

**A NOT SO MAGNIFICENT  
OBSESSION: THE UNITED  
STATES, CUBA, AND  
CANADA FROM  
REVOLUTION TO THE  
HELMS-BURTON LAW\***

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Few events in the past decade have illustrated so vividly the extent to which Canada can be affected by U.S. foreign policy initiatives, where the primary target of that policy is not Canada, as in the Helms-Burton law. As a major trading partner of Cuba and with extensive investment on the island in terms of finance and political capital Canada and Canadian policymakers could have anticipated that any dramatic deterioration in Cuban-United States relations would ultimately impact on Canadian interests.

The latest Cuban-American crisis was triggered by the actions of the Cuban air force on February 24, 1996, in shooting down two civilian aircraft operated by the Brothers to the Rescue, one of the groups involved in the ongoing anti-Castro propaganda warfare over Cuban territory. While these flights may not have been violating Cuban airspace on this occasion, previous flights had been a persistent part of the

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\*A list of acronyms used in this article is provided on page 26.

U.S.-supported anti-Castro propaganda campaign, and since their primary objective was to have leaflets reach the hands of Cubans, it is difficult to imagine how the mission could be achieved without eventually entering Cuban airspace.

The shoot down occurred on the same day that the *Concilio Cubano*, seen by U.S. officials as a broadly representative group of independent non-governmental organizations, was scheduled to hold its first public meeting. The Cuban government arrested most of the leaders, and the meeting did not take place. The U.S. official, congressional and public condemnation of the Cuban action against civilian aircraft was swift and angry, and it was not limited to the United States. Canada supported the UN Security Council's request for a full investigation by the International Civil Aviation Organization (ICAO) and later supported the ICAO Council's resolution condemning Cuba for its use of lethal force against the civilian aircraft. ICAO also found that the two Cessna aircraft were in international, not Cuban, airspace as Havana authorities had contended. The reaction in the United States, as we shall shortly observe, was sharper and with more wide-reaching consequences, provoking a crisis not only in Cuban- American relations but also between the United States and its allies.

This latest crisis, which has had a serious impact on the bilateral United States-Canada relationship, underlines the basic fact that Canada and the United States, allies as they were throughout the Cold War years and enjoying that much vaunted "special relation-

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ship," have nonetheless pursued very different approaches to Cuba since 1959. Both countries have been consistent in their dealings with Castro's Cuban regime over those years, with the United States adhering after 1961 to a hard line, including non-recognition of the Castro government, rejection of official bilateral relationships, an economic embargo on all trade and investment with the island nation and an active anti-Castro propaganda campaign. Canada, on the other hand, in spite of equally serious reservations about Cuban-Soviet linkages and with an ongoing concern about violations of human rights in Cuba by the Castro government, has consistently pursued a policy of constructive engagement with Cuba. The Helms-Burton legislation has highlighted that historical divergence between those two North American nations that John Thompson and the author refer to elsewhere as "ambivalent allies."<sup>1</sup>

## I. THE COLD WAR ERA

Even at the peak of the Cuban-Soviet-U.S. tensions during the Cuban Missile Crisis in October, 1962, Canada maintained diplomatic relations with Fidel Castro's government throughout the controversy, and the lack of full cooperation with the administration of John F. Kennedy by Prime Minister John Diefenbaker left a negative legacy. An equally important reality, however, in the Cold War triangle in which Canada was engaged was that Canada's continued presence in Havana provided an important source of information to the U.S. on Cuban affairs.<sup>2</sup>

Yet the Canada-Cuba relationship was both complex and ambiguous in the course of the 1970s. The Castro government proved to be a convenient dumping ground for FLQ terrorists from Quebec following the October crisis in Canada during 1970 for pragmatic rather than reasons of ideological affinity, given Castro's intolerance of political dissent within his own borders. Canada, along with the United States and other Western nations, roundly condemned Castro's large-scale intervention seemingly as a Soviet surrogate on the side of socialist forces in the Angolan war in 1975. Prime Minister Pierre Elliott Trudeau made an official, much publicized and criticized visit to Castro in early 1976 at the end of a tour of Latin American capitals, and, as with the more recent trip in 1998 by Prime Minister Jean Chretien, the objective seemed as much to symbolize the autonomy of Canadian foreign policy from that of the United States as to realize concrete diplomatic and economic gains.<sup>3</sup>

Canada-Cuban connections have attracted considerable domestic political and public commentary, but, on the whole, Canada has remained a marginal if not irrelevant player in the Caribbean basin dynamic shaped by U.S. antagonism toward Castro's "rogue" regime. Such was the case not only with direct Cuban-Canadian relations but also with Canada's shifting approach to the Central American crises in Nicaragua and El Salvador in the 1980s, when Canada (at least in the years in which Joe Clark was secretary of state for external affairs) sought to counterbalance the more bellicose American approach to the Soviet-Cuban presence in the region by promoting a peaceful, negotiated settlement between government and guerrilla forces. Whether the differences in approach between the Mulroney-Progressive Conservative government and its Republican counterpart to the south derived from fundamental differences in foreign policy toward the region or from the more significant role which Canadian public opinion, notably in the churches, had exerted on Canadian policy remains to be debated.<sup>4</sup>

The Nicaraguan revolution in 1979 and the events which followed significantly intensified the level of tension between the U.S. and Cuba. On July 19, 1979, the Sandinista army marched triumphantly into Managua, having finally routed the forces of Anastasio Somoza, in part at least because of Cuba's success in uniting the various Sandinista National Liberation Front (FSLN) factions for the final offensive, and in part because the Carter administration had cut off military support for Nicaragua's Somoza in the late 1970s as Eisenhower had to Cuba's Batista in 1959.

After the Cuban missile crisis, the Nicaraguan revolution was the most significant regional event of the Cold War era, and it is difficult to appreciate the intensity of the U.S. antagonism toward Cuba in the post-Cold War era without understanding the extent to which that nation was perceived in U.S. policymaking circles as the major protagonist in the region during the 1980s. Under a Sandinista government from 1979 to early 1990, Nicaragua became the fulcrum in East-West relations. Initially, it was a test of the two superpowers' ability to shape the politics of the Third World; finally, it became one of the major symbols for superpower collaboration in bringing an end to a half-century of Cold War.

The Carter administration considered the Nicaraguan situation to be an indigenous, regional problem attributed more to the internal socio-economic and political dislocations and repression in Nicara-

gua than to Soviet and Cuban aggression. Conversely, the Reagan and Bush administrations viewed the Central American situation exclusively as part of the East-West, U.S.-Soviet/Cuban conflict, and they opted largely for military solutions to the conflict.

