

**The Helms-Burton Law:
Development, Consequences, and Legacy
for Inter-American and European-U.S. Relations¹**

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ABSTRACT

The so-called Helms-Burton law has attracted the attention of International Law scholars, political scientists, and experts in international relations. The expectations of long and hard legal procedures reaching up the U.S. Supreme Court have not been confirmed in part due to the temporary suspension of some of the law's most controversial aspects. Title III would allow the former owners of properties confiscated by the Cuban government to sue the individual or companies who would "traffick" with them by buying, selling, or investing. The transitory agreement signed by Washington and Brussels in fact froze the process of an inter-Atlantic confrontation. However, additional measures by the U.S. Congress have maintained the tension and the possibilities of future legal procedures.

As a legacy of the origin, development and consequences of the law, two dimensions are still solid candidates for analysis. On the field of international relations, there stands the impact exerted by the domestic political motivation of the law on the overall network of the international links of the United States with the rest of the world, especially regarding free trade agreements and commerce organizations such as the OMC. In the second place, the nature of the Helms-Burton law will continue to attract jurists because of the complexity of its different measures, the different interpretations on its constitutionality, and the alleged violation of international law. This paper combines both dimensions.

I Development

On April 11, 1997, the European Commission, represented by its Vice President and U. K. commissioner Leon Brittan, as responsible for foreign trade and relations with North-America, and the government of the United States, represented by Under-Secretary of State for Foreign Trade Stuart Eizenstat, agreed on a compromise that in effect would temporarily neutralize the Helms-Burton law, just a year after its approval. In the event that all the portions of the agreement are implemented, which depends on (very arduous) congressional approval in part, this accommodation will represent the end of one of the most serious episodes of disagreement between Washington and Brussels since the end of the Cold War, as well as between the U.S. and its partners in NAFTA. In this fashion, a potential commercial war with an origin in U.S. domestic politics will have been aborted. Both parties realized the consequences of their fixed positions and the effects of their respective actions.

The balance sheet reveals that, on the one hand, the main authors and advocates of the law did not seem to show a noticeable degree of concern for the international repercussions of the legislation; the local and congressional objectives were paramount. On the other hand, there was no apparent slowdown motion in the path of confrontation taken by U.S. commercial partners in Europe and the Americas when they perceived that their legitimate interests were on the road to suffer serious damage. The law was interpreted as a grave violation of international conventions, basically centering around the issue of extraterritoriality. In a world currently ruled by the priority of free trade schemes as remedy for economic malaise, a legal instrument that tries to curtail the free flow of goods and investment seemed to be a candidate for active criticism and open opposition in all available forums. A trade war between the U.S. on one side and the European Union, Canada and Mexico on the other was in the making with no clear end in sight.

However, confrontation between usually amicable political allies and partners has proved to be feasible when affordable. That means (in the case of European states, Mexico or Canada), when the cost (political and commercial) for standing up to the U.S. is not exorbitant. In the case of Washington, the cost effective pattern of behavior consists of trying in an arrogant manner to lead the world with no concern for

international traditions. While the general wisdom that all politics are local is still valid, the restricted domestic rules and scenarios dominated by the evolution of the Helms-Burton law were destined sooner or later to be controlled by the realities of world markets and the dictates of a global economy. There will always be a limit for public activity fashioned only for local consumption.

In the minds of the American advocates of the Helms-Burton law and similar bills, the cost of a much bigger damage to the U.S. economy finally managed to impose the full force of its argument. The limit was in the form of the early death of newly born World Trade Organization. In the case of Mexican and Canadian interests the border not to be crossed was their investment in NAFTA. In all cases, when the conflict caused by the Helms-Burton legislation has obviously endangered sensitive trade networks, all parties have finally resorted to compromise -after making the corresponding political and media statements. While the tentative truce accorded between the U.S. and the European Union is and probably will be for sometime contested in the U.S. Congress, with the result that the other side will maintain its promise of retaliation, at the end all parties will be forced again to come to the table and negotiate an agreement.

With this central thesis in mind, in the following pages the subsequent chapters of the evolution and consequences of the Helms-Burton law are exposed, analyzed, and interpreted in the global and the specific regional settings of the European Union (especially Spain), Canada and Mexico.

Context and Origins

The objective of the United States government's "Cuban Liberty and Democratic Solidarity Act of 1996, "better known as the "Helms-Burton Law," has been fundamentally political: it has aimed to discourage foreign investment in Cuba (through the threat of lawsuits and the imposition of restrictions to travel to and from Cuba). More fundamentally, it seeks to generate a deeper economic deterioration in order to accelerate the fall of the current Cuban regime. This goal reflects the influence and importance of Cuban exiles in the United States. This influence includes their impact on domestic politics (not only at the municipal level in metropolitan Miami, but also in the rest of the state of Florida and other Hispanic enclaves), their relevance on congressional and presidential elections, and their subsequent pressure on foreign policy design.

The legislative origin of the law resides in the so-called "Torricelli Law" and other previous legal

instruments. Its development extends from its proposition as a bill, and includes its congressional approval, its presidential endorsement on March 12, 1996, and the subsequent and provisional suspension (for renewable periods of six months) by president Clinton of the controversial Title III. This part of the law contemplates legal action against individuals or companies maintaining commercial relations of any type with respect to properties formerly belonging to U.S. citizens (including former Cuban citizens who later became U.S. nationals) that were confiscated by the Cuban Revolution.

The consequences of the law have been thus far more evident in the political arena and have exerted a more significant impact on the realm of international diplomacy than in trade and investment networks, notwithstanding the fact that its influence in these two fields is by no means negligible. Curiously, in addition to discouraging foreign investment in Cuba, the diplomatic disputes and public arguments caused by the law have supplied justification to U.S. sectors opposed to free-trade agreements undertaken or currently contemplated, especially in regard to Mexico, Canada and the member states of the European Union. Not coincidentally, these are the countries most affected by the law and thus the most vocal in their opposition to it. Foreign responses followed very closely the initiative undertaken by the U.S. government. Some patterns of action were very consistent. For example, the European Union adopted in November 1996 a Common Position, without precedent in European-Latin American relations with respect to a cooperation agreement with Cuba conditioned to democratization, as one of the first experiments in the incipient Common Foreign and Security Policy (CFSP).

In contrast, all the United States allies in Europe had previously changed their positions from an ambiguous attitude with respect to the U.S. embargo to a voting pattern in the United Nations explicitly opposing coercive measures against Cuba. As a reflection of the attitude of the member states since the announcement of the Torricelli law, the main European Union institutions have issued declarations and approved resolutions extremely critical of the policies of the United States. At the same time, the EU has denounced the violations of human rights in Cuba.² Latin American countries that had exerted certain

²See resolutions of the European Parliament for 1987, 1988, 1990, 1992, 1993 and 1996, as specified in the bibliography. For a complete, chronological review see the compilation published by IRELA (1996, pp. 769-803) regarding documents generated in the last twenty years of European Union-Latin American relations.

pressure on Castro have in turn condemned the law in different forums, such as the Organization of American States and the Ibero-American Summits. Significantly, the Helms-Burton law has not had any appreciable success in accomplishing its fundamental objective (the end of the Cuban regime). On the contrary, it seems to have provided a new incentive to the Cuban dictatorship to persist in its hard line political stance.

This scenario began to take shape at the beginning of the 1990s, when two complementary developments took place. The first was the end of the Cold War with the subsequent search by the U.S. for a new role in the new world order. The second was the perception in some U.S. circles and in the Cuban exile community that the new political environment, far from facilitating the disappearance of the Castro dictatorship, could convert Cuba into a low priority item in the political and strategic agendas. Cuba no longer posed a risk to U.S. security, as multiple analyses offered by the Pentagon and the U.S. intelligence community made abundantly clear. While in the past military intervention or assassination attempts were part of the theoretical agenda, such drastic "solutions" were now off the drawing board.

This correct perception was confirmed by the fact that European and Latin American interests were eager to improve commercial and investment relations with Cuba. At the same time, U.S. companies not only had maintained indirect links with Cuba, but were anxious to have them directly in the short or medium term. The views of the hard liners were reinforced by their counterparts in the Cuban exile community, who feared that the end of the dictatorship would only come by inertia and the internal evolution of Cuban society. The confluence of interests alien to the U.S. in a future Cuba, and the need to maintain a sense of tension, advised some influential Cuban exile groups to convince U.S. Republicans that it would be beneficial for them to remain loyal to a cause that was part of their past agenda. This effective political action strategy was implemented as a result of much more than simply a masterful adaptation to the U.S. lobby system. Cuban exiles had managed to capture leading positions in local governments (as mayors of Miami and other municipalities) and in the state of Florida legislature. They also obtained appointments at the second and third level in the Presidential cabinet and entered the heart of the system by having Cuban-Americans elected to Congress. Lincoln Díaz-Balart (curiously, a distant relative of Fidel Castro) and Ileana Ros-Lehtinen (both from Florida), as well as Bob Menéndez (New Jersey), joined the ever-growing ranks of Hispanics in Capitol Hill. The stubbornness of the Cuban government in resisting a

minimum of political change, while permitting a moderate economic reform, gave the exile community and its allies in Washington sufficient ammunition to continue to attempt to bring about the end of the Cuban dictatorship.

Legal Development and Political Context

The Helms-Burton law is not only the culmination of the evolution of the political attitude of the United States toward Cuba, but also has its own juridical chronology.³ All U.S. legal actions have been responses to the inexorable inclination of the Cuban government toward the Soviet political and economic orbit. This pronounced trend had been initiated in 1960, when Havana and Moscow proceeded to exchange sugar and oil. In addition, Cuba received loans and considerable technological aid. In response, President Eisenhower progressively reduced the sugar quota (70% of the island's exports) that the United States had been importing from Cuba (according to the Sugar Act of 1948, at a rate of 80% of market prices). On July 6, 1960, the American Sugar Bill completely eliminated it. As retaliation, Cuba began to nationalize all U.S. properties. The reply of the U.S. government (in addition to the breaking of all diplomatic relations on January 3, 1961, and the attempt to topple the Cuban government through the Bay of Pigs operation that took place in April of that year) consisted of the imposition in October of an economic embargo limited to U.S. goods. On February 3, 1962, President John F. Kennedy used two laws, the Foreign Assistance Act of 1961 and the Trading with the Enemy Act (passed in 1917 in the context of World War I), in order to establish a total embargo of trade with Cuba (the Presidential Proclamation 3447). The Department of the Treasury announced on July 8, 1963, the Cuban Assets Control Regulations Act, by which U.S. citizens were forbidden to engage in any commercial or financial relations with Cuba, with the exception of activities undertaken through subsidiaries.

