The Case for a New Cuba Policy

Why diplomatic and humanitarian engagement would be good politics and great foreign policy

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Executive Summary

Now that Barack Obama has been elected to be the next president of the United States, the world will be waiting for the change that he has promised. While issues such as the global economic crisis and the wars in Afghanistan and Iraq will take months, years, or even decades to resolve, President-elect Obama has the opportunity to send an immediate signal of change to the world through a new approach to Cuba policy.

For the first time, Florida politics allow—and even encourage—the incoming administration to rethink the embargo. Cuban Americans increasingly believe that the best way to support human rights in Cuba is to have more contact with family and friends and to engage directly with the Cuban government. Cuban Americans also care more about politicians' positions on the economic crisis and healthcare than on Fidel Castro. "There is a generational and economic shift," says Joe Garcia, who ran a competitive race this year against Mario Diaz-Balart, a Cuban American congressman who supports current policy. While Garcia lost in his bid to unseat Diaz-Balart, he points to the U.S. economic crisis and anger over the restrictions on travel and remittances by Cuban Americans as factors which are increasingly influencing voters in South Florida.[1]

Shifting demographics among the broader Hispanic population in Florida also favor a new approach to Cuba. Florida is younger, more diverse, and more progressive than it was just a few years ago, as an influx of immigrants from Central and South America have changed the voter profile. Statewide, non-Cuban Hispanics now outnumber Cuban Americans. Non-Cuban Hispanics do not necessarily view U.S. Cuba policy as positive and would prefer to see Cuban immigrants subject to the same rules that apply to them.

Beyond the domestic political benefit of acknowledging a changing Cuban American community, a new approach to Cuba would send an important signal to the world. It would be relatively easy to demonstrate immediate change through a simple Federal Register notice and a new diplomatic approach. Even small changes in policy and rhetoric would send a strong message to U.S. allies, particularly in Europe and the Western Hemisphere, who will be looking for early signs from the next administration. "The next administration needs to have an early win," says former Assistant Secretary of State for Western Hemisphere Affairs Peter Romero.[2] Romero, who was a key player in the Clinton administration's second-term efforts to increase people-to-people exchanges, adds, "We've been on a losing streak for so long, something that breaks the paradigm and shows bold strokes would have an enormous impact. I think you can do that with Cuba."

It is also important to adjust the Cuba embargo to reflect post-9/11 priorities. Today the U.S. government focuses attention and resources on the Cuba embargo at the expense of more urgent pursuits such as halting flows of money to al Qaeda and keeping terrorists and criminals out of the United States. "The Cuba program puts extraordinary demands on government resources," observes former Office of Foreign Asset Controls (OFAC) Deputy General Counsel Serena Moe.[3] Enforcing nuisance sanctions on Cuba diverts resources from high-risk targets such as the 9/11 terrorists who entered the United States through Miami International Airport to violators

such as Cuban Americans who return from visiting relatives in Cuba with a box of cigars. Choosing to focus on Cohibas and rum rather than criminals and potential terrorists is a dangerous and unacceptable tradeoff in a post-9/11 world.

Change—whether unilateral action, diplomatic initiatives towards Cuba or U.S. allies, or multilateral initiatives—can and should be led by the White House. In spite of the layers of U.S. laws and regulations on Cuba, and the mistaken belief among many that meaningful policy changes require an act of Congress, the president retains wide discretion to modify the rules, as the Clinton and Bush administrations have demonstrated. Although an end to the entire embargo would likely require congressional action or a Cuban transition to a free and democratic government, the executive branch retains significant discretion to change policy through its licensing authority in the Cuba Assets Control Regulations. The idea that Congress has limited the president through legislation is largely a myth.

A new approach does not require an intensive top-to-bottom overhaul of U.S. policy on day one. The relationship is too complex and not urgent enough to commit the kind of time and energy that would be required for full and immediate normalization. But taking immediate action to reverse counterproductive Bush administration policies would send the message that change has arrived.

President-elect Obama could immediately:

1. Remove restrictions on the ability of Cuban Americans to travel and send financial support to family in Cuba.

2. Rescind the Bush administration's counterproductive limits on people-to-people travel and trade.

3. Rely on general licenses for travel to Cuba and instruct the Treasury Department to redeploy resources internally to focus on the department's urgent priorities of tracking terrorist financing and enforcing other sanctions programs.

4. Abolish the Office of Transition Coordinator and the Commission for Assistance to a Free Cuba, which obstruct direct diplomacy with Cuba and disrupt relations with U.S. allies. ("The hectoring and the finger wagging by the Cuba Coordinator just doesn't work," says former Canadian Ambassador to Cuba Mark Entwistle.[4] "If you're going to harangue somebody about the embargo, you ought to have some evidence as to the effectiveness of your policy.")

These steps could be accomplished via a simple notice in the Federal Register. Initial measures could be easy to accomplish with the stroke of a pen, just as the Obama administration will likely seek to reverse the so-called "Mexico City Policy" of denying federal development funding to organizations that provide information on family planning. They would be welcomed by an international audience hungry for signs of a new approach to foreign policy and by a growing number of Cuban Americans and other Hispanics.

In the following months, as the administration approaches the next Summit of the Americas in April 2009, the president should follow up on these initial signals by constructively engaging the Cuban American community, Congress, U.S. allies, and the Cuban government in the following ways:

1. Change the tone. If the United States wishes to make a serious effort to engage Cuba and U.S. allies on issues such as human rights and economic development, it will have to change its rhetorical approach. The United States should raise important issues, including human rights, in a more constructive and direct way than has been tried in the past with Cuba.

2. Depoliticize the Cuba portfolio. The U.S. approach to Cuba has been too special, which has been reflected in the way policymaking has been politicized within the bureaucracy. Depoliticizing the portfolio and returning Cuba to its normal place within the State Department bureaucracy would facilitate diplomacy.

3. Advance U.S. interests through principled diplomacy. The next president should engage Cuba diplomatically and place the burden on the Castro government to act constructively. Reestablishing regular, lower-level contacts, which have been curtailed by the Bush administration, would set the stage for higher-level discussions down the road.

4. Stop harassing U.S. allies. The next administration must stop harassing U.S. allies about their contacts with the Cuban government and attempt to find ways to work cooperatively to support human rights, civil society and economic development in Cuba. The United States should also eliminate the extraterritorial application of U.S. sanctions on Cuba and facilitate license exceptions where necessary.

5. End the travel ban. Complete repeal of travel restrictions would allow Americans to promote freedom and democracy in Cuba and would remove a burden from the Departments of Treasury and Homeland Security. The next president will have the support of moderate Cuban American groups, business interests, and other nongovernmental organizations to make a strong case for repeal.

6. Promote cultural exchanges and dialogue with the Cuban people. The next president should actively encourage people-to-people exchanges by streamlining the licensing process for Cuban musician, artist, athlete, and scholar access to the United States and by actively promoting dialogue and regular contact with the Cuban people. The U.S. government should also work with the private sector to encourage the establishment of a regular dialogue between Cuban economic officials and U.S. businesses. Facilitating sector-specific briefings—even in the face of continued trade restrictions—would establish important new channels of communication.

7. Prioritize sanctions administration and enforcement on the basis of national security risk. The next administration should call for a comprehensive reevaluation of the priority given to administering and enforcing all U.S. sanctions programs. This reevaluation, which could be done through a new quadrennial review at Homeland Security, should prioritize administration and enforcement of sanctions programs based on their relative importance to U.S. national security and the risk posed by lax enforcement. U.S. Customs and Border Protection and the

Office of Foreign Assets Control in particular should be given clear guidance to prioritize high-risk threats.

8. Address broader impediments to normal relations. The Cuba Adjustment Act, Cuba's place on the State Department's list of countries that sponsor terrorism, property claims, trademark and other trade issues and the status of the Guantanamo Bay naval base will continue to be impediments to long term normalization of relations. These issues must be addressed either unilaterally or as part of a broader negotiation with Cuba.

There is potential political benefit and a foreign policy opportunity for President-elect Obama and Congress to adjust the U.S. approach to Cuba. Immediately undertaking common-sense changes by lifting restrictions on travel by U.S. citizens, engaging in principled diplomacy with Cuba and U.S. allies, and changing the way in which the Cuba sanctions program is administered would be among the quickest and easiest ways to demonstrate to the world that change has come to U.S. foreign policy. These steps, combined with longer-term approaches aimed at dialogue and reconciliation with the Cuban people, would set the stage for normalization of relations.

The Cuban American community no longer considers the embargo sacred. Neither should the next president.

Advice to the Next President and Congress on Cuba [5]

as told to the author

"We should get our relationship with countries like Cuba on a more even keel. Pick a fairly senior, perhaps retired, diplomat with expertise in Latin America to go down and head the office in Havana without being accredited as an ambassador. Whether we do it for Cuba or the other rogues of the world, we need more contact and we need to be doing more without demanding some sort of political return." – ***Jeffrey Davidow**, Assistant Secretary of State for Western Hemisphere Affairs, 1996–1998*

"Cuba policy is long past due for substantial revision, and domestically there is waning support. Flooding Cuba with American tourists, journalists, and culture is the fastest way to promote change. I'd almost completely reverse current policy." – ***James Dobbins**, Senior Director for Inter-American Affairs, National Security Council, 1996–1999*

"I would begin making inroads and start immediately by lifting [travel restrictions]. Do all the things that you could do legally and then go to Congress and then work on lifting Helms-Burton … To show a new approach—a more nuanced, open approach to our foreign policy, not ideologically driven—would be a good point to make." – ***General James T. Hill**, Commander, United States Southern Command, 2002–2004*

"It's long past time that we … get dramatic about Cuba, which could help us in the hemisphere. You can use this election as an opportunity to change. We've been in a rut that hasn't gotten us anywhere." – ***Thomas Pickering**, Under Secretary of State for Political Affairs, 1997–2001, and Permanent Representative to the United Nations, 1989–1992*

"The next administration needs to have an early win. We've been on a losing streak for so long, something that breaks the paradigm and shows bold strokes would have an enormous impact. I think you can do that with Cuba." – ***Peter Romero**, Assistant Secretary of State for Western Hemisphere Affairs, 1999–2001*

"Engaging Cuba will strengthen the human rights movement and the standard of living for Cubans." – ***Nancy Soderberg**, Ambassador to the United Nations, 1997–2001*

"This is the time where you say look—there is change taking place in Cuba. We don't know where that is going, and it's a work in progress, but we should find ways to make sure that this change goes where you want it to go. A smart policy is one that tries to find opportunities to move Cuba in a different direction." – ***Arturo Valenzuela**, Senior Director for Inter-American Affairs, National Security Council, 1999–2000, and Deputy Assistant Secretary for Inter-American Affairs, 1994–1996*

"One of the things the new president could do that would be symbolically quite significant would be, in the first few weeks, to signal a dramatically new approach to Cuba." – ***Alexander Watson**, Assistant Secretary of State for Inter-American Affairs, 1993–1996*

Introduction

Sitting in a friend's North Miami apartment, Tony Jimenez observes that Cuban American hardliners "are people who haven't stepped foot on the island in fifty years."[6] Jimenez, a Cuban American who visited the island for the first time in 2005 and who has been back several times since, says, "They are completely divorced from the reality of what Cuba is today."

