

**XXI INTERNATIONAL CONGRESS  
LATIN AMERICAN STUDIES ASSOCIATION  
Chicago 1998**

**The Possibility of Détente Before the Third Millenium**

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**Prepared for Delivery at the 1998 Meeting of the  
Latin American Association**

**Chicago, Illinois**

**24-26 September 1998**

## **The Possibility of Détente before the Third Millenium**

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The seemingly irrational process by which the United States' policy toward Cuba is formulated today results from the highly ideological and confrontational relations that have prevailed between the two countries for over 39 years.

Cutting the Gordian knot not only requires political courage but also a new, realistic framework that should be applied in order to achieve U.S. goals.

The breakdown of the bipolar system of international relations disengaged Cuba from the East-West axis. Consequently, by 1989 perceptions about the Island changed and for the first time since the Missile Crisis of 1962, most US officials recognized that Cuba was not a threat to U.S. national security.

Cuba has previously been perceived as a Soviet satellite. The United States government's main demands focused on the need for changes in Cuba's internationalist policy, particularly in Africa and Central America. In the course of those years, however, the question of Cuba was not a priority in U.S. political circles and the policy was rather consensus-based: Democrats and Republican, liberals and conservatives generally assumed markedly anti-Cuban positions.

The new context offered excellent political opportunities to review the policy toward the Caribbean Island as the apparently most controversial issues in Cuba-U.S. agenda had been ironed out by history.

However, it was the right wing of the Cuban-American Community that seized the moment and pursued strategies to tighten the blockade and to increase tension between Cuba and the U.S. It understood the situation as an ideal one to destroy the Cuban project and in consequence pushed Congress initiatives designed to make the system collapse.

At the same time, Republican President George Bush attached little strategic relevance to Cuba and, weighing its new relations with post-Soviet Russia, stayed in expectation of events without altering its policy toward Havana. The topic of democracy and human rights however was brought to the fore in the bilateral agenda.

In any case, the disappearance of the Soviet Union had a critical impact on Cuba. The island had to undertake an economic restructuring to be able to face internal challenges brought about by changes in international relations.

Facts then showed clearly that the dynamics of the policy-making process and the positions of different players did not always coincide. The Executive branch, interested in other strategic and security issues, did not pay attention to Cuba. Meanwhile a group of legislators, backed by the Cuban-American National Foundation (CANF), the fiercest anti-Cuban lobby group, forced the debate on the Cuban problem. Moreover, they turned the issue into a domestic one by fictitiously linking the electoral vote in Florida and New Jersey with Cuba-U.S. relations.

The lack of an articulate, long term Executive strategy with respect to Cuba, stating future steps beyond circumstantial events, and the basic consensus on the need for the Island to modify its political system, helped certain special interest groups monopolize the Cuban issue. They used the United States' political process and the congressional electoral logic to serve their own interests.

The difficult economic pressure the Island was going through was compounded by its relatively declining weight in the System of International Relations. These were the background of an initiative that, instead of fostering a policy change in tune with the end of the Cold War, drove the U.S. Congress to intensify pressure to make the Cuban project collapse in the short term.

Common objectives and the electoral logic led the Bush Administration to back such legislative measure, although it considered it wise to leave some room for maneuver as regards substantive elements that could be perceived as a threat to U.S. national security posed by Cuba.

The 1992 *Cuban Democracy Act*, also known as Torricelli Act, was therefore designed to intensify the economic blockade and bring more pressure to bear on the Island. Eventually, it became the formula to force the debate on Cuba in electoral periods, as evidenced by the passing of the Cuban Liberty and Democratic Solidarity Act of 1996, commonly referred to as Helms-Burton Act.

US policy toward Cuba is irrational because it does not correspond to reality, i.e., the Cuban reality, the lack of a Cuban threat if it ever was one, and the inadequacy of the blockade to achieve newly stated goals of "bringing democracy" to Cuba. The major question I am asking in this paper is what explains such seeming irrationality?

## **THE LOW PROFILE POLICY**

By 1993, the change of government in the United States with the accession to the White House of a Democratic President, after twelve years of successive Republican mandates, and the deep process of transformations that was unraveling in international relations, seemed to offer an excellent opportunity to review Cuba-US relations thoroughly in the framework of a revision of all policy aspects in the new circumstances.

Clinton's major foreign policy appointments, particularly those related to Cuba, like Anthony Lake and Samuel Berger to head the National Security Council; Christopher Warren as Secretary of State; Strobe Talbott as Deputy Secretary; Peter Tarnoff as Under Secretary of State; Richard Feinberg, then chairman of Inter-American Dialogue, as NSC Special Assistant for Latin America, and academician Morton Halperin to handle democracy affairs in the NSC, augured well for, at least, a policy informed by contemporary international realities.

However, the new Administration kept in its political rhetoric a Bush-era discourse demanding changes in Cuba's political and economic system prior to an eventual improvement in relations with the USA.

On this particular subject, it is worth mentioning that these issues had been in the Cuban agenda of U.S. policy-makers since 1983, when the implementation of Project Democracy began. But those old criteria took on new life, driven by the U.S. Post-cold War foreign policy and the opinion that Cuba would not survive in the new political and economic context.

The initial trend was to timidly assess and interpret structural political and economic changes taking place in the island as simple cosmetic touches aimed at securing greater State control, in an asymmetrical relationship between politics and the economy. Consequently, the need to have changes in Cuba's political system and leadership was emphasized, ignoring the political culture and national identity of Cubans.

William Clinton's new administration rhetorically argued that there would be no changes in the policy toward Cuba until the precepts of democratization of society were observed, including the respect of human rights and the holding of free elections.

The Democratic Administration, however, declared its intent to previously report on any U.S. military maneuver close to Cuban borders, something that did not happen since the days of the Carter administration.

In 1993, the statements made by both the President's executive office and the State Department regarding Cuba tried to emphasize the fact that the U.S. had no intentions to intervene in the island, and that the purpose of their policy was to foster a peaceful transition to democracy.<sup>1</sup>

Those affirmations were expressly made to do away with or at least change Cuba's perception of an external threat, perceived in the U.S. as one of the key points in the Cuban government's survival, which had established itself as the defender of the people and their revolution.

Ever since Clinton's inauguration, it was emphatically declared that the American government's policy would continue to be one of diplomatic, political and trade isolation of the Cuban government, keeping the blockade as an instrument of pressure and, at the same time "giving a hand to the people of Cuba with humanitarian assistance".

According to statements made by the then Assistant Secretary for Inter-American Affairs, Alexander Watson, on November 18, 1993, at the House Foreign Affairs Committee, that concept reflected the spirit of the Torricelli Act that would become the cornerstone of the U.S. policy toward Cuba.<sup>2</sup>

Emphasis was placed on magnifying certain changes in the policy of hostility. This meant, in particular, the possibility of donating food to Non Governmental Organizations or individuals in Cuba or exporting or selling drugs or medical supplies.

But what was not stressed was that the Cuban Democracy Act restricted those exports to the U.S. government's ability to verify on site, and through other appropriate measures, that the exported product was used for the desired purpose. This was an infringement on Cuban sovereignty.

The objective of putting an end to the Cuban revolutionary process given the economic situation prevailing in the island was reinforced by the Torricelli Act, which tightened the blockade to the point of prohibiting American subsidiaries in third countries from trading with Cuba. At the same time, the need for the United States to implement a more active policy where all would depend on the Cuban government's concessions was beginning to take shape more clearly.

All through 1993, the statement of Alexander Watson and his former deputy Michael Skol suggested that the effort to achieve policy objectives toward Cuba were not to be confused with an improvement in relations with that country.<sup>3</sup> Such assurances attempted to soothe the Cuban community right wing, which interpreted the Democratic Administration's willingness to hold negotiations with the Cuban government as a policy change regarding Cuba.

The right wing of the US-based Cuban community was most concerned about statements made by government representatives on the adoption of a more clear-cut position against persons who launched violent attacks against Cuba from U.S. territory, by enforcing the Neutrality Act. Also in 1993, the U.S. government said that in line with its goal of building bridges and reaching out to the Cuban people, it was interested in increasing telecommunication links between the two peoples. To this end, the government authorized companies to negotiate the establishment of efficient and appropriate telephone communications with the island, and allowed for the granting of specific licenses to representatives of those companies to visit Cuba for contract negotiation purposes.

However, by the end of 1994, the debate on Cuba and the policy to be implemented by the U.S. government, considering the New World Order and the favorable changes that have taken place in the island, moved within four main trends:

- A. The status quo, propounding the convenience of maintaining the same policy course and reacting in various situations with a view to prolonging Cuba's political, diplomatic and economic isolation. Among the defenders of this policy there were top officers connected with policy making in the Executive Branch.
- B. Strengthening the policy of hostility, which openly advocates the need to overthrow the present Cuban system through whatever means, including military intervention in the island, as the price Cuba must pay for challenging the United States. The spokesmen for this line were found in the U.S. Congress, such as Lincoln Diaz-Balart, Ileana Ros-Lehtinen, Robert Menendez, and in the ultra-right wing of the Cuban community in the United States, within which the Cuban-American National Foundation lobby headed the parade.

- C. Communication or constructive engagement, which favor a partial modification of the blockade and the possibility of broadening the framework of communication between the two governments depending of the steps that Cuba was ready to take toward democratic changes. Paramount in this group was powerful think tanks, such as Inter-American Dialogue, the Center for International Strategic Studies and the Institute for Strategic Studies of the U.S. Army War College.
- D. A relative normalization of Cuba-US relations, based on the idea that the policy of hostility and its main instrument, the blockade, has not achieved its purpose of changing the present Cuban government. Consequently, their view was that U.S. policy should radically change and the blockade should be eliminated as a means of actively swaying Cuban society by exposing the people of Cuba to democratic and free-market influences. This line of thought was shared by certain academic sectors and isolated liberal democratic voices in Congress.

Nevertheless, the logic of hostility tended to be maintained, without giving priority to persuasive elements. This was the consequence of a perception of Cuba's internal situation as a time bomb where the "economic crisis and the illegitimacy of a pre-industrial, antiquated political and economic system" would not withstand the thrust of history.

In brief, by the end of 1993, the low profile policy as applied to Cuba was characterized by the following U.S. logic:

- To achieve a peaceful transition to U.S. defined democracy in Cuba as early as possible.
- To mitigate the suffering of the Cuban people during transition through donations of food to NGO's and individuals and the possibility of exporting or selling drugs, even to the Cuban government, under the above mentioned conditions.
- To maintain the diplomatic, political and economic isolation of the Cuban regime as well as the blockade as means to pressure for democratic reforms and the respect of political human rights.
- To continue disseminating information through Radio Martí and TV Martí, stressing the Democratic Administration's purpose of promoting the flow of U.S. ideas to the people of Cuba.
- To inform the international community of alleged human rights abuses occurring in Cuba.
- To improve conditions so that the peoples of Cuba and the United States could communicate freely.
- To maintain the policy of travel to the island, authorizing certain groups of persons to visit Cuba for humanitarian, educational or religious reasons, while keeping the prohibition to travel for tourist or business purposes.
- To increase the exchange of information materials and promote academic and sports exchanges.
- To intensify efforts to promote a greater understanding between the two peoples, at the individual and social levels as set forth in Track Two of the Cuban Democracy Act.

Around this basic concept prevailing among the architects of American policy, a coincidence was observed in studies about Cuba carried out in 1992 and early 1993 by powerful think tanks such as Inter-American Dialogue ("Cuba in the Americas: Reciprocal Challenges"); the National Defense Research Institute, better known as the Rand Corporation ("Cuba Adrift in a Postcommunist World"); the Center for Strategic and International Studies ("Cuba and the New Caribbean Economic Order"); the Institute of Strategic Studies of the Military College of the United States Army ("The United States and Cuba: From the Strategy of Conflict to Constructive Engagement"), and some universities like the Florida International University. It concluded a study titled "Cuba in Transition," commissioned by the State Department's Information and Research Office and by the Agency for International Development, at a cost of 500,000 dollars.<sup>4</sup>

Regardless of the ideological diversity of those think tanks and different nuances on very specific issues as well as their particular treatment of a given topic in the relations between the two countries, a wide consensus was seen on the basic pillars of the theses sustained in their analyses, namely:

- The essence of U.S. policy toward Cuba should not change because it was meant to force changes in the island's political and economic system toward a post-Castro society. In this regard, the blockade

as an instrument of economic pressure has to be maintained, as it would be even more effective in the attainment of U.S. policy goals. The elimination of several blockade measures was not discarded, with a view to having a more active influence on the changes taking place in the island.