Determined to avoid the mistakes of the 1960s toward Cuba and to keep Nicaragua out of the Cuban-Soviet camp, Carter continued to work for negotiations, to encourage the FSLN to broaden further its political base and not to lend support to insurgencies elsewhere in Central America. The pressures on Carter to move to a more aggressive stance were substantial in 1979-80. The Sandinista victory in Nicaragua was followed that year by the victory of the New Jewel Movement of Maurice Bishop in Grenada and its immediate overtures to Castro. At the same time the CIA discovered a Soviet brigade in Cuba, raising the East-West stakes at an awkward time when the Salt II Arms Limitation Agreement concluded by Carter and Brezhnev was making its way through the U.S. Senate. When the non-aligned nations met in September, 1979, Bishop, Castro and Nicaragua's Daniel Ortega sought, unsuccessfully as it turned out, to shift the focus of the group toward a harder anti-American, pro-Soviet line.<sup>5</sup>

Under the Reagan presidency, the United States entered a new period of confrontational relations with the Soviet Union, Cuba and their perceived surrogates in Central America. The revival of Wilsonian moralism, America-First sentiment, and rekindled Cold War rhetoric came to be embodied in the Reagan Doctrine. In its simplest terms, the Reagan Doctrine involved a shift from detente to an offensive against Soviet-bloc interests, especially in the Third World. As Reagan indicated in 1985, the administration pledged to stand by its "democratic" allies and to resist Soviet-inspired aggression against those democratic forces from Afghanistan to Nicaragua.<sup>6</sup> The implications were clear: there would be no tolerance for what was portrayed as Soviet-Cuban insurgencies and revolutions in the Caribbean region. In the same year that the U.S. authorized CIA sponsorship of the Contras (the various U.S.-backed, anti-Sandinista insurgent groups) in an effort to remove the Sandinistas from power, the Reagan administration demonstrated in Grenada that it was prepared to use military force in the region to achieve its foreign policy objectives and to remove what it saw as a communist threat on the American doorstep.<sup>7</sup>

The Grenada intervention provided an important part of the context for the general Central American crisis in the mid-1980s and

a clear warning to the Sandinistas in Nicaragua and the opposition in El Salvador that the Reagan administration meant business. There as well, the main concern was the perceived link between Cuban and Soviet foreign policy objectives in the region. Yet, ironically, at the same time that the Reagan administration continued to seek solutions through surrogate military action and aid, the Soviet Union under Gorbachev was attempting by economic and political pressures to move Nicaragua and Cuba in a direction compatible with U.S. objectives. Although weapons shipments to Nicaragua through Cuba continued for several years, both the Cubans and Nicaraguans were pressured increasingly by Moscow to open up their economies and to integrate them into the world system. At the same time the message from Moscow to Managua was that the FSLN government had to find a political solution to its situation rather than rely on military victory. Gorbachev also rejected violence as a means to revolutionary change, including the export of revolution.

Several signals revealed Soviet intent during the course of 1988-89. The first was a letter from Gorbachev to Costa Rican President Oscar Arias in April, 1988, insisting that the Soviet Union was not sending weapons to insurgent forces in Guatemala and El Salvador.<sup>8</sup> A second was the June meeting of the Congress of People's Deputies which stressed that the USSR had to integrate into the world economy and to accept the economic principles associated with such integration. A third came in a personal letter from Gorbachev to George Bush in October in which the Soviet leader stressed that there had been no arms shipments from the USSR to Cuba since the year before, although Nicaragua continued to receive foodstuffs and oil products, on which it was dependent. That fact was confirmed by U.S. officials in the fall of 1989 at the time that Nicaragua and the international community were working feverishly to put the machinery in place for the February, 1990 elections.<sup>9</sup>

If Soviet intent was clear by 1989, Nicaraguan and Cuban compliance was less certain, either ideologically in the idea of "revolution without borders," or in terms of arms shipments to El Salvador, which appear to have continued through 1989. In October of that year Soviet Foreign Minister Shevardnadze met on several occasions with President Ortega, the Sandinista National Directorate and the diplomatic corps in an effort to press the Soviet perspective. Several developments placed additional strains on the new Soviet-American cooperation. One was the fact that Moscow found it difficult to bring

Havana and Nicaragua into line. Nonetheless, the reality was that in the course of 1989-90, the United States and the Soviet Union achieved a substantial level of understanding and cooperation in the region. This in turn isolated Cuba from the mainland and undermined its ability to shape events in Central America.

Throughout the course of the Central American crisis during the 1980s, Canadian officials, like their American counterparts, were concerned with the serious national security problems generated by the instability in the region. Concerns over national security were not limited to the Soviet-Cuban presence in the region. Instability, whether provoked by external intervention or internal civil strife, poverty and class struggle, produced a significant degree of out-migration from the region, initially into the neighboring countries of Costa Rica and Mexico and subsequently into the United States and Canada. Regional refugees were hardly a new phenomenon, but the Central American crisis of the 1980s served to underline a reality that, along with such issues as narcotics trafficking and environmental degradation, national security concerns now wore a broader face.

Consistent with its historic Cold War role as a middle power caught between the two superpowers, Canada sought to nurture a peaceful and negotiated settlement to the tensions in the region, balancing there, as in Cuba, the more bellicose stance of the United States. Canadian policy included the continuation of development aid programs even in those countries which, like El Salvador and Guatemala, had dismal human rights records, on the grounds that constructive engagement even with repressive regimes would more likely bring about change than ostracism and belligerence. Significantly, Canadian officials in the Tory government of Brian Mulroney encouraged the Contadora peace process sought by those countries not engaged in the bloodshed (Panama, Colombia, Venezuela and Mexico) and led by President Oscar Arias of Costa Rica after their initial meetings in 1983. Pro-United States as Prime Minister Mulroney may have been and certainly he was perceived in that manner, he was accurate when he indicated in a 1986 letter that Canada, unlike the Republican government of Ronald Reagan, did not support a military solution to the Central American crisis, and that the Canadian government perceived the origins of conflict in the area as social and economic in nature rather than the imported Soviet/Cuban-inspired revolution that the United States stressed.<sup>10</sup> Canada also played an

important role in the planning and implementation of the internationally monitored February, 1990, national elections which removed the Sandinista government from power in favor of a coalition of opposition parties.<sup>11</sup>

The end of the Cold War, the Sandinista electoral loss, and the withdrawal of the USSR from the Caribbean left Cuba extremely isolated in the Western Hemisphere as the decade of the 1990s began. Canada's role in the Central American crisis and its ongoing engagement of Cuba enhanced its credibility in hemispheric affairs, at the same time making Canada more vulnerable to U.S. criticism for its continued support of the now isolated and increasingly impoverished and beleaguered Castro government in Cuba.

## II. THE POST-COLD WAR ERA

The end of the Cold War brought with it a new era of international uncertainty. The decades of bipolarity in international relations had been ones of both high tension and stability but the end of the balance of power left only the United States as the world's superpower, and the result was not the stability one might have anticipated but rather frequent outbursts of quasi-anarchy, terrorism and civil war, particularly in the Balkans, Africa, the Middle East and Asia. The world's major powers have consequently devoted a high degree of their energies and resources since 1990 in often futile efforts to contain ethnic and religious nationalism and the international terrorism and genocide which have frequently been their by-product.