This escalation of conflict was transferred to the inter-American forums, principally the Organization of American States (OAS). As a result, diplomatic relations between all the Latin American

³For a review of the interconnection between the juridical and legal aspects involved, see the works by Bar Association of New York, Bourque, Cain, Donner, Porotsky, Wong, and Zipper, mentioned in the bibliography. My gratitude should be expressed to Angel Viñas for his generous help in alerting me to the relevance of these and other research materials.

states (with the exception of Mexico) and Cuba were terminated in response to the missile crisis of October, 1962, and the discovery of Cuban-sponsored political and guerrilla activities throughout Latin America. After a period of certain normalcy, the U.S. imposed severe travel limitations to Cuba, prompted by Cuban activities in Africa in the 1970s. In the 1980s President Reagan applied other restrictions designed to force the Cuban government to negotiate its external debt. At the same time, Washington began to exert pressure on U.S. companies to eliminate their indirect links with Cuba, while obstacles were imposed on the sending of donations and goods by Cuban exiles to their relatives in the island.

As a prelude of future changes, Cuba began to foster economic reforms and investment. In 1982 Havana approved a law to regulate the activities of business consortia,⁴ along with offering possibilities for the long-term rental of properties on conditions similar to full proprietorship. Labor regulations were modified in 1990 to facilitate the establishment of tourism-related enterprises. Finally, in 1992 some parts of the Cuban constitution (articles 14, 15 and 18) were adapted to soften the prevailing intransigence against private property. The U.S. reaction to the apparent commercial success of Cuba and the prospects of an economic evolution without political reforms (following the Chinese model) did not take long to arrive.

During the 1992 U.S. presidential campaign, President Bush approved (on October 23) the Cuban Democracy Act, a bill presented in April by New Jersey Congressman Robert Torricelli. The bill had been previously endorsed by Democratic presidential candidate Bill Clinton, who had been actively courting Hispanic and Cuban-American support. The new tightening of the screw consisted of a threat of sanctions against U.S. companies that maintained dealings with Cuba through subsidiaries. The law also prohibited the use of U.S. harbors to ships that had previously docked in Cuban ports. Nonetheless, this law gave the executive branch the option of "calibrated responses" (i.e., partial lifting of sanctions) to positive actions by Cuba.

The normalization of international relations after the collapse of the Soviet Union favored commercial exchanges with countries (such as Cuba) that had been previously the source of confrontation between the major powers. However, the consolidation of economic links with Cuba was guaranteed to encounter serious obstacles. All investments became potential targets for confiscation and retaliation

⁴Decreto Legislativo No. 50 (15 February 1982).

emanating from two main sources. The first one was the U.S. government's policy after the approval of the "Torricelli Law."

The second risk originated in the Cuban exile sectors where dreams abounded that, in the event of a drastic and sudden change in Havana, they would be called upon to control the economic (and political) destiny of Cuba. Jorge Mas Canosa, leader of the influential Cuban-American National Foundation (CANF) and one of the richest U. S. Hispanics,⁵ considered himself a potential presidential candidate in a post-Castro Cuba. Mas Canosa sent an unprecedented letter to the embassies of several states with companies still maintaining operations in Cuba. In addition to referring to investment on the island as acts of "collaborationism," Mas reminded these companies that they were "taking a serious risk" and that "any investment made during the present regime would be subject to accounting in a post-Castro government."⁶ Mas Canosa was not alone: following the Republican victory in the legislative elections of November 1994, Senator Jesse Helms became Chairman of the Senate Foreign Relations Committee. He then announced that "the spirit of the Torricelli law" would be strengthened and converted into the "Cuba Liberty and Democratic Solidarity (Libertad) Act," by which companies that operated in the U.S. while trading with former U.S. interests confiscated by Cuba could become the object of lawsuits.⁷ This scenario became more serious when, following the shooting down of two Cessna airplanes belonging to the Cuban exile organization "Brothers to the Rescue" at the hands of the Cuban air force, President Clinton signed into law the new Helms-Burton law on March 12, 1997.

While Title I, Section 102, codifies all existing regulations and makes Congress (not the President) the key to future changes, this legislation basically is meant to strengthen the present embargo through the

⁵In a recent ranking of Hispanics, Jorge Mas Canosa and his son Jorge L. Mas were ranked in fifth and fourth place, respectively, with a net worth of \$257 and \$329 million. Thus, their combined fortunes make them the second-wealthiest U.S. Hispanic people, only behind Roberto Goizueta, executive of Coca-Cola (Mimi Whitefield, "Cuban Americans top list of rich Hispanics," The Miami Herald, March 5, 1997; "El Club de los millonarios hispanos," El Nuevo Herald, 5 marzo 1997).

⁶"Exile: Cuba investments 'an act of collaboration' ," The Miami Herald, December 22, 1994.

⁷Dispatches of AP and other news agencies (February 9, 1995).

following means:

* Section 103 prohibits loans, credits or financing by U.S. citizens or residents for transactions of confiscated property;

* Section 104 forces the U.S. to vote against admission of Cuba to international financial institutions, such as the IMF and the World Bank, until democracy is restored in Cuba.

* Title III allows U.S. citizens to sue in the U.S. court system anybody who "trafficks" in property confiscated by Cuba, extending this right to people who were not U.S. citizens at the time of the confiscation.

* Title IV blocks admission to the U.S. by foreign citizens (corporate officers, families, shareholders, etc.) involved in "trafficking" with confiscated property.

Juridico-political analysis

The law has generated considerable activity in the legal community. The most benefitted sector seems to be comprised by the attorneys who were hired or offered their services to potential plaintiffs or defendants.⁸ The law has also encouraged the interest of international law scholars and experts attracted to explore its potential unconstitutionality and the possible violation of international law.⁹ Most of the analyses coincide in some critical aspects, the most important of which coalesce around constitutional law, international treaties and judicial procedure.

Focusing on the possible violation of U.S. law, the generalized scholarly consensus is very critical (with few exceptions¹⁰) of the constitutionality of the Helms-Burton law. This diagnosis is based on the obvious political objectives of the law taking precedence over juridical and commercial arguments. Some of the most concrete criticisms are the following:

* It is alleged that the law (section 102) violates the Constitution's Fifth amendment, which guarantees freedom of travel to all U.S. citizens. A different item (but of parallel and controversial nature) is the threat of denying U.S. entry visas to officers (and their families) of companies that "traffick" U.S. properties unduly confiscated by the Cuban government.

* The Helms-Burton law has imposed a foreign policy goal on the U.S. court system. It is alleged that this is a violation of the separation of powers doctrine and an unprecedented case of curtailing the privileges of the President to conduct foreign policy. Moreover, the law codifies a transitory item in the

⁸See essays and papers by Altozano, Muse, Alvarez Mena and Crane, Mallett, and Ruiz Bravo.

⁹See papers on note 3.

¹⁰Among other reports, see Sergio Alvarez-Mena and Daniel Crane, and Brice Clagett.

foreign policy agenda by elevating it to the level of federal law. It forces the President to count on the consent of Congress to modify the previous conditions of the embargo and it conditions its abrogation to the explicit restoration of democracy in Cuba, the political disappearance of Castro himself, and the rebirth of a market economy with a clear set of rules. Even though the President can, as he did on two occasions (June 1996 and January 1997), suspend for periods of six months the effective execution of Title III, the political character of the law renders it easily manipulable. For example, when a political change takes place in Cuba, not all the requirements might be met if the ensuing reforms are slow and progressive, or if the details are not to the liking of the proponents and inspirers of the law.

* The law has opened a Pandora's box with respect to a new definition of citizenship that allows Cubans that became U.S. nationals to enjoy the protection of U.S. courts as a result of events that took place before obtaining U.S. citizenship. This is a case of retroactive privilege generously granted by the law which contrasts with the fact that no similar opportunity is bestowed on former citizens of other countries. It is an open invitation to lawsuits based on discrimination emanating from ethnic or national origin.

In the field of judicial procedure, the law created a scenario of legal confusion; there has been a danger that numerous legal suits could clog the legal system with considerable delays in producing effective decisions, making the political, instant satisfaction objective as virtually obsolete. The result could very well be that a high court will declare the law unconstitutional. In any event, the law as it exists today is only valid at a political level, and has exerted potential influence only through its economic consequences. But from the point of view of the U.S. legal tradition, its effectiveness remains to be proven until tested in court. The possibility of long and numerous court procedures is theoretically high because the requirements included in Title III permit that all individuals or companies with expropriated properties worth at least U.S.\$ 50,000 could become plaintiffs. This means that approximately 400,000 Cubans that are now citizens of the U.S. may be able to sue the interests that "traffic" with their former properties, now in the hands of the Cuban state. In contrast, only about 300 U.S. companies or persons could benefit from this law (or better from the "Cuba Claims Act" of 1964), because many of such properties do not have any real market value.¹¹

¹¹According to the U. S. Foreign Claims Settlement Commission, among the major U.S. properties that were expropriated were the following, valued in 1970 dollars: Cuban Electric Co. (\$268 millions), ITT (131), North American Sugar Ind. (109), Mos Bay Mining Co. (88), United Fruit Sugar Co. (85), West Indies Sugar Co. (85), American Sugar Co. (81), Standard Oil Co. (72), Bangor Punta Co. (63), Texaco (50). The bill was called by cynics the "Bacardi law," in reference to the emblematic ownership expropriated by the Revolution, and the fact that the bill was lobbied by the family of the former owners and other Cuban-American of considerable wealth. However, to equate the size of companies and the degree of wealth expropriated with the energy

In the area of international agreements, it is alleged that Section 103 of the law (and its precursors regarding extraterritoriality) violates the common understanding of international law and different legal instruments signed by the U.S.,¹² chief among which are articles 8 and 9 of the IMF statute, articles 6 and 10 of World Bank regulations, articles II and XI of the Inter-American Development Bank documents, the entire juridical and trade basis of the North American Free Trade Agreement (NAFTA), and the scope of the World Trade Organization (WTO). In contrast, experts supporting the law and the U.S. government position stress its constitutionality and compliance with the principles of international law.

Rebutting the initial negative connotation of one of the most controversial aspects of the law, attorneys Sergio Alvarez Mena and Daniel A. Crane confirmed in a paper presented at a meeting of the American Bar Association that "Congress intended Helms-Burton to apply extraterritorially" because its aim is to prosecute anyone who "traffics" with confiscated property. The most important aspects of their argument are the following:

* "the Supreme Court has never suggested that the Constitution imposes any limit upon extraterritorial statutes," even though the Ninth Circuit has declared some limits. However, "in the vast majority of cases there will be some slight link to the United States so as to satisfy even the dictates of the Ninth Circuit."