- The Cuban problem had to be internationalized through multilateral diplomacy, including the United Nations and its agencies, OAS, the European Parliament and the Latin-American Parliament.
- In line with American interests, the free flow of information to Cuba should be increased and a bridge building policy implemented, as it would make it easier to develop, in the future, a civil society adjusted to democratic standards.
- The United States should not promote a violent transition scenario where they would have to draw away from their foreign policy priorities such as keeping their hegemony in the New World economic order. The U.S. could not compromise through an intervention their future policy objectives in a post-Castro Cuba, by fueling anti-American sentiments.
- The recognition that, despite assessments of the economic crisis, the Cuban government had some, although limited, room for maneuvering, and that the situation might provoke a lack of control over the processes taking place in the island.

### **THE RAFTERS' CRISIS, THE MIGRATORY AGREEMENTS AND TRACK TWO OF THE TORRICELLI ACT**

It is only after the 1994 Summer rafters' crisis and its negotiated solution, that some U.S. policy makers defined the need to articulate a policy conception that would use instruments contained in the Cuban Democracy Act, such as Track Two, which had not been activated due to the predicted end of the Cuban revolution.

By the end of 1994, the Cuban issue was raised again, linked to the understanding by a part of the White House and the State Department that the economic blockade was not sufficient to overthrow the Cuban revolution while a desperate economic situation could trigger off a spectacular immigration wave. Other instruments, those of persuasion, had to be tried in order to act directly upon the Cuban society.

It is evident that the latter was related to the fact that Cuba had survived the predicted collapse of the revolutionary process. At the same time, the Island had not been able to avoid economic adjustments that ultimately would lead the country to new paths towards its reintroduction into the world economy, with direct implications in the Cuban domestic debate.

Economic readjustments and, above all, the island's ability to face the challenges in spite of the U.S. direct pressure policy, rushed the U.S. to use a new logic in its policy toward Cuba. Then, the debate on the priorities for using the persuasive instruments emerges vigorously by the end of 1994.

In the meantime, the migratory accords signed by the governments of Cuba and the United States after the rafters' crisis of the summer of 1994 settled security and humanitarian concerns, under the premise that migration between both countries had to be legal, safe and orderly.<sup>5</sup>

The September 1994 agreement was essentially designed to put an end to the crisis while the one signed on May 2, 1995 settled the situation at the Guantanamo naval base. Cuban immigrants at this military post were allowed to travel to the U.S. if they met immigration law requirements. Up to five thousand of them were included in the minimum figure of twenty thousand Cubans that the U.S. committed itself to admit into the country every year, according to the terms of the September 9 agreement.

Moreover, the May 1995 agreement stipulated that, as of that date, Cuban immigrants who were intercepted at sea or gained entry into Guantanamo naval base would be returned to Cuba.<sup>6</sup> Until 1994 change in policy, most Cubans that arrived in the United States were able to adjust to permanent resident status after one year at the discretion of the Attorney General.

By virtue of the 1994 and 1995 agreements, the U.S. treatment of the Republic of Cuba in migratory affairs returned to normal for the first time since 1959. They placed migratory relations with the island

almost on the same level and under the same regulations that the U.S. applies to any other country of the world.

For the United States, the solution of the migratory problem was a national interest as the country was in the process of restricting immigration from the Third world as a reflection of a racist tendency that may, as an extreme, become xenophobic.

The settlement of the migratory problem with Cuba was therefore included in a wider perspective. In line with U.S. national interests, it was made possible to channel the May 1995 agreement through secret negotiations, outside regular norms and without the usual staff from the State Department, suggesting that the issue was highly sensitive for the Administration.<sup>7</sup>

The outcome led to the resignations of the Director of the State Department's Cuba Bureau, Dennis Hays and the Deputy-Director, Nancy Mason, and the creation of a White House-level position, Special Advisor to the President and the Secretary of State on Cuban Affairs, which was taken by Richard Nuccio.

Nuccio was in favor of the blockade as an instrument of pressure on the Cuban government and advocated the strengthening of "Track Two" of the Torricelli Act, of which he was one of the main authors. In his opinion, it favored the building of bridges from one people to the other and encouraged the development of a civil society in Cuba.

According to his own statements in an interview granted to The Washington Times on July 30, 1995, "the U.S. government's policy toward Cuba focused around three pieces: In the first place, the most complete economic embargo being enforced by the United States against any country of the world". The conception was that this instrument was bringing about changes in the island.<sup>8</sup>

The American policy-makers identified the second piece as "support for the Cuban people". It was better articulated as a doctrine. Track Two policy was meant to seek and implement new ways to reach the entire Cuban society in order to weaken the government from within. It proposed the use of the largest possible amount of non governmental contacts, including long-distance telephone communications, stronger relations with Cuban emerging Non Governmental Organizations, approaching academic circles in different fields of science and the military. Also it authorized certain humanitarian donations to the Caribbean country under the Cuban Democracy Act provisions.

As professor William Leogrande wrote: "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 Two contacts to maximize their subversive effect. Travel to Cuba, for example is more tightly regulated than at any time during the Cold war. Almost no one is eligible for a general license; travelers must submit justification and obtain the government's permission for every trip".<sup>9</sup>

The third piece was an ambiguous phrase in the Cuban Democracy Act providing that the United States should be prepared to respond in a positive and thoroughly measured manner to political developments which were to happen in Cuba.<sup>10</sup>

Before resigning as Special Advisor for Cuban Affairs, due to his involvement in the leaking to the public opinion of CIA links with murders in Guatemala, Nuccio said the quid pro quo mechanism envisaged the possibility that there were reform-minded elements in the Cuban government. In his opinion, they could eventually convince the highest authority to make reforms, putting an end to the Cuban government's argument that the U.S. are the obstacle for changes in the relations between the two countries.

In our opinion, Nuccio's statements were aimed at establishing a certain order of priority for the factors involved in the making of the U.S. policy toward Cuba. He stressed the importance of considering Cuba's internal developments when formulating the policy and, therefore, the feasibility of implementing Track Two of the Torricelli Act.

The appointment of Nuccio as Special Advisor to the President and the Secretary of State for Cuban Affairs, was also an attempt to calm down far-right sectors of the Cuban community based in Miami and, in particular, the CANF, in the aftermath of the May 2, 1995 migratory accords.

The migratory talks showed that where there is a higher interest and a negotiating political will on the part of the Administration, pressure groups that could become obstacles to higher goals are ignored during decision-making.

### **THE RIGHT NEEDS TO FORCE THE DEBATE: THE IDEOLOGICAL CONTEXT IN CONGRESS WAS IN FAVOR OF THE CUBAN HARDLINERS IN THE USA**

The Cuban community right wing reacted inordinately to the migratory accord and the Cuban American National Foundation entered into a period of political panic that was unprecedented since its inception in 1981.

After May 2, 1995, right wing sectors of the US-based Cuban community founded a coalition known as Committee of United Cuban Exiles, with the 2506 Brigade, Cuba Independiente y Democrática, the Valladares Foundation, the Cuban-American National Foundation and Unidad Cubana as affiliates, among others.<sup>11</sup>

The Committee, together with Brothers to the Rescue and the Democracy Movement, sponsors of flotillas that sailed close to the island in a flagrant violation of Cuban borders that was dangerously provocative, organized "civil disobedience" actions against the Clinton Administration. They included demonstrations in Miami, New Jersey and Washington against the seemingly new policy toward Cuba.

As Brenner and Kornbluh wrote: "The momentum created in the aftermath of the May 2 immigration accord, the pressure from the international community to end an anachronistic Cold War policy, and events in Cuba itself all presented an opportunity to fundamentally rethink the imperial approach that has dominated U.S. policy for 35 years."<sup>12</sup>

The Democratic executive used all forums to declare that the May 2 agreement did not mean a change of policy, which would be kept within the framework of the Cuban Democracy Act. The Cuban community right wing, in particular the CANF, decided to defend its uncompromisingly militant positions from the conservative, Republican-majority Congress of the United States.

The CANF, afraid to lose the political space that it had held for years as representative of the Cuban community before the U.S. government, used the Helms-Burton bill as spearhead in the offensive to get back its positions, in dispute with other Cuban-American groups that advocated dialogue with Cuba. The Helms-Burton bill would become an insurmountable obstacle in the current and future relations between Cuba and the US, giving proof of the essence of the conflict: Sovereignty Vs Domination.

Despite the end of the cold war and the ongoing changes in international relations, the situation just describe provides a lesson: The Cuban community right wing was willing to side with the conservative Republicans in light of an eventual relaxation of tensions between two neighboring countries.

Following the legislative elections in November 1994, a shift takes place in the philosophical and ideological conceptions ruling policy-making in the United States.

The highly ideological and conservative thinking of the Republicans who had obtained the majority in Congress, reinforced by the need to prepare a coherent political agenda as an alternative to Democratic propositions for the 1996 presidential elections. That was the distinct focus of the debate over economic, foreign and domestic policy that permeated American political events after November 1994.

It was in that same context that the debate over Cuba took place in Congress in 1995, putting an end to lines of thought advocating "constructive engagement" or a "relative normalization of Cuba-US relations."



This scenario made it possible for the right in the U.S.-based Cuban community and, particularly, the Cuban American National Foundation to channel a number of anti-Cuban proposals through the Legislature. The lobby convoked congressmen and senators with close ideological affiliations who had received financial assistance during their electoral campaigns through its Political Action Committee.

The position of the Democratic Administration was to avoid unnecessary frictions with the small but well-organized right in Miami and, at the same time, with Congress over an issue that was not a political priority. The Administration was at the time embarked upon strong confrontations with the Republicans in areas of the budget, domestic and foreign policies.

From the beginning, the Clinton Administration tried to reconcile and strike an agreement with the Helms-Burton bill sponsors by agreeing with the purposes of the draft. Consequently, the objective of toughening the economic, trade and financial blockade against the Republic of Cuba was not questioned, an expression of a confrontational policy that endangered the very existence of the Cuban nation.

For years, the U.S. policy toward Cuba has been held hostage by domestic factors. The fictitious linkage of the Cuban issue to the electoral process in an attempt to gain the Cuban votes in the states of Florida and New Jersey, as well as the influence of the Cuban far-right lobby provoked a relative disconnection of the Cuban case from American foreign policy objectives. The Clinton Administration did not overcome that situation. At that point, in a pre-election year, the President had already decided to move in line with the elections, his tactics being not to lose votes.

Following this approach and the notion of "encouraging Cuba's peaceful transition to a free society," on October 6, 1995 at Freedom House President Clinton announced the adoption of an executive order to make more "flexible", around the fringes, a hostility policy designed over 35 years ago.<sup>13</sup>

The President, based on the commitment to further tightening the blockade against Cuba, proclaimed the following measures:

- To allow Cuban immigrants residing in the United States to travel to Cuba once a year for humanitarian emergencies, without applying for a special license from the Treasury Department.
- To authorize the exchange of news bureaus between Cuba and the USA. American media interested in opening offices in the island would have to apply for two licenses from the Treasury Department: one to negotiate their presence in Havana with Cuban authorities, and the other one to open an office if negotiations were successful.
- To permit shipments of donations to Non Governmental Organizations (NGO) in Cuba, including those active in humanitarian, educational, environmental and human rights affairs.
- To agree to have money transfers made for visa procedures or emergencies through Western Union, which would be allowed to open offices in Cuba.<sup>14</sup>

The weakness of the October 1995 executive order, which did not even remove the restrictions issued on August 20, 1994, --in particular the one prohibiting Cuban-Americans to travel to the island and send remittances to relatives without a specific license from the Treasury Department-- illustrated the ambivalence that governed President Clinton's moves as far as the policy toward Cuba was concerned, and the lack of will to make substantial changes.

The contradiction between his electoral advisors and his foreign policy advisors swelled and, once again, the dilemma was to either turn the policy toward Cuba into a U.S. foreign issue or keep it as a variable asset in the domestic and electoral process.

Notwithstanding President Clinton's indecision at that incipient stage, the Cuban community right wing was convinced that it had to force, through any means, its involvement in Cuba-U.S. developments. The hard-liners perceived the Track Two of the Torricelli Act and the secret talks, leading to the May 1995 migratory accord, as signals of its declining role in shaping the U.S. policy toward the island.

Furthermore, from mid-1995 to February 1996, a number of contacts with Cuba were made by other American sectors, increasing the right's fear of losing leading role and, practically, its *raison d'être* in the political debate on Cuba.