Cuba's increasingly isolated political and economic situation after 1990, traditional anti-Castro sentiment in the United States, the Republican ascendancy in Congress, a weak presidency, and both a powerful and a determined chairman of the Senate foreign relations committee combined to make Cuba an easy and symbolic target of U.S. foreign policy in the post-Cold War years. That Canada and other important American allies would be angered and challenged by that anti-Castro policy was a casual by-product of the policy rather than its intent.

The current U.S. policy is only a marginal departure from the previous thirty years of conflict, but the major significance of the Helms-Burton law lies in the impact that it has had on America's allies rather than on the U.S.-Cuban bilateral relationship. Throughout the thirty-seven years after Castro's 26th of July Movement defeated the government forces of Fulgencio Batista, eight successive

Democratic and Republican governments sought to remove Castro from power by isolating Cuba economically and politically from hemispheric affairs, engaging in constant anti-Castro media propaganda, supporting anti-Castro Cuban nationalist groups in the United States, and provoking internal subversion of Castro's government. U.S. policy has derived from considerations of national security as well as from domestic political realities. With ten percent of the Cuban population, mostly middle class, educated and successful, concentrated in New Jersey, southern Florida, Texas and California, Cuban-Americans have played an important role in shaping U.S. policy toward their homeland, to which at least the first generation of emigres believed they would soon return once the U.S. had removed Castro as it had deposed previous leaders inimical to American interests. Cuban emigres also proved to be a major source of repatriated funds for family and friends remaining in Cuba over four decades, although this did not become a major factor until Cuban authorities in 1977 permitted family visits from the U.S. and established "diplotiendas," or dollar stores, where visiting relatives and friends but not Cubans could purchase consumer goods for their deprived relations. In 1979-80 alone, on the eve of the Mariel exodus of more than 100,000 Cubans (including released prisoners and the mentally ill from asylums) Cuban-Americans visiting the country transferred goods worth \$100 million.<sup>12</sup>

The Clinton administration had shown some early signs that it might move in a more liberal direction on Cuban policies, but domestic political realities joined with the Cuban destruction of the two civilian airplanes in 1996 to undermine any likelihood of early normalization of diplomatic relations. In the United States the reaction to the Cuban attack was vigorous and direct. A conference committee of the House of Representatives and Senate met shortly after the incident and restored Titles III and IV to a version of the Helms-Burton legislation (North Carolina Republican Senator Jesse Helms and Indiana Republican Representative Dan Burton) that had been passed previously in 1995 by both houses of Congress.<sup>13</sup> The congressional conference committee (which included members of both House and Senate) took a hard line on relations with Cuba, expressing its "profound conviction that executive branch agencies must be more vigorous in their enforcement of certain provisions of the U.S. embargo on Cuba and must be accorded the resources by the President for this purpose."<sup>14</sup> Reflecting the widespread view in

Congress that the executive branch had not been sufficiently firm in its Cuban policy, the committee stressed that "the President and executive agencies must be more vigorous in advocating U.S. policy before foreign governments." There was limited opposition to the legislation in either house. The Senate approved the legislation by a vote of 74-22; the House of Representatives followed on March 6 by a margin of 336-86.

Facing a fall presidential election and strong domestic public sentiments in support of the bill, President Clinton not only signed it but also on March 1, 1996, issued Proclamation 6867, Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels.<sup>15</sup> President Clinton subsequently claimed that he had signed the bill "regretfully but not reluctantly."<sup>16</sup> In July, 1996, reflective of the new administration orientation, Jennifer Hillman, general counsel in the Office of the United States trade representative, told the Senate foreign relations committee that the United States had a legitimate interest in "addressing a continuing threat 90 miles from our shores," and that the "decision to respond to outrageous and unlawful behavior by pariah states reflects our interest in protecting the political and economics systems that our allies and we have built over the past decades."<sup>17</sup>

### III. THE HELMS-BURTON LEGISLATION

Whatever the President's motivation and sincerity, the March, 1996, Helms-Burton law (properly titled the Cuban Liberty and Democratic Solidarity Act and also the Libertad Act) is only the latest, though a particularly invidious, U.S. attempt to crush Castro by punishing its neighbors and allies.<sup>18</sup> The legislation was also designed to discourage any form of assistance to Cuba by the states of the former Soviet Union. It requires a report to Congress detailing the progress toward the withdrawal from Cuba of personnel of any independent state of the former Soviet Union, including advisers, technicians and military personnel, from the Juragua nuclear facility near Cienfuegos, which had not been completed. In this regard, the legislation amended the 1961 Foreign Assistance Act to explicitly designate intelligence facilities at Lourdes and nuclear facilities at Cienfuegos as ones which should be dismantled before the president considered providing assistance to Cuba. It further specified that engaging in non-market based trade with Cuba would render a

country ineligible for U.S. assistance. The legislation enabled the president to waive this section of the bill if doing so was important to the national security of the United States and if the president certified that the Russian government has given assurances that it was not sharing intelligence from Lourdes with officials or agents of the Cuban government.<sup>19</sup>

The Helms-Burton law was clearly intended to escalate the propaganda war against the Castro government as well as to curtail further its ability to engage in economic relations with the rest of the world. Specifically, the House bill reaffirmed the congressional mandate to convert Television Martí to ultra high frequency and required reports to Congress by the director of the United States Information Agency until the conversion is complete. In 1994 Congress had already appropriated \$1.2 million for the conversion of Radio Martí. At the same time the legislation does include sunset provisions for both Radio and Television Martí on the president's determination that a democratically elected government is in power in Cuba.<sup>20</sup> In reconciling the House and Senate versions of the legislation, the conference committee also adopted the Senate's provisions restricting American travel and family remittances to Cuba. Before these restrictions could be lifted the president would have to confirm that the Castro government had initiated certain economic and political reforms.<sup>21</sup>

Most importantly, Title I of the Act codifies all previous anti-Castro measures forming part of the U.S. economic embargo against the Castro government. This included the 1992 Cuban Democracy Act which urged other governments to curtail their own economic ties, including the extension of credit, with Cuba. Title I mandated the secretary of the treasury to instruct U.S. citizens serving on the boards of international financial institutions to oppose the involvement of Cuba in those institutions until it had adopted democratic political institutions, including the holding of democratic elections. The legislation also restricted travel to Cuba by U.S. citizens with relatives in Cuba.<sup>22</sup>

The intent to promote a significant transformation of the Cuban political system is very clearly articulated in the law. Title II, for instance, requires the president to develop plans for economic assistance to the island once a transitional government is in place, and details the nature of the economic aid that may be provided Cuba once a democratically-elected government takes over. The legisla-

tion further stipulates that all political prisoners in Cuba have to be released and specifies that any new government, transitional or otherwise, has to exclude Fidel Castro and his brother, Raul. Any transitional government is also required to allow international investigation of Cuban prisons, to dissolve the present ministry of the interior (including the committees for the defense of the revolution and the rapid response brigades), to permit the formation of independent trade unions, and to cease any interference with broadcasts by Radio and Television Martí. Not only does the legislation require that progress be made toward returning confiscated property to U.S. citizens before any liberalization of American economic relations can occur, but there is also a stipulation that Cuba must be moving toward a market economy.<sup>23</sup> It is difficult to imagine more sweeping legislation directed toward the transformation of another nation. Significantly, the codification of previous legislation also severely handicaps the executive by reducing its flexibility in dealing not only with Cuba but with other nations affected by the law, assuming the executive wished to pursue a policy divergent from that prescribed by Congress.