In Miami, this kind of talk is liable to get you labeled a communist, but Jimenez is hard to dismiss. He worked on the Bush-Cheney reelection campaign in 2004 before moving over to staff Secretary of Commerce Carlos Gutierrez, a fellow Cuban American whom he admires. He left the government in 2006, fed up with the Bush administration's harsh rhetoric and new restrictions on travel and remittances to Cuba.

These restrictions, which prohibit Cuban Americans from visiting family in Cuba more than once every three years, have shaken up embargo politics in Miami. President George W. Bush has exposed deep fissures between a diminishing old guard that favors complete isolation from Cuba and a rapidly growing number of younger Cuban Americans who want to try something different.

"Cuba for my generation is not Fidel Castro …It's the grandmother, the sister that you left behind."

New community groups such as Consenso Cubano and Raíces de Esperanza ("Roots of Hope") have emerged in South Florida to provide outlets for the quiet majority of Cuban Americans who are sick of talking about the Castros and feel alienated from the traditional hard line. These groups provide space to discuss formerly taboo issues such as dialogue, travel, and reconciliation. "Cuba for my generation is not Fidel Castro," Felice Corordo, a founder of Raices de Esperanza, explains.[7] "It's the grandmother, the sister that you left behind."

Jimenez and Corordo represent a new generation of Cuban Americans that is increasingly vocal, politically engaged, and willing to take on "old truths" about the embargo, which remains a cornerstone of U.S. policy towards Cuba even for President-elect Barack Obama. "The split is getting deeper," observes Carlos Saladrigas, a founder of Consenso Cubano and a member of the Cuba Study Group, a moderate Cuban American organization.[8]

Now that Barack Obama has been elected to be the next president of the United States, the world will be waiting for the change that he has promised. While issues from the global economic crisis to the wars in Afghanistan and Iraq will take months, years, or even decades to unravel successfully, Bush has gift-wrapped an opportunity for President-elect Obama to send a quick and easy signal of change to the world through a new approach to Cuba policy.

The Case for a New Approach

A new approach to Cuba is an increasingly smart political strategy. The Bush administration's divisive Cuba policies have created political space for President-elect Obama and Congress to seek a new path and attract an increasingly disaffected community. A new approach to Cuba, combined with a greater emphasis on finding solutions to problems at home, would appeal to the large and growing segment of Cuban Americans who speak of reconciliation and care more about where a candidate stands on healthcare and the economy than about ousting the Castros.

The next president should use this moment of opportunity to reorient the U.S. approach to Cuba. Politically, a new approach based on dialogue and engagement with the Cuban people would appeal to a new and increasingly political generation of Cuban Americans and other Hispanics that will continue to mature and gain influence over the next four years. A new approach would also have broader benefits for U.S. national security and the United States' image in the world.

A new political landscape

Over the past eight years, the Bush administration has managed to drive a wedge through the Cuban American community in South Florida. New restrictions on travel and remittances from Cuban Americans have forced many who had reflexively supported the embargo to reconsider its impact on their community and on their friends and family in Cuba. Many others, who are more concerned with the U.S. economy than transition in Cuba, have become weary of the incessant focus on the Castro brothers. The empty rhetoric and divisive policies of the past eight years have encouraged new community leadership to seek greater engagement and have begun to isolate the most extreme supporters of the embargo.

"The Bush restrictions forced many in our community who blindly supported the hard line to stop and think, 'Wait a minute. I'm anti-Castro. But are we doing the right thing?'" says Ric Herrero, a Cuban American who changed his views on the embargo after traveling to Cuba.[9] "The restrictions caused many in our community, who already had doubts about the hard-line approach in the wake of the Elian scandal, to engage in introspection and embrace a pragmatic approach to solving the Cuban puzzle."

Polling emphasizes Herrero's point. There has been a shift among Cuban Americans on key components of the embargo. More than sixty percent of Cuban Americans favor a rollback of Bush administration restrictions on travel and remittances. [10] A majority (55 percent) now favors allowing unrestricted travel to Cuba, not just by Cuban Americans but by all Americans. This number is nine percentage points higher than it was in 2004. Support for new approaches is particularly strong among younger Cubans. In a June 2008 poll of registered voters prepared for the Foundation for the Normalization of U.S.-Cuba Relations (ForNorm), nearly 70 percent of Cuban Americans under 55 in the districts held by Representatives Lincoln and Mario Diaz-Balart (R-Fla.) expressed support for allowing U.S. citizens to travel to Cuba, promoting people-to-people exchanges, and permitting greater financial support to family members in Cuba.[11]

Increasing numbers of Cuban Americans also support a new diplomatic approach. Nearly three-quarters think that the United States should engage "if a new Cuban government shows an interest in a gradual improvement of relations with the exile community and with the United States."[12] Sixty-five percent favor "establishing a national dialogue among Cuban exiles, Cuban dissidents, and representatives of the Cuban government."[13] More than 57 percent favor establishing diplomatic relations unconditionally according to a 2007 poll, whereas 57 percent were opposed when asked the same question in 2004.[14]

Even support for the embargo, an article of faith in South Florida for years, is rapidly eroding. Only 57.5 percent of Cuban Americans indicated support for the embargo in 2007, compared with 66 percent in 2000 and 78 percent in 1997.[15] A 2006 Bendixen & Associates poll pegged support for the embargo at 53 percent.[16] While many remain attached to the idea of the embargo, fewer actually have faith in it. Seventy-six percent of Cuban American respondents in the 2007 Florida International University poll said that the embargo works "not very well" or "not at all."[17]

Regardless of what one thinks about the embargo, there is evidence that Cuban Americans have grown tired of the single-minded focus on the Castro brothers. In the 2008 ForNorm poll, when respondents in the districts held by Lincoln and Mario Diaz-Balart were given a choice between supporting a candidate who focused on domestic issues or on changing Cuba's government or who focused on both equally, sixty percent of Cuban Americans said that they would support "a candidate whose top priority will be improving healthcare, lowering housing costs, and improving our schools."[18] Given the U.S. financial crisis, that number is likely much higher today.

President Bush's policies "have a negative impact on national reconciliation and family reunification"

"Cuban Americans are behaving like regular migrants who come to the United States to pursue the American dream," according to Guillermo Grenier, a professor at Florida International University who has overseen years of polling work on attitudes of Cuban Americans towards the embargo.[19] He added, "They care about getting a good job and sending their children to school and not as much about Fidel Castro."[20]

While the Cuban American community has been outgrowing the caricature of a monolithic bloc of single-issue voters for some time, new community leadership groups have emerged in South Florida to provide outlets for the quiet majority of Cuban Americans who are sick of talking about the Castros and feel alienated from the traditional hard line. These groups are creating space within the community to discuss formerly taboo issues such as dialogue, travel, and reconciliation. One example is Consenso Cubano, an umbrella group of moderate organizations that came together in 2006 to call for an end to restrictions by the United States and Cuba on travel rights. The group speaks of the Cuban Diaspora (rather than of the "exile community") as well as "reconciliation, peace and harmony."[21] It declared in 2006 that the Bush administration's policies "have a negative impact on national reconciliation and family reunification."[22]

One of the coalition's more prominent members is the Cuban American National Foundation (CANF), which for years championed tighter restrictions under its well-connected president, Jorge Mas Canosa. Over the past few years, the foundation has embraced a more moderate tone and has called for an end to Bush administration travel restrictions. Another participant, Juan Antonio Blanco, a former Cuban government official who defected to Canada, suggests that "peace needs to be made between the Cuban government and the Cuban Diaspora. You need forums that work as connectors."[23] Support for engagement, dialogue, and reconciliation is also growing among younger Cuban Americans through groups such as Raíces de Esperanza, a nonprofit network of young professionals that supports cultural links between Cubans on and off the island.

Building a progressive majority

While the Cuban American electorate, which trends older and more Republican than the broader community, has been among the most loyal supporters of the embargo, there is a new opportunity to capture the quiet majority of voters and would-be voters who care more about jobs, healthcare, and visiting family in Cuba than about Castro. Excitement about Obama's candidacy, combined with concern about Bush's Cuba policy and the state of the economy, has increased political participation among voters who are less inclined to support current sanctions. These new voters are likely to add to the voices challenging the conventional wisdom in South Florida and help to further marginalize opponents of change in the years to come.