* On the matter of damages, they recognize that are punitive rather than compensatory in nature, and the award should not be "unreasonable or excessive." However, "even assuming that it could be proven that the damages are not truly compensatory and that the act reaches persons only tangentially involved in the targeted trafficking, it is highly unlikely that the remedy conferred would approach the level necessary to be disproportionate for due process purposes."

* On the preferential treatment of (original or naturalized American citizens), they focus on the waiting period of two years before being able to sue and consider that lawyers will have a difficult time proving that the two-year waiting period is based on ethnicity.

* On interference with presidential powers, their opinion is that "the separation of federal powers,

employed in lobbying for the bill is inaccurate. The reality is that large companies and personal interests were not pleased by the widening of the potential pool of claimants because this would in fact diminish their opportunities of recovering substantial sums by litigation. Interests recognized as claimants in the 60s preferred the "list" to remain the same. An association named Joint Corporate Committee on Cuban Claims, with legal residence in Stamford, Conn., composed of more than 50% of companies with certified claims, opposed the evolution of the Helms-Burton bill for that reason.

¹²With considerable humor, Muse (see his paper) pointed out that allowing such penalties and confiscations is like permitting drivers who found parking spaces filled by pedestrians to run them over.

as they relate to foreign affairs, is by no means a well-settled question [...] Unlike the War Powers Act, Helms-Burton deals only with areas in which Congress and the President share concurrent power [...] While the President holds the power to conduct foreign affairs, he does not hold exclusive power to formulate foreign policy [...] The President has power to administer, but not necessarily to formulate, foreign policy [...] Directing the President to pursue particular policy objectives pursuant to the United States' existing treaties seems to be an entirely reasonable exercise of congressional power [...] because the Supreme Court has yet to draw many of the boundary lines between Presidential and Congressional powers in foreign affairs, and because the Constitution itself is relatively silent on these issues, it is impossible to state for certain that Helms-Burton would survive a challenge of the sort raised by the State Department" [...]

* In conclusion, the constitutionality of the Helms-Burton law does not appear to be in serious question. The authors of the analysis believe that it may be controversial, but it does not substantially depart in legal form from many of its federal precedents.

International Law expert Brice Clagett centered his commentary, published in The American Journal of International Law, on the following points:

* The correctness of the law is based on the fact that the former Cuban citizens are now U.S. nationals and therefore "to the extent they are citizens, the prejudice to them has a substantial effect on the United States."

* On the matter of U.S. interference with external affairs, Clagett considers that "because of the proximity of Cuba to the United States and the history of relations between the two countries, Cuba's persistence in suppressing democracy, violating human rights and refusing to satisfy international law claims against it has substantial impact on the United States in a variety of ways, including the recurring crisis caused by the flight of refugees. The United States has legitimate interests in [seeking to bring] these problems to an end. It has reasonably concluded that discouraging foreign investment in tainted Cuban property is an appropriate and proportionate means toward that goal."

* Due to "notorious weakness and ineffectiveness of international enforcement mechanisms" and "because the jurisdiction of international tribunals is consensual, it is only rarely that a confiscation case can be brought in such a forum." Hence, espousal of claims by the victims' government can take generations to bear any fruit."

* Regarding the controversial title III, Clagett claims that it does "no injustice to the 'traffickers' because they are fully aware that they are dealing in "tainted" property [...], dealing in stolen goods [...], and therefore they are taking a risk. He also reminds us that "international human rights law recognizes that, at least in certain circumstances, a state violates international law when it confiscates the property not only of aliens but of its own citizens." One of the reasons for title III is the "premise that international law in all cases forbids a state to confiscate the property of its national without just compensation."

II

Impact and Consequences

In contrast with the speculative nature of most of the aspects dealt with above, the actual repercussions of the Helms-Burton law have been more noticeable as a source of confrontation between friendly commercial partners and political allies. This has occurred precisely when the disappearance of the

constraints of the Cold War eliminated potential causes of disagreement based on the perception that alignment with the U.S. could be interpreted as taking policy dictates from Washington. Just when the temptation of the "non-aligned" position seems to make the least sense, the law has supplied sufficient ammunition for keeping a distance from the U.S., if not to confront it -up to a limit, that is.

Reverberations in the Americas

As expected, each stage of the law was met by an immediate reaction on the part of Cuba. In this essay, however, our focus of attention is the reaction outside the Havana-Washington axis. Due to the ongoing commercial agreements signed by the United States, reactions to the law are subdivided into those emanating from U.S. partners in NAFTA and, on the other hand, the countries in the rest of the hemisphere.

The law has compelled Canada to reinforce its policy of cooperation with the rest of the Americas and to reaffirm its commitment to friendly commercial ties with Havana.¹³ As a result, Canada is now Cuba's largest commercial partner, only surpassed by Italy in the field of tourism.¹⁴ In an unprecedented

¹³As an example of the implementation of protective measures, known in Canada as Foreign Extraterritorial Measures Act (FEMA) and designed to prevent that companies bend their policies under the pressure of the Helms-Burton law, the Canadian government initiated an investigation on the decision made by Wal-Mart to withdraw from its shops in Canada pajamas made in Cuba (AFP, "Pijamas cubanos son eje de pesquisa canadiense," El Nuevo Herald, 6 marzo 1997). Canada had previously included a commitment with the European Union for "combatting secondary embargoes" (sic) -a direct reference to the U.S. legislation- in the text of a Joint Political Declaration on Canada-EU Relations signed on December 17, 1996.

¹⁴The Helms-Burton law generated other side-effects. First, it received a symbolic and humorous reprisal. The Canadian Parliament considered a bill presented by Sir Arthur Godfrey, president of the Foreign Relations Committee, aiming to allow the current citizens of Canada who are descendants of the British colonizers whose properties were confiscated by the American revolutionaries in 1776 to sue the current owners. U.S. Congresswoman Ileana Ros-Lehtinen took this move seriously and argued that the colonizers who suffered such confiscations were duly compensated by the 1783 Treaty of Paris and other agreements including the Jay Treaty of 1795 ("Desde Washington: Estudio demuestra la falsedad de la legislación de parlamentario canadiense," Diario las Américas, 9 marzo 1997). Lawyer Muse compared the Helms-Burton demand to a potential lawsuit brought up by the American Indians whose lands were taken over by the United

visit that took place in late February 1997, Lloyd Axworthy, Canadian Minister of Foreign Relations, sealed with the Cuban government a broad cooperation agreement that includes protection for investors and a commitment of support for economic reforms. Neither the State Department nor the New York Times were pleased by the Canadian initiative, which they considered to be too lenient on Cuba.¹⁵

Mexico, lately suffering from the partial absence of the considerable autonomy it had enjoyed during the Cold War, when it was able to maintain both a leftist foreign policy and preserve the political monopoly of the ruling PRI party, has used available legal mechanisms in order to counteract (at least in public) the image of submission to the U.S. caused by NAFTA.

As a result of the formal consultation that took place among NAFTA members on May 28, 1996, Mexico and Canada declared that the Helms-Burton law "violated International Law" and might not meet "obligations derived from the NAFTA legislation."¹⁶ For its part, the Mexican Congress passed an Agreement that included the following assertions:

- * The Helms-Burton law is a "violation of Mexican sovereignty"
 - * It punishes "countries that do not share U.S. foreign policy toward Cuba," a situation that is "contrary to the tradition of Mexican foreign policy based on the principles of non-intervention and self-determination."
 - * The law is "against international law in its extraterritorial intent."
 - * Mexico reaffirms its "solidarity with the Cuban people,"
- and instructs the Mexican government to carry out "joint actions with other countries."¹⁷
- * Furthermore, Mexico asked for the convening of the NAFTA Commission when the details of

States, a line of thought that surfaced frequently in the op-ed pages of The Miami Herald. For example, it was argued: "Let them [Helms and Burton] propose legislation that would require any individual or company profiting today from the U.S. government illegal seizure of Native American property to compensate the victims or their descendants," ("Pay Native Americans, too," March 12, 1997). Finally, a pro-Cuba boycott against tourism in Florida was organized in Canada with no more considerable effects than press campaigns (Carol Rosenberg, "Canada's pro-Cuba boycott: Is Florida hurting?" The Miami Herald, March 9, 1997).

¹⁵"Canada Fails to Confront Dictator," January 25, 1997.

¹⁶Press release, May 28, 1997.

¹⁷Resolution of Congress, May 29, 1996. A communiqué of the foreign affairs secretary stated that the letter sent to Domos was an attempt to apply extraterritorial jurisdiction in Mexico.

Title IV of the Helms-Burton law were published in the Federal Register¹⁸ in view of the fact that they represented a threat against companies trading with third countries.¹⁹

On articles 2006(3) and 1105 of the NAFTA treaty Mexico has reminded the U.S. that the law should not affect transactions protected by the treaty and should not enact travel limitations.²⁰ In a detailed declaration, the Mexican position was summarized as follows:

* Mexico has rejected U.S. sanctions on Cuba and has condemned the blockade (sic),²¹ on the ground that International Law prohibits such coercive measures.

* Mexico opposes the law because it punishes Mexican citizens and interests for having financial and commercial operations in Cuba.

* Measures intended to isolate Cuba did not contribute to produce changes in Cuba's domestic and foreign policies, the evolution of which belongs exclusively to the Cuban people.²²

On October 23, 1996, the Mexican official register published a law for the Protection of Trade and Investment. Its most important items are the following:

* It forbids acts derived from the extraterritorial effects of foreign laws. Among the effects of such acts are the "imposition of an economic blockade," "the claiming of payments for expropriations produced in the country where the blockade takes place" and "the restriction of entering the country emitting the law."

* It forbids to supply any information requested by foreign courts.

* It requires citizens and companies to inform the Mexican government regarding damages and notifications about the above-mentioned cases.

* It authorizes Mexican courts not to recognize judgments or other decisions made by foreign courts on related matters, and to recognize that individuals or companies prosecuted and compelled to pay for damages as a result of foreign legislation will be allowed to sue in Mexican courts for the payment of a similar compensation.²³

Regarding activity within the United Nations system, Mexico solicited an opinion of the

¹⁸Press release, June 17, 1996.

¹⁹Press release, August 20, 1996.

²⁰See paper by Hernán de Jesús Ruiz Bravo and Manuel Morán Rufino.

²¹The use of this term is not limited to Mexican (or Cuban) sources. It has been also used (along with the more conventional "embargo") at least on one occasion by the European Parliament. See, as an example, the Resolution of September 29, 1994.

²²"Position Taken by Mexico on the Helms-Burton Law and the Question of Cuba" (August 28, 1996). A meeting with U.S. envoy Stuart Eizenstat was held the same day.