The two main provisions of the act which deal with foreign nationals are Title III and Title IV.<sup>24</sup> The former permits previous owners of property in Cuba expropriated by the Cuban government after the 1959 revolution to file suit in U.S. courts against current investors in such property. Titles I and III identify confiscated property as that which was nationalized, expropriated or otherwise seized by the government of Cuba without it having been returned or adequate compensation paid, or the claim on the property having been legally resolved. The definition of property in the legislation encompasses real and personal property as well as intellectual property, including any future interests and leasehold interests in that property. In Title III "property" is not defined to include real property used for residential purposes unless the claim is held by a U.S. national and has been certified under Title V of the International Claims Settlement Act of 1949, or unless that personal property is occupied by a Cuban government official or a member of the Cuban ruling party. Trafficking also does not include trading in or holding securities that are publicly traded unless the trading is "with or by a person determined by the U.S. Secretary of the Treasury to be a specially designated national of Cuba." Hence, shares of mutual funds, for instance, which might in some way be linked with Cuban

property would not likely be affected. The legislation characterizes those investors as “traffickers in confiscated property.” “Trafficking” in the legislation is defined very broadly, including selling, transferring, distributing, dispensing, brokering, managing or otherwise disposing of expropriated property, or purchasing, leasing, receiving, possessing, obtaining control of, managing, using or otherwise acquiring or holding an interest in that property, or engaging in commercial activity or otherwise benefiting from the property or profiting from such trafficking by or through another person. U.S. nationals with claims to property expropriated by Cuba are to bring suit in U.S. courts against persons who “traffic” in such property. A claim can be brought by U.S. nationals - ie., U.S. citizens or companies incorporated in the United States who own the claim to the confiscated property. Such individuals or corporations must have been registered with the Foreign Claims Settlements Commission or have adequate documentation to demonstrate ownership. For the first two years after enactment, only claims that were certified by the Foreign Claims Settlement Commission can furnish the basis for suit. Thereafter (ie., March, 1998), uncertified claims may serve as the basis for an action, but the claim must exceed US\$50,000 in value. The legislation deviates from the usual practice in international law by permitting suits to be filed by individuals who were not U.S. nationals at the time the property was confiscated. In other words, rather than the likely 5-8,000 U.S. citizens and companies who were active in Cuba at the time of confiscation, the legislation broadens eligibility to include several hundred thousand Cuban emigres who subsequently acquired American citizenship. This includes the children of former Cuban nationals.

Claimants under the legislation are eligible to receive up to three times the value of the property certified by the Foreign Claims Settlement Commission in the event the trafficker continues to do business traffic at the end of a thirty-day period following notice of claim by the Commission. For certified claims the value is to be determined by the Commission. At the time the legislation came into effect, the Foreign Claims Settlement Commission had certified a total of 5,911 claims involving approximately \$5.6 billion, including accrued interest,<sup>25</sup> a sum that the Cuban government clearly is in no position to pay and whose capacity to pay will be further weakened by the potential curtailment of investment in the country that could result from the application of the law.

Section 306 (b) of the legislation provides the president of the United States with the power to suspend for successive periods of six months the application of Title III allowing suits against “traffickers.” In part as the result of the intense pressure that was brought to bear on the U.S. government by the European Union, the United Kingdom, and Canada, but also by Mexico and other western hemisphere countries with economic ties with Cuba, President Clinton on July 16, 1996, announced that he would suspend the right to sue for six months, and he has continued to renew the suspension since that time. But he did allow the title to come into effect, thus providing that liability for companies under the legislation would begin to accrue by 1 November 1996. He also announced that he was appointing a special envoy to work with American allies to promote democracy in Cuba.

Title IV provides for the exclusion from the United States of certain third country nationals if they “traffic” in expropriated property in Cuba after March, 1996.<sup>26</sup> The provision applied not only to the individual identified as trafficking in such property but to their spouse, minor child or agent as well. The only exceptions to the application of the provision are in instances in which the secretary of state determines that entry into the United States is necessary for medical reasons, or to defend a claim brought under Title III. The United States government moved quickly to implement this provision. The State Department sent advisory letters to three companies in June 1996, one Canadian, one Mexican (Grupo Doms) and one Italian (STET SpA), indicating that they would be barred from the United States within forty-five days unless they could demonstrate that they had ceased to traffic in Cuban property which was subject to the claim of a U.S. citizen. There is some lack of consensus on whether the “trafficking” in Cuban property applies only to actions after March 12, 1996, or to individuals whose involvement with confiscated Cuban property occurred in the 1960s, which was one view expressed in the U.S. House of Representatives conference committee.<sup>27</sup>

#### **IV. IMPACT OF THE LAW**

With the withdrawal of the Soviet Union from the Cuban economy, the economic presence of Canada has become more important for Cuba. Hence the provisions of the Helms-Burton law were of growing significance for Canadian interests. By early 1998 Canada

provided nearly one-sixth of Cuba's annual influx of 1.6 million tourists and a high percentage of foreign investment in Cuban industry. It was not surprising then, that the reaction in Canada to the legislation and its application should have been pronounced, especially since the Clinton administration had moved so quickly to implement some of the provisions. In July, 1996, the Department of State informed executives of one Canadian company, Sherritt International, which has nickel mining interests in Cuba and is one of the largest foreign investors in the country, that they would be denied entry to the United States, along with their spouses, minor children and agents. Executives of a Mexican company received similar letters from the State Department the following month, and in March, 1997, four additional Sherritt executives were informed of their exclusion from the United States.<sup>28</sup>

At least one U.S.-based firm operating in Canada, Wal-Mart, took voluntary measures to avoid violating Helms-Burton. In a quasi-comic furor over the sale in Canada of Cuban-manufactured pajamas, company officials ordered the offending garments removed from shelves in their Canadian stores. Although a seemingly insignificant matter, certainly in terms of economic and political impact on Cuba, the pajama "game" of early 1997 crystallized Canadian sensitivities on the larger issue of U.S. impact on Canadian culture and the Canadian economy. Canadian sensitivities were captured in a March 6 editorial cartoon in the *Financial Post* which depicted an overweight Wal-Mart shedding its striped pajamas before a lustful Uncle Sam shouting encouragement: "Take 'em Off!" "Not in my house, you don't," responded the robust Canadian.<sup>29</sup> A week later the hotly disputed pajamas were back on the shelves in Canadian stores.

