly, Fidel Castro has a long record of hostility to democratic pluralism, independent of US policy. But he also has a long record of hostility to free market economics, and he is learning – albeit grudgingly – to live with that necessity. The climate that Washington fosters is not insignificant. Castro's intolerance for opposition may verge on paranoia, but he has a real and powerful enemy constantly feeding his suspicions.

Constructive Disengagement

Having sold his constitutional right to make policy towards Cuba for a mess of electoral pottage, is there anything constructive that Bill Clinton, or any president, can do while Fidel Castro remains in power? Unless and until Helms-Burton is modified, the terrain of policy options is relatively barren. Washington cannot relax its economic sanctions, nor can it tighten them much more than it has already, and no one outside of Miami wants to use military force. The State Department will continue to engage the Cubans diplomatically on issues of mutual interest, and hope that they will cooperate despite our declared desire to subvert their government. Beyond the United States's self-inflicted policy of watchful waiting, there are nevertheless a few things that could be done:

(1) *Look to Europe and Latin America for help.* Having cast itself irreversibly as the bad cop in the Cuban melodrama, the USA needs its allies, now more than ever, to play good cop, offering Castro positive incentives for further economic and political reform. Convincing Europe and Latin America to cooperate will take formidable diplomatic skills, since the Helms-Burton Act punishes them for engaging Cuba, and does so in ways that probably violate US trade agreements with them. Clinton has got off on precisely the wrong foot by using the threat of Helms-Burton to try to coerce the allies into conformity with US policy.

To repair relations with the allies, Clinton will have to continue to waive the implementation of the trafficking provisions when the current six month period elapses in January. With the election over, the domestic

political pressure on Clinton to implement Title III is much reduced, whereas the international costs of doing so are undiminished. He can justify such a stand on the grounds that European cooperation is essential to promoting democracy in Cuba. Moreover, Washington should stop insisting that everyone follow its lead. Helms-Burton prevents the United States from pursuing any policy other than hostility towards Cuba; it does Washington no harm for other countries to try constructive engagement.

(2) *Get the government off Track II.* Clinton should restore the authentic person-to-person character of Track II by halting government efforts to orchestrate and manipulate it. If contact with ordinary people from the United States benefits the cause of Cuban democracy, lift all restrictions on travel to the island. Or at a minimum, extend the general licence to travel to all groups currently eligible to apply for specific licenses. Similarly, NGO applications to help Cuban counterparts should be approved routinely, not run before a gauntlet of government officials trying to judge whether the project is sufficiently subversive. Finally, the US government should stop funding Cuban NGOs, directly or indirectly, overtly or covertly. Given the history of US hostility towards Cuba, there is no way such support can avoid tainting everyone who receives it. Worse, government funding for some projects makes all NGO projects suspect.

(3) *Restore some balance between the branches.* Now that the November election is over and the partisan fever has broken, the president should ask Congress to modify the Helms-Burton Act to restore some degree of presidential discretion. (Outright repeal of Helms-Burton is impossible as long as there are enough conservative Republicans in the Senate to mount a filibuster – which means indefinitely). Perhaps the president, flush with his new mandate, can convince Congressional leaders that he needs some flexibility to respond to significant changes in Cuba that fall short of the stringent conditions in the current law.

Virtually everyone agrees that a peaceful transition to democracy in Cuba is in the best interests of the United States. But if such a transition began to unfold in ways other than Helms-Burton envisions, the president would be powerless to promote it. It would be tragic if a US president were forced to stand idly by while a promising political situation in Cuba unravelled. A law that denies the president the use of positive policy instruments increases the danger that he will find himself in a situation where he has to rely on armed force.

With the end of the Cold War and the diminution of Cuba's role on the world stage, US–Cuban relations have been subordinated to domestic politics on both sides of the Straits of Florida. Castro, faced with the disruptive social and political effects of market reforms, needs the foil

of a perennial external enemy. Clinton, loath to look soft on one of the last Communist dictators in an election year, signed antipathy toward Castro into law. Fidel Castro has outlasted eight US presidents, and Clinton will probably be the ninth. But even Fidel isn't likely to outlive the Helms-Burton Act. Perhaps the Europeans and Latin Americans, less burdened by the ideological baggage of the Cold War and a vocal exile community, will have better luck bringing Cuba in from cold. They can't do any worse.