### **1995: A GREATER INTEREST TOWARD CUBA**

The irrational persistence to maintain a policy that has not had the expected results and the imperative need to shift the course prevailing in the non-existence relations status between Cuba and the United States for the benefit of American political interests, have been referred to in editorials by The Wall Street Journal, The Washington Post, The New York Times, Los Angeles Times, USA Today, The Economist, The Journal of Commerce, Time, The Chicago Tribune, and U.S. News and World Report.

Academic sectors and relevant think tanks that studied Cuban reality advocated the need to maintain the policy of isolating the Cuban government until democratic changes occurred in the island. But at the same time, they urged to try to influence Cuban society by means of exchanges of information and ideas, academic and cultural exchanges, increased travel to the island, and others. The dissemination of those ideas strengthened the small group inside the White House Executive Office that was bent on giving priority to such methods.<sup>15</sup>

It was then that, from June 15 to 18, 1995, a number of personalities of The Inter-American Dialogue traveled to Havana. This delegation issued a report in September 1995 under the title "Cuba in the Americas: Breaking the Policy Deadlock." The study made recommendations to the governments of Cuba and the United States aimed at improving their relations.

This influential think tank, with strong connections in Washington, proposed to lift all restrictions to travel and send money to Cuba, although it maintained that the blockade was to be used as a negotiating piece in U.S. policy toward Cuba.<sup>16</sup>

Under the premise that dialogue was the best option to settle the historic Cuba-US conflict, the report said that it would be politically unwise to adopt the Helms-Burton bill. It considered that such a punitive legislative measure would be more harmful for the Cuban people, would weaken the civil society in the island and push democratization backwards.<sup>17</sup>

Among other considerations, The Inter-American Dialogue advocated the legal sentencing of violent acts by the Cuban community against Cuba and the termination of TV Martí as it violated international telecommunications agreements.

Another study commissioned by the U.S. Defense Department, titled "The Military and the Transition in Cuba," was made public in April 1995.

The analysis made by American and former-Soviet experts affirmed that the people of Cuba and the military seemed prepared to give Fidel Castro the margin necessary to carefully walk the path towards a mixed economy. The study favored the reduction of the economic blockade against Cuba.

Furthermore, Robert Pastor's visit to Havana in May 1995 and the proposal by the former President Jimmy Carter -- very diplomatically not accepted by the island-- to hold private meetings with representatives of the U.S.-based Cuban community and with the Cuban government in order to foster a dialogue between them, had been seen and understood then by experts, as a sign of the interests that the American political establishment could be promoting through the Carter Center in Atlanta.<sup>18</sup>

In this analysis, it must also be considered that, unmistakably, what was happening in Cuba or the perceptions thereof, had an impact on the making of U.S. policy toward Cuba in that period. The process of gradual economic reforms was a fact, beyond any philosophical arguments on their essential causes.

Cuba's economic and political decisions were considered when the U.S. policy toward Cuba was taking shape while the northern neighbor's intentions have been always pondered when designing the Cuban national project.

Suggesting a pragmatic approach, Cuban government officials met with Cuban emigrants. In another example of this course, Roberto Robaina, Minister of Foreign Affairs, attended a seminar on Participant Democracy, held on June 16-18, 1995, in Cuba's province of Cienfuegos, sponsored by the Hans Seidel Foundation from Bavaria, Germany. On that occasion, President Fidel Castro talked for three hours at the International Conference Center with the leader of Cambio Cubano, Eloy Gutiérrez Menoyo.

A Second Conference: "The Nation and the Emigration" was another sign of the Cuban government's desire to normalize relations between Cubans residing abroad and their country of origin.

But one of the major causes for concern for the Cuban community right wing was the overwhelming rush toward Cuba by American businessmen.

During 1994 and the first quarter of 1995, 250 executives and representatives of 174 American companies, authorized by the Treasury Department, traveled to Cuba expecting to do business there after the blockade is lifted.

In 1995, Cuban officials met with 1300 American executives and signed 40 non-compulsory letters of intent. One of the letters of intent to invest was for an amount higher than 10 billion dollars. Another proposal by a group of 12 hotel chains was valued in \$ 2 billion.<sup>19</sup>

Executive officers from important American companies, all with a high annual business turnover, like the pharmaceutical giant Elli Lilly, Merck, Marriott, Hyatt, Radisson, Johnson and Johnson, ATT, visited Havana to study future trade opportunities with the island. Other U.S. companies that have expressed their interest were: ESSO, AMOCO, Chiquita, Nabisco, Chase Manhattan, Carlson Companies, Revlon, Consolidated Cigar Aficionado, General Motors, Dow Chemical, Texaco, Sears, J.C. Penny, K. Mart and Radio Shack.

Particularly important was that some 60 top American executives flew to Cuba on October 6, 1995, in a private fact-finding mission organized by Time Inc. The delegation, which was the major group of U.S. businessmen welcomed in Cuba in the last few years, met with President Fidel Castro to gather information on the Cuban reality. Before their trip, they met with Leon Panetta, former White Chief of staff, and several Clinton foreign policy advisers, and received approval for the trip to Cuba.<sup>20</sup>

In this context, we must consider the economic interests that came to light after President Fidel Castro's visit to New York in 1995 for the United Nations 50th anniversary celebrations. It was believed feasible that in the near future, the American business sector might become a pressure group in the U.S. political system and would advocate the total lifting of the economic, trade and financial restrictions imposed by the government of the United States against Cuba.

The precedents of China and Vietnam were not negligible in spite of the big differences between those two countries and the island.

In line with the interests of business sectors in Europe, Latin America and in their own country, U.S. policy-makers conceived the application of the so-called Sullivan principles by investors in Cuba.

During the years when the Pretoria regime was subjected to an international embargo, many American companies chose to stay in South Africa. Such a decision was controversial in certain sectors and Reverend Sullivan developed a number of principles to be applied by American companies to challenge apartheid discriminatory rules in their job policy.<sup>21</sup>

Taking this precedent into account, Rolando Castañeda, of the Inter-American Development Bank, and George Plinio Montalván, former head of the OAS economists' unit, both of Cuban origin, developed

guidelines that Cuba-based companies should follow so as not to take part in the "political game of the Cuban leadership."

In brief, those principles promote:

- Direct recruitment of the labor force.
- A 48-hour workweek.
- Creation of independent trade unions.
- Equal access to the labor market and tourist resorts.
- Implementation by Cuba of market reforms.
- Lifting of the blockade on food sales.
- Lifting of the blockade, after Cuba releases political prisoners and agrees to respect international human rights conventions.
- Claims to be based on compensation, not restitution.<sup>22</sup>

The year 1996 began with more contacts between various sectors of the American society and Cuban officials. In January, two important groups of legislative assistants traveled to Havana, sponsored, respectively, by the Center for International Policy, a liberal think tank, and by the conservative USA-Cuba Foundation headed by Gary Jarmin. A third delegation of religious leaders, academicians and businessmen from companies like Reebok, Gillette and First Boston Bank, led by the Massachusetts Rep. Joe Moakley, also visited Havana.

In late January, New Mexico Democratic Representative Bill Richardson, now U.S representative to the United Nations met with President Fidel Castro and other senior officials. They discussed three basic topics: (1) the Cuban government's figure for immigration to the United States; (2) the probable release of a group of Cuban prisoners, and (3) the status of fugitives of the American justice who apparently resided in Cuban territory. Calvin Humphrey, a counsel to the House Intelligence Committee, accompanied him.

According to an article written by Carl Nagin in the New Yorker, during Richardson's visit Fidel Castro brought up the overflights by the organization Brothers to the Rescue.<sup>23</sup> That organization has entered Cuban airspace to drop flyers criticizing the Cuban government on January 9 and 13. Concerns about those overflights had also been expressed "to Scott Armstrong, who had close ties to several National Security Council officials..."<sup>24</sup> So, there was a belief from the Cuban side, that they had "reached an understanding" that the flights would be stopped".<sup>25</sup>

Later on, in a interview with CBS News on April 30<sup>th</sup> 1996, Fidel Castro said "that one of his emissaries had received promises from the 'highest level' of the U.S. government that there would be no more incursions into Cuban airspace".<sup>26</sup>

On February 5-9, a joint delegation from the Center for International Policy and the Center for Defense Information met with the Cuban Minister of the Armed Forces, Raul Castro Ruz, and with Gen. Ulises Rosales del Toro. They discussed military matters and the potential problems that the Juragua nuclear plant might pose to the United States in the future, if its construction were resumed. They also talked about Cuban government's concerns about Brother to Rescue overflights. When they returned to U.S. they debriefed at the State Department and with Defense Intelligence Agency officials,<sup>27</sup> and warned that either the U.S. government stopped those actions or an incident was going to occur.

On February 9, Richardson returned to Cuba and took back to the United States three Cuban prisoners, in a gesture that was valued as positive by the State Department, although it stressed that the Congressman's action had not been solicited by the Clinton Administration.

By mid February, the Natural Resources Defense Council also sent to Havana a delegation of experts on energy and environmental safety who met with President Fidel Castro, among the visitors were Robert Kennedy Jr. and Michael Kennedy, nephews of the late President John F. Kennedy.

Also that month, another delegation of businessmen led by the former President of the World Bank, A.W. Clausen and by the Director of the World Affairs Council, David Fischer, visited the island to obtain information on the Cuban market potential.

So until February 1996, the appearance was, that there was going on a key turning point of decline for the right wing. They felt the policy slipping out of their hands, and thought the momentum being generated by business interests could lead to ending the blockade.

## **THE RIGHT HOLDS THE UPPER HAND**

While those developments were taking place, the Cuban community right wing's actions against the island grew more severe, particularly those that were acts of violation of Cuba's air and maritime space. Again, the Cuban government reacted by declaring that it would not allow such provocation.<sup>28</sup>

In the meantime, in early February, an important group of policy makers involved in Cuban affairs decided to quit their jobs. They were Alexander Watson, Assistant Secretary of State for Inter-American Affairs, and his deputy, Anne Patterson; Richard Feinberg, NSC Special Assistant for Latin America, and Morton Halperin, NSC Special Assistant for Democracy Affairs. This unquestionably created an institutional void at the time of the February 24, 1996 incidents.

The decision taken by the Cuban government to shoot down two aircraft of the Brothers to the Rescue group on February 24, --for having violated Cuba's air space in a provocative maneuver, although the ICAO (International Civil Aviation Organization) Official Report did not recognize that the aircraft had violated Cuba's sovereignty-- was the pretext used to let the trend towards a reinforced hostility policy prevail.<sup>29</sup>

Even now, it is still incredible the United States, aware of the overflights and their tremendous risk, took no steps to avoid that crisis. That episode has significant relevance for the security of both the United States and Cuba, and for the entire Caribbean region.

On February 26, Clinton asked the Congress to pass a law seeking immediate compensation for the dead pilots' relatives. He declared his intention to work together with Congress to pass the then pending Helms-Burton bill, ordered an expansion of Radio Martí, prohibited direct charter flights between Cuba and the United States. At the same time the President requested, through the U.S. representative to the United Nations, that a Special Session of the UN Security Council be convened to condemn Cuba's action.<sup>30</sup>

Later, in October 1996, a leak to **The Miami Herald** would let it be known that Clinton, at the time, requested the Pentagon to provide possible response options, namely:

- A mass air strike, or
- A missile attack against the San Antonio military base where the MIGs had taken off.<sup>31</sup>

The Pentagon, however, declared that such measures should not be taken and recommended extreme caution. This is a proof enough that U.S. national security criteria not always coincide with the wishes of the extreme right.

It is worth noting that the security structures in place Cuba-U.S. relations are so fragile that small players, like the well organized right wing of the Cuban Community, can influence not only the relations between the two countries but also a matter of security interest: national and regional security.

The Democrat Executive, in a attempt to avoid being perceived "weak", decided to back the Cuban Liberty and Democratic Solidarity Act, which call for sanctions against Cuba and third countries dealing with it. The new Act dictates the policy to be followed by any future Cuban government if want to be recognized by the U.S. government, makes relations between the two countries conditional on the resolution of claims according to the American law. Furthermore, the rule undermines the President's

authority to change, in the interest of U.S. nation, a given course of action, and forces him to depend on Congress.

On March 12, 1996, the President's signature marked the entry into force of the Cuban Liberty and Democratic Solidarity Act, better known as the Helms-Burton Act. On the same day, coincidentally, the Republican primary election was held in the state of Florida.

The Presidential decision to promulgate the most anti-Cuban Act in the history of the Cuba-US conflict, which codifies the blockade into a rule of law, has possibly been the less drastic option following the shooting down of the Brothers to the Rescue aircraft, as seen from a military perspective. Heretofore, the blockade was based on presidential executive orders. It could be tightened or loosened at the President's discretion as conditions warranted.