It is difficult to determine how significant an impact the Helms-Burton law has had on foreign involvement in Cuba. One State Department official indicated that, following initial approaches by the department, a Dutch bank and a Mexican cement company had withdrawn from Cuba to avoid prosecution. Yet there are hundreds of other firms involved in various aspects of the Cuban economy, and only time will determine the extent to which they are willing to curtail their operations in and with Cuba. But there is little doubt that Helms-Burton has impinged further on an already weak economy and that the main victim in this process is the average Cuban citizen.

Opposition to the Helms-Burton legislation came not only from Canada, Mexico, the U.K. and European Union. Even Pope John Paul II condemned the legislation and the American embargo more generally in his early 1998 official visit to Cuba. On a more formal level the Organization of American States assumed a position critical of the United States. In June, 1996, thirty-three members of the OAS (only the United States was opposed) agreed to refer the issue of whether or not Helms-Burton was consistent with international law to the Inter-American Juridical Committee. The committee is an independent legal advisory body of the OAS composed of legal experts from member states. The committee issued its report in August, 1996, finding the legislation to be inconsistent with international law in several respects:

1. On the grounds that domestic courts (in this case those of the United States) are not the appropriate *fora* for the resolution of state to state claims. Rather, what Helms-Burton does is to create a private right of action to settle the outstanding claims of U.S. citizens against the government of Cuba for its confiscation of American property, without the involvement of Cuba. Every other country with citizens who had property expropriated by the Castro government settled those claims on behalf of their citizens in negotiations with Cuba. Canada settled the claims of its citizens with Cuba in 1980 and since 1959 has adhered to a clear policy of "constructive engagement" on the assumption that such an approach is more likely to produce change in Cuban politics than the U.S. policy of isolation and embargo. In the view of its critics, Helms-Burton identifies the wrong parties for compensation; ie., the individuals and companies of third countries rather than the Cuban government. In the event that such claims are denied by the Cuban government, they can be referred to the international claims tribunals, as was the case with claims between the United States and Iran, or brought before the International Court of Justice.

2. The Inter-American Juridical Committee also found that the Helms-Burton legislation was inconsistent with international law in its provision of rights to those who were not U.S. nationals at the time the confiscation of the property occurred. When it first addressed the matter of confiscated Cuban property in the 1960s, the U.S. Foreign Claims Settlement Commission stated that: "The principle of international law that eligibility for compensation requires American nationality at the time of loss is so widely understood and universally accepted that citation of authority is scarcely necessary."<sup>30</sup>

3. The Juridical Committee further concluded that the Helms-Burton legislation asserted unjustified extraterritorial jurisdiction over companies investing in Cuba and hence was in violation of international law. A basic premise under international law for establishing legislative and juridical jurisdiction is rooted in the principle of territoriality. Under that principle, a state may justify the application of the laws of its territory only insofar as an act occurring outside its territory has a direct, substantial and foreseeable effect within its territory and the exercise of such jurisdiction is reasonable.<sup>31</sup> Nothing in the Cuban situation was found to justify an extension of U.S. law beyond its territory. The Commission rejected the application in the Cuban instance of the international law doctrine of effects, which recognizes the right of a state to extend law beyond its jurisdiction if there is conduct that has or threatens to have "substantial effect" within its territory. In other words, the United States would have to be able to demonstrate that the conduct of foreign persons and companies with interests in Cuba was having a substantial impact within United States territory. Since the major objective of the legislation is not to protect American companies and individuals but rather to alter the Cuban government, it is impossible to justify Helms-Burton under the effects doctrine. To be considered legitimate under international law, the application of extra-territoriality would require that the action be reasonable, which the Inter-American Juridical Commission did not conclude was the case.

4. Finally, the IAJC found that "any use by nationals of a third state of expropriated property located in the expropriating state, as well as the use anywhere of products or intangible property not constituting the expropriated asset itself, does not contravene any norm of international law."<sup>32</sup>

Helms-Burton is an ill-conceived secondary boycott which badly blurs the lines between foreign policy and trade policy. It is extra-territorial in scope, since those to be prosecuted under the law are not Cubans but all others, regardless of nationality, who seek to do business with Cuba. Even more important is the fact that the legislation runs against the longstanding postwar U.S. commitment to trade and investment liberalism and international trade regimes as embodied in GATT, WTO, NAFTA, the drive for a Free Trade for the Americas which emerged from the 1994 Miami Summit, and the current U.S. support for a Multilateral Agreement on Investment

(MAI) which is intended to remove restrictions on the international flow of investments. Helms-Burton violates several other basic premises of the NAFTA accord with Canada and Mexico, notably under Article 1105, which requires the United States to accord "fair and equitable" treatment to Canadian and Mexican investors, or Article 1603(1) which provides temporary entry to the United States of several classes of business professionals. The law also contradicts historical reality, since it was the United States rather than the Cuban government which broke off negotiations over compensation. It is curious, to say the least, that the United States is the only nation in the world which has not reached a compensation settlement with Cuba.

The Clinton administration sought to counteract the impact of the legislation on its allies by exercising power delegated under Title III permitting the president to suspend the effective date of the section for a period not to exceed six months if the president "determines and reports in writing to the appropriate congressional committees ... that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." The section allows additional suspensions every six months on the same terms. At the date of writing President Clinton has consistently extended the application of Title III, although no comparable suspension provision exists for Title IV.<sup>33</sup> The Clinton administration also appointed Ambassador Stuart Eizenstat to serve as a special envoy to Canada to address issues arising from the legislation and to mute criticism of the United States for engaging in unilateral action.<sup>34</sup> The reality is that liability began to accrue on November 1, 1996, and the Department of State established a special office to facilitate the claims process.<sup>35</sup>

The Canadian government responded by passing amendments to the Foreign Extraterritorial Measures Act. Bill 54, which was approved by the Canadian House of Commons in September, 1996, passed review by the Standing Committee on Foreign Affairs and International Trade and went into effect on January 1, 1997.<sup>36</sup> It allows the attorney general to issue orders blocking any attempt to enforce Helms-Burton judgments in Canadian courts and to "provide recourse to Canadian companies to sue in Canadian courts for damages to recover amounts awarded against them in Helms-Burton proceedings initiated in the United States." Canada also initiated a challenge to Helms-Burton in April, 1996, under NAFTA, although the Canadian government did not immediately request a dispute

settlement panel. Two rounds of NAFTA consultations were held in Washington in April and May, 1996, and a NAFTA Commission meeting was held in late June.<sup>37</sup> When President Clinton in January, 1997, renewed the suspension of the right of U.S. companies to file suit under the Helms-Burton legislation for an additional six months, Foreign Affairs Minister Lloyd Axworthy and International Trade Minister Art Eggleton expressed appreciation for the short-term benefits of the decision. But they noted that the measure was only a temporary one, that Canadian companies remained vulnerable under Title III, and that the president's actions did nothing to modify the application of the legislation's entry provisions. The Canadian government's position continued to serve as a call for the United States to repeal the legislation entirely.<sup>38</sup>