It is clear that Cuban Americans historically have tended to identify with the Republican Party and with the embargo. In 1996, President Bill Clinton pulled less than one-third of the Cuban American vote in South Florida even after signing the Helms-Burton Act and receiving the support of Mas Canosa and CANF. (Vice President Al Gore and Senator John Kerry (D-Mass.) were unable to match Clinton's percentage in 2000 or 2004.) In 2006, Democratic candidates for governor and senator in Florida received 29 and 37 percent of the Cuban American vote, respectively, about double the percentage from earlier elections.[24] Even now, the 2008 ForNorm poll of Florida's 21st and 25th congressional districts found that clear majorities of Cuban Americans over 55 oppose allowing Americans to travel or U.S. companies to trade and invest in Cuba.[25]

Over the past two years, however, the electorate in South Florida has changed, particularly in the 21st and 25th congressional districts, where tens of thousands of new Democratic voters have been added to the rolls.[26] Between the 2006 election and August 2008, more than 80,000 Democratic and Independent voters were added to the rolls in Miami Dade County, compared to less than 3,000 Republicans. Broward County added more than 40,000 new Democrats over the same period, whereas Republican and Independent voter registrations declined. Voter registration among 18–29 year olds has also increased dramatically, up by more than 20 percent in Miami Dade. These voters came out in force to support President-elect Obama. He received 35 percent of the overall Cuban American vote, and 55 percent of Cuban Americans under 30.[27]

These changing demographics present an opportunity for President-elect Obama and members of Congress to appeal to a community that is more diverse politically than it has been given credit for and that is tired of being treated as a cash machine. For years, U.S. presidential candidates

and sitting presidents alike have swept into Miami "as croupiers to pick up all of the chips," says Cuban-born Miami architect Raúl Rodríguez, who laments "how little regard they all have had for Cuban Americans."[28] Acknowledging the Cuban American community's frustration with the embargo as a political issue would be a popular move for the next president, members of Congress, and those who might wish to succeed them.

Democratic congressional candidates in South Florida ran competitive races this year by taking advantage of this opportunity. Annette Taddeo, Raúl Martinez, and Joe Garcia have portrayed incumbents Ileana Ros-Lehtinen (R-Fla.), Lincoln Diaz-Balart, and Mario Diaz-Balart as overly focused on Cuba policy. Earlier this year, the Garcia campaign released an ad on the Internet called "One Trick Pony":

> 7,000 foreclosures. Record gas prices. 14,500 kids without healthcare. Unemployment rising. And … our representatives' response … [*Clips of Lincoln and Mario Diaz-Balart saying: Fidel Castro! Communist! Castro regime. Fidel Castro. Mr. Castro. Terrorist Cubans! Condemned!]* Had enough? This November, let's try something new.[29]

The challengers also confronted their opponents on their support for Bush's restrictions on travel and remittances by Cuban Americans. At an October 2008 debate, Martinez challenged Lincoln Diaz-Balart's support for restrictions on Cuban American travel, saying, "That's not what America is all about."[30] "Allow the families to connect to each other and then we can work on all the other issues." In May 2008, Taddeo released a statement that pledged to end 2004 restrictions on Cuban Americans, declaring, "We must stop tearing Cuban and Cuban-American families apart."[31] She tied Ros-Lehtinen to the Bush administration's Cuba policy and asked her to commit to the same pledge.

"There is a generational and economic shift," Garcia argues, pointing to the U.S. economic crisis and anger over the restrictions on travel and remittances by Cuban Americans as factors influencing voters in South Florida.[32]

While all three of the incumbent Cuban American Republicans won reelection, the competitive race Garcia ran in Florida's 25th Congressional district, which was unthinkable just a few years ago, suggests that relying on hard-line Cuba policies as an electoral strategy in South Florida is increasingly less viable. Focusing on important domestic concerns while advancing a compassionate agenda to engage Cuba would build a base of support in South Florida that will become even more significant as younger Cuban Americans and more recent immigrants mature politically.

Broader appeal

Changing demographics among the broader Hispanic population in Florida also favors a new approach to Cuba. Florida is younger, more diverse, and more progressive than it was just a few years ago, as an influx of immigrants from Central and South America have changed the voter profile. According to 2006 exit polls, non-Cuban Hispanic voters outnumber Cuban Americans.[33] Latinos are registering more heavily as Democrats and Independents. Republican identification in Miami-Dade County dropped from 56 percent of registered Hispanic voters in 2000 to 44 percent in 2008.[34] "Florida Hispanics are no longer majority Republican," observes Sergio Bendixen, a Democratic pollster based in Miami.[35]

Non-Cuban Hispanic voters went heavily for Obama in the November election. According to exit polling from early voting, 85 percent of Mexican-born voters, 86 percent of Argentine-born voters, and large majorities of those born in Puerto Rico, Honduras, the Dominican Republic, Peru and Colombia voted for Obama. Statewide, Obama received 57 percent of the Hispanic vote.[36]

Non-Cuban Hispanics do not necessarily view U.S. embargo policies as positive. Only 27 percent of Hispanic voters in Florida's 17th district support current U.S. policy towards Cuba.[37] The same poll found that 57 percent of Hispanic voters favor "applying to Cubans the same rules that apply to other immigrants."[38] Simon Rosenberg, president of Democratic think tank NDN, suggests that, "The minds of the Hispanic community have been drifting from the Diaz-Balarts."[39]

These trends make it even less likely that future candidates will see much of a political benefit from taking the well-worn hard line on Cuba policy. Politicians will increasingly confront a changing electorate, many of whom would prefer the United States to normalize its interactions with Cuba and the Cuban people.

A Post-Fidel approach

For the first time in nearly fifty years, when the next President of the United States takes the oath of office, Fidel Castro will not be the president of Cuba. Now that he has stepped aside, the United States has an opportunity to consider new policies for a post-Fidel Cuba while challenging the Cuban government to do the same.

Raúl Castro has given some small indications that he is taking a more pragmatic and less ideological approach than his brother. Since taking over in 2006 (formally in 2008), his government has implemented some minor reforms. Cuban citizens are now allowed to own cell phones and computers. The government has removed restrictions on the ability of Cubans to stay in hotels, undoing the "tourism apartheid" that human rights groups have long criticized. It has also announced agricultural reforms that would devolve control to local authorities and lease property to private farmers in an attempt to improve production. The younger Castro has also increased space for public debate – albeit marginally -- which was apparent in February 2008

when a student at the University of Computer Science outside of Havana questioned National Assembly President Ricardo Alarcón on a range of issues from wages to Internet access.[40]

The Bush administration is right to point out that few of these reforms will have much of an immediate practical effect but is wrong to pretend that continuing to isolate Americans and their money from Cuba will make the situation any better. While most cannot afford to own a cell phone and are restricted from accessing the Internet, Cubans still manage to share information via cell phones, flash drives, and new media. (Blogger Yoani Sanchez has received international acclaim for publishing a popular blog site *Generación Y* via clandestine visits to Internet cafes in Havana.) U.S. policy should encourage more widespread adoption of communication technologies by providing Cubans the resources to share information.

In addition to supporting the Cuban people, the United States has a new opportunity to engage the Cuban bureaucracy and military and cultivate relationships with those who may favor economic and political reform. A younger generation of Cubans, who recognize the potential impact of a new relationship with the United States, is already being given more responsibility for management of the economy and society by 77-year-old Raúl Castro. A member of that younger generation, a Cuban official with the Ministry of Foreign Investment, argued in 2007, "[N]ormalization … would have a serious impact on how Cuba would manage its economy. There are a number of factors that could change."[41]

"In Eastern Europe, we always assumed transition would come from within rather than without," says Arturo Valenzuela, a former senior director for inter-American affairs at the National Security Council (NSC). "'Soft-liners' can become allies—there are indications that there are soft-liners in Cuba."[42]

A signal to the world

Beyond the domestic political benefit of acknowledging a changing Cuban American community, a new approach to Cuba would send an important signal to the world. While complex foreign policy issues from Darfur to Iraq will take years to resolve in cooperation with the international community, it would be relatively easy to demonstrate immediate change with respect to Cuba through a simple Federal Register notice and a new diplomatic approach. Even small changes to policy and rhetoric would send a strong message to U.S. allies, particularly in Europe and the Western Hemisphere, who will be looking for early signs from the next administration.

The United States' reputation in the world has slid dramatically over the past eight years. Large majorities in key allies such as Canada (77 percent), France (75 percent), Mexico (66 percent), and the United Kingdom (67 percent) say that their opinion of the United States has gotten worse since the start of the Bush presidency. Less than one-half of respondents in Canada and the United Kingdom think that the relationship with the United States is a friendship.[43] A troubling number think that Bush and the U.S. presence in Iraq are greater threats to world peace than Kim Jong-Il and the Iranian nuclear program, and view Beijing more favorably than Washington.[44] In order for the United States to improve its image in the world, the next president will have to offer

new policies that demonstrate a commitment to working with allies and a pragmatic, engagement-oriented approach to foreign policy challenges.

Cuba policy offers this opportunity. Embargo politics have kept the United States from pursuing easily attainable changes to policy. With the stroke of a pen, the next president could unilaterally demonstrate that he is willing to try a different approach by allowing greater freedom of travel for U.S. citizens to Cuba. A diplomatic approach to Cuba would signal that the president is willing to pursue peaceful solutions to difficult problems, even if those initial efforts do not bear fruit immediately. Multilaterally, overtures to U.S. allies to promote rule of law, economic development, and human rights in Cuba would be a welcome change from the unproductive criticism that has become the hallmark of recent U.S. policy.

Compared with difficult challenges such as stabilizing Afghanistan or containing Iran, Cuba is an easy place to showcase change. "The next administration needs to have an early win," says former Assistant Secretary of State for Western Hemisphere Affairs Peter Romero.[45] Romero, who was a key player in the Clinton administration's second-term efforts to increase people-to-people exchanges, adds, "We've been on a losing streak for so long, something that breaks the paradigm and shows bold strokes would have an enormous impact. I think you can do that with Cuba."

