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CUBA SI, CASTRO NO! THE CUBAN DEMOCRACY ACT OF 1992 AND ITS IMPACT ON THE UNITED STATES' FOREIGN POLICY INITIATIVES TOWARDS ESTABLISHING A FREE AND DEMOCRATIC CUBA

MICHAEL A. NOVO*

*He was a coward to the strong: He was a tyrant to the weak.*¹

I. INTRODUCTION

From July 26, 1953, until the end of 1958, Fidel Castro persistently led his "26th of July Movement" to victory, culminating in the overthrow of then-Cuban president Fulgencio Batista.² Castro's overthrow of Batista was praised by many Cubans when it finally occurred, and many countries abroad also praised Castro's victory as an end to Cuban corruption and a return to democracy for the people of Cuba.³ However, this widespread approval would prove to be short-lived. Castro publicly abolished democracy and declared Cuba a Marxist-Leninist state on December 2, 1961.⁴ Fidel Castro was then confronted with a foreign policy initiative by the United States specifically designed to return a democratic form of government to Cuba. Clearly, neither the United States nor Fidel Castro would have envisioned that these measures, taken over thirty years ago to ensure the restoration of democracy, would be at issue today.

The United States' foreign policy towards Cuba has always been motivated by a compelling need by the U.S. to protect interests in the Western Hemisphere. Policies implemented by the U.S. in dealing with any one country are determined by a balance of factors which, depending on present relations with a certain government, vary in

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1. PERCY BYSSHE SHELLY, *Rosalind and Helen*, in *THE POCKET BOOK OF QUOTATIONS* 45 (Henry Davidoff, ed., Pocket Books 1952).

2. U.S. Dept. of State Dispatch Vol. 4, No. 8 (Feb. 22, 1993), at 102. Fulgencio Batista seized control in a popular uprising against Gerardo Machado in 1933 and remained Cuba's dominant leader for more than 25 years until he fled the island on January 1, 1959.

3. *Id.*

4. *Id.*

configuration from one country to the next.⁵ This balance in establishing a policy which will be used in dealings with a foreign country is achieved by identifying what goals, interests and values are vital and fundamental to Americans, and then assessing threats which could jeopardize these goals, interests and values.⁶ The goals most important in the United States' policy with Cuba since 1961 have been the re-establishment of both democratic ideals and a free-market economic system in Cuba. Additionally, the United States has attempted to promote global welfare by demanding that Cuban citizens be given the most basic of human rights. These goals are consistent with the American way of life.⁷ To this end, United States' policy has been to isolate Castro and deny Cuba access to trade and U.S. economic assistance.

The isolation of Castro has been coordinated through a series of embargoes and trade restrictions over the last thirty years. The earliest embargo was instituted by President John F. Kennedy in a Presidential Proclamation, and prohibited any trade between the United States and Cuba.⁸ The most recent form of the embargo is the Cuban Democracy Act of 1992,⁹ signed into law in October 1992, which modified provisions of the embargo to reflect recent changes in world order that have essentially left Castro and Cuba ostracized.

This article discusses the United States' foreign policy relationship with Cuba and how its interests have been manifested in the economic blockade of the island. It addresses the modification and strengthening of the embargo against Cuba through the Cuban Democracy Act of 1992, world reaction to the embargo and its effect on Cuba. Finally, this article addresses the issue of whether the embargo furthers the U.S.'s interests towards realizing a modern-day, democratic Cuba.

II. THE PROGRESSION OF U.S. RELATIONS WITH CUBA

A. *The Initial Break*

Fidel Castro quickly consolidated his power in Cuba by eliminating former leaders of Batista's opposition through execution or long

5. See generally JOHN NORTON MOORE ET AL., NATIONAL SECURITY LAW 24 (1990).

6. *Id.* at 5-17. Examples of these interests, goals and values, as detailed by the authors include territory, resources, ideals, military sufficiency, domestic strength, world order, and global welfare.

7. *Id.*

8. Proclamation No. 3447, 3 C.F.R. 4173 (1962).

9. Cuban Democracy Act of 1992, Pub. L. No. 102-484, §§ 1701-1712, 106 Stat. 2575, *codified at* 22 U.S.C.A. §§ 6001-6010 (West Supp. 1993).

prison sentences after President Fulgencio Batista fled the island on January 1, 1959.¹⁰ Beginning in November of 1959, Castro expropriated property owned by U.S. citizens that would eventually total approximately 1.8 billion dollars.¹¹

Although he assured a skeptical world in a visit to Washington in April of 1959 that he was "against all kinds of dictators" and "against communism," Castro publicly declared himself a Marxist-Leninist in December of 1961 and systematically abolished democracy, freedom of expression and all opposition political activity.¹² Thereafter, in January of 1961, tensions between the U.S. and Cuba escalated when the U.S. terminated relations with Cuba after a demand was made to reduce staff at the U.S. embassy in Havana.¹³ President Kennedy then initiated the embargo on trade with Cuba to protest Castro's conversion to communism.¹⁴ Nonetheless, Castro adamantly pursued his socialist revolution and attempted to propagate it in other countries.

The United States was faced with a precarious situation in late 1962. A democratic ally just 90 miles away had been overthrown by a powerful socialist revolution. Its newly-elected leader, Fidel Castro, had unequivocally denounced democracy, initiated a repressive dictatorship, eliminated the most basic of human rights, nationalized over 1.8 billion dollars of U.S.-owned properties without compensation, and allied Cuba with the U.S.'s only true military rival in the world. All of these actions were perceived as threats to the established policies of the U.S. vis-à-vis Cuba. The United States was forced to modify its foreign policy with this new Cuban government to cope with the sudden changes that had swept over Cuba.