Even within Cuban dissident circles Helms-Burton and the ongoing U.S. ostracism of the Castro regime has not been unanimously applauded. Writing in the *New York Times* in early 1997, Elizardo Sanchez Santacruz, who is director of the Cuban Commission for Human Rights and National Reconciliation and who has spent nine years in Cuban prisons as a result of his opposition to Fidel Castro's repression of civil liberties, vigorously criticized U.S. policy. Sanchez contended that the sanctions only served Castro's ends by providing further excuse for his refusal to implement internal reforms, in particular to modify the centralized economy and "strait-jacketed political culture." For Sanchez, internal reforms in Cuba require that the United States, along with other nations, dissident groups, and the current Cuban government, participate in a broad dialogue on the future of Cuban society. For him, Helms-Burton further isolates the United States from such an essential process and undermines the opportunities for Cuban transformation. Even with Helms-Burton in place, Sanchez argues that the United States could play a "less obstructionist role" by facilitating Cuban engagement with Canada, Europe and Latin America to encourage economic and political liberalization. He also urged the United States to permit the return of Cuba to the Organization of American States and to allow the free movement of Americans to Cuba, in a spirit consistent with the Helsinki accords, and to lift the embargo on sales of food and medicine, a ban that violates international law and harms innocent citizens rather than the Castro government.<sup>39</sup>

Significantly, criticism of the legislation has come from within the United States. The National Association of Manufacturers com-

plained to President Clinton about the deleterious impact of Title II on the major trading partners of the United States and their potential retaliation against American interests. In a similar vein, in July, 1996, the National Foreign Trade Council, the Organization for International Investment, the U.S. Chamber of Commerce, the European-American Chamber of Commerce, and the U.S. Council for International Business cautioned the president that Helms-Burton would have a negative impact on America's major trading partners, who would in turn implement countermeasures against United States firms.<sup>40</sup> Major voices in the media have also been critical not only of U.S. policy but of Senator Helms personally. On June 7, 1997, the *New York Times* editorialized that "neither the Senate nor the nation is well served by Mr. Helms' erratic performance and senseless showdowns. It is a maddeningly persistent irritation that this limited man occupies such a central role in American foreign policy." Fair criticism or not, the analysis fails to take into consideration the fact that the Helms-Burton legislation passed overwhelmingly in both houses of Congress and was signed by the president. Responsibility for the bill was much broader than Senator Helms' own aging shoulders.

The official American position on the legislation is that the U.S. wishes to enlist the assistance of foreign governments to accomplish American foreign policy objectives in Cuba, specifically identified as democratization and a change in the personnel of the Castro government. To that end American officials have encouraged Canadian and other foreign nations and nationals active in Cuba to support non-government organizations seeking peaceful change. They ask that foreign firms engage in direct hiring of Cuban nationals rather than going through a Cuban government agency, to use fair employment practices, and to respect the environment. As Eizenstat indicated in Ottawa in August, 1996, "if there is to be trade, if there is to be investment, it ought to be at a higher standard of involvement so that it helps the people of Cuba." Such diplomacy has had some positive results. The European Union, for instance, issued a declaration calling for reforms in Cuba in human rights and political freedoms. But at the same time the European Union has joined Canada in its basic opposition to the Helms-Burton law itself. The Council of Ministers approved a motion declaring the legislation to be in violation of international law and decreeing that any company established in Europe that is subjected to a judgment under the Act may "claw

back" against the assets of the American plaintiff in any one of the European Union's states.<sup>41</sup> In the spring of 1997 France signed an accord with Cuba protecting French companies that invest there. Trade minister Franck Borotra indicated that the government of France was sovereign and independent in its decisions, and he assured Cuban authorities that France would continue to fight the Helms-Burton legislation. If the United States did not modify the terms of the law, he cautioned, France and the European Union would insist on reconvening a World Trade Organization panel that was to decide on the international legal standing of the law. That month (April, 1997) the European Union had suspended its claims before the WTO in return for a commitment from the Clinton administration that it would seek to eliminate from the law the provision denying U.S. visas to the executives of offending foreign firms.

According to Borotra, France became the nineteenth European country to sign a bilateral investment agreement with Cuba after the latter had opened its doors to foreign investment in 1993. Like Canada, the French have consistently argued that constructive engagement is a more effective policy in encouraging growth and change in Cuba. "How else," Borotra queried, "except by encouraging growth and satisfying their needs can we help bring about the better standard of living the Cuban people aspire to today, in an environment that remains full of conflict and bars them normal access to international trade."<sup>42</sup>

Even before the passage of Helms-Burton, the withdrawal of the Soviet Union as a major player in Cuba, combined with the U.S. economic embargo, had a serious deleterious impact on the Cuban economy. Between 1986 and 1995 Cuba's GDP declined from \$19.3 million (U.S.) to \$12.8 million. Exports fell from \$6.4 million to \$1.4 million. Imports dropped from 49.1 million to \$2.6 million. Only tourism showed a steady increase both in the numbers of tourists visiting the island's resorts and in the revenues they generated. While only 200,000 tourists had visited Cuba in 1986, by 1995 that number had risen to 740,000, producing revenues of almost \$1 billion in contrast to just \$98 million in 1986.<sup>43</sup>

Clearly, Helms-Burton has contributed little to the stated objective of the legislation, democratization in Cuba, and substantially diverted the attention of American allies away from Cuban reforms to coping with the law itself. It has made foreign firms nervous about continuing or expanding their investments in Cuba, and in that sense

the main impact of the legislation has been to irritate America's most important trading partners, including Canada, Mexico, and the European Union.

The Canadian position on Cuba certainly has not been altered either by the Helms-Burton law or by U.S. diplomatic pressure. The official Canadian approach to Cuba continues to stress engagement and the encouragement of political liberalization, as it has for the past four decades. Canada has consistently urged Cuban authorities to honor its international obligations, particularly on civil and political rights. When the Cuban foreign minister visited Canada in 1995, human rights was high on the Canadian agenda, and he met with both the UN Commissioner for Human Rights and with former NDP leader Edward Broadbent, director of the Montreal-based International Centre for Human Rights and Democratic Development. Cuba in turn ratified the United Nations Convention Against Torture in May, 1995. In the same year, Canada was among the first nations to express official concern at the extreme sentence received by Cuban human rights activist Francisco Chaviano from Cuban courts. As with the United States, Canada was vigorous in its criticism of the Cuban government in early 1996 for its harassment of the *Concilio Cubano*. Yet critical of Cuba as Canadian officials have been, the Liberal government of Jean Chretien has continued to engage the Caribbean nation in dialogue. Foreign Minister Lloyd Axworthy traveled to Cuba in January, 1997, to sign declarations on human rights and foreign investment, meeting with Castro on that occasion amidst criticism from U.S. officials. Through the Partnership Program the Canadian International Development Agency has provided substantive funding for Canadian NGOs working with grassroots partners in Cuba to promote economic development and modernization. There has been an active program of Canada-Cuba parliamentary exchanges to facilitate an open dialogue on mutual concerns and interests.