Aligning U.S. policies with national security priorities

It is also important to adjust the Cuba embargo to reflect post-9/11 priorities. Today, the U.S. government focuses attention and resources on the Cuba embargo at the expense of more urgent pursuits such as halting flows of money to al Qaeda and keeping terrorists and criminals out of the United States. "The Cuba program puts extraordinary demands on government resources," observes former Office of Foreign Asset Controls (OFAC) Deputy General Counsel Serena Moe.[46]

The Bush administration has increased the burden on key government agencies responsible for keeping the United States safe from terrorism by ordering the Departments of Treasury and Homeland Security "to step up enforcement of Cuba embargo travel restrictions by increasing inspections of travelers and shipments to and from Cuba, and by targeting those who travel to Cuba illegally through third countries and by private vessel for illegal business or tourism purposes or to carry unlicensed currency to Cuba."[47]

"The Cuba program puts extraordinary demands on government resources," says a former OFAC Deputy General Counsel

As a result of this order, U.S. Customs and Border Protection (CBP) increased its scrutiny of passengers arriving from Cuba at Miami International Airport, conducting secondary inspections of twenty percent of arrivals from Cuba compared to just three percent of those entering from other countries in 2007. In a 2007 report, the Government Accountability Office (GAO) concluded that agency's inspections of arrivals from Cuba "may strain CBP's ability to carry out its mission of keeping terrorists, criminals, and other inadmissible aliens from entering the

country" through the very port at which Mohammed Atta and at least three other 9/11 hijackers arrived.[48]

The Treasury Department has also increased its focus on Cuba at the expense of more serious national security concerns. Since 2000, it has investigated more cases involving the Cuba embargo than all of the other sanctions programs for which the office is responsible.[49] It issued more than 41,000 licenses in 2006 compared to 24,540 in 2002, despite the fact that the 2003–2004 rule changes dramatically restricted the number of potential travelers to Cuba.[50] The rule changes have saddled the Treasury Department with an additional licensing obligation.

"Licensing Cuban travel is a huge administrative burden. It takes a lot of resources to review and issue licenses consistent with the defined categories and specific terms under which individuals may receive authorization to travel. And, there's the additional burden of enforcing the terms of the license, not to mention all the enforcement actions undertaken against those who violate the travel restrictions and go unlicensed," says Stevenson Munro, another former OFAC Deputy Chief Counsel.[51]

Stepped-up enforcement of the Cuba sanctions program, as well as routine administration of the embargo, divert resources from high-risk targets such as the 9/11 terrorists who entered the United States through Miami International Airport to high-percentage violators such as Cuban Americans who return from visiting relatives in Cuba with a box of cigars. Choosing to focus on Cohibas and rum rather than on criminals and potential terrorists is a dangerous and unacceptable tradeoff in a post-9/11 world. This is particularly true when it comes to Cuba, whose national security threat level is "none whatsoever," according to former Commander of U.S. Southern Command James T. Hill.[52]

"This is domestic policy trumping international security policy," according to a former senior director for inter-American affairs at the National Security Council (NSC)

The next president should ensure that the allocation of resources used to administer and enforce all U.S. sanctions programs is based in large part on an assessment of national security risk. In its final report, the 9/11 Commission cautioned, "The challenge for national security in an age of terrorism is to prevent the very few people who may pose overwhelming risks from entering or remaining in the United States undetected."[53] Americans should not be in the habit of breaking the law by bringing cigars and rum into the United States, but increasing the resources to investigate and prosecute minor violations ignores this infinitely greater challenge.

Suggestions from government officials that they already use risk matrices to determine resource allocations misses the point. GAO noted in its report that CBP stepped up inspections at the direction of the Bush administration "based on its assessment of the risk of embargo violations."[54] Allocating resources based on the relatively high "risk" of someone sneaking a cigar back to the United States fails to consider the national security implications of that action compared to other threats for which the agency is responsible.

"This is domestic policy trumping international security policy," says Valenzuela.[55]

U.S. Sanctions and the Myth of Helms-Burton

Some have argued that, even if President-elect Obama is inclined to change policy, Congress has tied his hands by passing legislation on Cuba. The Obama administration should look beyond the false perception encouraged by current and former U.S. officials that virtually any change in U.S. policy must begin with Congress. Congress has a role to play, but it is unlikely to alter Cuba sanctions in any significant way without prodding from the president. Change—whether unilateral action, diplomatic initiatives towards Cuba or U.S. allies, or multilateral initiatives—can and should be led by the White House. The idea that Congress has limited the president through legislation such as Helms-Burton is largely a myth.

Shaping the Cuba sanctions program

The Cuba sanctions program is contained in the Cuba Assets Control Regulations (CACR), issued by OFAC in 1963 under the authority of the Trading with the Enemy Act. Virtually every U.S. president has changed these regulations to reflect various policy priorities. Since the end of the Cold War, Congress has also become involved in shaping policy, passing three major pieces of legislation that have required changes to the regulations.

During the Cold War, Congress had little to do with shaping U.S. regulations on Cuba. There were some exceptions, including Congress's appropriation of money for Radio Marti at President Ronald Reagan's urging and passage of the Cuban Adjustment Act under President Lyndon Johnson. For the most part, however, the president controlled policy. President Jimmy Carter used his authority to remove travel restrictions and allow U.S. citizens to spend money in Cuba. Reagan used his to prohibit the ability of U.S. citizens to spend money in Cuba and reinstitute the travel ban.

In the 1990s, Congress began to take a more active role in foreign policy. Republicans and Democrats, led by the Florida and New Jersey delegations, introduced legislation aimed at tightening the embargo to "turn the economic screws" even more, as Representative Lawrence Smith (D-Fla.) suggested in June 1990.[56] The 1992 Cuban Democracy Act was the first successful attempt by Congress to put its stamp on U.S. Cuba policy. The act authorized the president to impose sanctions against foreign countries doing business in Cuba, restricted U.S. subsidiary operations in Cuba, and curbed travel and remittances. The bill required that the president certify that Cuba was respecting human rights and moving towards free elections within six months of the certification before any normalization of relations could take place. The act also included statements of policy that the United States would take into account the willingness of other countries to cooperate in U.S. policy goals regarding Cuba as a matter of foreign policy. In addition, the bill authorized the Treasury Department to enforce the act and to establish an office in Miami to improve enforcement.[57]

In 1996, sanctions proponents in Congress succeeded in imposing tougher measures on Cuba and third countries doing business with the Cuban government through the passage and enactment of the Cuban Liberty and Democratic Solidarity (Libertad) Act, otherwise known as the Helms-

Burton Act. Helms-Burton, which passed easily after Fidel Castro shot down two U.S. airplanes flying close to Cuba, called for increased enforcement of current sanctions and a string of new measures. The legislation required federal agencies to oppose loans to Cuba in international organizations and instructed the president to take steps to improve assistance to human rights groups in Cuba.[58] Title III of the act permits U.S. nationals to sue in U.S. court any foreign person who deals in U.S. property that was confiscated by the Cuban government. Title IV instructs the Department of State to withhold visas from foreign businessmen doing business with Cuba. (Titles III and IV have stirred controversy with U.S. allies and have not been implemented fully.)

The piece of Helms-Burton that tends to gets the most attention is Section 102(h), "Codification of Economic Embargo." The section reads:

> The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to Section 204 ["Termination of the Economic Embargo Against Cuba"] of this Act.[59]

This provision has led to a widespread—although incorrect—perception that the executive branch lacks the authority to change the terms of the embargo on Cuba. Members of Congress and U.S. officials have encouraged this view. During the consideration of the conference report for Helms-Burton, Senator Paul Coverdell (R-Ga.) said that the act "codifies—this is very important—it codifies the existing embargo on Cuba, making it law unless a transition government is in place."[60] A congressional working group on Cuba suggested in 2002 that, because of Helms-Burton, "The president lost the ability to modify the embargo in calibrated ways in response to incremental reforms that could take place in Cuba."[61] More recently, in an interview with Reuters, one State Department official suggested that "[Cuba] is one of our most regimented policies. Our hands are tied by laws."[62]

Current executive branch discretion

Although a formal end to the embargo would likely require either an act of Congress or the transition by Cuba to a free and democratic system of government, the next administration's hands are far from tied when it comes to shaping policy. Based on a plain reading of Helms-Burton statute, actions taken by the Clinton and Bush administrations after Helms-Burton was enacted, interpretation of the law by government agencies, and analyses by sanctions law experts, the executive branch retains wide discretion to make significant changes to U.S. Cuba policy.

In codifying the embargo, "including all restrictions under part 515 of title 31," Congress captured in Helms-Burton the president's discretion to change the restrictions.[63] This licensing authority is stated throughout the CACR. Section 201(a) and (b) and Section 204(a) specify that transactions involving Cuba are prohibited "except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise." Section 202 indicates that securities

transactions with Cuban nationals are prohibited "unless authorized by a license expressly referring to this section." The regulations restrict holding blocked property "except … as authorized by the Secretary of the Treasury or his delegate by specific license."[64]

"The regulations, when made statutory [by the Libertad Act], left in place the ability to issue regulations and licenses—either general or specific," according to Moe. "If that were not the case, no little leaguers could go to Cuba and no aid could be given to Cuba without an act of Congress."[65]

Congress has acknowledged this discretion. In its "Overview and Compilation of U.S. Trade Statutes," the House Committee on Ways and Means wrote, "Title I of the Act provides that the Cuban embargo as in force on March 1, 1996 (*including the executive branch discretion contained therein*) is to remain in effect until the president takes certain steps outlined in section 204 of the Act to suspend or terminate the embargo based on the existence of a transition government or a democratically elected government in Cuba" (emphasis added).[66] The committee's own handbook, which is also known as the House Ways and Means Blue Book, recognizes the ability of the president to alter the terms of the embargo.

Both Clinton and Bush utilized this discretion to modify the Cuba sanctions regulations following the passage of the Libertad Act in 1996. After Pope John Paul II visited Cuba in January 1998, the Clinton administration changed the rules to permit Cuban Americans to send money to relatives in Cuba and to allow direct flights between the United States and Havana. On January 5, 1999, Clinton announced that his administration would expand remittances to Cuba; increase people-to-people exchanges with Cuban academics, athletes, and scientists; and allow sales of agricultural products to independent groups in Cuba.