B. *The United States Responds to the Revolution*

In re-evaluating its interests and goals with respect to Cuba and its new government, the U.S. government felt it necessary to implement a policy designed to re-establish democracy and free elections, while also eliminating any socialist threat so dangerously close to American shores. Towards that end, on February 3, 1962, President

10. U.S. Dept. of State Dispatch, *supra* note 2, at 102.

11. Paul A. Sheyner & Virginia Barta, *The Legality of the U.S. Economic Blockade of Cuba Under International Law*, 13 CASE W. RES. J. INT'L L. 451 (1981). (The exact amount stated in FOREIGN CLAIMS SETTLEMENT COMMISSION, ANNOTATED REPORT 69, is \$1,799,548,690).

12. U.S. Dept. of State Dispatch, *supra* note 2, at 102.

13. *Id.*

14. Proclamation No. 3447, *supra* note 8. The economic blockade was signed into effect on February 3, 1962.

John F. Kennedy imposed an economic blockade which prohibited all trade between the U.S. and Cuba.¹⁵ The stated purposes for the embargo against Cuba were: (1) to prevent the socialist Cuban government from extending its subversive activities to any part of this hemisphere; (2) to prevent Cuba from endangering the U.S. through an externally-supported military; and (3) to support self-determination for the Cuban people.¹⁶ The authority to impose this embargo upon Cuba stemmed from both the Trading With the Enemy Act of 1917 (the "TWEA")¹⁷ and the Foreign Assistance Act of 1961 (the "FAA").¹⁸

The TWEA gives the President power to regulate all commercial transactions with foreign countries during times of national emergency or war.¹⁹ By presidential proclamation, President Kennedy established this required state of national emergency by decreeing the embargo just after the unsuccessful Bay of Pigs invasion and before the Cuban Missile Crisis.²⁰ The Congress has delegated to the President a wide amount of discretion in the implementation or suspension of these extraordinary powers, including the authority to determine when a former enemy country is no longer a threat to the United States.²¹

Additionally, the FAA allows the President to establish a complete embargo against trade with Cuba to further the U.S. policy of not providing any assistance to Castro's government.²² Congress delegated a wide amount of discretion to the President to decide when assistance can be given to Cuba.²³

After the initial embargo was established against Cuba, additional measures to clarify and expand the blockade were implemented. The Cuban Assets Control Regulations (the "CACR") were promulgated in 1963 to define prohibited imports, exports and transactions between the U.S. and Cuba.²⁴ Additionally, the CACR set up licensing requirements, enforced and administered by the Department of the Treasury,²⁵ for all travel to or dealings with Cuba.²⁶

15. *Id.*

16. S.J. Res. 230, 87th Cong., 2d Sess., Pub. L. No. 87-733, 76 Stat. 697 (1962).

17. Trading With the Enemy Act of 1917 *codified at* 50 U.S.C. App. §§ 1-6, 7-14, 15 [note], 16-39, 41-44 (as amended) (1988).

18. Foreign Assistance Act of 1961 *codified at* 22 U.S.C. § 2370 (as amended) (1988).

19. 50 U.S.C. App. § 5(b).

20. Proclamation No. 3447, *supra* note 8.

21. 50 U.S.C. App. § 5(a).

22. 22 U.S.C. § 2370(a)(1).

23. 22 U.S.C. § 2370(a)(2).

24. 31 C.F.R. § 515 (1980).

25. 31 C.F.R. § 515.807 (1980).

26. 31 C.F.R. § 515.201 (1980).

Along with other collateral statutes passed since the initial blockade, the TWEA, the FAA and the CACR have been the primary basis to enforce the embargo against Cuba over the past thirty years.

III. CUBA IN TODAY'S CHANGING WORLD

A. Cuba and the Demise of Socialism

Dramatic changes in the world over the past five years have altered forever the balance of power that once existed between the two great superpowers that emerged after World War II, the United States and the Soviet Union. Before *perestroika* brought reforms to the Soviet Union, leading ultimately to the disintegration of the USSR and socialism in the Eastern Bloc nations, Cuba was a key component in the network of socialist countries. Cuba used this network to avoid the full impact of the United States' economic blockade against it. With the breakup of the Soviet empire, Cuba lost its main benefactor and found itself isolated politically from the rest of the world as one of the few remaining socialist countries.

Since the end of the Cold War, Cuba clearly is no longer of strategic importance to the former Soviet Union.²⁷ The successor states of the USSR have adapted democratic ideals, free market systems, and have redesigned their failed, antiquated socialist models of governance. The ideological rift between Castro's "Communism or death" position and Gorbachev's *perestroika* reforms at the close of the 1980's, left Cuba without support for its subversive activities for the first time in over thirty years.²⁸

With problems to deal with at home, a desire not to support Cuba's insurgencies abroad, and the need to garner Western support and acceptance of its reforms, Russian president Boris Yeltsin ordered the withdrawal of Russian troops and technical advisers from Cuba.²⁹ This change in Russian-Cuban policy resulted from pressure applied by U.S. President George Bush to both Gorbachev and

27. *Cuba In a Changing World: The United States-Soviet-Cuban Triangle* (Hearings Before the Subcommittees on Europe and the Middle East, and on Western Hemisphere Affairs of the Committee on Foreign Affairs of the House of Representatives), 102d Cong., 1st Sess., 10 (1991) [hereinafter *Cuba Hearings*]. Prepared Statement of Dr. Wayne S. Smith, Adjunct Professor of Latin American Studies, The Paul H. Mitze School of Advanced International Studies, Johns Hopkins University. The Russians continue to maintain a satellite communications monitoring base at Lourdes, Cuba.