²³October 23, 1996.

International Court of Justice, while the General Assembly considered a Resolution on the extraterritorial application of laws. In the OAS system, Mexico joined a Resolution opposing the Helms-Burton law in a session that took place in Panama on June 3, 1996. A joint declaration of the ministers of foreign relations of the Rio Group, then meeting in Bolivia, was considered, with an instruction to the Inter-American Juridical Committee to present an Opinion to the Council on the validity of the law. The most important items included in this Opinion are the following:

* The Helms-Burton law does not conform to International Law because (a) the national courts of a given state (in this case the United States) are not a competent forum for the resolution of claims between different states; (b) because the U.S. does not have the right to assume claims of persons who were not U.S. citizens at the time of the facts; (c) because it does not have the right to attribute responsibility to nationals of third countries for claims against another state or for the use of expropriated goods situated within the expropriating state; and (d) because it does not have any right to impose a compensation superior to the amount of damages.

* According to International Law, the aspect of extraterritoriality is only permitted in the event that facts have a direct, substantial and predictable effect on the territory of the state dictating such law.

* The facts do not conform to International Law practices regarding the "trafficking" of confiscated property.²⁴

In the rest of Americas²⁵, and in spite of the steady criticism directed toward Castro, the law bolstered the belief held by many leaders that the maintenance of commercial links is the most appropriate way to induce a political opening in the island, especially now that ideological infiltration and guerrilla activity have disappeared from Havana's strategic agenda. The heads of state or government of the Rio Group (assembled for their tenth meeting at Cochabamba, Bolivia, on September 3 and 4, 1996) issued an explicit declaration of opposition to "the extraterritorial effects of national laws" while not mentioning any pressure for Cuba to democratize (as had been done in the past): "We reject every attempt to impose unilateral sanctions having extraterritorial effects, because it violates the law that rules the coexistence between states and ignores the basic principle of respect for sovereignty, in addition to violating international law." The Rio Group reaffirmed a "strong rejection to the `Act for Cuban Freedom and

²⁴Opinion of the Inter-American Juridical Committee following the mandate of the Resolution AG/DOC.337/96 of the General Assembly of the Organization of American States, entitled "Freedom of Trade and Investment in the Hemisphere" (August 23, 1996).

²⁵As a sample of the interest raised by the law in the rest of the hemisphere, see the critical analysis provided by the Chilean diplomat María Soledad Torres.

Democratic Solidarity,' known as the Helms-Burton law and, to this effect, we point out the significance of the unanimous opinion issued by the Organization of American States' Inter-American Juridical Committee, in the sense that the grounds and eventual application of the law do not conform to international law."²⁶

Between Havana, Washington and Madrid

The approval of the Helms-Burton law coincided with the impending change of government in Spain as a result of the March, 1996 parliamentary elections. The conservative nature of the new government led by Prime Minister José María Aznar suggested a more critical attitude toward Castro. However, the wider issue was more complex. In the international area, Spain, especially during the PSOE administration (1982-1996), was seen as one of the culprits for the development of the law, by virtue of its investment and strong trade links with Havana, economic connections that can be traced back to the UCD governments (1976-1982) and even to the Franco era. The topic of Cuba had for a long time the potential of becoming one of the few points of disagreement between Madrid and Washington --before and after the Spanish political transition, during and after the end of the Cold War. Moreover, in the domestic Spanish context, Cuba had been the source of an on-going dispute between the Spanish government and the opposition (before and after the March 1996 election).²⁷ The Socialists (inaccurately) appeared as antagonists of the United States in the perception of the Cuban exile community and the conservative political circles of Spain, while the Popular Party was perceived (simplistically) to be taking the cues from

²⁶Final Declaration of Rio Group summit in Bolivia. Bolivian Social Communications Ministry, La Paz, Sept. 6, 1996.

²⁷For a review of the controversies reflected in the media, see sources quoted in my books, essays, and papers on the general topic of Spain-Cuba relations. For the period before 1998, consult my book Cuba y España (1998) and for a more recent review see my chapter and postscript included in the volume entitled El espacio iberoamericano (1996) and the corresponding, updated English version (The Ibero-American Space, 1997). See also the contrasting views of Izquierda Unida's Diego López Garrido, "Sobre Cuba y la UE," (El País 3 enero 1996) and Cuban exile Carlos Alberto Montaner, "Aznar, la ley Helms-Burton y los cubanos," (El País, 5 junio 1996). For a more detailed analysis, see the articles published by Inocencio Arias (defending the Spanish government's position), Remiro Brotons (criticizing it) and Sahagún (presenting a balanced approach) mentioned in the bibliography.

Washington in the eyes of the rank and file of the PSOE and Izquierda Unida.

In reality, these perceptions did not exactly correspond to the factual evidence. First, the relation between the PSOE and Cuba was not as rosy as the Spanish conservatives and the Cuban exile community portrayed. Frequent confrontations between Madrid and Havana originated from causes as varied as the following events: the skilful operation led by PSOE's premier Felipe González to maintain Spain as a member of NATO (a decision publicly questioned by Castro) by virtue of the referendum held in 1986; the crisis produced by the invasion of the Spanish embassy in 1990; Castro's negative remarks against the 1992 commemorations; and personal insults inflicted upon high Spanish officials (including the president of the Spanish Congress and the minister of foreign affairs). The PSOE administration (especially when Fernández Ordóñez was in control of foreign affairs) was very careful not to let Cuba become a thorn in the side of its relations with President Reagan and, especially, President Bush.

Overall, the issue of Cuba presents an interesting and comparative (contrasting) parallel between its use (and abuse) in domestic politics in Spain and the United States. In the absence of hard and factual evidence supported by reliable surveys, a reasonable interpretation dictated that taking a hard stance toward Cuba in the post-Cold War era expects the return of a noticeable number of votes in certain specific constituencies (Miami, New Jersey). For members of Congress who depend on voters outside these Cuban-dominated enclaves, an anti-Castro attitude still receives a warm welcome in the political inclinations of generations that consider the "loss" of Cuba as a historical affront. In addition, this antagonistic attitude represents a commodity to be traded in the daily dealing of Congress. Cuba, however, in the overall format of the electoral global political scene of the U.S. is not that important -to be hard on Cuba helps not to loose some votes in certain congressional districts, but it does not spectacularly represents a priority item to win elections. Cuba is, in summary, a peculiar internal matter in selected scenarios. Elsewhere in the U.S. it is nothing but a mere footnote, as it were.

In the Spanish case, the issue of Cuba is also very complex and its political manipulation has its roots in history and contemporary politics. Ironically, anti-U.S. attitudes can be detected in conservative and traditional circles, as well as in the other extreme of the political spectrum. The first group may justify their antagonism or distrust of the U.S. for historical reasons, including religious diemensions such as the

perception of the U.S. a protestant-dominated nation. Other motivations span back to the humiliating experience of the Spanish-American War of 1898, and the (never explicitly stated) more recent humiliation by the Spanish military in the 50s and 60s when they were granted surplus military equipment as compensation for the agreement of use of the military bases on Spanish soil. The second sector where resentment towards the U.S. has been more obvious is in the potential electorate and membership of the left parties and intellectuals who have interpreted that the survival of the Franco regime was guaranteed solely by the U.S. support. Once the political transition was set in motion, the left was prepared to send the bill to Washington for the cost of the long dictatorial regime. The Cuban issue became an easy, affirmative subject for contention.

When the historical and nostalgic memory of the "loss" of Cuba began to fade away within the military circles of Spain as a source of resentment against the U.S., the dictatorial nature of the Cuban regime became the central argument for the conservative Spanish parties to exert an influence on the Socialist government while the PP was in the opposition. Once in power, the most vocal sectors of the PP insisted in converting the Cuba issue into an integral part of its domestic program. While the Socialists perceived that a friendly attitude towards Cuba and a public cautious distance from the U.S. would be rewarded in the ballot box, the "populares" interpreted that their potential voters demanded a hard line stance against Castro. All these arguments do not discard the fact that respective actions are also dictated by ethical and old-fashion ideological reasons: the conservatives are supposed to stand up against marxism and the socialists are inclined to act as progressives.

However, the battle lines became somewhat different as a result of the Helms-Burton law. This U.S. legislative item created a fascinating Spanish global coalition, a novelty in the Madrid political scene. All the main political parties were for the first time in agreement on one topic. Once in power, the PP Ä naturally more inclined toward free enterprise Ä was firmly aligned with the PSOE and Izquierda Unida (despite having been traditionally at odds with both) in opposition to the Helms-Burton legislation. In the European political scene, Spain sided with the rest of the European countries, as expected, also in opposition to the new U.S. law. Some European partners had already proceeded to design countermeasures. The United Kingdom, for example, had previously approved protecting mechanisms for its investments, including the Protection of Trading Interests Order de 1992. It would have been surprising that a

government that campaigned for privatization and the preeminence of free enterprise would burn the bridges that the previous government extended toward Cuba in the form of private and public investments that, after all, generate jobs.

Guillermo Gortázar, a PP member of parliament who had distinguished himself as a critic of the Socialist posture toward Cuba, rushed to propose a package of measures to protect Spanish investment in the island – not as a guarantee against moves by the Cuban government, but as a precautionary mechanism to ward off the consequences of the Helms-Burton law. Among these measures were the regulations on confidentiality²⁸ of data on investments in Cuba in order to restrict this information from the knowledge of U.S. agencies and thus avoid consequent retaliatory measures. In addition to the collective mechanisms of the European Union, the policy known as Obligatory Diplomatic Protection was designed to convert the Spanish administration into a co-defendant of related U.S. lawsuits. Finally, some European-wide countermeasures were contemplated, including the denial of visas to potential litigants against European interests. They would be prevented from entering European Union territories, as well as been prohibited from future investment in the Union.²⁹ Nevertheless, once the European Union approved these collective measures, the Spanish government decided not to enact special mechanisms of its own.

The triangle formed by the European Union, Cuba, and Spain became a centerpiece of the annual Ibero-American summits inaugurated in 1991 in Guadalajara, Mexico. The new Spanish government began to play along two fronts – Europe and Ibero-America – and this time elected to use the forum shared with its closer linguistic and historical partners. Due in part to the fact that the central issue of the November 1996 summit held in Santiago and Viña del Mar, Chile, was "governability," Castro's presence again attracted world attention. Curiously, unanimity against the Helms-Burton law coincided with the pressure exerted privately by some Latin American dignitaries on Castro to initiate a political opening, in addition to the public demands made by the Spanish premier José María Aznar.

The conflict started with an offer made by the Spanish government for the renewal of bilateral

²⁸These measures could have notable consequences in the calculation of the volume of investments.