In a letter explaining the decision to authorize remittances and direct flights to Cuba, officials from the State and Treasury Departments indicated:

> OFAC interprets section 102(h) of the [Helms-Burton] Act to permit the continued exercise of reasonable licensing authority in OFAC's implementation of the prohibitions contained in the CACR as of March 1, 1996, and in the CDA and the Act.[67]

Administration officials went on to say that the issue of remittances "remains subject to presidential discretion in weighing the humanitarian purpose of allowing U.S. residents and citizens to support family members in Cuba against the resulting flow of hard currency to Cuba."[68] Ambassador James Dobbins, senior director for inter-American affairs at the NSC, echoed this sentiment in response to a question about whether certain Clinton administration actions went against the act:

> Helms-Burton codified the embargo and at the same time it codified the president's licensing power. That is, it codified a process by which there was an embargo to which exceptions could be granted on a case-by-case basis by the president in cases in which it was deemed to be consistent with U.S. policy. Of course, we issued hundreds, probably thousands of licenses for different things since Helms-Burton was signed without any complaint—any complaint on the

> grounds that it was inconsistent with Helms-Burton. In some cases, people didn't agree with a particular licensing decision. But the concept that the president would be able to license travel, remittances, other things, such as the steps he took with March, is well accepted.[69]

The Bush administration has also made significant changes to the rules governing travel, trade, and remittances to Cuba, which further highlights the discretion available under current law. In 2003, the Treasury Department issued rules that eliminated people-to-people educational exchanges and changed other rules governing travel and remittances. Technical amendments also narrowed a general license unblocking the assets of Cubans resident in the United States and ended the automatic unblocking of Cuban expatriates resident in countries other than U.S. sanctions targets and the United States itself.[70] Such expatriates much now apply individually to OFAC to be licensed as "unblocked nationals."[71] In 2005, the administration clarified rules governing shipment of agricultural products to Cuba, requiring that U.S. exporters be paid prior to shipment rather than before the title changed hands, as is normally the case in international commerce.

The administration's most dramatic changes to policy came in 2004, when it used its rulemaking authority to severely limit contact with the Cuban people. The Treasury Department issued a rule that further curtailed educational programs, removed the presumption of "fully hosted" travel by which additional exchanges took place, limited the ability of Americans to send money to Cuba, and restricted visits by Cuban Americans to family on the island. These changes were based on recommendations from the interagency Commission for Assistance to a Free Cuba that the administration established in 2003.[72]

The rules narrowed the definition of family, limited visits to 14 days once every three years, and removed the exception to the regulations that allowed additional visits for humanitarian reasons. Under these regulations, Cuban Americans can no longer legally visit aunts, cousins, or other extended family on the island and must obtain a specific license to travel to visit immediate family. A Cuban American cannot return to Cuba legally within a three year period even if, for example, his mother or father were to die within that timeframe. In explaining the policy, a State Department official said, "if [Cuban Americans] have a dying relative, they have to figure out when they want to travel."[73]

In this case, the administration went from authorizing travel under a general license, with which advance permission was not necessary in individual circumstances, to requiring that each potential traveler apply for a specific license from the Treasury Department in order to be able to visit relatives in Cuba. Having demonstrated the authority of the executive branch to switch from a general to a specific license via a simple Federal Register notice, the discretion clearly exists to do the opposite.

More recently, in response to the notice by Raúl Castro that Cubans would be allowed to own cell phones for the first time, the Bush administration announced it would permit Cuban Americans to distribute them to relatives on the island. In explaining the policy, NSC Senior Director for Western Hemisphere Affairs Dan Fisk said, "in this case the State Department and the Department of Commerce will work together to change the regulatory structure. It's a Federal Register [notice] … Most of the embargo is actually contained in federal regulations."[74]

This example is significant. The Bush administration used its discretion to exempt U.S.-origin electronics on the Commerce Control List (CCL)—which are specially controlled by the Department of Commerce for reasons of anti-terrorism—to a country that the State Department says is a sponsor of terrorism. It did so even though the CACR, which spells out the list of items authorized to be sent in gift parcels, does not include mobile phones.[75] "From a licensing standpoint, this is a major step," says William A. Reinsch, a former Undersecretary of Commerce for Export Administration.[76] "Items subject to the CCL are controlled for a reason. Now we're not exactly talking about sending shoulder-fired rocket launchers, but the move to exempt items on the CCL highlights that discretion over licensing policy extends far beyond things like toothpaste or baseball gloves."

Both administrations have taken pains to indicate that their actions are consistent with current policy and congressional intent. Clinton characterized his administration's measures as in line with acts of Congress, which "enable and encourage the administration to conduct a program of support for the Cuban people."[77] In announcing the recent cell phone plan, Fisk argued that the move is "consistent with our existing regulations on gift parcels."[78]

The Clinton administration took this view even though its moves to allow travel by Cuban Americans and remittances expressly contradicted the sense of Congress in the Helms-Burton Act. The act indicated that remittances should not be granted until the Cuban government allows the "unfettered operation of small businesses" and that, before allowing generally licensed travel by Cuban Americans to Cuba, the president should "insist on such actions by the Cuban Government as abrogation of the sanction for departure from Cuba by refugees, release of political prisoners, recognition of the right of association, and other fundamental freedoms."[79] Similarly, the Bush administration's attempt to portray its action on mobile phones as routine belies the significant export exception it has made.

Such arguments demonstrate how little deference to Congress is necessary to alter the terms of the embargo. Only the most unimaginative of administrations would have difficulty explaining how any particular initiative it might wish to pursue would further the intent of Congress to show solidarity with the Cuban people. The next administration easily could seek to further the cause of assisting the Cuban people by, for example, exempting goods such as agricultural machinery or computers from U.S. sanctions, permitting services such as direct banking or micro-lending, or allowing imports of Cuban agricultural products.

The Trade Sanctions Reform and Export Enhancement Act of 2000

Ironically, the only piece of legislation that may restrict executive authority is the one that was designed to loosen the trade embargo. In 2000, a bipartisan group of lawmakers helped enact the Trade Sanctions Reform and Export Enhancement Act (TSRA). The law, which was championed by the likes of Attorney General John Ashcroft , Senator Max Baucus (D-Mon.), and Representatives Charlie Rangel (D-N.Y.) and George Nethercutt (R-Wash.), has had a greater practical effect on the Cuba embargo than has Helms-Burton or the Cuban Democracy Act.

The law exempts exports of food, medicine, medical products, and agricultural products from U.S. sanctions. It is because of TSRA that U.S. farmers can sell lentils and poultry to Cuba and

medicine and defibrillators to Sudan and the Palestinian Authority. Despite the embargo, the United States is now Cuba's largest source of foreign agricultural imports to the tune of nearly $500 million per year.

In exchange for exempting humanitarian trade from the embargo, pro-embargo members of Congress championed a provision that prohibits the executive branch from licensing "travel to, from, or within Cuba for tourist activities."[80] As a result, one of the most logical steps the next president might wish to take, lifting the travel ban, likely would require an act of Congress. "This time, Mr. Diaz-Balart got it right," says Robert Muse, an attorney based in Washington, DC who advises businesses on Cuba.[81]

The trouble with Congress is that it is unlikely to act without signals and serious leadership from the next president. According to an aide to Senate leadership, "Cuba's a tough issue, and I don't think the Senate would take up legislation without some consensus in the caucus."[82] Faced with two wars, a troubled economy, and a host of foreign policy problems, it will be difficult to convince Congress to change policy except in very minor ways—for example, by reinstating family travel—that already are sure to be on the mind of the next president.

Congress will need to play a role in the full normalization of relations, but it is likely going to be up to the president to initiate change within the boundaries of current law. Luckily for the next president, the confines put in place by Congress are not terribly limiting. The executive branch has the authority to make significant modifications to the Cuba sanctions program.

The Embargo's Extraterritorial Reach

Another prominent feature of the embargo is its extraterritorial nature, which has sown discord with U.S. allies as the result of stepped up enforcement by the Bush administration.

In the middle of a 2007 conference on Cuba's energy policies held at the Sheraton Maria Isabel in Mexico City, Starwood, the U.S. parent of the hotel, ordered a participating delegation of Cuban officials to leave at the request of the Treasury Department. This action turned a sleepy conference into a minor international incident, leading Mexican Foreign Minister Luis Ernesto Derbez to declare, "There does not exist and neither should there exist the extraterritorial application of this law in our nation."[83] The spat also prompted a response from the Mexican president's office, an investigation by the mayor of Mexico City, and a fine and brief closure of the hotel for supposedly unrelated building code violations. Mexican newspapers ran headlines of the controversy for days while local politicians stoked anti-American sentiment. The event "created a scandal involving much of the media, legislators, Mexican officials, and the Cuban government."[84]

The Cuba embargo is the most comprehensive of any sanctions program because of its unique extraterritorial nature, which permits the enforcement of U.S. law abroad. U.S. sanctions on Cuba are the only country restrictions that apply to any Cuban national living or traveling outside the target country as well as to any business "wherever organized or doing business, that is owned or controlled by" a U.S. citizen, resident, or any person within the United States.[85] This is true even if a Cuban national has been living in Spain for five years – even if he has been

naturalized there – or if a business, such as the Sheraton in Mexico City, is a foreign entity subject to the laws of Mexico.

Harry Clark, a partner with the international trade law practice of Dewey & LeBoeuf, explains, "No other country applies laws the way the United States does. Under normal standards in international law, you can apply to your own law to your own citizens and to foreigners when they're in your country, but what you can't do is apply your law to foreigners when they're overseas. We do that, particularly with respect to Cuba. It generates enormous resentment."[86]

As the incident in Mexico City suggests, allies bristle at attempts by the United States to enforce its sanctions laws inside their countries. Immediately after Helms-Burton was passed in 1996, the European Community filed a case against the law at the World Trade Organization (WTO). The dispute led to negotiations between the United States and the European Union and to an eventual suspension of Titles III and IV vis-à-vis European interests. Canada, the European Union, Mexico and others passed blocking statutes in response to Helms-Burton that prohibited the compliance of individuals or firms under their jurisdiction with the extraterritorial provisions of U.S. sanctions. The EU took offense with extraterritorial U.S. sanctions that "purport to regulate activities of natural and legal persons under the jurisdiction of the Member State" and "violate international law."[87]

Although a handful of executives have been excluded from entering the United States under Title IV of the act, concern over extraterritoriality abated for a period given that both Clinton and Bush chose to waive Title III to avoid antagonizing U.S. trading partners.