However, it certainly gave Clinton a pretext to elegantly sidestep the subordination of his veto to a Congress majority that favored the measure. Besides, it made it easy for him to correct an assertion made by the extreme sectors of the Cuban community that the President wished to change the policy of hostility, an opinion that he perceived as harmful to his intent to win the state of Florida.

The Helms-Burton Act, like the 1992 Cuban Democracy Act, known as the Torricelli Act, was passed in an election year, fearing that the Presidency would be accused of being weak with "Castro's Cuba", and neglecting real U.S. foreign policy considerations.

Consequently, Cuba as an issue goes beyond itself and becomes a test-case in what could be a proposal for changing the overall system of international relations, the principles and practices established in contemporary international law, and the rights and duties of States in the commercial sphere.

Unlike the Cuban Democracy Act of 1992 that focused basically on trade, the new legislation is mainly targeted on the financial area, with a view to limiting Cuba's needed re-introduction into the international market.

From the same moment Cuba set the strategic goal of attracting foreign capital for development, restructured its institutions and legislation to make the investment process feasible, and decided to be transparent on the status of its external finances to initiate talks on the debt subject, the American Congress made attempts to pass legislative measures to hinder the economic process that was entangled already by a web of difficulties.

The Helms-Burton Act did not enter into effect in its entirety since Title III, providing for civil judicial procedures on American courts to claim seized property did not enter into force until August 1, 1996, after President Clinton decided to put it into effect on July 16.

The new Act has a provision that allows the President to postpone the entry into effect of that controversial section every six months or delay its enforcement for six months in the event that the President did sign its entry into effect.

Therefore, under the pressures of an election year, Clinton chose the technicality of putting Title III into effect while postponing until February 1997 the right to file claims on U.S. courts for property seized after 1959. By now he has postponed it four times.

This decision taken by the President is characteristic: trying to make a good impression on various sectors, no matter how contradictory their interests can be.

Clinton tried to avoid a trade dispute with the major U.S. trade partners that had opposed the Helms-Burton Act, a problem that could not be settled by the President's special representative for the promotion of democracy in Cuba, Stuart Eizenstat, but let him gain time until the 1996 elections.

His re-election aspirations and his fear to be accused by the right of not maintaining a strong-hand policy toward Cuba led Clinton to disregard requests to postpone the entry into force of Title III. Important

American business groups like the National Manufacturers Association, the Chamber of Commerce of the United States and the National Council of Foreign Trade had made those solicitations.

The Helms-Burton Act bears the name of the head of the Senate Foreign Relations Committee and of the head of the House Sub-Committee for the Western Hemisphere, respectively. The Act is a compilation of anti-Cuban measures that had been introduced toward the end of 1994 by legislators of Cuban origin Lincoln Diaz-Balart, Ileana Ros-Lehtinen and Robert Menendez. They all exude a philosophy of punishment that is indicative of their applicability in the New World Order.

This anti-Cuban measure transgresses the principles that govern international law, such as the self-determination of nations, sovereign equality among States, the illegitimacy of the use or threat of use of force, including economic coercion, and non-interference in the internal affairs of States. The Act has three major objectives aimed particularly against Cuba:

- To tighten the economic siege and hamper the process of economic transformations that is taking place in the island.
- To render impossible any prospects of improving relations between Cuba and the United States by creating practically insurmountable obstacles in the solution of common problems.
- To reverse the Republic of Cuba to the status it had in the early 20th century, pursuant to which the United States could define the destiny of the Cuban Nation.

The spirit and the letter of this legislation attest to the essential conflict between Cuba and the United States: Sovereignty Vs Hegemony. That is aside from the excuse of ideological aversion to socialism as a political and social model, which is revealed as fallacious by the fact that the United States has entered into commercial and diplomatic understandings with China and Vietnam.

#### **THE HELMS-BURTON ACT: A PLATT-LIKE PROPOSAL**

The Act has an introduction and four titles. The introduction explains the criteria of the U.S. Congress in connection with the Cuban government, the purposes and the definitions of the terms used therein. From the legal point of view, the definitions of confiscation, property and traffic contradict not only criteria and principles internationally recognized by States, but also legal practice in the United States. The Act tries to override the "Doctrine of the Sovereign Power of the State" and grants U.S. courts jurisdiction not only to hand down decisions on property and other related rights but also on juridical persons, private persons or foreign States.

#### *STRENGTHENING OF INTERNATIONAL SANCTIONS AGAINST THE GOVERNMENT OF CUBA*

Title I is entitled Strengthening of International Sanctions against the Castro government. It proposes a number of measures aimed at internationalizing economic, trade and financial sanctions adopted by the government of the United States against Cuba. Among these provisions are:

1- Internationalizing sanctions against the government of Cuba through the Security Council of the United Nations Organization, imposing a mandatory international embargo.

This measure ignores the fact that for six years the UN General Assembly has adopted six consecutive Cuban-sponsored resolutions condemning extra-territorial trade sanctions.<sup>32</sup>

In a letter from its representative in Washington, Andreas Van Agt, and the French ambassador to the United States, Jacques Andreani, the European Union has stated its opposition to "the adoption of unilateral measures that have not been approved by the UN Security Council."<sup>33</sup>

2- Urging the U.S. Executive Branch to request that other governments restrict trade with Cuba and the granting of credits to the island.<sup>34</sup>

The extraterritorial nature of this section, aimed at restricting trade relations between Cuba and other countries in the world, as well as hampering the investment process in the island, makes its acceptance

by significant U.S. trade partners improbable. Cuba has signed bilateral agreements for investment promotion and protection with EU members: Spain, Great Britain, Italy, Germany and France. Accepting the American suggestion would be tantamount to accepting the extraterritoriality of American legislation, which seems unlikely, since it undermines the concept of the sovereignty of national States.

In touch with, former Canadian Foreign Minister Andre Oullet, in a letter to the State Department, declared that it was unacceptable for foreign firms negotiating with other countries to be restricted by the legislation of third nations.<sup>35</sup>

3- Strictly enforcing the Regulations on Cuban Assets Controls as well as fining and imprisoning violators of the U.S. Trading with the Enemy Act. Energetically enforcing restrictions on travel to Cuba.<sup>36</sup> In this regard, the most significant is the fact that the act confers on the U.S. Treasury Department the right to impose fines of up to USD 50 000. It includes seizure of property used to violate these regulations, from people who transgress restrictions on trips to Cuba, pursuant to the Cuban Assets Control.

4- Codifying the trade embargo existing up to March 1, 1996, with the aim of having all regulations prior to the Cuban Liberty and Democratic Solidarity Act, including Presidential proclamations, executive provisions and department resolutions, become part of the legal corpus of the new act.

This provision curtails executive power to change or adjust certain administrative decisions on its own, since the act provides that the President, in consultation with Congress, may take certain steps to lift the embargo insofar as they are aimed at creating sound foundations for a democratically elected government.<sup>37</sup>

5- Forbidding U.S. private persons or U.S. agencies from granting credits, loans and financing, directly or indirectly, to a foreigner or foreign company that has trafficked with U.S. property confiscated by the Cuban government.<sup>38</sup>

In this regard, the European Union and Canada have very strongly expressed their opposition saying that there is no juridical foundation in international law for the United States to claim the right to regulate trade with Cuba by a U.S. subsidiary in third countries. Rejection for the implementation of the extraterritoriality of the U.S. act is based not only in principles and standards internationally recognized by States, but also in the impossibility for the United States to force its subsidiaries to ignore the law of the countries where they are domiciled.

However, pressures by U.S. head offices would complicate transactions with these firms, slow down the negotiation process and the pace of investments, by including the island in the list of countries considered of high risk for investment processes.

This provision runs counter to GATT (General Agreement on Tariffs and Trade) provisions on freedom of trade and the exclusion of political prohibitions on trade. These restrictions also violate the spirit of free enterprise and free trade that the United States has historically defended as a cultural tradition.

6- Instructing U.S. representatives in international financial agencies, like the World Bank, the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the International Multilateral Investment Guaranty Agency and the Inter-American Development Bank, to oppose Cuba's membership in the aforementioned. Cutting U.S. contributions to said organizations by the same amount of credit that these institutions decide to grant Cuba.<sup>39</sup>

US instructions to vote "no" in the event that Cuba requests membership in any of these organizations have been an established practice for over 30 years. However, the present act contradicts obligations undertaken by the United States with these agencies and is an attempt to unduly influence decision making by these international financial organizations.

7- Instructing the U.S. Permanent Representative to the Organization of American States to oppose



and vote against Cuba's return to the organization until such time as there is a democratic government in the island.<sup>40</sup>

These concepts fail to consider the position of an important group of Latin American governments that advocate Cuba's reinsertion in the Western Hemisphere's political and economic organizations. They contradict the statements of the General Secretary of the OAS, Cesar Gaviria, during the opening session of the 25th Assembly of that institution, when he said that Cuba deserved a chance in the hemispheric community.<sup>41</sup>

It is significant that on March 6, 1995, the Inter-American Human Rights Committee wrote a letter to the U.S. government calling for respect for international treaties and modification of certain provisions in the embargo against Cuba, particularly regarding the sales of food and pharmaceuticals.

On June 4, 1996, the Organization of American States approved a resolution against Helms-Burton legislation, and ordered the Inter-American Juridical Committee to examine the legislation and to reach a conclusion as to whether it is valid under international law. In August 1996, the Committee concluded that the Act was not in conformity with international law.

8- Cutting down U.S. assistance to the former Soviet republics in the same amount by which, in one way or another, they benefit the Cuban government, be it through trade, credits or economic contributions. This would include economic contributions to make the Cienfuegos nuclear power plant operational, as well as for any military intelligence facility, like the Lourdes base. It expressly rejects the USD 200 million that Russia pays Cuba for the use of the Lourdes facilities.<sup>42</sup>

Prior to the decision to kowtow to right-wing pressures, the U.S. Executive had opposed this step in a letter by the Assistant Secretary of State for Legislative Affairs, Wendy R. Sherman, to the head of the House International Relations Committee.

Also, ex-Assistant Secretary for Inter-American Affairs Alexander Watson told the Western Hemisphere Sub-Committee, during a Congressional hearing on March 16, 1995, that this step "might curtail U.S. ability to foster reform and stability in Russia. He warned "pressing on Russia to cease its use of Lourdes could be seen by the Russians as interfering with their exercise of their right under the START Treaty to monitor compliance with the agreement" and could complicate Russia's ratification of START II.<sup>43</sup>

9- Instructing the President of the United States to submit a yearly report to Congress on aid to and trade with Cuba by foreign countries, comprising:

- A description of all bilateral aid, including humanitarian assistance
- An identification of Cuba's trading partners and the magnitude of their trade.
- A description of the joint or shared risk ventures already established or in the process of becoming established by nationals of other countries, as well as other companies with facilities in Cuba.
- A determination of whether any of those facilities are the object of a claim by an U.S. citizen.
- The total of the Cuban debt with each foreign country and debt stemming from business, including the amount of the debt swapped, condoned or reduced.
- Steps to ensure that raw materials and goods manufactured totally or partially in Cuba by nationals or by foreign firms do not enter the United States.<sup>44</sup>

This provision will require significant additional resources, a serious problem in a period of U.S. budget constraints. This report would force the U.S. Administration to trace more than 2500 firms over 109 countries.

10- Forbidding U.S. imports of sugar, syrup and molasses produced in a country that the President determines has imported those products from Cuba. The aim is to prevent indirect subsidies to the Cuban sugar industry through "countries that buy Cuban sugar for domestic consumption and sell their sugar to the United States under the system of quotas."<sup>45</sup>

This clause violates the principles of international law and the sovereignty of States because of its

extraterritorial nature. Moreover, it contradicts the principles of the World Trade Organization (WTO) and of the General Agreement on Tariffs and Trade (GATT). In the cases of Mexico and Canada, it would also be a violation of the obligations under the North American Free Trade Agreement (NAFTA).

On January 22, 1997, Canada and Cuba signed a broad political and economic cooperation agreement, which call for cooperation against the Helms-Burton legislation and broad cooperation on human rights issues.

As for Latin America, this provision breaches the resolution issued by the 1975 OAS consultative organ resolution declaring that each signatory determines the nature of its own economic and diplomatic relations in the way it sees fit.