The Chretien government continued its policy of active engagement and public snubbing of the U.S. position by paying an official visit to Castro in late April, 1998. Prime Minister Chretien indicated that he had talked with President Clinton about the controversial visit in an effort to smooth ruffled American feathers. Castro and Chretien discussed a range of issues during the almost two-day visit, from human rights to economic and cultural relations. The two governments signed accords on health, film and sports cooperation,

and Chretien was able to announce that they had reached agreement in principle for Cuba to pay compensation on the assets of Canadian insurance companies that were expropriated following the 1959 revolution. In fact, Cuban announced prior to the arrival of the Canadian delegation that it was releasing nine million dollars to cover that property in order to pave the way for a bilateral investment agreement. There was also an effort to address the issue of political repression. Appropriately, Chretien himself did not talk with Cuban dissidents on this visit, but two senior aides met with four jailed political prisoners: Marta Roque, head of the Independent Economic Institute; Vladimiro Roca, president of the dissident Social Democratic Party; Felix Bonne, head of Civic Current, a human rights group and an economics professor at the University of Havana; and Rene Gomez, leader of the Independent Lawyers Association. They had been arrested in 1997 for criticizing Communist Party policy documents and had yet to be provided with a trial.<sup>44</sup>

From a Canadian perspective, this process of "constructive engagement" (the precise term the United States had used to describe its policy toward the white minority regime in South Africa)<sup>45</sup> has produced some results over the past few years, including the emergence of farmers' markets, the "dollarization" of the economy, and family economic enterprises, all of which are moving Cuba in the direction of a more open, market-based economy. This is one of the stated objectives of the Helms-Burton legislation. As well, the bilateral discussions between Canadian and Cuban officials, including Chretien and Castro, on human rights issues could not have occurred without official relations between the two countries. In this sense once again, Canada can be seen to be serving the real interests and foreign policy objectives of the United States while the Clinton administration hides behind the veil of political caution. President Clinton in fact directly referred to the beneficial consequences of the Canadian presence during the Chretien visit, suggesting that Canada could be an effective advocate for change on the island. At the same time it must be stressed that neither Pope John Paul II's nor Prime Minister Chretien's visits in 1998 have led to a significant softening of the Castro government's stand on political dissidents.

## V. CONCLUSION

The saga is certainly not over four decades after Castro came to power. Throughout those years a small nation barely ninety miles from the Florida coast has managed to defy the will of the world's major superpower. As much as one can appreciate the historical factors that have contributed to the direction and nature of U.S. policy toward Cuba, in particular the previous Soviet presence and most notably the psychological and strategic impact of the 1962 Missile Crisis, the United States stands alone in the world in its narrow, parochial, and to date unsuccessful policy approach to Cuba. Both nations have paid a very high price for the confrontation; both nations have been the self-imposed victims of the historical legacy of imperialism, colonialism, dependency and superpower rivalry. For almost thirty years Castro's government substituted one dependency for another, virtually eliminated real political and economic freedom in order to avoid further engagement with the United States, and used hundreds of thousands of Cubans as pawns in a vicious political conflict. Both countries have violated the sovereignty of their neighbors in the course of the struggle - Cuba with its export of revolution; the United States with its export of counter-revolution. If one can legitimately speak of tragedies in the relationships between certain nation states, the Cuban-American confrontation has truly been one. It is too easy to condemn U.S. imperialism or to critique Castro for the ills of Cuban society. In this case, the failure has been a mutual one of two nations, two peoples, locked in a historical trap from which they seem incapable of extricating themselves.

For Canada, relations with Cuba are less central to the foreign policy agenda or to the domestic political arena than they have been in the United States. Canada has neither a significant and concentrated Cuban émigré population nor the vested historical interest in the political economy and culture of the island nation. From the time of its occupation of the island following the Spanish-American-Cuban War in 1898 and the establishment of its protectorate over the liberated Spanish colony, the United States has held a special place in Cuban politics, economics and society. The historian Luis Perez, Jr., describes that Cuban-American relationship as "ties of singular intimacy." Canada has never approximated that degree of involvement in its relations with Cuba, and to some degree therein lies the fundamental difference between the policies of the two nations regarding the Caribbean nation. Canada is thus almost an interloper

in a domestic squabble between two intimates when it comes between the United States and Cuba in its own quest to establish the autonomy of its foreign policy from that of the United States. As with any intervention between two such intimates, Canada and its policymakers cannot expect to escape unscathed when its more powerful and committed neighbor is determined to pursue a policy that runs counter to Canadian interests. Although both the United States and Canada are dedicated to the achievement of a more liberal and democratic Cuban government with a higher degree of tolerance for political dissent, and they also share a commitment to promote a free market economy in the Caribbean region, for the foreseeable future they appear destined to clash over the best means to be employed in the pursuit of their common goals.

## ACRONYMS

CIA	Central Intelligence Agency (U.S.)
FLQ	Quebec Liberation Front
FSLN	Sandinista National Liberation Front (Nicaragua)
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
IAJC	Inter-American Juridical Commission
ICAO	International Civil Aviation Organization
MAI	Multilateral Agreement on Investment
NAFTA	North American Free Trade Agreement
NDP	New Democratic Party
NGOs	Non-governmental organizations
OAS	Organization of American States
USSR	Union of Soviet Socialist Republics
WTO	World Trade Organization

## NOTES

<sup>1</sup> John Herd Thompson and Stephen J. Randall, *Canada and the United States: Ambivalent Allies* (London and Athens: University of Georgia Press, 1994).

<sup>2</sup> Judith Ewell, *Venezuela and the United States: From Monroe's Hemisphere to Petroleum's Empire* (Athens: University of Georgia Press, 1996); S.J. Randall, *Colombia and the United States* (Athens: University of Georgia Press, 1992); Thompson and Randall, *Canada and the United States*.

<sup>3</sup> There are insightful discussions of these years in: Edgar J. Dosman, "Hemispheric Relations in the 1980s: A Canadian Perspective." *Journal of Canadian Studies*, 19 (Winter 1984-85); J.L. Granatstein and Robert Bothwell, *Pirouette: Pierre Trudeau and Canadian Foreign Policy* (Toronto: University of Toronto Press, 1990). See also J.C.M. Ogelsby, "Canada and Latin America," in Peyton Lyon and Tareq Ismael, eds., *Canada and the Third World* (Toronto, 1976); Stephen J. Randall "Canadian Policy and the Development of Latin America," in Norman Hillmer and Garth Stevenson, eds., *Foremost Nation: Canadian Foreign Policy and a Changing World* (Toronto: McClelland and Stewart, 1977).

<sup>4</sup> Author's discussion of Canadian Central American policy with the right Honourable Joe Clark, Calgary, 1997.

<sup>5</sup> Robert A. Pastor, *Whirlpool: United States Policy Toward Latin America and the Caribbean* (Princeton: Princeton University Press, 1992), pp. 56-57.