28. U.S. Dept. of State Dispatch, Aug. 17, 1992, V. 3, No. 33, at 657-658 (*The Cuban Democracy Act and U.S. Policy Towards Cuba*). (Statement by Robert S. Gelbard, Prin. Dep. Asst. Sec. for Inter-American Affairs, before Subcomm. on Trade of House Ways and Means Comm. on Aug. 10, 1992).

29. *Id.* at 657.

Yeltsin seeking to end military and economic support to Cuba.³⁰ As a result, Cuba has found itself an isolated relic in the Western Hemisphere from a time when socialist revolutionary uprisings were common in Central and Latin America.

B. The Economic Crisis, Human Rights, the Dissident Movement and Castro's Aversion to Change

For over thirty years, Castro received substantial economic and military aid from the former Soviet Union.³¹ Ideological differences with Cuba,³² coupled with the switch to free market economies in post-USSR states has caused a significant reduction in and a commitment to terminate all forms of assistance and trade subsidies to the Castro government.³³ Besides ending trade subsidies to Cuba, Russia has required exports to Cuba be paid for in hard currency—an attempt to satisfy Russian hard currency needs.³⁴ Cuba's economy has been hard-hit, forcing Castro to resort to bartering Cuban products to other countries at lower market prices, reducing export revenues.³⁵ Cuba has also faced import limitations due to hard currency shortages. These changes have mushroomed into "an economic crisis that affects all aspects of daily life."³⁶

Reduced fuel supplies throughout Cuba have halted most forms of transportation and threaten the sugarcane harvest—Cuba's key export.³⁷ Bicycles are now the most common mode of transportation; fields are plowed by oxen; and daily/nightly intervals of power blackouts are regular occurrences—attempts to conserve what little energy and electricity is available.³⁸ Virtually all necessary supplies, including food, clothing and medicine, are rationed. These conditions result from Cuba's inability to secure hard currency to purchase supplies in the world marketplace.

The every-day shortages for the Cuban people are less apparent to vacationing tourists to the island. Items such as toiletries and food are practically non-existent in "peso" stores for Cubans; yet

30. *Id.* at 658.

31. *Id.* at 657-658. Cuba received both cash and trade subsidies from the Soviet Union, which peaked at an estimated 5 billion dollars a few years ago.

32. See U.S. Dept. of State Dispatch, *supra* note 2. Gorbachev urged Castro in a visit to the island in April of 1989 to adopt *perestroika* and denounced Cuba's policy of exporting the revolution.

33. U.S. Dept. of State Dispatch, *supra* note 28, at 657-658.

34. U.S. Dept. of State Dispatch, *supra* note 2, at 103.

35. *Id.*

36. U.S. Dept. of State Dispatch, Apr. 20, 1992 (*U.S. Policy Towards Cuba*), at 312.

37. *Id.* at 312. Public transportation has been drastically reduced, and fuel for private automobiles is almost impossible to acquire.

38. *Id.*

these items are plentiful at government-run "dollar stores" open only to those with American dollars to spend. Tourist hotels, only for those who have dollars, are well-stocked and rarely experience power outages, which are frequent for Cuban citizens.³⁹ These Cuban government practices have created a rigid "tourist apartheid" system which prevents Cubans from obtaining necessary goods and denies them luxuries available to those lucky few—generally tourists—who have dollars. The Cuban people have become "second-class citizens" in their own country, shut-out of restaurants, hotels and nightclubs.⁴⁰ These inequities have not gone unnoticed by the Cuban people.

A dissident movement has developed in response to the worsening economic crisis which prevents most Cubans citizens from meeting their most basic needs, the continued denial of human rights, and the regime's failure to initiate democratic reforms. Numerous dissident groups have been formed in an attempt to raise a united voice against Castro's oppressive system. Castro, however, has been less than tolerant of these groups and has made it clear that he will not accept opinions contrary to the Revolution.

Castro's totalitarian government eliminated all forms of democracy, free elections, and opposition in Cuba almost immediately after taking power.⁴¹ The more subtle denials of rights of Cubans is evident in the denial of rights to equal protection, fair trial, free expression, peaceful assembly, free elections, and free travel outside of Cuba.⁴² However, in dissolving any uprisings or quelling the voicing of opinions against the revolution, Castro was quick to resort to what can only be described as strong-arm tactics against those who would try to subvert the movement. Although Cuba is a member of the United Nations and pledged to honor the Universal Declaration of Human Rights,⁴³ violations of these rights has long been associated with the socialist regime of Fidel Castro.

39. *Id.*

40. Tom Mashberg, *Cubans learn to live with "tourist apartheid"*, BOSTON GLOBE, Feb. 21, 1993, at 69.

41. Dept. of State Dispatch, *supra* note 2.

42. *Id.* (There is no freedom for Cubans to criticize the government and their only source of information is *Granma*, the newspaper controlled by the Cuban Communist Party. "Due process" and fair trials are not guaranteed and Castro's government amended the Constitution of 1940 to include "counter-revolutionary crimes" which are "crimes against the integrity and stability of the nation. Acts committed in favor of socialism are acceptable while those committed against socialism are considered 'counter-revolutionary,' and are punishable by death.").