11- Increasing TV Marti effectiveness by converting the station from VHF to UHF. <sup>46</sup>

TV Marti, as an instrument of U.S. ideological pressure on Cuba, is incompatible with international law and an infraction commitments undertaken by the U.S. duties under the 1982 International Telecommunications Convention and the 1979 International Telecommunications Union Radio Regulations annexed thereto. Article 30, article 1, of paragraph 2666 recognizes that "radio broadcasting stations should not exceed the necessary amount to economically ensure domestic services within the borders of the country in question."

This violation by the U.S. Administration was confirmed as such in the 1990 ruling of the International Frequency Registration Board.

#### *A PLATT-LIKE PROPOSAL*

Title II, entitled Assistance to a Free and Independent Cuba attempts to impose a second Platt Amendment by establishing the standards that should govern the future Cuba once of the objective of destroying the Cuban process is achieved. <sup>47</sup>

Congress takes upon itself the right to determine the conditions of what would initially be a "transition government" and later, a "democratically elected government," requirements for a Presidential certificate of "the Cuban people's good conduct." A transition government is defined as one that legalizes all political activity, release all political prisoners, holds free internationally supervised elections, respect private property, promise to restore confiscated property to its pre-1959 owners, and excludes both Fidel Castro and Raul Castro.

Based on this certificate and in line with the funds then available to the United States, the U.S. President would adopt the necessary measures to re-establish diplomatic relations and end the blockade, as well as authorize assistance to Cuba from international organizations.

Pursuant to the act, it is a sine qua non premise for the "democratically elected government" to have returned to U.S. citizens or companies all the property nationalized after January 1, 1959, or to have paid total compensation for them, including those that were subject to forcible expropriation by the Cuban government as illegally obtained assets.

In this regard, it is evident that the new act usurps de facto or constitutional powers incumbent on the President of the United States in the management of international relations, conferring them to Congress.

As Jorge Dominguez has written: "The Helms Burton Act is quite faithful to the theme of the Monroe Doctrine and the Roosevelt Corollary. It claims for the United States the unilateral right to decide a wide array of domestic policies and arrangements in a nominally sovereign post Castro Cuba. In the Monroe Doctrine, the United States asserted its right to specify which system of government was acceptable in the Americas. In the Roosevelt corollary, the U. S. Government claimed the additional right to stipulate specific economic and other pollicies and specifically to redress the nonpayment of debts" <sup>48</sup>.

On January 28, 1997, the American government published a program titled "Support for a Democratic Transition in Cuba". This plan is an integral part of the Helms-Burton Act, which under section 202 (g) stipulates that it will be applied only when a transition government is in power in Cuba and after said government takes appropriate measures to return to U.S. citizens all property nationalized and confiscated after 1959. The plan also establishes a so-called aid for various countries and organizations for a six-year period in specific sectors of Cuba's society, without considering the realities and sovereign rights of the Cubans. Likewise Helms-Burton Act, it establishes a prescription for all involved parties, including limits to the President's exercising his discretion in formulating U.S. policy toward Cuba.

The document sets the terms for a hypothetical aid, but during the so-called transition period, diplomatic and trade relations will not be resumed. Even if a "transition government" comes into power in Cuba the blockade must continue until a "democratically elected government" is in place, certificated by the U.S. government. According to the plan, during that period, no private or state investment will be made because the legislation prevents U.S. nationals to do business with Cuba.

The program titled "Support for a Democratic Transition in Cuba" is written in ambiguous language, and the study of events in Eastern Europe is in evidence. What it does states clearly is that "for the time being, no country, no international organization or institution is in position to make specific commitments to give funds to support transition in Cuba.

The Helms Burton Act "rediscovers the ideological brio of Imperialism. At the end of the twentieth century, as in centuries past, the United States is demanding the right to set the framework for the political and economic system it would tolerate inside Cuba".<sup>49</sup>

In other words, The Empire dictates rules that the Cuban nation has to follow, after suffering a turn-of-the-century-like intervention. This platform document, that advocates democracy as the U.S. foreign policy doctrine in the period of transition in International Relations, is more onerous than the Platt Amendment.

#### *POLITICAL MANIPULATION OF THE CLAIMS ISSUE*

Title III, Protection of property rights of United States Nationals, provides for the establishment of civil judicial procedures in U.S. courts for the filing of claims on confiscated property.<sup>50</sup>

Americans, whose properties were expropriated, may file claims against any foreign person, company or State that has sold, distributed or disposed of any property subject to a claim or that has bought, received, possessed, obtained control of, acquired or used the confiscated property not only in Cuba but in any country in the world.

The Act allows U.S. national to sue for money damages in U.S. Federal court those persons that traffic in property confiscated in Cuba. It extends the right to sue to Cuban Americans who became U.S. citizens after their properties were confiscated or nationalized.

Before analyzing the scope of these provisions in Title III, one would do well to remember the context in which U.S. property on Cuba soil was nationalized.

As a reaction against the punitive economic measures imposed by the U.S. government following the victory of the Cuban revolution and intended to suffocate this social process from a position of force, on July 6, 1960, Act 851 of 1960 was passed. It granted the President and the Prime Minister of the Republic of Cuba full powers to dictate, whenever deemed expedient, the nationalization through forcible expropriation of the property of U.S. natural or juridical persons or of firms in which those persons had interests or shares, even if they were established in conformity with Cuban legislation. (Art. 1).

Pursuant to this Act, on August 6, 1960, the Cuban Executive issued resolution number 1, providing for the forcible expropriation, with a mechanism for compensation, of the Compañía Cubana de Electricidad, the Cuban Telephone Company and the U.S. Esso, and Texaco oil firms and the 36 sugar mills the United States owned in Cuba.

On September 17 of that year, resolution number 2 was adopted, providing for the nationalization of the following U.S. banks: First National City Bank, First National Bank of Boston and the Chase Manhattan Bank.

In October, Cuba nationalized 380 large firms and all banks, except the Canadian, under Act 890. It then passed the Urban Reform Act and nationalized all U.S. firms still operating in Cuba then, pursuant to resolution number 3 issued in conformity with the powers conferred by Act 851.

At that moment, Cuba proposed indemnifying U.S. firms through bonds at a yearly 2% rate, to be amortized in a maximum period of 30 years, from the funds accruing from one fourth of the value of purchases exceeding 3 million tons of sugar from Cuba. It provided that the price of sugar remained at no less than 5.75 U.S. cents a pound. The United States rejected this proposal.

For its part, on July 3, 1963, the U.S. government froze all Cuban assets in that country. In 1964, the U.S. Congress authorized the Foreign Claims Settlement Commission to determine and validate the amounts of claims by U.S. citizens or firms against the Cuban government and to adjudicate and sell frozen Cuban assets to meet validated claims. This was later suspended by that same institution in 1965.<sup>51</sup> The Commission was directed to certify its finding on the amounts of the claimants losses to the Secretary of State. In addition, the Commission was authorized to determine the validity of claims against Cuba for the disability or death of U.S. citizens that resulted from actions that were taken by or under the authority of the Cuban government.

From November 1, 1965 to July 6, 1972, claimants brought their suits before the Foreign Claims Settlement Commission, which decided whether they were in order or not and certified the amount of the loss. On July 6, 1972, the Cuba program of the Commission came to a close and it issued a certification to the Secretary of State stating the total amount of the claims by U.S. citizens or firms.<sup>52</sup>

The Foreign Claims Settlement Commission certified 5,911 claims as valid, and the total value of nationalized, expropriated, intervened or impounded assets was determined to be an aggregate principal of 1,851,057,358, at a yearly interest rate of 6%, from the moment the asset had been lost. The number of claims that were rejected or withdrawn by the beneficiaries totaled 5905.

Of the 5911 claims certified, some 5,013 were from private individuals and totaled \$221 million dollars. Most of the initial amount of 1,851,057,358 were accounted for by three companies: Cuban Electric Co., ITT and North American Sugar Industries, which in all totaled USD 507 million. Other major certifications were in favor of companies such as Standard Oil and Texaco.

At present, the total amount of the claims is over USD 5.6 billion, considering the yearly 6% interest on the USD 1,851,057,358 initially certified by the Foreign Claims Settlement Commission of the United States.

The Cuban government has not refused to discuss the topic of the compensations to U.S. citizens or firms for the assets nationalized after 1959. However, the prevailing, highly ideological and emotional confrontation relations have not been an appropriate climate for negotiations. The blockade has also contributed to keeping this issue on ice.

Cuba has concluded agreements for the liquidation of claims on assets affected by the nationalization process with Switzerland, France, Canada and Spain, using the formula of Lump Sum Agreements. All along these years, Cuba and these countries have had normal trade and investment relations, without the claims issue having been an insuperable obstacle for them. Cuba and the United States might seek a formula to solve the problem of compensations in compliance with international law. That should take into consideration the positions of the two parties in a constructive dialogue, but taking into account damages to the economy and the people of Cuba inflicted by the punitive measures imposed by the government of the United States for more than 36 years.

However, Title III of the Helms-Burton Act extremely complicates the already difficult compensation

problem by trying to legitimate potential claims by present U.S. citizens who were not nationals at the time the confiscation took place.

The new act expressly disregards U.S. judiciary practice enshrined in the Doctrine of the Sovereign Power of the State Act, which provides for:

- The sovereign powers of a foreign State to nationalize property of private individuals and companies who are its nationals at the time of the expropriation.
- Consequently, it recognizes the discretionary power of the Sovereign State of Cuba to nationalize property belonging to its citizens, which is not the object of international law.
- The enforceability of the legislation in force in the place where the property is located to determine entitlement to said property.
- Acceptance, as a sovereign act of a State, of the nationalization of foreign property located within its territory and fair compensation.

Formerly, this recognition was tacitly expressed in a case resolved by the Supreme Court of the United States, *Banco Nacional de Cuba Vs Sabbatino*, of 1964. Then it was decided to maintain intact the Doctrine of the Sovereign Power Act to eliminate considerations on the validity of nationalization undertaken by "the Cuban government within its territory regardless of allegations that said nationalization contravened international law."

The Helms-Burton Act goes even further than the Hickenlooper Amendment passed by the U.S. Congress on October 9, 1964 and the Foreign Aid Act. This amendment invalidated the U.S. Supreme Court ruling in the *Banco Nacional de Cuba Vs Sabbatino* case. It provided that "no United States court can decline, on the grounds of the Doctrine of the Sovereign Power of the State Act, to dictate a decision based on the merits of the case dealing with a claim of property rights or any other right adduced by any of the parties, including a foreign sovereign State, based on or originating in confiscation or impounding pursuant to a law of said State in violation of the principles of international law.

However, the Hickenlooper Amendment does not recognize, as the Helms-Burton Act does either the retroactive scope of the law or its enforceability on property that did not exist at the time of the expropriation; neither does it include the right to indemnification for damages on the nationalized property.

In this regard, the European Union has stated that it does not recognize the jurisdiction of U.S. Federal courts over litigation between U.S. citizens and foreign companies regarding property nationalized abroad, including that which may derive from retroactive enforcement of the law on behalf of persons who at the time of the expropriation were not U.S. citizens.

During the Congressional hearing, Former Assistant Secretary for Inter-American Affairs, Alexander Watson said that while the solution to the claims problem was a priority for the U.S. government, the bill would impose "a number of radical and binding sanctions and restrictions regarding transactions of property, not only in Cuba but elsewhere in the world, whose property rights were held by U.S. citizens. These sanctions would have to be enforced indiscriminately upon both American and foreign companies, thereby generating serious disputes with U.S. allies, and they might be difficult to defend under international law."<sup>53</sup>

Title IV of the act provides that the Secretary of State, in consultation with the Attorney General, must exclude from the United States any foreigner who had acquired, negotiated, managed or used property in Cuba that is under claim by any U.S. citizen or company. The list of the excludable includes corporate officers, principals, or shareholders with a controlling interest of an entity involved in the confiscation or nationalization of U.S. property or trafficking of U.S. property. It also includes the spouses, minor child, or agent of aliens who could be excludable under this provision. This provision is mandatory and only waiveable on a case by case basis for travel to the United States for humanitarian medical reasons or to defend themselves in legal actions regarding confiscated property.

The Cuban Liberty and Democratic Solidarity Act not only tries to obstruct an eventual improvement of

relations between the two neighboring countries, but also attempts to undermine the present system of international relations, taking as a test case the destiny of the Cuban Nation.

### **CUBA IN THE FOREIGN OR DOMESTIC AGENDA: THE UNDERSTANDING WITH RESPECT TO DISCIPLINES FOR THE STRENGTHENING OF INVESTMENT PROTECTION**

Paradoxically, the reaction of U.S. allies against the extraterritorial character of the Helms-Burton Act creates favorable conditions for the Cuban case to return to the foreign policy agenda, overshadowing domestic considerations in the making of U.S. policy toward the island.