Over the past eight years, however, the Bush administration has exacerbated tensions with U.S. allies by ratcheting up the enforcement of extraterritorial provisions of the U.S. sanctions program. In addition to the Mexico City incident, in early 2007 the Hilton Hotels Corporation faced scrutiny in Norway and the United Kingdom for refusing to book Cuban officials in their hotels. Around the same time, under pressure from the Treasury Department, Barclay's Bank and the Austrian bank BAWAG attempted to close a series of accounts held by Cuban nationals, which created reputational and legal issues in their home countries. The Bush administration has also stepped up enforcement of Title IV of Helms-Burton, barring a number of Canadian company executives from entering the country, including board members and lower level employees for whom, Canadian officials argue, the ban was never intended.[88]

The administration has paired this stepped-up enforcement with heavy-handed, and largely unsuccessful, efforts to pressure U.S. allies in Canada, Europe, and Latin America on their policies towards Cuba. These attempts to bully close allies economically and diplomatically over a policy on which there is such fundamental disagreement have been wholly unproductive. The next administration should reduce efforts to enforce extraterritorial aspects of the embargo. It should also seek to work cooperatively with U.S. allies who have greater access to the Cuban people and officials on policies that promote U.S. foreign policy interests, democracy, human rights, and the welfare of the Cuban people.

Charting a New Course

Change does not require an intensive top-to-bottom overhaul of U.S. policy on day one. It is easy to want to side with the long, distinguished, and bipartisan list of statesmen over the years, from Senators William Fulbright (D-Ark.) and Chuck Hagel (R-Neb.) to Secretaries of State George Shultz and Madeleine Albright, who have suggested that the U.S. embargo should be removed.[89] U.S. policy towards Cuba may be "ridiculous," as Shultz told PBS's Charlie Rose in April,[90] but the relationship is too complex yet not urgent enough to commit the kind of time and energy that would be required for full and immediate normalization. Complete normalization is particularly unlikely given the gravity of other foreign and domestic issues facing the next administration, the unwillingness of Congress to act, and the likelihood that Cuba would prove a reluctant partner in any effort to improve relations.

Instead, from the first day in office the next president should pursue simple and relatively minor initiatives that could have disproportionately large benefits for the United States' image in the world, U.S. national security, Cubans, and Cuban Americans. On day one, the next administration should issue a Federal Register notice that removes all restrictions on travel by Cuban Americans; rescinds the Bush administration's counterproductive limits on people-to-people travel, trade, and remittances; and changes the way in which the U.S. government administers travel licenses. These steps, combined with a new diplomatic tone, would be easy to accomplish and welcomed by an international audience hungry for signs of a new approach to foreign policy. They would be significant in their own right and would lay the groundwork for a long-term normalization of relations. At the same time, the next president should begin to address some of the structural impediments to normal relations.

Demonstrating a new approach from day one

The new U.S. president will enter office with an extensive to-do list. Many items on this list are long-term projects—healthcare, tax reform, fixing an economy marred by a housing crisis and bank failures—that require deliberation, interagency discussion, public comment, and potentially legislation by Congress. Others, designed to reverse actions taken by the last administration, are more easily accomplished. One example of the latter is the rush to reverse the previous party's decision on the "Mexico City Policy" regarding U.S. development funding for organizations that provide advice or information on family planning.[91] Reagan, Clinton, and Bush each changed the policy through a simple memorandum to the U.S. Agency for International Development (USAID).

In this context of unwinding harmful policies on day one, a simple Federal Register notice and a few lines in a speech would send a clear, initial message of change to the international community. On day one, the Obama administration should:

1. Remove all restrictions on travel by Cuban Americans and remittances to Cubans.

The administration should allow Cuban Americans the unlimited right to visit their family members – including extended family – in Cuba. Visits should not be restricted to once every three years as they have been under the Bush administration, nor should they be limited to once per year as they were under Clinton. Dividing Cuban families is a violation of internationally agreed upon human rights as contained in the UN Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. There is no doubt that Cuba bears its own responsibility for restricting family reunification, but U.S. policies should not make the problem worse. As Oswaldo Payá, a founder of the Varela Project in Cuba, writes, "Respecting the right of Cubans who live outside of Cuba to come to Cuba should not be conditioned on change in Cuba; this would inflict double punishment on the same victim."[92]

The United States should also support Cubans by permitting remittances under a general license by any person subject to U.S. jurisdiction as was the case under the Clinton administration. Limits on remittances should also be raised or removed entirely to support the welfare of the Cuban people.

2. Rescind other Bush administration restrictions on travel and trade.

The Bush administration's restrictions have not only separated Cuban families but have cut off contact with important elements of Cuban civil society and undercut the intent of Congress with respect to trade. The next administration should immediately rescind the measures imposed in 2003 and 2004 that constrain ties between the American and Cuban people. Changes should include:

- Revising the definition of "cash in advance" to bring U.S. policy into line with the intent of Congress when it passed the Trade Sanctions Reform Act of 2000.

- Increasing the total amount of money that an authorized traveler may carry to Cuba. In a rare liberalization of restrictions, the Bush administration authorized travelers in 2003 to carry $3,000 in remittances (limited to $300 given to each Cuban household) to Cuba. However, the administration reversed course in 2004 and reduced the total allowance to $300 per trip.

- Reinstating people-to-people educational exchanges. The policy of the next administration should be to authorize and encourage people-to-people educational exchanges via groups that bring individuals under their auspices to Cuba for the purpose of educational trips, as was the case during the Clinton administration.

- Restoring the presumption of fully hosted travel. The next administrations should restore the discussion of and references to fully hosted travel and end the presumption that travelers to Cuba pay expenses for their Cuban travel-related transactions, bringing back the treatment of fully hosted travel that existed under the Clinton administration.

- Once again allowing visits by individuals in the United States to Cuba when a family member is in Cuba pursuant to an OFAC license. Mothers and fathers should be able to visit their sons and daughters who are studying in Cuba for the semester. The Bush administration

had rolled back this provision to allow for visits only in "exigent" circumstances and only "after consultation with the Department of State, in true emergent situations, such as serious illness accompanied by an inability to travel."[93] This restriction should be loosened to permit regular visits.

- Restoring the ability to import Cuban merchandise for personal consumption. Taking this step would lessen the presumption by U.S. border enforcement officials of violations and would encourage Customs to focus resources on other threats.

- Increasing per diem rates that travelers can spend while in Cuba.

- Removing restrictions on the licensing of educational activities in Cuba, including the requirements that any program must be no shorter than 10 weeks and that a student must be enrolled in a degree program.

3. Rely on general licenses for travel to Cuba.

In addition to making the above changes, the next administration should make minor amendments to the CACR to permit travel to Cuba by all eligible persons via a general license rather than requiring specific license applications. This would allow the Treasury Department to focus on keeping the United States safe rather than on administering routine licenses to Cuban Americans, academic institutions, church groups, athletes, and members of the press who wish to travel there legally.

Current resource allocations reflect in part an institutional preference for relying on specific licenses, which must be approved on a case-by-case basis, as opposed to issuing blanket general licenses for exceptions to a sanctions program. The State and Treasury Departments rely on specific licenses as a way to enforce the law. According to Wynn Segall, an OFAC practitioner with the law firm of Akin Gump Strauss Hauer & Feld, "The use of specific licenses, rather than broader general licenses, preserves the ability of the executive branch to retain maximum latitude when exercising discretion over U.S. sanctions policy. General licenses remove a layer of control."[94]

The next administration should ease the burden on the Treasury Department by mandating general licensing of authorized categories of travel to Cuba while redeploying resources internally to focus on the department's urgent priorities of tracking terrorist financing. "Given the other very serious threats out there from groups like al Qaeda and Hamas, for Cuba we ought to be able to streamline the process," suggests Moe.[95]

4. Abolish the Commission for Assistance to a Free Cuba and the Office of the Transition Coordinator at the State Department.

The current political structure overseeing U.S. Cuba policy has been a useful propaganda tool for the Cuban government and made the United States less popular among allies. The interagency Commission for Assistance to a Free Cuba is a waste of resources and an obstacle to direct diplomacy with Cuba. The commission gathered dozens of agencies and cabinet secretaries together to recommend much but achieved little. It published two reports totaling hundreds of

pages that largely resulted in the Bush administration's decision to restrict travel and remittances. The bulk of the commission's recommendations hinge on a complete political transformation in Cuba, which is an unlikely outcome made even more remote by the very existence of the commission.

The Office of the Transition Coordinator, which was established at the State Department as recommended by the commission, is an irritant to relations with U.S. allies. In Europe and Canada, officials rolled their eyes in response to questions about the tenor of visits by the State Department's Cuban transition coordinator. In one European capital, an official complained that the coordinator was "running around" objecting to visits to Havana as "ill-timed."[96]

"The hectoring and the finger wagging by the Cuba Coordinator just doesn't work," says former Canadian Ambassador to Cuba Mark Entwistle.[97] "If you're going to harangue somebody about the embargo, you ought to have some evidence as to the effectiveness of your policy."

Together, the office and the commission are a public relations boon for the Cuban government. Billboards in Havana advertise "el Plan Bush" and the commission, adding, "Thanks, but the Cuban people are free already." There is a stigma associated with the commission and the transition office that cannot be removed by shifting personnel or retooling their missions. The next administration should abolish both immediately. Although an interagency approach to Cuba policy has some appeal, any new effort must stand apart from the present commission.