43. Manuel A. Mesa, Note, *The Cuban Anachronism: A Static Nation in a Dynamic World*, 5 FLA. INT'L L. J. 247, 252 n. 44 (1990), citing G.A. Res. 217A, U.N. Doc. A/777, at 71 (1948). (The Universal Declaration of Human Rights recognizes the equal and unalienable rights of all members of the human family.)

Additionally, Castro has consistently denied United Nation's representatives access to the island to monitor prison conditions and report on Cuba's human rights record.⁴⁴

In December of 1992, Americas Watch, a group that monitors human rights throughout the hemisphere, reported that the worsening economic crisis resulted in increased repression in Cuba.⁴⁵ For example, leaders of a peaceful demonstration by the Cuban Democratic Coalition for democratic reforms in front of the state security headquarters received two-year prison sentences for disorderly conduct.⁴⁶ When the eleven groups forming the Cuban Democratic Convergence called on Cuba's Fourth Party Congress to implement a provisional democratic government and grant amnesty to all political prisoners in October, 1992 three group leaders were given three-year prison terms for "incitement to crime."⁴⁷ The Cuban Government has also used neighborhood "watch-groups" to instigate mob attacks on human rights activists to intimidate and silence them.⁴⁸

IV. THE CUBAN DEMOCRACY ACT OF 1992

The Cuban Democracy Act of 1992 ("CDA") was signed by President Bush on October 25, 1992, and has the support of President Clinton.⁴⁹ The CDA is the first major shift in U.S. policy towards Cuba in thirty years.⁵⁰ The CDA states that U.S. policy is to seek a peaceful transition to democracy and economic prosperity in Cuba.

44. Dept. of State Dispatch, Aug. 17, 1992, *The Cuban Democracy Act and U.S. Policy Towards Cuba* (statement by Robert S. Gelbard, Principal Dep. Asst. Sec. for Inter-American Affairs, before the Subcommittee on Trade of the House Ways and Means Committee on Aug. 10, 1992).

45. *Cuban Rights Violations Growing Worse, Monitoring Group Says*, CHI. TRIB., Dec. 13, 1992, at 23. Among those problems cited in Cuba were reprisals against dissidents; trials staged in courts that lacked independence; long prison sentences for political dissenters; government-organized mobs that beat dissidents and vandalized their homes; and frequent complaints about prison conditions.

46. U.S. Dept. of State Dispatch, *supra* note 36, at 313. Thomas and Daniel Aspillaga received these sentences.

47. *Id.* Additionally, one Convergence leader, Luis Pita Santos, who called for peaceful demonstrations against the state, was placed in a mental institution until April, 1992, and was then suddenly tried for "illicit association," clandestine printing" and "contempt".

48. *Id.* at 313-314. Maria Elena Cruz, leader of the Alternative Criterion group, was attacked by a mob of 200 people, dragged down the stairs from her apartment, and had pamphlets which contained her anti-Castro writings forced into her mouth. While none of the participants were punished, victim Cruz was sentenced to two years in prison for "felonious association and slander." Cruz Varela is presently travelling throughout the U.S. and Europe on a visa issued by the Cuban government.

49. Cuban Democracy Act, *supra* note 9.

50. *Id.* at § 1705(a).

The CDA seeks to achieve this goal through the combined application of sanctions and incentives.

The CDA sanctions include a policy statement that the President should encourage major Cuban trading partners to restrict dealings with the Cuban government consistent with the purposes of the CDA.⁵¹ These sanctions stipulate that any country giving "assistance" to Cuba is not eligible for U.S. aid under the FAA or the Arms Export Control Act, debt reduction programs, or debt forgiveness.⁵² The CDA defines "assistance" as business dealings on terms more favorable than general market terms, but does not include donations of food or medicine.⁵³

The CDA allows humanitarian aid to Cuba without export restrictions in the form of donations of food, medicines and medical supplies to non-governmental organizations or individuals for humanitarian purposes.⁵⁴ Medicines and medical supplies can also be exported, subject to verification and inspection, with certain restraints.⁵⁵ Exports of medical supplies not directed to either non-governmental groups or individuals are subject to inspection and verification to assure the items will be used for the appropriate purpose.⁵⁶

The most controversial provision of the CDA is the "Mack Amendment," named after its original sponsor, U.S. Senator Connie Mack (R.-Fla.). The Mack Amendment tightens the embargo on Cuba by prohibiting the issuance of licenses for most transactions between foreign U.S. subsidiaries and the Cuban government after October 1, 1992.⁵⁷

Another provision of the CDA, which was already implemented by President Bush through an Executive Order, prohibits any vessel which enters Cuba to engage in trade by loading or unloading any freight in the U.S. for 180 days thereafter.⁵⁸

The CDA lists certain factors to be considered in deciding whether to make humanitarian assistance available to Cuba. These factors include: (1) that the Cuban government make a public commitment to hold free and fair elections and within six months

51. *Id.* at § 1704(a).

52. *Id.* at § 1704(b)(1).

53. *Id.* at § 1704(b)(2)(B).

54. *Id.* at § 1705(b); § 1705(d)(1)(B).

55. Exports are banned which violate the Export Administration Act of 1979 or the International Emergency Economic Powers Act. Such exports include items which will be used for torture or human rights violations; the item will be re-exported; or the item could be used in the production of biotechnology products. *Id.* at § 1705(c).