Nevertheless, the very existence of the Act is an almost insurmountable obstacle between two neighbor nations that for ideological and emotional reasons are still involved in the Cold War. The hard-liners have so far prevailed: Helms-Burton is aimed at undermining trade and suffocating any type of foreign exchange for and foreign investment in the island.

But it is important to remember, that trade has been given top priority in the United States' current foreign policy agenda. It may in the medium term take the Cuban issue out of the domestic agenda- subject to electoral logic and the political expediency of special interest groups based in Miami or Union City- and become a foreign policy issue.

A consensus on how international trade should be carried out in the short term has not been reached in Congress, even among republicans. The debate flows mainly between Helms-style isolationists and conservative Republicans that are free trade advocates.

Such backing of free trade by U.S. conservative Republicans is in open conflict with Helms-Burton Act and in general, U.S. unilateral economic sanctions against other countries. This conservative sector, which has pushed significant agreements like NAFTA, is now trying to figure out to what point the American government will put in place certain protectionist measures that damage trade policy because of allegedly national security or foreign policy demands.

Since February 1996, U.S. policy toward the Island has been to maintain the status quo and implement the Helms-Burton Act even in the face of the resistance launched by Europe against the legislation. That reached its peak on February 20, 1997 with the setting up of a World Trade Organization (WTO) dispute settlement panel on the European Union's challenge to the Helms-Burton legislation. The U.S. policy of hostility toward Cuba has been justified on the grounds, not of the Cold War bipolar criteria, but of the Cuban government downing of the two Brothers to the Rescue exile planes which had violated the Island's airspace in an openly provocative maneuver.

The complaint at WTO was suspended in April 1997 after the Representative for Democracy in Cuba, Stuart Eizenstat, promised the European Union that his government would lobby the U.S. Congress to amend the controversial Act.

The same day that Stuart Eizenstat declared the bases of the understanding reached by the United States and the European Union, on April 11, 1997 the office of Senator Helms released a statement stressing: "...Congress will insist on the full implementation of the Helms-Burton Act, including Titles III and IV. We will not accept the case before the World Trade Organization. Europe has been the one that has jeopardized this organization by taking a foreign policy dispute before such institution".

Due to the 1997 agreement, the Europeans decided to suspend their case for a year to allow for a negotiated settlement. At the same time, there was a threat from the United States, that it could invoke article XXI of the WTO, arguing that the implementation of the Helms-Burton Act was a matter of national sovereignty and interest. From that moment on, that could have created a precedent, which all nations could invoke to justify similar claims and, as a result, the ability of the WTO to keep trade borders open would have been undermined. That was not for sure in the U.S. interests, specially now when there is an U.S. domestic debate on the use of unilateral economic measures as foreign policy instruments.

Negotiations between the European Union and the United States took more than a year, and in fact it was a long and tense dispute over the U.S. effort to use the threat of economic sanctions to strong-arm Europeans into following U.S. policy toward Cuba. It was a major irritant to transatlantic ties. Precisely, trying to find out a way to release tensions and to have some reached achievements by May 18, 1998 EU-U.S. summit, a deal between the United States and the European Union on ending their dispute over the U.S. Helms-Burton Act aimed against foreign investment in Cuba was settled.

That understanding was reached in a middle of debate about other tensions between the EU and the US, namely a contentious trade dispute involving American sanctions on foreign companies doing business in Libya and Iran in energy projects. That aspect was a real priority for some European countries like France and Italy. The Cuban issue, on the contrary, was not as important as the oil controversy. So, the questionable Helms-Burton Act was not supposed to affect a more general agreement that was in the interest of both the European Union and the United States.

At the same time, the proposed Multilateral Agreement on Investment (MAI) was similarly held hostage to Helms Burton Act. Although, the MAI, like the proposed transatlantic trade agreement, faces a number of other significant obstacles, it could not be concluded without a resolution of the dispute over Helms Burton Act.

The European Union has strongly opposed the U.S. sanction laws, which it considers illegal under world trade agreements. It has threatened to sue the United States and to impose sanctions on U.S. companies in retaliation. So with that deal, the United States avoided a major conflict with Europe.

As a result of the negotiations, the European Union agrees to establish disciplines -- for the first time internationally, no one has ever done this before -- to bar future use of expropriated property and to deter investments in expropriated property including in Cuba, and the U.S. Executive Branch agrees to seek waiver authority under Title IV of the Helms-Burton Act in the U.S. Congress, as the U.S. President has for Title III.

As mentioned before, according to Title III of the Helms-Burton Act, Clinton may waive permission for former owners of contested property to sue the foreign companies for compensation in American courts. Under the law Clinton has to exercise that waiver, if he chooses to do so, every six months. He has done exactly four times since the Act passed in 1996. Another provision, Title IV, requires the government to deny visas to executives of foreign companies and their families that profit from the disputed property. But the President has no authority to waive the other sanctions denying visas to executives of companies and their families found to be in violation of the law.

As part of the new agreement, the U.S. Administration is only under obligation to seek an amendment with respect to Title IV. Title IV is tied to the mentioned disciplines, and since these disciplines would be permanent, under Title IV the U.S. Executive Branch will seek a permanent waiver.<sup>54</sup>

The so-called disciplines are supposed to do the following:

- There's an outright ban in investing in any expropriated property in the future.
- A claim registry is set up -- an international claims registry -- on which claimants who say their property has been expropriated can file a claim.
- A country, which has a pattern or practice of expropriation, is treated in a special way. And even in cases where expropriations occurred prior to the effective date of these new disciplines, these disciplines can apply.<sup>55</sup>

According to the Understanding's annex D called EU Side letter, as a result of an investigation that an expert team for the European Union has done off of some claims filed by Americans for Cuba for expropriated property, the European Union has said that "it appears, using a sampling of those claims, that these expropriations appear to have been in violation of international law" and that these new disciplines would be applied.<sup>56</sup>

The application of the disciplines also means that if a European investor wants to invest in Cuba, in almost every instance he has to go to a commercial assistance agency to get risk insurance. And the essence of this agreement is that no commercial assistance agency in Europe can allow or can give such assistance to an investor in Cuba without satisfying itself that it's not providing such assistance on expropriated property. It will be the responsibility of the commercial assistance agency in Europe to do the screening and to be the filter. They have to make a determination that the property is not "illegally" expropriated before they can grant the commercial assistance.<sup>57</sup>

Even more important, though the Understanding with respect to disciplines for the strengthening of investment protection still **is not a legally binding commitment** for Europe, it states that while that deal "constitutes a political arrangement reflecting the participants' intention to apply these disciplines on a **policy basis**, the participants will make a joint proposal in the Multilateral Agreement on Investment (MAI), which upon entry into force, will be an agreement **binding under international law**".<sup>58</sup>

The European Union's decision to wait for the fulfillment of a promise made by the U.S. Administration makes us think that it was not understood that in U.S. decision-making process, the only authority that can pass or amend a legislation is the U.S. Congress and not the Executive Branch. The promise to seek amendments to Title IV and include a waiver similar to the one contained in Title III could be not viable from the point of view of the U.S. Congress.

In other words, the administration has no guarantee that Congress will agree to the changes. Jesse Helms reacted negatively to the news of the agreement. "It will be a cold day in you-know-where before the EU convinces me to trade the binding restrictions in the Helms-Burton for an agreement that legitimizes their theft of American property in Cuba," Helms said. Rep. Lincoln Diaz-Balart said the administration "should not assume this has the support of Congress."<sup>59</sup>

In a political maneuver, to underscore the easing of trade tensions between the United States and Europe, Clinton and British Prime Minister Tony Blair, whose country currently holds the EU presidency, both announced the launching on May 18 of a "Transatlantic Economic Partnership" of enhanced efforts to reach market-opening trade agreements in a number of areas by the year 2000.

Clinton's proposal to launch new global trade talks marked a return to the world trade debate after a humiliating rebuff last year by Congress, which refused to go along with his request for fast-track trade negotiating authority. The president needs such authority to reach agreement not only in a new trade round, but in other regional initiatives.

The cave-in seemed to be European Union's payment for the "Transatlantic Economic Partnership". Maybe it placed the transatlantic relationship on ever-stronger footing. But at what cost?

In my opinion, among other aspects, one of the most important costs for the European Union is to recognize the United States as the hegemon in this changing world. The concept of Hegemony is a very difficult term. The idea of the hegemon is that the hegemon considers not only about its own direct benefit but thinks about preserving the entire system with the idea that if it preserve the system as the hegemon it will benefit. At the same time the hegemon establishes the rules of the game. But to do that there is a need to spend money on being the police force of the world. Washington has now fiscal constraints, so there is a second alternative that is being considered instead of the super power hegemon vision. That is called multilateral hegemony. It is the approach that the Clinton administration is taking and the President is for the support from traditional allies, especially in issues like trade and commerce that are not codified by international law and are under debate.<sup>60</sup>

President Fidel Castro in a speech to the World Trade Organization said that the U.S.-EU agreement appeared to have been clinched at the expense of Cuba.<sup>61</sup>

In an interview published by the Cuban youth weekly Juventud Rebelde, Ricardo Alarcon, President of the Cuban national Assembly, said the EU-U.S. agreement left the 36-year-old U.S. economic blockade against Cuba firmly in place. "All nations -- including the members of the European Union -- remain



victims of the extraterritorial measures that the U.S. has been applying against Cuba for three decades through the blockade," he said. "It is absurd to think that an agreement can be reached simply through a U.S. presidential promise to consult with the barbarians in Congress to see if they are ready to ease up on the threats of sanctions," Alarcon added.<sup>62</sup>

### **The Pope's Visit.**

Though, it is still very early to determine the lasting impact of Pope John Paul II's trip to Cuban domestic policy, we will analyze some of the most important effects in U.S. - Cuban relations.

First, the Pope's visit underlines the failure of U.S policy toward the island. The Pope criticized the U.S. blockade during his January 21-25 trip. "The Cuban people," he said, "cannot be denied the contacts with other peoples necessary for economic, social and cultural development...". His holiness called for "the world to open to Cuba, and for Cuba -- with all its "magnificent possibilities" -- to open to the world",<sup>63</sup> but still the official U.S Policy is to isolate Cuba from the rest of the world. All of Latin America condemns the U.S. policy, U.S European allies refuse to go along and Canada goes out of its way to defeat U.S efforts to cut off all contact between Cuba and the outside world.

In the last Summit of the Americas in Chile the Cuban issue was very present. Canadian Prime Minister Jean Chretien visited the island on April. Barbados -- in the name of the Caribbean region -- called for Cuba's complete reinsertion, and Brazilian President Fernando Henrique Cardoso described Cuba's presence as essential in order to speak of a unified American continent.

The Dominican Republic and Guatemala announced that they had reestablished diplomatic relations with Cuba. Spain, meanwhile, named its ambassador to Havana in April, putting an end to a diplomatic crisis that broke out in 1996. And Mexico called in April 21 for Cuba to be re-admitted into the OAS.

Second, the balance of power in U.S. politics is beginning to shift away from Cuban American hard-liners. There is an important U.S. trend: the erosion of conservative support for U.S. Cuba policy. The National Review, the Wall Street Journal and the Washington Times all have editorialized against the current U.S. policy. The U.S. Chamber of Commerce is lobbying aggressively in favor of sales of food and medicine to Cuba.

The decline of broad conservative support for the blockade leaves Miami's hard-liners almost alone in supporting this policy. Those hardliners are concerned as well about the gathering momentum of the forces in favor of a softening of the blockade, and they are concerned in the context of the vacuum of leadership left by the death of Mas Canosa.

Meanwhile, Miami critics of the hard-line policy have become far more visible. About 200 Cuban Americans from the Miami area went to Washington in April, lobbying Congress to end the blockade on food and medicine.<sup>64</sup>

A parallel process is taking place in Dade County. Since the 1994 Migration Agreement a new wave of Cubans are legally arriving in Miami. They left the Island without any political resentment or social distress. Their concerns are more similar to other immigrants from the Third World, and for sure "Fighting the communism in Cuba" is not among their priorities.<sup>65</sup>

At the same time, 35% of the Cuban-Americans have not been born in the Island.<sup>66</sup> They belong to the so-called second and third generation of Cuban Americans and, as a group, they do not look at Cuba the same way their parents or grandparents used to. That could us conclude that Miami's demography is changing radically, and that will impact the policy toward Cuba in the near future.