Promoting U.S. interests and values over the long term

These initial steps would be easy to accomplish and welcomed by an international audience hungry for signs of a new approach to foreign policy. In the weeks and months following, and as the administration approaches the next Summit of the Americas in April 2009, the president should follow up on these initial signals by constructively engaging the Cuban American community, Congress, U.S. allies, and the Cuban government in the following ways:

1. Change the tone.

If the United States wishes to make a serious effort to engage Cuba and U.S. allies on issues such as human rights and economic development, it will have to change its rhetorical approach. Key concerns such as ensuring basic economic and political rights must be at the top of the next president's agenda, but it will be important to approach Cuba and U.S. allies in a constructive way in order to advance U.S. priorities. Jeffrey Davidow, assistant secretary of state for Western Hemisphere affairs from 1996–1998, explains the problem:

> There has been continuity in U.S. Cuba policy that is self-defeating. There has always been this idea, which we publicly state, that we are trying to have Cuba loosen up in some way, and that that loosening up will lead to cracks in the political dam that will cause the regime to change. The Cuban government has recognized that we're trying to put little cracks in the dam. We should look for things that we can do, consistent with our law, particularly in the economic area, which we should just do without expecting anything in return. We should cease

> the rhetoric that says we are doing this because we expect it to put cracks in the dam.[98]

The United States should not precondition action on changes in Cuba and should refrain from using keywords and catchphrases that have had political cache at home but that inhibit the ability of the United States to engage constructively. Instead of talking about isolating the Cuban regime, U.S. leaders should discuss the desire for reconciliation with the people of Cuba. The next president should stop talking about transition in Cuba altogether, which allows the Cuban government to suggest that the United States wants to intervene in its domestic affairs. U.S. politicians should also cease referring to Cuban Americans as exiles. When eighty percent would elect to stay in the United States even if Cuba became a democracy and three-quarters favor the ownership by current residents of properties in Cuba rather than returning them to their original owners, it is clear that the vast majority of the community is no longer living in exile.[99]

Changing the tone does not mean that the United States should sit quietly in the face of human rights violations. U.S. presidents have a long history of standing strong for human rights and raising those concerns directly with host governments as Reagan did with Soviet leader Mikhail Gorbachev and Clinton and Bush have done with their counterparts in China. But the United States should raise these issues in a more constructive and direct way than has been tried in the past with Cuba. Christopher Sabatini, senior director of policy for the Americas Society and Council of the Americas, encourages U.S. policymakers to "flip the argument" and engage Cuba to address human rights concerns. [100] "We must continue to talk about human rights while pursuing engagement," he says. "We should be willing to say that there are 200 dissidents in prison, and use that as one of the central issues—along with economic loosening—as the way in which we engage the Cuban leadership."

2. Depoliticize the Cuba portfolio.

Before embarking on any international outreach, the next administration must change the manner in which Cuba is treated in the foreign policy bureaucracy. The Commission for Assistance to a Free Cuba and the transition coordinator are unsalvageable and should be scrapped immediately. These structures are too closely linked with the Bush administration to serve any valuable purpose for the next president. Special offices did not begin with Bush, however. During the Clinton administration, responsibility for Cuba shifted between career bureaucrats and special advisors at the State Department and the White House based on various policy and political concerns.

Rather than assigning a new special advisor or office to handle Cuba, the best course of action would be to return Cuba to its normal place within the State Department bureaucracy. Responsibility for the Cuba portfolio should be given to the assistant secretary of state for Western Hemisphere affairs in conjunction with lower level desk officers. A White House special envoy for the Americas, which has been proposed by President-elect Obama, could complement this strategy by reaching out at a high level to other countries in the Western Hemisphere to talk about future relations with Cuba.

Part of the problem with the U.S. approach to Cuba is that the country has been too special, which has been reflected in the way policymaking has been politicized within the bureaucracy.

Depoliticizing the portfolio would facilitate diplomacy. “Special offices are subject to political grandstanding,” according to former U.S. Under Secretary for Political Affairs Thomas Pickering.[101] “Diplomats are much more inclined to take instructions and be responsive.”

3. Advance U.S. interests through principled diplomacy.

With the right team in place to manage U.S.-Cuban affairs, the next president should engage Cuba diplomatically and place the burden on the Castro government to act constructively. Although the Cuban government may be reluctant to embrace sweeping efforts to change the relationship with the United States, U.S. diplomats should engage frequently through already established channels to deal with counternarcotics, migration, and military issues. Reinvigorating dialogue through these regular, lower-level channels, which the Bush administration has allowed to atrophy, would set the stage for higher level discussions down the road.

The United States could also float discreet proposals to gauge the reaction of the Cuban government in a better relationship. One easy place to begin is to offer to allow Cuban diplomats to travel freely while posted to Washington if Havana would agree to do the same for U.S. Foreign Service officers. More sensitive issues could also be discussed in hypothetical terms side-by-side, for example the willingness of the Cuban government to release dissidents from jail and the willingness of the United States to remove Cuba from its list of countries that support terrorism.

The Cuban government, which has a history of spurning U.S. outreach, may not react quickly or favorably to diplomatic overtures. This year, the Cuban government initially rejected hurricane relief proposed not only by the United States but by the EU as well. “Process in Cuba is slow,” according to a former British diplomat who served in Cuba, who adds, “There is a huge depth of suspicion about everything.”[102] One Canadian official warns that, when negotiating with the Cuban government over normal development assistance, “you need to roll with the punches. It can be frustrating.”[103] Given the checkered history of U.S.-Cuban relations, uncertainty surrounding Cuba’s economy in the wake of recent hurricanes, and the government’s resistance to sudden change, Havana may not be in a rush to engage vigorously with the United States. Pickering speculates that “a dramatic shift would be resisted by Raúl, who wants to keep any changes gradual.”[104]

Still, presidents from John F. Kennedy to Reagan have demonstrated a willingness to engage with the Cuban government even at times of immense tension. Great presidents recognize that talking to the United States’ enemies is not appeasement. “Part of [a diplomat’s] job is to maintain contact with people you wouldn’t want to invite to dinner,” advises Davidow.[105] The United States should reengage to support its interests on issues such as migration and counternarcotics while laying the groundwork for more substantial discussions later. Even if a breakthrough is not possible today, reestablishing regular channels of communication will make gradual improvement more likely down the road.

4. Stop harassing U.S. allies.

The United States must change its diplomatic and economic approach to third countries with respect to Cuba. Diplomatically, the next administration should stop harassing U.S. allies about

their contacts with the Cuban government and attempt to find ways to work cooperatively to support human rights, liberty and economic development in Cuba. U.S. diplomats should rely on their counterparts, particularly in Europe and the Western Hemisphere, as interlocutors to help facilitate contact and dialogue with the Cuban government, rather than dressing them down for their routine meetings with Cuban officials.

The next administration should seek forums such as the UN, the upcoming Summit of the Americas, and even the Organization of American States to facilitate sidebars on issues of common interest with allies. The next president could also encourage efforts currently underway by countries including Canada and Spain to establish a forum with Cuba, which might provide another opportunity for U.S. participation.

Finally, the next administration should eliminate the unique extraterritorial provisions of U.S. Cuba sanctions to minimize the threat of blocking statutes and international diplomatic and legal challenges. In this regard, the next administration should treat as unblocked nationals all Cubans outside Cuba other than those specially designated by the U.S. based on their activities, not their national origin. The next administration should also remove the provisions of U.S. law that oblige foreign-incorporated subsidiaries of U.S. firms to abide by the provisions of U.S. sanctions. These moves would remove major irritants to relations with our closest allies and would address a current issue for U.S. and foreign institutions, which are caught between conflicting U.S. and local laws.

5. End the travel ban.

The president and Congress should work to allow travel by Americans to Cuba for any purpose. Complete repeal of travel restrictions would allow U.S. citizens to be ambassadors of freedom and democracy to the Cuban people. Repeal would also take a burden off of the Departments of Treasury and Homeland Security, which could put the resources that are now used to administer and enforce prohibitions on travel by U.S. citizens toward investigating other threats from groups like al Qaeda and countries such as Iran.

Because repeal of the travel ban may require an act of Congress, the next president should enlist the help of key members of Congress, including chairs of the relevant committees and House and Senate leadership. Moderate Cuban American groups are likely to make it easier for the next president and Congress to come together in a bipartisan fashion by pushing next year to end all restrictions on travel by U.S. citizens. The next president should work with moderate Cuban American groups, business interests, and other nongovernmental organizations to make a strong case for repeal. Dialogue with Congress and repeal of the travel ban could pave the way for later legislative actions to normalize relations.

6. Promote cultural exchanges and dialogue with the Cuban people.

Allowing U.S. citizens to travel to Cuba would be welcome but not enough. The president should encourage people-to-people exchanges by streamlining the licensing process for Cuban musician, artist, athlete, and scholar access to the United States and by actively promoting dialogue and regular contact with the Cuban people.

There are a variety of areas that the next administration could choose to pursue, from Catholic Church ministries and scientific exchanges to music concerts and baseball games. Sports are often identified as good building blocks. "Sport is critical for Cuba," notes one British diplomat. "Even cricket went down so well there."[106] Peter Magowan, former president and managing partner of the San Francisco Giants, traveled to Cuba in 2002 as part of a group sponsored by the Center for National Policy. He observed that "Cuba has a tremendous baseball tradition. One of the best things that the next president could do, given the state of the country, is to send baseballs and bats and uniforms as a goodwill gesture."[107] As Tony Kapcia, head of the Hispanic and Latin American Studies department at the University of Nottingham puts it, "Sport gets through to them in a way that other things do not."[108]

Congress should also encourage educational exchanges and scientific and environmental cooperation. Rather than rushing to establish a new freedom and democracy scholarship program for the Cuban people, Congress and the president should utilize existing channels such as the Fulbright program, the National Science Foundation, and the Smithsonian Institution to ensure that efforts focus on results rather than rhetoric. The U.S. government could also seek to establish "American corner" facilities with libraries and universities, taking cues from the Canadian government, which has established "Canadian Studies Centers" to provide information and access to the Internet to Cuban universities.

In addition, the U.S. government should work with the private sector to encourage the establishment of a regular dialogue between Cuban economic officials and U.S. businesses. Facilitating sector-specific briefings—even in the face of continued trade restrictions—would establish important new channels of communication. The United Kingdom provides an excellent model for this type of interaction through a public-private partnership known as the Cuba Initiative. The initiative, founded in 1994 at the request of the Cuban and British governments, facilitates meetings with Cuban ministers in the United Kingdom that have in the past led to "chance" meetings with British officials.[109] The next president should license and facilitate these activities and encourage the U.S. business community to maintain lines of communication with Cuba.