56. *Id.* at § 1705(d)(1)(A).

57. *Id.* at § 1706(a).

58. *Id.* at § 1706(b)(1).

proceed to implement that decision; (2) that the Cuban government make a public commitment to respect and actually observe internationally-recognized human rights and basic democratic freedoms; and (3) that it does not provide weapons or funds to any group seeking the violent overthrow of the government of another country.⁵⁹ Furthermore, the U.S. President may waive other CDA sanctions, if he determines and reports to Congress that the new Cuban government has complied with certain additional specific steps towards democracy, pluralism, constitutional safeguards for civil liberties and a free market economy.⁶⁰

Finally, the CDA states that it will be U.S. policy with respect to a newly elected Cuban government to encourage the admission or re-entry of such government to international organizations and international financial institutions, provide emergency relief, and take steps to end the U.S. trade embargo of Cuba.⁶¹

V. LIFE AFTER THE CUBAN DEMOCRACY ACT

A. *The World Reacts to The Cuban Democracy Act*

Since the Cuban Democracy Act (the "CDA") was signed by former President Bush in October of 1992, reactions have been numerous and widespread. Groups from the United States and Cuba, as well as other countries and governments, have issued policy statements or enacted laws which in some way stem from the enactment of this legislation.

Even before the CDA was actually signed, the European Community (the "EC") planned on lodging a formal complaint with the General Agreement on Tariffs and Trade (the "GATT"), objecting to the U.S.'s "extraterritorial application of its laws."⁶² The EC claimed no problems with the substance of the bill, but rather felt that the threat of sanctions for violations of the 180-day waiting period for ships previously serving Cuban ports would have before entering U.S. ports would "adversely affect international shipping."⁶³

Recently the EC has taken a more definitive stance on the CDA. In late September of 1993, the European Parliament issued a resolution calling for member governments to ignore the provisions of the CDA which prohibit subsidiaries of U.S. firms from trading with

59. *Id.* at § 1707.

60. *Id.* at § 1708(a).

61. *Id.* at § 1708(b).

62. *E.C Warns It May Complain To GATT If Cuba Embargo Expansion Is Approved*, INT'L TRADE REP., (Export Policy: European Community) (Oct. 14, 1992).

63. *Id.*

Cuba.⁶⁴ The Parliament's External Economic Relations Committee compiled a report which asserts that the CDA "is putting serious constraints on EC-Cuba trade" and may cause "a secondary embargo imposed on EC exports to the United States."⁶⁵ Additionally, the report maintains that under the Foreign Anti-Boycott Provision of the 1969 Export Administration Act, the U.S. has repeatedly challenged the extra-territorial application of foreign laws and embargoes.⁶⁶ The Committee concluded that "the U.S. rejects the embargoes of other countries but insists that its own embargoes should be enforced."⁶⁷

Additionally, Canada reacted swiftly to the CDA's impending passage by issuing an order in October of 1992, which blocked U.S. attempts to prevent U.S.-owned subsidiaries in Canada from trading with Cuba.⁶⁸ The order was issued under the Foreign Extraterritorial Measures Act and requires that Canadian-based companies operate according to Canadian laws and that any attempts to influence trade with Cuba be reported.⁶⁹ Almost 20 U.S.-owned companies operating in Canada are being investigated by the Canadian Justice Department for violations of Canada's anti-embargo order.⁷⁰ Apparently these U.S. companies are more intimidated by sanctions which could be imposed on them for violating the CDA.

Numerous other groups have spoken out against the embargo reinforced by the CDA. The United Nations General Assembly passed a resolution which called for the end of the U.S.'s trade embargo against Cuba.⁷¹ Additionally, a non-binding U.N. resolution voted on in November of 1993 repudiated the embargo and called on

64. *EC Parliament Calls On Member States To Ignore U.S. Law Extending Cuba Embargo*, BNA INT'L TRADE DAILY, Sept. 20, 1993. (Although the European Parliament adopted the resolution, the EC has not promulgated any formal legislation to prevent firms from complying with the CDA).

65. *Id.*

66. *Id.* The Foreign Anti-Boycott Provision prohibits American companies from complying with foreign boycotts).

67. *Id.*

68. *Canadian Government Issues Order Blocking Cuban Democracy Act Expansion*, INT'L TRADE REP., (Export Policy: Canada) (Oct. 14, 1992).

69. *Id.* The Foreign Extraterritorial Measures Act was promulgated by the Canadian Parliament in 1984 as a formal opposition to U.S. attempts to influence trade between Canadian-based firms and Cuba.

70. Peter Benesh, *Canadian Trade With Cuba Growing; U.S. Embargo Is Helping By Pushing Business Opportunities North*, STAR TRIB., Aug. 16, 1993, at 8D.

71. *U.N. Calls for U.S. Embargo Repeal*, FACTS ON FILE WORLD NEWS DIGEST, Dec. 21, 1992, at G1, 962. The resolution was passed by a vote of 59-3 with 71 abstentions. Only the U.S., Israel and Romania voted against the resolution. Although not legally binding, the resolution was designed to express disapproval for U.S. attempts to enforce laws beyond its borders.

nations to ignore it.⁷² Further, in May of 1993, five of Cuba's dissident groups called on President Clinton to lift the embargo, claiming it was "outdated and counterproductive."⁷³ That same month, a group of Protestant church leaders embarked on a twenty-city tour to promote an end to the embargo.⁷⁴ During a summer summit in Brazil, twenty-two leaders of Latin America, Spain, and Portugal issued a joint statement emphasizing "the need to eliminate unilateral application, by any state, for political ends, of measures of an economic or trade nature against a state."⁷⁵ And just recently, a group of Roman Catholic bishops in Cuba issued a statement denouncing Castro's repressive form of government and opposing the U.S. trade embargo.⁷⁶ While numerous groups have voiced their disapproval and called for an end to the CDA, measures have also been introduced to support the embargo.