²⁹Alberto Pérez Giménez, "El Gobierno prepara medidas con la Ley de EE.UU" (ABC, 23 mayo 1996).

cooperation agreements in exchange for some political reform. In the absence of a pre-arranged face-to-face meeting, the customary lottery seated Aznar and Castro together for lunch. The language used by the Spanish leader was not exactly the most opportune, and worst of all was his decision to make it public: "If you move your piece [democracy], I'll move mine [aid]." After a protocolary exchange of ties, they quietly adjourned and Castro returned to Cuba, where he referred to Aznar as a caballerito (little gentleman) at a meeting of the Cuban Assembly of Popular Power. He followed that salvo with the ritualistic admonition that "the dignity of Cuba cannot be played with on a chess board."³⁰

Almost simultaneously, Spain presented to the Council of Ministers of the European Union a new cooperation-aid plan toward Cuba entirely conditioned on the enactment of political reform. This proposal was not received with equal enthusiasm by all European partners. For some, the proposal was an adequate pressure mechanism; for others, it was like a subservient nod to the U.S. Nevertheless, the main principles were approved by the Political Committee on November 15 under the Irish presidency.

What ensued as a direct consequence of this was one of the most serious incidents between Spain and Cuba in recent years.³¹ Under the excuse of a press interview granted by the newly appointed Spanish ambassador to Cuba, Josep Coderch, in which he expressed hopes that a gradual political change in Cuba would coincide with his tenure in Havana, Fidel Castro withdrew the Cuban placet to Coderch. The true reason was Spanish sponsorship of the new measures approved by the Political Committee of the European Union.

³⁰Journalist responses to this episode were notable in Spain. As a sample, see my own commentaries: "Enyoraren Castro", Avui, 14 novembre 1996; "Corbates, escacs i ambaxadors", Avui, 5 decembre 1996.

³¹In view of the frequent frictions generated recently between Spain and Cuba, it is understandable that this incident was not to be the last. In March 1997, the detention of a Spanish tourist in Havana prompted Spanish Foreign Minister Abel Matutes to declare that the Spanish government would not recommend to Spaniards to visit Cuba. Roberto Robaina, Cuban Minister of Foreign Affairs, called Matutes a "meddler," a "liar" and a "blackmailer." See my commentaries: "Tensión lingüística entre Madrid y La Habana", Diario las Américas, 28 marzo 1997; La Opinión (Los Angeles), 26 marzo 1997.

The Socialist opposition has branded this new foreign policy pattern consisting on resorting to the European Union institutional cooperation as a sample of desespañolización (de-Hispanization of) the relationship with Cuba. For the PSOE, the link (be it contentious or amicable) between Madrid and Havana is much better accomplished and understood as a sort of family affair, where sensitive issues are treated in a more direct and efficient manner. In contrast, once the bilateral topics between Cuba and Spain are placed within the global context of the European Union, these run the risk, in the view of the Socialists, of being diluted. This argument also makes much better sense when certain attitudes that border on an explicit anti-U.S. stance are placed in the normal procedures of the European Union, especially the most supranational institutions such as the Parliament and the Commission. The filter applied to measures that seem too radical to Nordic or British representatives suffer a considerable loss of flavor. In summary, in the view of the PP, contentious exchanges between Cuba and Spain have better chances of coming out as beneficial for Madrid once they are placed in the Brussels context. Spain's partners would logically side with Madrid in items that do not represent any noticeable damage to their economies or strategic interests. What is good for Spain may be good for the rest of Europe, seems to be the logic. For the PSOE, converting the bilateral relationship into a portion of the pooled sovereignty means a loss of independence and the disappearance of direct, person to person negotiations.

In any event, the general consequences of all this controversy during most of 1997 is that it seems ironic that Spain became the party that suffered the most damages in a conflict that originally involved only Washington and Havana. On the one hand, Spain lost one of its shrewdest observers in the diplomatic field, a handicap that followed on the heels of the inopportune resignation (the first of its kind since the Spanish Civil War) at the end of 1994 of Spanish ambassador José Antonio San Gil, due to never clarified disagreements with the Socialist government, and the short tenure (barely a year) held by his successor, Eudald Mirapeix, considered to be too lenient toward Cuba by the new conservative Spanish government. The only recorded rejection of a Spanish diplomat in Cuba was the case of Pablo de Lojendio, who was expelled from the island on January 28, 1960, after he confronted Castro on live television and proceeded to call him a liar for accusing the Spanish diplomatic mission of connivance with the Cuban opposition.³²

³²In the annual Congressional debate known as "The State of

Moreover, Spanish investors in Cuba feared lack of protection when the financial guarantees and other incentives (frequently tied up to the acquisition of Spanish goods) were withdrawn by Madrid. As a result, commercial flow between the two countries run the risk of a significant slowdown. Meanwhile, other European countries (not publicly involved in controversies with Castro) could very well fill the space left by Spanish interests. On the other hand, the European Union institutions were in the same position as before the incidents. There was no aid agreement with Cuba and the requirements for a future one were still the same. Cuban authorities rushed to announce that the disputes with Spain should not have any influence on future dealings with Brussels or other European capitals.

From Washington to Brussels

The Helms-Burton law caused noticeable damage to inter-Atlantic relations at a very inopportune time when any trade disagreement may unchain a serious confrontation in the restructuring of economic blocs. Europeans have reluctantly come to terms in accepting U.S. leadership in difficult scenarios such as the pacification of the former Yugoslavia. France has shown a new willingness to reinsert itself into the European security network, especially in the context of NATO. A consensus has been reached regarding economic and military cooperation with Russia. The North-Atlantic free trade agreement is a reality that will be imposed by the simple argument of the similarities between U.S. and European economies. In contrast, the dispute over Cuba is an anomaly that nobody desires.

In order to better understand this entangling relationship, one has to take into consideration that the repercussions caused by Cuba may be disproportionate to the objective value and impact of this nation in the global arena. The importance that Cuba has for the United States and Spain (each one a special case) is different from the attention accorded by Europe as a whole. As we will see later, it is for this reason that the Europe-U.S. disagreements on this matter have yet to cross the line of no return. No party would dream of saying it in public, but the reality is that Cuba is not worth a commercial or political war between Washington and Brussels. This explains the certain degree of ambiguity that has characterized all moves

the Nation", PSOE's leader Felipe González had only one major criticism for the foreign policy of José María Aznar: Spain was the only EU member state without an ambassador in Havana (AFP, June 11, 1997).

made by the European Union and its member states, as well as some of the moves originated in the White House, as illustrated by President Clinton's decision to sign Helms-Burton into law, then partially suspend it, and finally neutering it with a compromise with Brussels. When the European Union announced the delay in the negotiations for the cooperation-aid agreement with Cuba in mid 1996, it left untouched its opposition to the Helms-Burton law. The logic of the market and the admonitions coming from the Spanish foreign affairs ministry worked in unison. At the same time, more drastic measures were not taken, other than the vague declaration made by the Council of Ministers of Foreign Affairs in their meeting held in Luxembourg at the end of April, 1996.

Sporadically, evidence of an under-the-table compromise surfaced in the media. The correspondent in Brussels of the conservative Madrid daily ABC, Alberto Sotillo, months before the announcement of the freezing of the aid agreement and the implementation in November 1996 of the Common Position toward Cuba, had titled a story of his in the following manner: "The U.S. is asking for a gesture from the European Union to delay the execution of the Helms-Burton law." He elaborated: "Washington wants the European Union to make a 'political gesture' regarding the Cuban regime to allow Clinton to concentrate on the electoral campaign and to help him suspend the application of the Helms-Burton law." Among the conditions of this "gesture" it was mentioned that investments should benefit the whole of Cuban society and that companies should not be forced to deal directly and exclusively with the Cuban government.³³ The intermediaries in this "negotiation" might have been the members of a delegation of Europarliamentarians who visited Washington, among them some members of the Spanish Partido Popular who had direct knowledge of the Cuban problems and, more broadly, European-Latin American relations, including Carlos Robles Piquer, Guillermo Galeote, José Ignacio Salafranca, and Gerardo Fernández Albor. Even though not exactly what may have been expected, the suspension of the negotiations for the cooperation and aid agreement between Brussels and Havana certainly seems to fit the bill as the awaited "gesture."

Certain ambivalent decisions were taken within the context of the European Union, all dictated by the constraints of the forums where the Spanish government and the leaders of the party in power had to act. For example, the Organization for Economic Cooperation and Development (OECD) had avoided issuing a

³³ABC, 9 marzo 1996.

condemnation of the U.S. for its retaliation against Cuba and China during its May 1966 meeting, while discouraging measures against the agreements emanating from the World Travel Organization.³⁴

The freezing of the negotiations for the cooperation agreement between the European Union and Cuba had also an internal dynamic, although one intimately linked to the U.S. conditions. First, the impact made by the aggression against the aircraft of the exile organization added to the passing of the Helms-Burton law, translated into European criticism against Washington. Second, the explicit conditions presented to Castro by the European Commission (reform of the Cuban penal code and recognition of the internal opposition) as requirements for the signing of the cooperation package constituted a serious obstacle.³⁵ Castro considered it a humiliation and in turn elected *Á* as usual *Á* to take advantage of the situation, to claim to be the target of harassment and international conspiracy. The disdain professed by Havana was the straw that broke the camel's back. Socialist Manuel Marín, a seasoned Vice-President of the European Commission, as a Commissioner in charge of relations with Latin America, "threw in the towel." [or "cave in", abandoned the mission as hopeless] The change of government in Madrid was only coincidental.

Under the Damocles threat of the law, the European Union decided to denounce it in the World Trade Organization, stating that the procedure would not wait until after the U.S. elections. During the second half of 1996, the U.S. government made a considerable effort to convince the European Union to find an elegant face-saving solution. However, the European governments had their hands tied by a new measure adopted by the Council of Ministers (also known as the Council of the European Union) in November. They could not afford to appear to be negotiating under the threat of retaliation. The Parliament and the Commission had already issued sufficient signs of protest.³⁶ It was now the turn (by Spanish

³⁴"La organización se limita a pedir," Expansión, 23 mayo 1996; "Matutes critica la actitud de Washington sobre Cuba," La Gaceta de los Negocios, 23 mayo 1996.

³⁵See essay by Angel Viñas.

³⁶See documents detailed in the bibliography, especially the resolutions of the European Parliament of 1992, 1993 and 1996, and the declarations of the Council and the Presidency of the European Union of 1995. Complete texts are available in the compilation by IRELA (1996).

initiative) of the Council to counteract the consequences derived from the U.S. law.