Third, the issue of U.S.-Cuban relations is being discussed in circles and by groups that have never been involved before. Growing numbers of mainstream corporate leaders, labor union officials, politicians and business associations have begun to take a stand against the trade ban. Nearly 700 companies, trade associations and farm organizations have joined USA Engage in a few years. Members and supporters

include the U.S. Chamber of Commerce, the National Association of Manufacturers, Eastman Kodak, General Motors, Goodyear and Honeywell.

USA Engage is a new movement aimed at eliminating American economic sanctions against Cuba and other countries around the world. Some economists estimate U.S. trade with the island, if the ban is lifted, would jump to \$3 billion per year initially then soar to \$7 billion within a few years.

Four, the Cuban Government and the Vatican believe Pope John Paul II's trip to Cuba has borne fruit. Rome is cautiously pushing ahead with its agenda to raise the profile of the Roman Catholic Church on the island. Cuba's release of some prisoners<sup>67</sup>, the increasing role allowed Catholic humanitarian organizations and the Easter celebrations all are viewed as signs that the Vatican's policy is on track.

The U.S. cardinals have made clear that they see the pope's visit as the first engagement of a long campaign, and they are determined to press for more change in U.S. policy. Boston's Cardinal Bernard Law is calling for a bipartisan presidential commission to recommend changes in U.S. policy and urges a rapid end to all restrictions on sales of food and medicine to the island.

Five, The papal visit to Cuba highlighted the fault lines in Congress, the business community and the religious sector over the U.S. blockade. A House bill sponsored by Rep. Esteban Torres (D-Calif.) that would allow sales of food to Cuba and remove many of the current restrictions on sales of medicine and medical supplies was introduced in the International Relations Committee, nevertheless it is controlled by blockade supporters.

In the Senate a similar bill sponsored by Sen. Christopher Dodd (D-Conn.), the ranking minority leader of the Foreign Relation Committee was also introduced and would authorize the President to allow the sale of medicine and medical equipment to the Cuban people. Though their prospects appear dim, it is important to say the bills are backed by a range of organizations -- from the Roman Catholic Church and other mainstream church groups to the U.S. Chamber of Commerce -- and has garnered the support of about 25 percent of Congress. Sponsors include both Republicans and Democrats.

Those who back the legislation also include business mogul David Rockefeller, producer Francis Ford Coppola, former Treasury Secretary Lloyd Bentsen Jr., former Deputy Secretary of Defense Frank Carlucci and General John J. Sheehan, former Supreme Allied Commander Atlantic. Dodd and Torres' proposals have been also supported by Americans For Humanitarian Trade With Cuba (AHTC).

ATCH is a bipartisan coalition focused solely on restoring sales of U.S. produced food and medical supplies to Cuba. It is comprised of American leaders from business, government, labor, Cuban-American, medical, religious and humanitarian communities. Members have different points of view on the blockade itself, but all agree they can no longer support a policy carried out in the name of the American people which causes the suffering of Cubans.

Momentum for action became so strong after the pope's visit that Sen. Jesse Helms and the Cuban American National Foundation (CANF) put forward another bill to pre-empt more sweeping changes that would open up trade and allow the sale of food and medicine to Cuba. The initiative is aimed at undercutting those who want to end restrictions on the sale of food and medicine to Cuba. But as Fidel Castro has said "Cuba does not demand humanitarian aid from the United States, it does not ask for handouts," "It demands an end to the economic war against our people and that it respect our right to develop ourselves economically and trade freely with all the people of the world."<sup>68</sup>

An editorial of the Washington Post said, "The politicians and exile groups who endorse this change deserve credit. Implicitly, they are admitting that an embargo bearing directly on the health and welfare of innocent Cubans is a cruel practice that subverts American ideals."<sup>69</sup>

The plan marks the Cuban American National Foundation's first Policy initiative since the death of Jorge Mas Canosa. It was clear the Foundation leaders were eager to reassert a presence in Washington with a new bill that could undercut rival legislation to allow food and medical sales. But the proposal caused a

rare rift among hard-liners Cuban-American leaders. The three Cuban-American members of Congress all rejected the plan, saying it is unnecessary and confusing, and invites criticism of the blockade. They fear that even this slight change could unravel the blockade policy.<sup>70</sup>

Six, for the first time since the introduction of the Helms-Burton Act, designed to starve Cuba of foreign investment and codify a 35-year-old trade blockade, U.S. efforts to isolate Havana have come under sustained attack.

The growing debate over Washington's policy toward Cuba now is not confined to the right wing of the Cuban American community. The fact that the Brookings Institution has held two major seminars on Cuba since the pope's visit is one indication that the issue is warming up. More Republicans are questioning current policy. The deliberate infliction of pain on people Americans supposedly wish to help is an unsustainable Policy. That is only part of the reason more people are questioning American policy toward Cuba.

For the Administration, Clinton might have to undertake the daunting task of trying to defend his policy in the face of this reality. Instead, he has been able to get away with silently persisting in obstinate futility. The administration officials had no plans for dealing with this situation before and after the pope's visit, and they have been caught flat-footed as many sectors of American society lash out at the blockade.

Despite pleas from Pope John Paul II, humanitarian-aid groups, many members of Congress, Europeans, Canadians, Latin Americans, the United Nations and the U.S. Chamber of Commerce, neither Congress nor President Clinton have been prepared to ease any portion of the policy. When Cuba responded to the pope's visit by allowing churches to flourish and agreeing to release scores of prisoners, Cuba watchers looked to the United States for a response.

Instead, two months after Pope John Paul II visited the island, On March 20, William Clinton announced the following measures:

- First, the resumption of licensing direct humanitarian charter flights to Cuba.
- Second, establishing new licensing arrangements to permit Cuban Americans and Cuban families living here in the United States to send humanitarian remittances to their families in Cuba at the level of \$300 per quarter, as was permitted until 1994.
- Third, streamlining and expediting the issuance of licenses for the sale of medicines and medical supplies and equipment to Cuba.<sup>71</sup>

The steps the Administration has taken were really very modest. They simply restore humanitarian provisions that were in effect when Clinton took office but were later suspended in 1994 and in 1996. Again, it was underlined that the current U.S. nonpolicy toward Cuba does not have any rationale and only maintains the status quo. Opportunities to promote positive change have being wasted.

Officials have insisted, however, that the moves do not signal a weakening of the long-standing U.S. embargo on trade with Cuba, which they said remains the cornerstone of efforts "to isolate and undermine the regime of President Fidel Castro".<sup>72</sup> They expressed that there are four elements of U.S. policy designed: "pressure the Cuban government through the embargo and the Libertad Act; support for the Cuban people; encouraging a multilateral effort to promote democratic change; and maintaining the safety and legality of migration".<sup>73</sup> In other words, America's Cuba Policy is stuck somewhere in the Cold War era.

The so-called long-standing U.S. Policy, according to U.S. officials, has been that significant actions in Cuba will be followed by carefully calibrated responses from U.S. government. The Cuban government accommodated the pope's visit. It allowed live television transmission of the masses. It released prisoners. And yet the U.S. government can not decide if Cuba has reached the point of achievement some positive response from the United States.

Most incredible was that only 20 days after the so called new measures approved by the Administration it became known that the Defense Department concluded that Cuba poses no significant threat to U.S. national security, and senior defense officials increasingly favor engaging their island counterparts to reduce existing tensions.

The report, mandated last year in an amendment introduced by Florida Sen. Bob Graham,<sup>74</sup> portrays "Cuba's Revolutionary Armed Forces as a severely diminished military and to downplay the risks posed by chemical or biological weapons".<sup>75</sup> It also says the chances of another mass exodus from the island are reduced.<sup>76</sup>

The chief of the U.S. Southern Command in Miami, Marine Gen. Charles Wilhelm said, "That armed force has no capability whatsoever to project itself beyond the borders of Cuba, so it's really no threat to anyone around it. As much as 70 percent of the armed forces' effort is involved in their own self-sustainment, in things like agricultural pursuits. ... It doesn't even begin to resemble the Cuban armed forces that we contemplated in the '80s."<sup>77</sup>

Current and former Pentagon officials say they have no evidence of high-level Cuban complicity in drug-running to the United States; they do not think Cuba has "weaponized" biological agents against the United States; and they say that the best way to ensure that the Juragua plant is to provide cooperation and scrutiny under the International Atomic Energy Agency.<sup>78</sup>

According to Pentagon officials, the most "immediate risk to U.S. interests is posed by unchecked emigration from Cuba".<sup>79</sup> For that reason, U.S. military officials are "reflexively uncomfortable with a U.S. policy" that is predicated on provoking a popular uprising or an economic ruin.<sup>80</sup>

Prepared in coordination with the Defense Intelligence Agency, the CIA, the National Security Agency, the National Security Council and the State Department, the assessment said that Cuba now poses "a negligible threat to the U.S. or surrounding countries".<sup>81</sup>

This context gives an excellent opportunity to review overall U.S. Policy toward Cuba, but to change that policy the President has to have a moral conviction, and unfortunately, Clinton's personal traits as President include an inconsistency in his position and radical change of opinion in tune with the prevailing political trend. So his best bet on the Cuban case is therefore that nothing should happen in the largest Antilles Island to make him feel pressured to act one way or another.

At the same time, it seems that President Clinton is not interested in reviewing the Cuban question from another perspective as, in the cost-benefits analysis, he considers it will mean more costs than points scored in favor of his party and the future Democratic candidate for the 2000 election.

All told an interesting twist to U.S. policy making with respect to Cuba as it evidences an asymmetry in the relevance that each country attaches to the other: While Cuba has always considered the United States claims when designing its national policy, the Island is not, in the short or medium term, a political priority for the United States.

From the institutional point of view, the Executive does not seem to be interested in analyzing the subject of Cuba from a more realistic and far-reaching perspective, and pays attention only to what it considers critical events or moments.

The Helms-Burton Act labels and defines U.S. policy toward Cuba and is strict enough to leave very little room for the Administration to apply other policy instruments in the short term.

In the Congress, with the rightist conservative movement in some important committees and subcommittees, the discussion of the Cuban issue has tended toward enforcing tighter measures against the Island.

In both the Executive and Congress, the perception prevails that Cuba can not continue to make its process viable and that, in the short run, changes made in the Island will be more in line with U.S. foreign policy aims.

Another element that further complicates relations between the two countries is, undoubtedly, the existence of an articulate, anti-Cuban lobby with relative financial clout: The Cuban American National Foundation (CANF).<sup>82</sup> Despite, the death of its leader Jorge Mas Canosa, in late 1997, still the CANF has the ability of bearing fruits to sustain pressure within American political circles.

In Congress, the only vocal and influential institution is still the CANF, which lobbies the various congressional committees and subcommittees that discuss bills concerning U.S. policy's toward Cuba. The CAN-F has a bearing on the formulation of U.S.-Cuba relations.

All this, and the fact that three Cuban-Americans sit in Congress, and their goals as legislators are almost limited to the question of Cuba, constrained the debate on U.S. policy toward the Island. As a result, the discussion used to be centered only on those who have very specific interests in that country.

The prevalence of a more realistic vision as an alternative to current policy is also hampered by the lack of knowledge about the history of relations between Cuba and the United States even before 1959, as well as about Cuba's present-day reality, culture and politics.

Therefore, if we examine the deep roots of Cuba-U.S relations since the former became a Republic – characterized by the dichotomy Sovereignty Vs Domination – and if we added the above mentioned elements, highlighting the Foundation's activities and the markedly anti-Cuban stance of the three Cuban-American representatives, then it is easy to understand why the issue, without being a priority in U.S. foreign policy, is manipulated and monopolized by the right wing during the policy-making process.

There has been a shift in public opinion, but still "Old warriors die hard". Despite the evolution of public opinion in the United States within the business community, the Catholic church, humanitarian groups, the leadership's vacuum in the CANF and the demographic changes in the Cuban community in Miami, time is needed still for the change in American public policy to translate into policy changes.

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<sup>15</sup> A Report of the Inter-American Dialogue Task Force on Cuba: Cuba in the Americas Reciprocal Challenges, A special Report; Inter-American Dialogue of the Aspen Institute, October 1992, Washington D.C.; González, Edward and David Ronfeldt: Cuba a Drift in the Postcommunist World RAND, Ntl. Defense Research Institute, prepared for the Under Secretary of Defense for Policy, Published 1992 by RAND, Santa Monica, Ca; Preeg, Ernest : Cuba and the New Caribbean Economic Order, CSIS, Washington D.C., 1992; Shulz, Donald E: The United States and Cuba: From the Strategic of Conflict to Constructive Engagement, Strategic Studies Institute, U.S. Army War College, Department of the Army, The Department Defense, May 12, 1993; Florida International University: Cuba in Transition, Prepared for The State Department and AID, June 1993.