Shortly after passage of the CDA, Rep. Lincoln Diaz-Balart (R-Fla.) and Sen. Connie Mack (R-Fla) filed a resolution calling for the United Nations Security Council to impose an international embargo on Cuba in a similar show of united condemnation used to combat apartheid in South Africa.⁷⁷ The House Foreign Affairs Subcommittee on Western Hemisphere Affairs recently accepted the resolution, and the measure awaits further Congressional approval before the president forwards it to the U.N. Security Council.⁷⁸

B. The Effectiveness of the Cuban Democracy Act

Many groups have reacted to the CDA over the first year of its existence. Some believe the CDA is a miserable failure and that the U.S. is perpetuating an antiquated doctrine. Others view the CDA as an incredibly successful piece of legislation that has fulfilled and surpassed the expected goals its authors set out to attain. Few people fall in the middle of this debate.

As previously discussed, numerous groups and countries had unfavorable reactions to the CDA and called for its repeal almost immediately. But other arguments calling for an end to the U.S. trade

72. *Key U.S. Allies at U.N. Vote Against Cuba Embargo*, MIAMI HERALD, Nov. 4, 1993, at A22. (The 184-member General Assembly voted 88-4 with 57 abstentions. The U.S., Israel, Paraguay and Albania voted against the resolution).

73. *Dissident Groups Urge Easing of U.S. Stance*, MIAMI HERALD, May 9, 1993, at A21.

74. *Protestant Leaders Seek End of Embargo*, MIAMI HERALD, May 14, 1993, at B2.

75. *Latin Leaders Ask End of Embargo on Cuba*, N.Y. TIMES, July 16, 1993, §1, at 7.

76. Mimi Whitefield, *Bishops Critical of Cuba, More Reform*, MIAMI HERALD, Sep. 15, 1993, at A1.

77. *International Embargo Urged in Joint Resolution*, INT'L TRADE REP., (Feb. 17, 1933).

78. *Resolution for International Embargo Against Cuba Approved by House Panel*, BNA DAILY REP. FOR EXECUTIVES (Regulation, Economics and Law), at 77 (Apr. 23, 1933).

embargo are that the CDA is ineffective and outdated;⁷⁹ it is cruel to the Cuban people who are suffering as a result;⁸⁰ it is stifling trade opportunities for U.S. companies;⁸¹ and it gives Castro more strength in his plight.⁸²

As a result of the embargo's prohibition on U.S.-owned subsidiaries trading with Cuba, the windows of opportunity have been opened for other nations to fill the gap which exists for trade in Cuba. EC and Canadian companies have reaped the rewards of joint business ventures with Cuba in the areas of tourism and the development of natural resources.⁸³ U.S. business executives have complained that unless there is an end to the embargo, U.S. companies' opportunities will be limited with all the best opportunities long gone.⁸⁴

The most vocal critics of the embargo, however, are those who feel the embargo is having an inhumane effect on the Cuban people. Countless human rights organizations view the CDA as only causing needless suffering and having made no impact on bringing about democratic reforms on the island.⁸⁵ As a result, many of these groups have initiated shipments of humanitarian aid to Cuba as a stopgap measure until the embargo is lifted, believing that this is the only way to circumvent the "harsh effects" which would otherwise result.⁸⁶

C. Cuba and the Cuban Democracy Act

Before the Cuban Democracy Act was initiated, Cuba was facing an economic crisis that threatened to bring a collapse to the system Castro had created to govern the island more than thirty years ago. Cuba had experienced a dramatic drop in exports from over eight billion dollars in 1988 to only \$2.3 billion in 1992.⁸⁷

79. MIAMI HERALD, *supra* note 68, at A21.

80. Alfonso Chardy & Aminda Marques Gonzalez, *Shipments to Cuba Rise as Push to Lift Embargo Picks Up Speed*, HOUS. CHRON., May 16, 1993, at A16.

81. STAR TRIB., *supra* note 66, at 8D.

82. HOUS. CHRON., *supra* note 75.

83. STAR TRIBUNE, *supra* note 83. (Canadians fly round-trip from Montreal or Toronto to Havana for as low as \$312. Additionally, Canadian oil and mineral companies have been instrumental in providing Cuba with sophisticated technology for extracting and refining their plentiful supply of natural resources.)

84. *Id.*

85. Cynthia Corzo, *Dade's Cuban Embargo Laws Stand*, HOUS. CHRON., July 23, 1993, at B3.

86. *Id.* As of May, 1993, one group alone, the National Council for Churches of Christ, was responsible for sending over 60 tons of humanitarian supplies. Another, Pastors for Peace, has already sent two convoys of aid and plans a third in February, 1994.

87. Barbara Ireland, *Empty Port Proves Embargo is Hurting; For Island Nation, Sports Hold Key To Survival as Economy Skids*, BUFF. NEWS, Jul. 29, 1993, at 1.

In the past two years alone, Cuba's economy has shrunk by over fifty percent.⁸⁸ Arguably, the most recent economic problems in Cuba are a result of imposing the CDA, and clearly, the effects can be noted by the changes Castro has been forced to make. Changes which, until recently, would have been unthinkable.