A Regulation against the application of the law was published on November 22, 1996.³⁷ It is significant that the mechanism chosen was the highest in the ranking of EU legislation. Regulations, in the past only used by the Commission, have been produced by the Council in order to show the preeminence of this inter-governmental body over the rather bureaucratic Commission. Regulations are binding on all member states and do not need to be translated or interpreted into national law. This specific Regulation contains protective measures regarding the prohibition of accepting the extraterritorial effects of the Helms-Burton law. First, the European Council established its justification for opposing this and other laws. The European Union has had (since the foundation of the European Community, as its predecessor) as one of its objectives the contribution to "the harmonious development of world trade and to the progressive abolition of restrictions on international trade" and "endeavors to achieve to the greatest extent possible the objective of free movement of capital between Member States and third countries, including the removal of any restrictions on direct investment Å including investment in real estate, establishment, the provision of financial services, or the admission of securities to capital markets." In accordance with these goals, the European Regulation's main objectives were set as follows:

* The U.S. has enacted laws [the Torricelli and Helms-Burton laws³⁸] that purport to regulate activities of persons under the jurisdiction of the member states of the European Union; this extra-territorial application violate international law and has adverse effects on the interest of the European Union.

* Therefore, the Regulation provides protection against the extra-territorial application of these laws and binds the persons and interests affected to inform the Commission.

* No judgment of a court outside the European Union regarding the effects of these U.S. laws will be recognized and no person shall comply with any requirement or prohibition derived from them.

* Any person affected shall be entitled to recover any damages caused by the application of these laws.

At the same time, a similar message was received by the surprised Stuart Eizenstat, the seasoned U.S. envoy who acted as special representative of President Clinton. In brief, a close comparative analysis of Canadian, Mexican, and European anti-Helms measures reveals a pattern of striking and unsurprising similarities.

³⁷Council Regulation (EC), No. 2271/96. Official Journal of the European Communities (November 29, 1997).

³⁸An Annex specifically listed all U.S. legal measures that the European Union considers unacceptable. It also includes the Iran and Libya Sanctions Act of 1996.

As a result of successive warnings of a U.S. rectification that never materialized, the path taken by the actions and reactions of Washington and Brussels led to the definitive presentation on February 3, 1997, of a legal initiative against the United States within the framework of the new World Trade Organization (WTO), successor of the General Agreement on Tariffs and Trade (GATT). The European Union had warned that the temporary suspension of title III was not sufficient. The rest of the law was considered a violation of the principles of commercial exchange guaranteed by the WTO. As a first action, the organization formed a panel charged to issue an opinion within the term of six months. The U.S. alleged that the Helms-Burton law was not an issue of concern to the WTO, since the limitations imposed on the trade with Cuba were a matter of national security. This amounts to an explicit admission that the law has a political objective, as its most ardent advocates had made abundantly clear all along.³⁹

III

Legacy and Conclusion

Victors or vanquished?

One need not be a cynic to notice that perhaps the most clear and lasting consequence of the Helms-Burton may be the fact that, as an apparent reward for their efforts, all its supporters and advocates won reelection to the U.S. Congress. To be sure, clearly their support of this bill cannot be considered the only reason for their success, since they all enjoy a comfortable backing in their respective constituencies. It can at least be argued that support for the law certainly did not generate a loss of votes (and this analysis is applicable to the case of President Clinton). What their reelection may prove is that consideration of the Cuba question was inconsequential. The sponsors of the bill, Senator Jesse Helms (North Carolina) and

³⁹Congresswoman Ileana Ros-Lehtinen, upon returning from a trip to Europe in January 1997 (where she had to explain her point of view to various European governments), insisted that the Helms-Burton law was simply a mechanism designed to guarantee full U.S. control of its border laws by facilitating the withdrawal of visas from the executives of companies dealing in confiscated properties in Cuba. She also insisted that the law does not forbid investments in Cuba, only the ones that deal with previously confiscated properties ("Desde Washington: La irritación europea con la ley Helms-Burton," Diario las Américas, 2 marzo 1997).

Congressman Dan Burton (Indiana), as well as noted Helms-Burton backers Bob Menéndez and Robert Torricelli (both from New Jersey), were reelected and kept company with Ileana Ros-Lehtinen and Lincoln Díaz-Balart, both Cuban-American representatives from the South Florida area.

A year after the approval of the law, its main advocates issued statements. Ileana Ros-Lehtinen addressed the House of Representatives claiming that "dozens of companies have suspended operations in Cuba while others are postponing their plans for investment in the slave economy of Castro." Moreover, she criticized the European Union for "its latest attempt to benefit from stolen U.S. properties" and for presenting "an irresponsible demand to WTO" that tries "to undermine the capability of the U.S. to dictate its own foreign policy."⁴⁰ Senator Jesse Helms addressed the Cuban people through Radio Martí claiming that "one by one, foreign investors that fill the pockets of Fidel Castro and keep his regime afloat are fleeing."⁴¹ The context of these declarations confirmed their triumphalism, but it also revealed contradictions and a definite complexity. A succinct review provided by Miami Herald correspondent Christopher Marquis on the pressures received by foreign companies after one year of the law revealed that (perhaps under instructions from the White House to "go slow") only executives of two companies were banned from U. S. territory under the provisions of Title IV. The main problem seemed to be that potential claimants against "traffickers" of confiscated property were not providing hard data to the U.S. government,

⁴⁰"A Year After the Helms-Burton Law." See text published in Spanish in Diario las Américas (March 12, 1997). In a note published later, she detailed the companies that have left Cuba: Bow Valley Industries of Canada, Vitro and Pemex of Mexico, and Guitart of Spain. Others have delayed their operations: the United Kingdom's BAT, and Beta Gran Caribe and Heenan Blakey of Canada ("Su primer año ha sido un éxito," Diario las Américas, 16 marzo 1997). Sources of the Spanish government and the European Commission revealed that about twenty European companies have received requests of information from the U.S. Department of State regarding their operations in Cuba, among them Sol Meliá, BBV, Iberia, Tabacalera, and Repsol (J.C. González, "Estados Unidos pide información," El País, 22 febrero 1997).

⁴¹"Helms a Cuba: Tiranía caerá pronto," Associated Press, EFE, and other agencies; text in Spanish published in El Nuevo Herald, March 13, 1977.

preferring to withhold their lawsuits until Title III becomes effective.⁴²

The fact is that the sectors that exerted pressure for the approval of the law could claim that the combination of the U.S. legislative measures and the political change in Spain produced uncertainty in business circles, especially Spanish ones. Some investment projects from other countries were put on hold, while some companies announced they were leaving Cuba as a result of the uncertainty caused by the limitations imposed by the U.S. and the collapse of the European Union's cooperation-aid proposal⁴³, even though the overall accounting of these losses is very difficult to be computed. Other business signals were, in contrast, contradictory. For example, Spanish exports to Cuba rose during the first half of 1996 more than 40%⁴⁴, but settled for a 14% increase for the whole year from 51 billion pesetas in 1995 to 59 billion.⁴⁵ Spanish investment for 1996 reached \$11.4 millions, tripling the figures of 1995. However, on a comparative basis, this figure only represents 0.12% of the total Spanish investment in the world. Nevertheless, Spain became the second most important trade partner of Cuba (in contrast to its sixth place in 1994)⁴⁶. In spite of the fact that the Spanish government cancelled a line of credit worth 2,000 million

⁴²"Pulling its Punches," The Miami Herald, March 13, 1997.

⁴³Gencor (South Africa), Heenan Blakey and York Medical (Canada), Vitro (Mexico), and Wiltel (United States), among others (Pablo Alfonso, "Rechazo europeo oscurece el horizonte económico," El Nuevo Herald, 18 mayo 1996). The Spanish government announced the suspension of plans to build eight hotels to be managed by a consortium formed by the Cuban government agency Gran Caribe and the Spanish public company Paradores de España, with an investment of \$16 million (AFP, June 3, 1996). Occidental Hoteles (an enterprise that manages a hotel in Miami) announced that it was withdrawing from a project, in conjunction with the Cuban company Gaviota, to build a resort in Varadero (Diario las Américas, 13 junio 1996).

⁴⁴Pablo Pardo, "Pese a Helms y a Burton, España exporta más a Cuba," Expansión, 3 agosto 1996.

⁴⁵Ministry of Economy, "Crece la inversión española", Expansion, 15 abril 1997.

⁴⁶José María Triper, "El capital español apuesta por Cuba," Cinco Días, 11 febrero 1997.

pesetas for exports to Cuba,⁴⁷ later it was announced that 40 million pesetas were available in aid,⁴⁸ along with an overall program of development cooperation that included additional 100 million in commercial loans and 11 million for humanitarian aid and scholarships.⁴⁹ All these figures, however, will reveal once again the disproportion between the attention given by Spain to the global regional scenario of Latin America and the narrower terrain occupied by Cuba, and the real trade and investment value of the Latin American subcontinent in the overall picture of Spain's global strategic preoccupations. Latin America and Cuba are important for Madrid for reasons not limited to capitalistic arguments. History and culture, perceptions and images are part of the explanation for actions that seem in principle illogical and energy consuming. This is a dimension that both Brussels and Washington need to understand when dealing with this triangular relationship generated by the Helms-Burton law.

Turning back to the effects of the legislation in the Western Hemisphere, reports revealed that Canadian interests dealing with mineral resources (Sherrill) received warnings from Washington as early as July 1996, with the result that several of its executives were denied visas to enter the U.S.⁵⁰ The Mexican conglomerate Domos, whose executives had received letters from the State Department telling them that they could no travel to the U.S. and that they could become the subject of lawsuits, was the most obvious single case of targeting companies trading with previously confiscated U.S. property. Domos announced that it was leaving its investment in Cuba's telephone system, the remains of which used to belong to ITT.⁵¹ An Italian company, STET, rushed to fill Domos' place with an initial investment of \$300 million, raising its share from 12.95% to 29.29%⁵² However, STET later has tried to agree with ITT on the payment of a

⁴⁷Mauricio Vicent, "El gobierno de Aznar cancela un crédito," El País, 2 febrero 1997.

⁴⁸El País, 8 enero 1997.

⁴⁹AFP, EFE, 28 febrero 1997.

⁵⁰State Department sources, reported by news agencies on March 15, 1997.

⁵¹Andrés Oppenheimer, "U.S. Law Puts Cuba Investor on the Skids," The Miami Herald, March 3, 1997.

⁵²Juan O. Tamayo, "Firma italiana se burla de ley Helms," El

compensation for the use the confiscate property⁵³. This shift is important because it confirms the fears of Spanish entrepreneurs regarding the inevitable filling of the space left by Spain due to the discouragement of investment.⁵⁴ The U.S. State Department issued statements praising the negotiation,⁵⁵ a process that might be critically received by Cuba as compliance with the Helms-Burton law, as well as in the hard-line circles of Cuban exiles who have based their opposition to any investment in Cuba on moral grounds as part of a policy to exert economic pressure on the Cuban government.