<sup>16</sup> A Report of the Inter-American Dialogue Task Force on Cuba: "Cuba in the Americas: Breaking the Policy Deadlock", A special report; Inter-American Dialogue of the Aspen Institute, September 1995, Washington D.C.

<sup>17</sup> Idem;

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- <sup>18</sup> Alfonso, Pablo: "En marcha el diálogo de Carter"; In: El Nuevo Herald; 21 de Septiembre 1995; p 1A-11A.
- <sup>19</sup> Falk, Pamela: " Eyes On Cuba: U.S. Business and the Embargo", In: Foreign Affairs, March-April 1996, p 16.
- <sup>20</sup> Nagin, Carl: "Annals of Diplomacy: Backfire", In: The New Yorker, January 26, 1998, p 31.
- <sup>21</sup> En los años cuando el régimen de Pretoria estaba sometido a un embargo internacional, muchas compañías norteamericanas decidieron mantenerse en Sudáfrica. Esa decisión resultó muy controvertida para determinados sectores norteamericanos, y un reverendo llamado Sullivan desarrolló una serie de criterios a ser aplicados por las compañías norteamericanas con la finalidad de que en su política de empleos se desafiaran los criterios discriminatorios del Apartheid.
- <sup>22</sup> Falk, Pamela: Op Cit.
- <sup>23</sup> Nagin, Carl: Op Cit, p 30 35.
- <sup>24</sup> Idem, p 33
- <sup>25</sup> Idem, p 35.
- <sup>26</sup> Idem, p 35.
- <sup>27</sup> Idem, p 33.
- <sup>28</sup> "Statement By Roberto Raobaina, Minister of Foreign Affairs of the Republic of Cuba, to the Resumed 50<sup>th</sup> Session of the U.N. General Assembly", March 6.
- <sup>29</sup> Report of the Investigation Regarding the Shooting Down of Two U.S. Registered Private Civil Aircraft by Cuban Military Aircraft on 24 February 1996, ICAO, June 20, 1996.
- <sup>30</sup> U.S. Newswire, February 26, 1996.
- <sup>31</sup> The Independent, October 2, 1996.
- <sup>32</sup> Section 101 (2). Cuban Liberty and Democratic Solidarity Act of 1996. (H. Rept 104-468).
- <sup>33</sup> Letter to Speaker of the House Newt Gingrich, from the European Union dated March 22, 1995.
- <sup>34</sup> Section 102 (a). Cuban Liberty and Democratic Solidarity Act of 1996. (H. Rept 104-468).
- <sup>35</sup> Letter of March 23, 1995, from the Minister of Foreign Affairs of Canada, Andre Ouellet, to the U.S. State Department.
- <sup>36</sup> Section 102 (c) (d). Cuban Liberty and Democratic Solidarity Act of 1996. (H. Rept 104-468).
- <sup>37</sup> Section 102 (h). Cuban Liberty and Democratic Solidarity Act of 1996. (H.Rept 104-468).
- <sup>38</sup> Section 103 (a). Cuban Liberty and Democratic Solidarity Act of 1996. (H. Rept 104-468).
- <sup>39</sup> Section 104 (a) (b). Cuban Liberty and Democratic Solidarity Act of 1996. (H.Rept 104-468).
- <sup>40</sup> Section 105. Cuban Liberty and Democratic Solidarity Act of 1996. (H.Rept 104-468)
- <sup>41</sup> Statement by Assistant Secretary of State for Inter- American Affairs Alexander Watson, before the House Western Hemisphere Subcommittee. March 16, 1995.
- <sup>42</sup> Section 101 (3) and Section 106 (a) (d) (2). Cuban Liberty and Democratic Solidarity Act of 1996. (H.Rept 104-468)
- <sup>43</sup> Statement by former Assistant Secretary of State for Inter-American Affairs Alexander Watson, before the House Western Hemisphere Sub-Committee. March 16, 1995; and letter from the Assistant Secretary of State for Legislative Affairs, Wendy R. Sherman, dated April 28, 1995, to the Head of the House Foreign Relations Subcommittee, Benjamin A. Gilman.

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- <sup>44</sup> Section 108. Cuban Liberty and Democratic Solidarity Act of 1996.(H.Rept 104-468).
- <sup>45</sup> Section 110. Cuban Liberty and Democratic Solidarity Act of 1996. (H.Rept 104-468).
- <sup>46</sup> Section 107. Cuban Liberty and Democratic Solidarity Act of 1996.(H.Rept 104-468).
- <sup>47</sup> Title II-Assistance to a Free and Independent Cuba. Cuban Liberty and Democratic Solidarity Act of 1996. (H. Rept 104-468).
- <sup>48</sup> Dominguez, Jorge: "U.S. Cuban Relations: From the Cold War to the Colder War", In: Journal of Interamerican Studies and World Affairs, 1997, p 58.
- <sup>49</sup> Idem,
- <sup>50</sup> Section 302. Cuban Liberty and Democratic Solidarity Act of 1996. (H.Rept 104-468)
- <sup>51</sup> Act of October 16, 1964. PL 88-66, 78. Stat. 1110, Amending International Claims Settlement Act, 22 U.S.C. 1621 (1970); and Act of October 19, 1965. PL 89-262.
- <sup>52</sup> See Castro Mariño, Soraya and Fernández Tabío, Luis René:"Estados Unidos-Cuba: La política económica de la confrontación". In: Cuadernos de Nuestra América, Vol XI, Number 21, January-June 1994.
- <sup>53</sup> Statement by former Assistant Secretary of State for Inter-American Affairs Alexander Watson, before the House Western Hemisphere Subcommittee. March 16, 1995.
- <sup>54</sup> Understanding with Respect to Disciplines for the Strengthening of Investment Protection, May 1998, p 5.
- <sup>55</sup> Idem; p 1, 2, 4.
- <sup>56</sup> Understanding with Respect to Disciplines for the Strengthening of Investment Protection. Annex 4. EU Side Letter, p 12.
- <sup>57</sup> Understanding with Respect to Disciplines for the Strengthening of Investment Protection. Annex A. p 7.
- <sup>58</sup> Bolded by the Author. Idem; p 5
- <sup>59</sup> Balz, Dan: "U.S. Eases Stand on Cuba, Iran Sanctions: Helms Condemns, Europe Hails Move", In: The Washington Post, Tuesday, May 19, 1998; Page A15
- <sup>60</sup> Brenner Philip: Today U.S. Foreign Policy, Conference at CESEU, Havana University, February, 1998.
- <sup>61</sup> Castro Hits US-EU Accord on Helms-Burton Law (CNN Interactive) Reuters 19-MAY-98; Moulson Geir: "Castro Calls Trade Deal `Unethical'" In: Los Angeles Times, May 19, 1998.
- <sup>62</sup> Juventud Rebelde, 24 de Mayo, 1998.
- <sup>63</sup> See the analysis of this phrase made by Fidel Castro In: Comparecencia televisiva del Presidente del Consejo de Estados y de Ministros de Cuba Fidel Castro Ruz el 2 de febrero 1998.
- <sup>64</sup> Russell Mead, Walter:"Remaking U.S.-Cuba Policy" In: Los Angeles Times, Sunday, March 29, 1998
- <sup>65</sup> According to Jose Cabanas, head of the Ministry of Foreign Relation's section that deal with Cuban outside the Island, more than 100 000 Cubans have arrived to The United States as a result of the 1994 Migration Agreement. Conference dictated at Havana University, September 11, 1998.
- <sup>66</sup> Idem,
- <sup>67</sup> In February 12, 1998 Cuba announced it has decided to release dozens of prisoners in what the Vatican called "an act of clemency and goodwill" resulting from an appeal made by Pope John Paul II during his trip to the island last month. The release was announced first in a Vatican statement that said the inmates were on a list of several hundred prisoners presented by the Vatican to Cuban authorities during the pope's visit. The release was later confirmed in Havana by Cuban Foreign Ministry spokesman Alejandro Gonzalez, who said "several dozen" people on the Vatican's list were in the process of being freed, according to news service accounts. Gonzalez said 106 people on the list had already been released by the time of the



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pope's January 21-25 visit. He added that the government had decided to pardon for humanitarian reasons more than 200 people jailed for either political or common crimes.

<sup>68</sup> See: Comparecencia televisiva del Presidente Fidel Castro del 3 de Febrero y el discurso del 14 de Febrero de 1998 en la inauguración de la sesión de la Asamblea del Poder Popular. Véase además el discurso en Ginebra del 17 de Mayo de 1998 en la Swiss-Cuban Friendship Association.

<sup>69</sup> The Washington Post: "The Cuba Food Embargo", Editorial, Friday, February 6, 1998; Page A24.

<sup>70</sup> The Senate Foreign Relations Chairman Jesse Helms, R-N.C., the entire GOP leadership and several Democrats introduced on May 14, 1998 the legislation to authorize \$100 million over four years in humanitarian aid to the Cuban people, while urging stepped-up U.S. government support for "democratic opposition groups in Cuba." The measure would require the president to seek a U.N. resolution calling on Fidel Castro to "immediately respect all human rights, free all political prisoners, legalize independent political parties, allow independent trade unions and conduct freely contested elections." It also urges the administration to commence "freedom broadcasting" through Radio and TV Marti broadcasts from Guantanamo Bay and "suitable sites around Cuba." In addition to humanitarian aid, the bill calls for "democracy assistance" -- communications equipment, printing presses, photocopiers and other items that internal opposition groups need to spread pro-democracy messages. The Reagan Administration provided such assistance to Poland during the 1980s. The proposal is supported by 20 other senators including five Democrats and Majority Leader Trent Lott, R-Miss.

<sup>71</sup> Chicago Tribune: Give Cuba trade, Not Charity, March 25, 1998; Cristopher Marquis: "Medidas de EU aún causan debate en exilio", In: El Nuevo Herald, jueves, 26 de marzo de 1998; Los Angeles Times: "U.S. Policy on Cuba", Thursday, March 26, 1998; The Miami Herald: "Much a do about little", Section:Opinions, OP-ED Commentaries, Wednesday - MAY 20, 1998, p A22. Background Briefing With State, Commerce and Treasury Department Officials Regarding Implementation of March 20 Measures on Humanitarian Flights, Family Visits and Monetary Remittances for Cuba Wednesday, May 13, 1998

<sup>72</sup> Lippman , Thomas W.: "U.S. to Ease Some Curbs Against Cuba", In: The Washington Post, Friday, March 20, 1998; Page A01

<sup>73</sup> Background Briefing With State, Commerce and Treasury Department Officials Regarding Implementation of March 20 Measures on Humanitarian Flights, Family Visits and Monetary Remittances for Cuba Wednesday, May 13, 1998. Worldnet "DIALOGUE" United States Information Agency Television and Film Service of Washington, D.C. Guests: Michael Ranneberger, Coordinator, Cuban Affairs, U.S. Department of State, Marettte Evans (sp), Office of Foreign Asset Control, U.S. Department of the Treasury, TOPIC: New Measures for Cuba, Post: Havana, Host: Ivan Silva Acuna, Date:May 13, 1998.

<sup>74</sup> Defense Department Authorization Act ( P.L. 105-85). As Signed into law, section 1228 called for the Secretary of Defense to carry out, by March 31, 1998 a review and assessment of Cuban military capabilities and the threat to U.S. National Security posed by Cuba, and an assessment of the contingency plans developed by the Secretary to counter any threat posed by Cuba to the United States.

<sup>75</sup> Defense Department Report: The Cuban Threat to U.S. National Security, May, 1998.

<sup>76</sup> Idem;

<sup>77</sup> Marquis, Christopher: "Pentagon wants U.S. military to work with Cuba Posted"; In: The Miami Herald, Friday, March 27, 1998

<sup>78</sup> Idem;

<sup>79</sup> Defense Department Report; Op Cit;

<sup>80</sup> Marquis Christopher: "Pentagon wants U.S. military to work with Cuba Posted"; Op Cit.

<sup>81</sup> Defense Department Report; Op Cit;

<sup>82</sup> The Center for Public Integrity studied the Cuban foundation's lobbying in 1996, concluding it was among the most effective and most feared on Capitol Hill. The Washington-based center monitors campaign tactics and ethical issues. The study focused on the Helms-Burton Act's passage. CANF officials and related groups contributed \$4.4 million to federal election campaigns since 1979, the study found. See: Fechter, Michael: "Cubans learn politics quickly, In: The Tampa Tribune, March 14, 1998.