As a result of power outages, food shortages and health concerns, the people of Cuba have become noticeably more intolerant.⁸⁹ Not only has the number of *balseros* (Cuban refugee rafters) surpassed that of any other year to date, but Cubans are engaging in nighttime protests by looting government stores, pelting police cars with rocks and spraying anti-government graffiti on walls.⁹⁰ These protests, which were once non-existent because of fear of reprisals, are clear indicators of both "the Cuban people's growing frustration . . ." and Castro's "diminishing ability to exercise control." In response to these outbursts, Cuban officials, attempting to get-tough on anti-government crime, decreed that vandalism of state property would be considered sabotage and punishable by eight years in jail.⁹¹ Similarly, in an attempt to prevent citizens from fleeing the island, Cuban border guards have been killing Cubans who attempt to swim to the U.S. military base at Guantanamo in search of asylum.⁹²

To solve the growing problems due to a shortage of hard currency with which to buy goods on the open market, Castro has taken drastic measures. The island has been "opened for business," with the Cuban government encouraging increased tourism and joint ventures and allowing companies to repatriate significant profits.⁹³

Castro indicated his desperation to obtain hard currency when, in his traditional July 26th speech commemorating the revolution, he announced that Cuba would legalize the dollar.⁹⁴ Although the very thought of Cubans carrying dollars would once have been "not admissible" because it represented all that was wrong with the "capitalist Yankees," the measure was deemed necessary for the

88. U.S. Dept. of State Dispatch, Vol. 4, No. 35, Aug. 17, 1993, at 577 (*Cuba: Current Assessment and U.S. Policy*). (Statement by Robert S. Gelbard, Dep. Asst. Sec. for Inter-American Affairs, before the Senate Select Committee on Intelligence on July 29, 1993).

89. Mimi Whitefield & Miriam Wasserman, *Cubans Vent Discontent in Dark of Night*, MIAMI HERALD, Aug. 18, 1993, at A1.

90. *Id.* at 5A. Numerous activities such as these, as well as impromptu anti-government protests, have been reported in recent months.

91. Mimi Whitefield, *Cuba to Consider Vandalism of State Property as Sabotage*, MIAMI HERALD, Sept. 14, 1993, at A8.

92. U.S. Dept. of State Dispatch, July 12, 1993 (*Cuba: U.S. Protests Killings Near Guantanamo*). (Statement by Acting Dept. Spokesman John Snyder, July 7, 1993).

93. STAR TRIB., *supra* note 66.

94. Douglas Farah, *Cuba Opts to Legalize the Dollar; Marxists Preparing for Historic Shift as Economy Crumbles*, WASH. POST, July 25, 1993, at A1.

"revolution to survive."⁹⁵ Cubans now are able to use their dollars for purchases in government-run dollar stores, but this has created a new wave of problems. Just after opening the dollar stores to Cuban citizens, the government raised prices by more than fifty percent, causing sales to drop dramatically and causing a shift of purchases to the black market.⁹⁶ Additionally, only those Cubans who have access to dollars, either from tips from tourists or sent by relatives abroad, can shop in these stores, creating a new class of second-class citizens in the country.⁹⁷

Another sweeping change initiated in an attempt to increase foreign currency allows Cuban citizens to engage in more than 117 types of private enterprise ranging from plumbing and hairdressing to guarding bicycles.⁹⁸ These attempts at private enterprise are designed to employ citizens and provide services which the government no longer could.⁹⁹ However, due to stifling governmental restrictions, many citizens might forego registering their trade and continue to participate illegally in the black market for services.¹⁰⁰

The government of Cuba, more recently, has been looking towards increasing hard currency revenues by allowing increased telephone service with the United States. One CDA provision designed to increase communication and information to the island sets forth procedures for the State Department to allow competitive telephone service between the U.S. and Cuba.¹⁰¹ The guidelines allow one year for companies to set up services and split all revenues in half with the Cuban government.¹⁰² Cuba has rejected contract proposals by ATT & MCI, demanding the release of \$80 million of long distance fees, which the Treasury Department refuses to release, collected over the last thirty years and frozen in U.S. banks.¹⁰³ Moreover, Cuba wants to double the rate allowed to be charged per minute of phone service under the State Department guidelines.¹⁰⁴

95. *Id.*

96. Mimi Whitefield, *Rapid Changes Push Cuba Into Unknown*, MIAMI HERALD, Sep. 27, 1993, at A1. Before the price increase one dollar store reported sales of \$30-35,000 per day while after the increase sales declined to \$10-15,000 per day.

97. *Id.* at 8A.

98. *Id.*

99. *Id.*

100. *Id.*

101. 'No Party' Without Cuba Approval; Clinton Lifts Ban on Telephone Links to Cuba, COMM. DAILY, Jul. 26, 1993, at 1.

102. *Id.*

103. Anthony Faiola, *The Elusive Connection; Cuba Balks at Terms for Phone Service*, MIAMI HERALD, Oct. 21, 1993, at C1.

104. *Id.* at C1. The Cuban government requested a rate of \$2.40 per minute.