Paradoxically, some observers consider that the law has had other commercial effects different from the original objectives of discouraging certain risky investments in Cuba. For example, the protests made by the U.S. trade partners (Mexico, Canada, and the European Union) have strengthened U.S. sectors that oppose the free trade agreements. Countries that openly resist with different measures the effects of U.S. laws, even when they may be justified on national security grounds, appear to be undeserving of the confidence of the faithful guardians of U.S. national sovereignty, which may seem to be curtailed by the signing of trade agreements. As we have seen, in order to dramatize its protest against the law and to stress its distance from U.S. interests and policies, Canada intensified its links with Cuba through high-level diplomatic visits. This was a clear message of defiance that produced considerable displeasure in key Washington circles opposed to NAFTA. Mexico continued its policy despite receiving a number of favors from the U.S., including certification for its efforts in the war against drug trafficking (in clear contrast to

Nuevo Herald, 6 marzo 1997.

⁵³Christopher Marquis, "New test looms in wrangle over property Cuba seized", The Miami Herald, April 26, 1997; "Empresa podría evitar efecto de ley Helms", El Nuevo Herald, 26 abril 1997.

⁵⁴Spain's business press often reflects this concern, which it shares with the political opposition to the PP government. See, for example, Francisco Safont, "¿Qué nos jugamos en Cuba? Cinco días (11 febrero 1997). Also noticeable is the "telephone connection" made evident by the fact that Mas Canosa-owned companies bought INTEL, a Spanish subsidiary of the Telefónica conglomerate, a company that is absent from Cuba but nonetheless had considerable interest in Latin America, especially Argentina, Chile and Peru.

⁵⁵AP, April 28, 1997.

the rejection of Colombia). In these circumstances, popular expressions make a lot of sense: "with friends like these, who needs enemies?"⁵⁶

In brief, as we have seen in the preceding pages, the true effect of the Helms-Burton law has been to foster unity and galvanize opposition to it on the part of all the governments of Europe and Latin America, who have condemned it since its inception in various forums. In addition, it generated other interesting side effects. For example, the General Assembly of the United Nations has witnessed a steady descent in the number of governments that used to abstain when considering the vote on the issue of the U.S. economic embargo against Cuba. The Rio Group not only has denounced the law but made no mention in its latest declarations regarding the need to democratize Cuba.

The law is an illustration of a very negative dimension in the current overall international image of the United States. It has been the subject of constant critical analyses published by sectors that cannot be considered as favorable to Castro. As one of the numerous examples, the Universal Press Syndicate columnist and author of books on Castro, Georgie Anne Geyer, summarized the frustration of a wide sector of opinion that senses that the U.S. government is actually contributing to the survival of the Castro regime. The Helms-Burton law, she said, "has poisoned the relations with our main allies" and "caused that they take equivocal actions, which could be very unpleasant and pernicious with effects lasting for decades." U. S. actions have made our allies to side with Castro, pretending that his shortcomings did not exist."⁵⁷

On a more pragmatic level, the law has been converted by the U.S. into an object of exchange, subject to negotiation and all kinds of compromises (such as the suspension of Title III), with the result that one of initial bases (ethical issues related to dealing in "stolen" property) has been partially lost. The origin of this attitude is related to the shift from a multilateral policy (actions in agreement with international laws and conventions), dictated by the end of the Cold War, to a unilateral one, derived from the concept of

⁵⁶This point of view is represented by José Antonio Villamil, former U.S. Under Secretary of Commerce, in his frequent columns. As an example, see "Peligran iniciativas sobre comercio internacional de los Estados Unidos," Diario las Américas (2 marzo 1997).

⁵⁷"Estados Unidos ayuda a Castro a regresar al escenario mundial," Diario las Américas (6 marzo 1997).

"exceptionalism." This new ideological attitude considers it unquestionable that the U.S. is now the only superpower and thus has the right and obligation to impose its new legal schemes on the rest of the planet, even though they may violate U.S. fundamental laws. The Helms-Burton law is simply an example of the gradual loss of international interest expressed by many sectors of U.S. society. At the same time, it is the result of the rise of an ideology that tries to impose a local reading (extraterritoriality) with little regard (because the cost is not considered too high) for the grave consequences inflicted on the international image of the U.S.

Curiously, all the parties involved with Helms-Burton can claim partial or total success. The European Union has saved face by explicitly opposing the law and approving the Common Position on Cuba. The Spanish government has shown firmness toward the law, while appearing as a major advocate of the Common Position. Castro could demonstrate that he did not collapse under pressure or accept overtures such as the offer made by President Clinton in January 1997 of a huge aid and reconstruction package conditioned on the disappearance of the current Cuban political leadership during the transition.⁵⁸ Meanwhile, the U.S. government has maintained the threat of Title III, which is officially only temporarily suspended. Even when one considers that the Cuban government has hardened its internal policies (as confirmed by the adoption of measures designed to harass dissidents in the early months of 1997), the Spanish Socialists may also claim some success. They could say that more satisfactory results could have been obtained with their "carrot" policies of inducement to Castro. In contrast, no benefits have yet been obtained by the policies of "stick" brandished by the government of Aznar and the ones offered in a more diplomatic way by the European Union through its Common Position.

⁵⁸Known as "Support for a Democratic Transition in Cuba." Naturally, in Cuba the offer was received with a disdain illustrated by the expression "Cuba is not for sale." The Cuban exile community and different sectors of U.S. public opinion expressed both enthusiasm and skepticism. In addition, the figures of the package included aid from international organizations and the already impressive sum of money regularly remitted to their families in Cuba by U.S.-based exiles (more than \$500 a year). That amounts to about 50% of the \$8 billion promised for an eight-year period once the initial reforms begin.

The points of view expressed in a private meeting of the representatives of most of the parties in this conflict can be summarized as two poles of frustration. On the one hand, the European Commission feels that "Fidel Castro has not been affected by this law; it is the Cuban people who suffer."⁵⁹ On the other, the U.S. government believes that "European indecisiveness in their model of relations with Cuba does not lead anywhere" and that "the conflict unchained by the EU's demand in the Organization of World Trade does not benefit anybody."⁶⁰

The Sunset of the Helms-Burton Law?

Just about a month after the first anniversary of the Helms-Burton law, the behavioral patterns and internal contradictions that have dominated its birth and evolution were confirmed by the confluence of several incidents that took place during the month of March, 1997. These culminated in the announcement⁶¹ of what seemed to be a temporary compromise between the European Union and the United States designed to put an end to their disagreements just on the eve of the day when legal actions were to commence within the framework of the World Trade Organization (WTO). On April 11, 1997, the European Union and the United States announced a "memorandum of understanding" that would lead to the suspension of the charges to be presented by the EU in the WTO.⁶² Initial commentaries pointed out that the United States was offering some readjustment in the Helms-Burton law in exchange for the withdrawal of the European Union's WTO lawsuit and a commitment to implement measures designed to "discourage" investment in the properties confiscated by the Cuban regime. On the other hand, President Clinton announced that the general U.S. policy toward Cuba would not be changed.⁶³

This new development took place in the aftermath of an escalation of mutual (especially in the

⁵⁹Hugo Paeman, European Union Ambassador in Washington, quoted in La Gaceta de los Negocios, February 12, 1997.

⁶⁰Same source as the previous note.

⁶¹News agencies (among them AFP) filtered the agreement on March 25, 1997.

⁶²EFE, 11 abril 1997.

⁶³News wires of AP, EFE, and other news agencies, April 11, 1997. On April 18, the COREPER confirmed the agreement.

context of Spain's relations with Cuba) declarations and retaliations. First, the temporary detention of a Spanish tourist in Havana propelled Spanish foreign Minister Abel Matutes to protest and threaten to discourage Spanish tourism to Cuba. In response, the Cuban government issued a new round of insults. At the same time, numerous foreign embassies in Havana complained that their diplomatic pouches were being opened in search of "offensive" materials. Simultaneously, U.S. authorities increased the screening of luggage taken by Cuban exiles travelling to Cuba, which led to a demand that Cuba-bound travelers arrive at the Miami airport five hours in advance of their flights.

In this already tense scenario, Francisco Javier Ferreiro, a Spanish businessman, was arrested in Miami for transporting U.S. merchandise to Cuba by the way of third countries. This incident generated declarations by both the Spanish Embassy in Washington and the Foreign Ministry in Madrid stating that while Spain was still opposed to the Helms-Burton law, the alleged crimes committed by the Spanish businessman were covered by the previous (1960s) laws and thus, protected by U.S. sovereignty.⁶⁴ This mild response provoked protest by the Spanish opposition, this time led by former Spanish Prime Minister Felipe González.⁶⁵ Subsequently, on the occasion of an official visit by Spanish Prime Minister Aznar to Washington, the imprisonment of Ferreiro was taken up by foreign minister Matutes to Secretary of State Albright.⁶⁶

Simultaneously, during the yearly meeting of the Human Rights Commission of the United Nations held in Geneva, the member states of the European Union revealed an apparent ambivalence. First, they passed a Resolution against the U.S. economic sanctions.⁶⁷ Second, they endorsed U.S. claims against Cuba for human rights violations. This patent contradiction was the result of the confluence of different factors, including the controversy generated by the insertion of a Cuban national in the Nicaraguan

⁶⁴Alberto Míguez, "España no protestará," Diario Las Américas, 8 abril 1997.

⁶⁵"Ahora Felipe González acusa a EE.UU. de violar los derechos humanos," AFP, April 9, 1997; Alberto Míguez, "Ataca la izquierda a Aznar," Diario Las Américas, 9 abril 1997.

⁶⁶EFE, May 1, 1997.

⁶⁷AFP, April 3, 1997. The Resolution was passed by 37 votes in favor and 8 against.

delegation. Finally, after making a statement of protest against the Helms-Burton law, all EU member states (and other European partners) voted in favor of the U.S. inspired measure.⁶⁸

In this increasingly heated context, the sudden (and unsurprising, according to our thesis) announcement of the agreement between the European Union and the United States was made public (at the same time that Ferreiro pleaded innocent in a Miami court⁶⁹). This certainly seems to confirm the hypothesis that the numerous incidents were not sufficiently grave to warrant an open war between the two most powerful economic powers on earth and thus risk of unraveling the nascent World Trade Organization.⁷⁰ EU commissioner Leon Brittan knew that President Clinton could not obtain a total dismantling of the Helms-Burton law through a Congress still dominated by the Republican party. The White House and the State Department, on the other hand, are conscious of the fact that the demand presented by the EU at the WTO was basically a dead-end street that could only inflict collateral damage to all free-trade agreements being negotiated by the U.S. in an ever increasing difficult climate partially influenced by protectionist sectors.⁷¹

Preliminary details of the agreement included the Clinton Administration's vow to suspend indefinitely Title III and to persuade Congress to suspend Title IV of the law. The European Union, in return, agreed to implement certain measures designed to curtail commercial transactions dealing with

⁶⁸Robert Evans, Reuter, April 17, 1997. Out of 53 members, 19 voted for, 24 abstained (as opposed to 28 last year), and 10 voted against (5 more than last year).