7. Prioritize sanctions administration and enforcement more heavily on the basis of national security risk.

The next administration should undertake a comprehensive, risk-based reevaluation of the priority given to administering and enforcing each U.S. sanctions program. This reevaluation, which could be done through the quadrennial review at Homeland Security that is recommended in the Democratic Party platform, should allocate resources to sanctions programs based in large part on their relative importance to U.S. national security and the risk posed by lax enforcement. Such an approach would be in line with recommendations from the bipartisan 9/11 Commission to establish risk-based priorities for allocating scare resources and defending U.S. transportation assets.

CBP and OFAC, respectively, are part of the front line and the back office in the fight against terrorism. Customs should be given clear guidance to prioritize high-risk targets that present a broader danger to U.S. citizens over low-risk violations. Priority must be given to addressing those risks that pose the greatest danger to the United States rather than to handling nuisance

sanctions violations that do not have broader security homeland security implications. Instructing OFAC to approve travel via a general license would remove some of the burden on the office, though clear guidance must be given to prioritize inspections and enforcement of higher-risk targets.

8. Address broader impediments to normal relations.

There are other key policy issues that the next president and Congress must address that inhibit reconciliation between Cuban Americans and Cubans and the normalization of relations. Clearing away long-term impediments will pave the way for the eventual normalization of relations. While many may be addressed unilaterally by the president and Congress, most will likely be addressed in the context of a diplomatic rapprochement with Cuba.

The United States should rethink the Cuban Adjustment Act, which inhibits the long-term resumption of regular travel by Cubans to the United States. Whether the United States abrogates this policy unilaterally, or does so in concert with an effort by the Cuban government to remove restrictions on its citizens to travel abroad, the act must be repealed in order to normalize travel by Cubans to the United States.

Cuba's inclusion on the State Department's list of countries whose governments "have repeatedly provided support for acts of international terrorism" is another impediment.[110] As with other countries, Cuba's place on the list may be negotiated in the context of other issues. North Korea was taken off the list because of its cooperation on its nuclear program, not for lessening support for acts of terrorism. Sudan appears to remain on the list largely because of the atrocities in Darfur rather than for any role it has in sponsoring terrorism. Cuba should be removed from the list of state sponsors of terrorism, assuming that U.S. intelligence information supports it, but the reality is that such a move is likely to happen only in the context of improved bilateral relations.

Congress has at least partial responsibility for resolving some of the roadblocks to better relations. Trade is hampered by restrictions on foreign vessels and the financing of U.S. exports to Cuba. Helms-Burton poses an obstacle to greater military-to-military cooperation with the Cuban government and to the settlement of property claims. TV and Radio Marti and USAID programs are barriers to a better relationship with Cuba as well as grossly ineffective uses of taxpayer money. (The CANF concluded that the USAID Cuba program "has been rendered utterly ineffective due to restrictive institutional policies and a lack of oversight and accountability of grantee recipients.[111]) Section 211 of the FY1999 Omnibus Appropriations Act, a special-interest provision passed by Congress in the dead of night back in 1998, violates U.S. international trade commitments and interferes with one of Cuba's best-known brands, Havana Club rum. Congress, backed by the president, should begin to break down these barriers to better relations.

Finally, the Guantanamo Bay naval base will continue to be an issue in the relationship, although moral and military concerns rather than the U.S.-Cuban relationship will likely dictate the outcome. "It has in fact become a bad mark on our nation," says Hill. "The bigger issue though is something will already have to have been done with the detainees. It is much easier to say that I'm going to close it than to close it."[112]

A History of Engagement

The current arms-length approach of the United States to the Cuban government and the Cuban people stands in contrast to the bipartisan spirit of engagement that successive U.S. presidents have pursued to varying degrees with Cuba and more aggressively with other adversaries including China, North Korea, and the Soviet Union. In considering the direction in which to take future Cuba policy and how to respond to other important foreign policy challenges, it is important to remember there is a bipartisan history of diplomacy and international engagement.

U.S.-Cuban relations

The United States has a history of maintaining diplomatic contact with the Cuban government and of reaching out directly to the Cuban people through educational and cultural exchanges. In cutting off contact with the Cuban government and people, the Bush administration has departed dramatically from the policies pursued by his predecessors. The lack of contact with Cuba during the current Bush administration, particularly on the diplomatic front, is unprecedented and has been wholly unsuccessful in promoting U.S. values or achieving U.S. foreign policy goals.

Presidents from Gerald Ford to Clinton have engaged Cuba diplomatically. In September 1974, Senators Jacob Javits (R-N.Y.) and Claiborne Pell (D-R.I.) met with Fidel Castro in Havana, who released four U.S. citizens from prison as "a gesture of goodwill toward the two senators" following their visit.[113] In January 1975, Deputy Undersecretary of State Lawrence Eagleburger met with Cuban officials at La Guardia Airport to discuss the bilateral relationship. Eagleburger joined Assistant Secretary of State William Rogers in July 1975 for negotiations with the Cuban government to discuss normalization of the relationship. The two governments also maintained a dialogue as tensions increased over confrontations in Africa and Latin America.

The Carter administration maintained diplomatic contacts with Cuba on a number of issues. The two sides met, first in secret and then publicly, to negotiate an agreement on fishing rights in 1977. The same year the countries agreed to open interests sections in Washington and Havana. Carter administration officials also met with Cuban counterparts to discuss issues such as migration and narcotics.

Although Reagan dramatically reduced contact with the Cuban people by effectively reinstituting the travel ban that Carter had lifted, the administration also kept open diplomatic channels especially on migration. Michael Kozak, the State Department's deputy legal advisor, met several times with Cuban negotiator Ricardo Alarcón over the summer of 1984 to discuss migration issues, leading to an accord that December.[114] U.S. and Cuban officials maintained contact on migration as the accord broke down and reconvened in Mexico City in November 1987 to announce a renegotiated agreement. In the wake of a migration crisis, Clinton administration officials met with Alarcón in 1994, which resulted in a migration accord that provided for regular meetings between the two countries going forward.

Previous administrations, particularly under Carter and Clinton, also maintained closer contact between the American and Cuban people. Carter went the furthest, granting additional visas for Cubans to visit the United States, removing the ban on travel to Cuba, permitting charter flights, and negotiating the opening of interest sections in Havana and Washington. Clinton, having initially tightened some travel restrictions, during his second term allowed Americans to travel for a broader array of cultural, educational, and journalistic reasons. And, despite its resumption of travel restrictions, not even the Reagan administration went so far as to restrict travel by Cuban Americans to the extent that the Bush administration has done.

Engaging U.S. enemies

The embargo is also increasingly out of place given U.S. efforts to normalize relations with other communist regimes, including many with reprehensible human rights records. Nearly everywhere else in the world, the United States has sought to engage through trade, diplomacy, and aid in order to advance U.S. interests and values while simultaneously raising important concerns about human rights.

During the Cold War, Reagan referred to the Soviet Union as the "evil empire" and strongly criticized the country's denial of freedom of religion and curbs on individual liberty as "brutal affronts to the human conscience."[115] Less than one year after making that statement, however, and a few months after an administration official said that the country's human rights record had deteriorated since the establishment of the Helsinki Process ten years prior, Reagan sat down with Gorbachev for the first of three summit meetings.[116]

Clinton identified China as one of the world's worst human rights violators, but also led a bipartisan effort to approve China's entry into the WTO. In fact, the Clinton administration pushed a UN resolution objecting to human rights violations at the same time that it was asking Congress to vote to affirm the trade pact. A State Department spokesperson said at the time, "One can have a relationship with China and still have a fundamental disagreement with China on specific issues. We engage with China to advance our national interests. As the president said yesterday, we are going to pursue the World Trade Organization issue with respect to normal trade relations. But that doesn't mean that we have to forgo our principles."[117]

Bush has also raised human rights concerns while simultaneously advancing common interests. The president has been critical of China's human rights record but similarly supported its entry into the WTO. On the campaign trail in May 2000, candidate Bush suggested that "trade with China will promote freedom," and that "economic freedom creates habits of liberty."[118] More recently, the Bush administration negotiated an agreement with North Korea, one of the worst human rights violators in the world according to the State Department, over its nuclear program. Despite brutal extrajudicial killings, torture of repatriated refugees, and a regime that denies "freedom of speech, press, assembly, and association, and restrict[s] freedom of movement and workers' rights," U.S. officials have regularly participated in six-party talks with Pyongyang, which led to the removal in October 2008 of North Korea from the list of countries that sponsor terrorism.[119] From North Korea to the Soviet Union, the United States has worked on multiple tracks to advance the U.S. national interest, human rights, and liberty.

Conclusion

U.S. Cuba policy, suggested Senator Fulbright in 1964, "has been a failure, and there is no reason to believe that it will succeed in the future."[120] More than forty years later, despite its continued lack of success, the embargo is still a cornerstone of U.S. policy.

There is a political benefit as well as a foreign policy opportunity for the next president and Congress to adjust the approach to Cuba. Immediately undertaking common-sense changes by lifting restrictions on travel by U.S. citizens, changing the way in which the sanctions program is administered, and overhauling the current diplomatic approach, would be among the quickest and easiest ways to demonstrate to the world that change has come to U.S. foreign policy. These steps, combined with longer-term approaches aimed at dialogue and reconciliation with the Cuban people, would set the stage for normalization of relations.

Long-term normalization would correct a policy that increasingly requires verbal cartwheels to rationalize. Although Tehran supports terrorist groups and is developing a nuclear program in defiance of the international community, the United States maintains more comprehensive sanctions on Cuba than on Iran. Kim Jong-Il developed a clandestine nuclear program and actually possesses nuclear weapons that may have been sold on the black market, but North Korea was just removed from the list of countries supporting terrorism while Cuba remains on it. The United States purchased more than $300 billion of goods last year from China, a country with serious human rights concerns, but bans imports from Cuba.

In *Our Man in Havana*, Graham Greene's Dr. Hasselbacher admonishes vacuum cleaner salesman–turned-spy Mr. Wormold to dream more. "Reality in our century," he tells Wormold, "is not something to be faced."[121] So it has been when it comes to U.S. policy towards Cuba. The time has come to face reality and approach Cuba in ways that promote humanitarian values and U.S. interests and that befit the greatest economic and foreign policy power in the world.

The Cuban American community no longer considers the embargo sacred. Neither should the next president.

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