Cuba's other recent moves towards attracting hard currency into her borders include increasing the number of travel visas into Cuba from the United States and extending those travel privileges to Cuban exiles;¹⁰⁵ allowing Cubans to receive consumer goods purchased by relatives and friend in the United States from government-owned storehouses;¹⁰⁶ and allowing Cuban athletes to participate on foreign professional sports teams.¹⁰⁷ Castro has declared these changes and economic reforms "irreversible," and stated that Cuba "must adapt to the reality of today's world."¹⁰⁸

Although some people see signs that relations might be warming between the U.S. and Cuba through acts such as approval of humanitarian aid shipments, easing of travel restriction, and increased telecommunications, the present administration denies any change in its policy and points to the fact that all of these actions are within the provisions of the CDA.¹⁰⁹ Sen. Robert Torricelli (D-N.J.), author of the CDA, noted recently that "[o]pening communications and flooding Cuba with information . . . was part of the act's strategy" and that "[c]ritics who didn't like the embargo conveniently forget that."¹¹⁰ President Clinton has also emphasized the embargo's effectiveness and stated that any further change in policy will come only as a result of Castro's progression towards democratic change.¹¹¹

To further garner support, Cuba hosted a conference between government officials and Cuban exiles early in 1994 to "discuss key issues affecting mutual relations."¹¹² These attempts by Castro to foster communication have been viewed with skepticism in the exile community which, almost unanimously, has rejected any dialogue with a Castro-controlled government.¹¹³ Although some newer exile and dissident groups have called for an open dialogue with Cuba, most feel that both talks with a government without any real intent

105. Miami Herald, *supra* note 89. Cuban exiles, once called "worms" and "scum" by Castro, were previously not allowed to travel to the island. Allowing exiles to now travel to the island is a result of the use for exiles as "generators of foreign exchange."

106. Ana Santiago, *Cuba to Let U.S. Relatives Buy Goods for its People*, MIAMI HERALD, Oct. 2, 1993, at B2. These purchases are permitted by the CDA, according to the State Department, as long as they do not exceed \$300 every four months.

107. Mimi Whitefield, *Cuba Goes for Gold in Pro Sports, Move Ditches Its Dogma for Dinero*, MIAMI HERALD, Oct. 28, 1993, at A1.

108. *Castro Economic Reforms 'Irreversible'*, MIAMI HERALD, Nov. 5, 1993, at A18.

109. *Cuba Embargo Effective and Will Continue*, CHI. TRIB., Sept. 6, 1993, at 3.

110. Dick Krischten, *A Bridge to Cuba?*, NAT'L J., Sept. 11, 1993, at 2219.

111. CHI. TRIB., *supra* note 101.

112. Andres Oppenheimer, *Cuba to Host Meeting With Exiles; Dissidents are Skeptical of Intent*, MIAMI HERALD, Oct. 13, 1993, at A11.

113. *Id.* at A11.

of initiating democratic reforms and, any transition lead by Castro would be useless.¹¹⁴

VI. CONCLUSION

The world has changed significantly since Castro first took control of Cuba and President Kennedy instituted the initial embargo against the once-friendly nation. The threat of communism is now essentially non-existent with the collapse of the Soviet Union, and as a result of his refusal to adopt the democratic reforms that have overtaken all of his former allies, Castro has isolated Cuba as the last bastion of socialism in this Hemisphere.

The CDA modifies the embargo to specifically align itself with the United States' modern-day need to establish a foreign policy with Cuba that will effectively support its interests and goals in the face of these changing times. The CDA strengthens the embargo against Cuba, closing what were thought to be certain loopholes in the prior embargo and further isolates Castro's repressive government both politically and economically. Yet, the CDA also provides the Cuban people with a means of acquiring humanitarian aid in the form of food and medical supplies, and information through increased telephone and mail service. Although some of the provisions of the CDA are harsh on the Cuban government, it offers a way out of the economic blockade if Castro is willing to adopt democratic reform and free election, establish a free market system and recognize essential human rights which have been denied the Cuban people.

The policy of a U.S. trade embargo has been questioned by human rights groups and governments alike. It has been asserted that the CDA has had no impact on bringing about democratic change in Cuba and, in reality, is only causing barriers to free trade and deprivation among the Cuban people. But with the passing of time, it has become easier to see the effectiveness of the CDA.

Castro has had to make sweeping societal changes—changes which he called "irreversible"—in order to participate in the open market. To fulfill Cuba's need for hard currency to purchase goods, the government has initiated new policies which border on creating a free-market economy. The growing economic crisis, lack of goods to fulfill basic daily needs, and continual human rights violations have caused a discernible increase in the number of dissident groups and raised the level of frustration and intolerance of the Cuban people for their government. As the situation worsens, more and more Cubans

114. Mimi Whitefield, *Cuba's Woes Embolden Castro Foes*, MIAMI HERALD, Aug. 29, 1993, at A1.

risk their lives to leave the island by any means possible. The seeds for internal change have been planted.

Only through the continued implementation and enforcement of the CDA will these advancements towards change in Cuba progress. The more stringent provisions of the CDA are beginning to have a real effect on what once was Castro's stranglehold on the Cuban people. The totalitarian government is becoming isolated among the nations of the world while humanitarian aid groups are rallying to provide the assistance that the people of Cuba need. The CDA has set in motion the tides of change in Cuban society and any end to the embargo against Cuba would erase the progress that has been made in the short time since its promulgation. The CDA has proven that given time, the embargo will bring about change.

The CDA has responded to what were considered shortcomings in the initial embargo against Cuba and has given Castro real incentives to end his control over the island. These include an end to the embargo, recognition in the international community and economic and humanitarian assistance from the United States. The provisions of the embargo have instigated change in Cuba, but more time is needed before the Act can achieve its ultimate goal—a free and democratic Cuba.