⁶⁹"Empresario español se declara inocente," EFE, Avance, 11 abril 1997.

⁷⁰This conflict is not the only one between the European Union and Washington with potential damage in the WTO setting, since disagreements include import-export of different foods, sanitary process, bananas, and incentives for cereal production ("Un nouveau différend commercial oppose les Etats-Unis et l'Union européenne", Le Monde, 4 abril 1997).

⁷¹Xavier Vidal-Folch, "Los negociadores de EE.UU. y la UE alcanzan un pacto para desactivar su litigio sobre Cuba," El País, 12 abril 1997.

confiscated Cuban properties.⁷² Both parties pledged to cooperate in order to bring democracy to Cuba.⁷³ Both protagonists of the agreement claimed to have obtained mutual benefits and gains for their respective own interests. Brittan considered that, in exchange for withdrawing the EU claim in the WTO, he had obtained the following: the agreement includes the protection of other investments in other regions (such as Libya and Iran), it limits its scope to future investments and does not affect present contracts, and it neutralizes this type of extraterritorial aim in future laws.⁷⁴ Eizenstat congratulated himself for having spared the WTO of irreparable damage by creating "a first and true opportunity for developing a multilateral discipline that will ban investment in confiscated properties."⁷⁵ When the deal was made public, the main backers of the law rushed to claim to be victorious. The Cuban-American National Foundation, through its spokesman José Cárdenas, used expression that have a nostalgic air: "The other side has blinked".⁷⁶ The romantized confrontation around the Helms-Burton law was equalized to the missile crisis that presented the risk of obliterating the planet. While the assesment of the reaction shown by the Europeans may be branded as correct, the reality is the both sides blinked, and wisely elected to back down.

Initial reactions also revealed moderate cracks in the coalition that created the law. While the office of Senator Helms considered the agreement positive, his colleague Burton and Cuban-Americans Ros-Lehtinen and Díaz-Balart denounced it as a "surrender"⁷⁷ and an attempt to confuse Congress. This attitude would became the policy of subsequent measures presented in the legislative chambers. European observers

⁷²Christopher Marquis, "Europe, U.S. Make Cuba Deal," The Miami Herald, April 12, 1997; Cynthia Corzo, "EU y Europa pactan sobre Ley Helms," El Nuevo Herald, 12 abril 1997.

⁷³Memorandum of Understanding, April 11, 1997.

⁷⁴Xavier Vidal-Folch, "La UE no ha perdido nada", El País, 27 abril 1997.

⁷⁵Statement released by the State Department, transcribed under the title of "Enfoque multilateral a los derechos de propiedad", in Diario las Américas, 27 abril 1997.

⁷⁶David Marens, The New York Times service, April 12, 1997, as transcribed in report entitled "Suavizan diferendo en ley Helms-Burton", Diario las Américas, 13 abril 1997.

⁷⁷Ileana Ros-Lehtinen, "La administración Clinton se rinde

were already detecting a solid front of opposition to the overtures by President Clinton.⁷⁸ In early June of 1997, several measures were introduced in Congress, among them a bill by Robert Torricelli that would hold foreign companies that use confiscated American property liable to the INS for the amount of tax dollars the U. S. claimant had written off as a loss from its tax bill (estimated to a total of over \$2 billion). Rep. Bill McCollum planned to present another bill to strip Clinton of his ability to waive Helms-Burton's Title III. Other projects aimed at withholding U.S. assistance to Russia and other countries continuing their aid and cooperation programs with Cuba.⁷⁹

On the other side of the Strait of Florida, reactions were predictable in view of the circulation (just a few days before the agreement) of a communique of the Cuban government addressed to all foreign embassies in Havana in which they were warned of the "illegal" nature of any measure that might be interpreted as collaboration with the implementation of the Helms-Burton law.⁸⁰ Consequently, reactions by Cuba will be always difficult to predict if the Cuban government considers that the EU-United States agreement truly damages Cuban interests.⁸¹ However, when the new measures crafted in the U.S. Congress

ante las demandas europeas", Diario las Américas, 20 abril 1997.

⁷⁸"Eurodiputados prevén el Congreso se niegue a suavizar Helms-Burton", EFE, 18 abril 1997.

⁷⁹Rafael Moreno, "Ros-Lehtinen feliz por alarma de Castro", EFE, 2 junio 1997. The bills had side effects, some of them with a Puerto Rican-Cuban confrontation profile as in the case of an additional project presented by N.Y. Democrat José Serrano who insisted on demanding quarterly reports by the State Department on the diplomatic protests presented by Cuba -as a mirror image of the demands included in the Cuban exiles-sponsored bill that would force the State Department to report on the individuals and companies not complying with the Helms-Burton law ("Tema cubano inflama disputa", El Nuevo Herald, 6 junio 1997). Serrano's amendment was passed when the House had a very low attendance, but it was later defeated by 287 votes against 141 (EFE, June 12, 1997). However, this and other measures caused a considerable delay in the voting procedures with potential future consequences.

⁸⁰Pascal Fletcher, "Havana's 'note' creates a puzzle for embassies", Financial Times, April 15, 1997; "Sorprende a diplomáticos nota de la cancillería," EFE, 11 abril 1997.

⁸¹Christopher Marquis, "Cuba blasts embargo proposals", The Miami Herald, May 31, 1997. See also report by the office of

were detected by Havana, the Cuban government elected to denounce them on live television (via CNN) in a press conference given by the president of the Popular Assembly Ricardo Alarcón.⁸² As a follow-up, foreign relations minister Roberto Robaina visited several Central American and Caribbean capitals denouncing the new U.S. measures and delivering a personal message from Castro. Simultaneously, his deputy Isabel Allende went to Europe, while the Minister of Foreign Investment Ibraín Ferradas travelled to South America. The impressive high profile of these activities surprised Washington, where the Cuban moves were interpreted as reflecting an extreme concern for the new bills presented in the U.S. Congress and the evolution of the agreement with the European Union.⁸³

In any case, in the event that Title IV is effectively suspended, the law would be virtually devoid of any content, even though both the European Union and the United States will be keeping their options open as they await each other's moves. This development would also confirm the central thesis that the actions taken by other parties would be considered secondary to the paramount goal of avoiding a major economic confrontation between the European Union and the United States. In this conflict between Brussels and Washington, a limit has been set to the potential and irreparable damage inflicted upon the World Trade organization; in the triangular relationship formed by the United States, Canada and Mexico, the limit has been presented by the fragility of NAFTA. In addition, two other sources of pressure have been exerting their influence on the White House.

In the first place, important U.S. corporations that have anchored their future on the widening of world trade expressed growing impatience over economic sanctions that interfere with trade, at the expense of U.S. businesses. Moreover, these economic sanctions were executed without the consent of important corporate powers. In the second place, some U.S. military circles have very quietly expressed their concern over the need of a U.S. policy aimed at a "soft landing" transition in Cuba, to minimize the threat of sudden

Representative Ros-Lehtinen, "Congreso considera legislación", Diario las Américas, 1 junio 1997; "Representantes de EU buscan apretar ley Helms-Burton", EFE, 1 junio 1997.

⁸²CNN programs, May 30, 1997; "Canciller dice que Clinton es rehén del Congreso", Reuter, June 1, 1997.

⁸³Juan Tamayo, "Cuba sets off blitz against embargo," The Miami Herald, June 13, 1997.

immigration, and to minimize the political pressure to intervene in a catastrophic collapse of the Cuban regime.

However, all depends on the actions yet to be taken by the active and passive protagonists of both the law and the agreement, and the extent to which they perceive themselves to be the "losers." At face value, the disappearance of the most drastic aspects of the law is a setback for its most ardent backers in the U.S. Congress. The agreement is also detrimental to Cuba because it deprives the Cuban government of a useful scapegoat; on the other hand, the Brussels-Washington commitment to work together for Cuban democratization as an expansion of the EU's November 1996 "Common Position" is a new excuse for Castro to claim harassment and decry renewed foreign meddling in Cuba's internal affairs. In the event that the agreement crafted by British commissioner Leon Brittan is seen in Europe as a concession to the U.S., it will be used by different governments and political opposition parties in capitals where maintaining a distance from the U.S. is a prudent attitude. Moreover, the agreement did not seem to slow down the bilateral activities by important European member states; such is the case of France, in view of the signing of a commercial agreement with Cuba, which was interpreted as "a new European challenge to the Helms-Burton" law, with the resulting displeasure of Washington⁸⁴. An added enigma is the stance taken by the Canadian and Mexican governments now pressed to duplicate the agreement or in contrast, to take isolated, unilateral actions.

However, the reasoning proposed by the free trade scenario is also applicable to the U.S. partners in NAFTA. As a consequence, for Brussels, Washington, Ottawa, and Mexico, the relative weight of Cuba reveals itself in all its limitations within the global context. To paraphrase the famous sarcastic comment attributed to Henry IV of France, "Havana is not worth a mass - or a mess."

This interesting chapter of U.S-European-Western Hemisphere relations is therefore still open to analysis. A prudent term of time for a subsequent evaluation may seem to be the six months of the official "truce" agreed upon by the European Union and the United States (to expire in late 1997). In the event that

⁸⁴The agreement was signed by Franck Borotra, French Minister of Industry, and Ibrahim Ferradaz, Cuban Minister for Foreign Investment and International Cooperation (AFP and other news agencies, April 25,; Octavi Martí, "Francia reta a EE.UU", El País, 26 abril 1997.

the Cuban regime comes to an end by virtue of natural evolution (as a consequence of Castro's death), the Helms-Burton law will claim a place in history – with a balance sheet with more damages than benefits. Its central objective (Castro's exit under the effect of economic pressure) would not have been accomplished. The law then will be on record as a simple attempt to facilitate the return of democracy in Cuba, an objective shared by all the U.S. partners and allies which are nonetheless adversaries on the issue of the unfortunate law. Helms-Burton will go down in history as an irritant and the source of unnecessary friction between the U.S. and the rest of the world, especially the members of the European Union – a side effect that the U.S., Europe, and the rest of the world hardly need in this complex and confusing new world order.

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