<sup>6</sup> U.S. Government, *Weekly Compilation of Presidential Documents*, XXI (11 February 1985), 145.

<sup>7</sup> U.S. Department of State/Department of Defense, *Grenada: A Preliminary Report* (16 December 1983); U.S. Department of State/Defense, *Grenada Documents* (Washington, D.C., 1984); U.S. House of Representatives, Committee on Foreign Affairs, *U.S. Military Actions in Grenada: Implications for U.S. Policy in the Eastern Caribbean*, 98 Congress, 1st Session, 3 November 1983.

<sup>8</sup> J. S. Adams, *A Foreign Policy in Transition: Moscow's Retreat From Central America and the Caribbean, 1985-1992* (Durham & London: Duke University Press, 1992), p. 136.

<sup>9</sup> Adams, *Moscow's Retreat*, pp. 110-112.

<sup>10</sup> For a thorough though one-sided account of the Mulroney years in Canadian Central American policy see James Rochlin, *Discovering the Americas: the Evolution of Canadian Foreign Policy Towards Latin America* (Vancouver: University of British Columbia Press, 1994), pp. 145-165. Mulroney's letter is cited in Rochlin, p. 157.

<sup>11</sup> The author was part of the small Canadian delegation to that electoral monitoring process, working with the United Nations.

<sup>12</sup> Luis Perez, Jr., *Cuba and the United States* (London and Athens: University of Georgia Press, 1990), p. 256.

<sup>13</sup> 104th Congress, 2d Session, House of Representatives, Conference Report, *Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996* (March 1, 1996). 104th Congress, 1st session, S. 381, A Bill to strengthen international sanctions against the Castro government in Cuba, February 9, 1995; 104 Congress, 1st Session, An Act to seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, October 10, 1995.

<sup>14</sup> Conference Report, p. 46.

<sup>15</sup> *32 Weekly Compilation*, Presidential Document 374 (March 4, 1996)

<sup>16</sup> *New York Times*, April 12, 1997.

<sup>17</sup> U.S. Congress, Senate, Committee on Foreign Relations, Hearing Before the Subcommittee on Western Hemisphere and Peace Corps Affairs, *The Libertad Act: Implementation and International Law*, 104 Congress, 2d Session (July 30, 1996), pp. 12- 13.

<sup>18</sup> Cuban Liberty and Democratic Solidarity (Libertad) Act, Public Law No. 104-114, 110 Stat. 785 (1996).

<sup>19</sup> Conference Report, p. 47.

<sup>20</sup> Conference Report, p. 49.

<sup>21</sup> Conference Report, p. 51.

<sup>22</sup> U.S.C. # 6001,, 6021, 6034, 6042, 6022. For a discussion of pre-1996 sanctions against Cuba, see Elizabeth Abi-Mershed, "United States Economic Measures Against Cuba," *American Journal of International Law*, 89 (1995), 868.

<sup>23</sup> 22 U.S.C. # 6062(b), 6065(a), 6066.

<sup>24</sup> The author is indebted for this discussion of the provisions of the Helms-Burton legislation to Joanne Osendarp, Investment Trade Policy Division, Department of Foreign Affairs and International Trade (Canada) who shared her notes from a presentation to the Calgary branch of the Canadian Institute of International Affairs (October 1996).

<sup>25</sup> Kern Alexander and Jon Mills, "Resolving Property Claims in a Post-Socialist Cuba," *Law and Policy in International Business*, 27 (1995), 137.

<sup>26</sup> United States Information Service, "Background on the Helms-Burton Bill," 5 September 1996, available electronically at [www.usis-canada.usia.gov/helms.htm](http://www.usis-canada.usia.gov/helms.htm).

<sup>27</sup> Cited in Craig R. Auge, "Title IV of the Helms-Burton Act: A Questionable Secondary Boycott," *Law and Policy in International Business*, 28 (Winter 1997), 582.

<sup>28</sup> *Wall Street Journal*, July 11, 1996, March 17, 1997; *Globe and Mail* (Toronto), March 15, 1997.

<sup>29</sup> See also David Sanger, "U.S.-Canadian Split on Cuba Tangles Wal-Mart's Pajamas," *New York Times*, March 6, 1997.

<sup>30</sup> Cited by Joanne Osendarp, presentation on Helms-Burton to the Calgary branch of the Canadian Institute for International Affairs, October 1996.

<sup>31</sup> Cited in Osendarp. On effects doctrine and extraterritoriality see Vaughan Lowe, "US Extraterritorial Jurisdiction: the Helms-Burton

and D'Amato Acts," *International and Comparative Law Quarterly*, 46 (April 1997), 378-390.

<sup>32</sup> Cited in Osendarp.

<sup>33</sup> See Thomas Lippman, "Clinton Suspends Provision of the Law that Targets Cuba: Move Defuses Spat with Major Allies," *Washington Post*, January 4, 1997. For a more detailed analysis of this provision see Craig Auge, "Title IV of the Helms-Burton Act: A Questionable Secondary Boycott," *Law and Policy in International Business*, 28 (Winter 1997), 575-591.

<sup>34</sup> Eizenstat press conference, Ottawa, August 30, 1996, available online, [www.usis-canada.usia.gov/helms.htm](http://www.usis-canada.usia.gov/helms.htm). Eizenstat is also Under-secretary of Commerce and a former U.S. Ambassador to the European Union.

<sup>35</sup> Joanne Osendarp, Trade Adviser, Canadian Department of Foreign Affairs and International Trade, presentation to the Canadian Institute of International Affairs, October 1, 1996 and interview with the author, October 2, 1996.

<sup>36</sup> Canada, Department of Foreign Affairs and International Trade, News Release, December 30, 1996.

<sup>37</sup> Osendarp presentation, October 1, 1996.

<sup>38</sup> Canada, Department of Foreign Affairs and International Trade, News Release, January 3, 1997, No. 1.

<sup>39</sup> "Cuba Can't Change on Its Own," *New York Times*, April 22, 1997.

<sup>40</sup> Cited in Osendarp, presentation to the Canadian Institute of International Affairs, October 2, 1996. For a U.S. academic critique see Stephen A. Lisio, "Helms-Burton and the point of diminishing returns," *International Affairs*, 72 (October 1996), 691-711.

<sup>41</sup> *New York Times*, December 4, 1996, A8. See also the analysis by Theodore Meron and Detlev Vagts, "The Helms-Burton Act: Exercising the Presidential Option," *American Journal of International Law*, 91 (January 1997), 83-84.

<sup>42</sup> *New York Times*, April 26, 1997, I3.

<sup>43</sup>United Nations, Economic Commission for Latin America (CEPAL), *La inversion extranjera en Cuba* (1995); tourism data from Lisio, "Helms-Burton and the point of diminishing returns," p. 697.

<sup>44</sup>*The Tampa Tribune* (April 28, 1998). Andrew Purvis, "Was It Worth It?" *Time* (May 11, 1998)

<sup>45</sup> Purvis, "Was it Worth it?" *Time* (May 11, 1998).

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