

10. Relations with Cuba

Policymakers should

- repeal the Cuban Liberty and Democratic Solidarity (Libertad, or Helms-Burton) Act of 1996;
- repeal the Cuban Democracy (Torricelli) Act of 1992;
- restore the policy of granting Cuban refugees political asylum in the United States;
- eliminate or privatize Radio and TV Marti; and
- end all remaining sanctions that prevent U.S. companies from trading and investing in Cuba.

On December 17, 2014, President Barack Obama announced that Washington would seek to restore diplomatic relations with Cuba after more than half a century of antagonism—an animosity that lingered for decades even after the fall of the Berlin Wall and the end of the Cold War. His administration had signaled early on its willingness to engage the island, but few expected such a dramatic shift in such a short period of time: nine months after the announcement, the U.S. flag was flying again outside the reopened U.S. embassy in Havana, and in March 2016, Obama became the first sitting U.S. president to visit Cuba since 1928.

Rapprochement was long overdue given the blatant failure of the previous U.S. policy in bringing about democracy in Cuba through economic sanctions and diplomatic isolation. Polls also showed widespread support for normalization: ahead of President Obama's historic trip, 58 percent of Americans said they favored the diplomatic thaw. Even a majority of Cuban-Americans expressed in different surveys their opposition to continuing the embargo. More significantly, 97 percent of Cubans on the island—the people who are supposedly the ultimate beneficiaries of U.S. policy—support normalization, according to an April 2015 *Washington Post* poll.

Beyond restoring diplomatic ties, in the last two years, many things have changed in the relationship between the United States and Cuba: dozens of commercial flights per day have been authorized, as well as cruise ships and ferries; Americans are allowed to travel practically without constraints to the once-forbidden island, and hundreds of thousands are doing so every year; U.S. tourists can now use their credit and debit cards in Cuba; limits on remittances have been lifted, and the money can now be directed to the development of private businesses; U.S. citizens are permitted to trade with authorized independent Cuban businesspeople; and U.S. telecommunication firms are also allowed to sell services to the island. Exercising its executive authority, the Obama administration went as far as it could in relaxing many economic sanctions. However, U.S. companies are still prevented from most commerce and investment in Cuba. Lifting those outstanding prohibitions is a prerogative of Congress.

The death of Fidel Castro in November 2016 is yet another recent change in Cuba. However, it is unlikely to change the nature of the authoritarian regime or weaken its grip on the country, at least in the short term, as it has been preparing for a post-Fidel Cuba for years. By the same token, Castro's death should not alter the direction of U.S.-Cuban relations.

Leaving the Cold War in the Past

Sanctions against Cuba were first authorized under the Foreign Assistance Act of 1961, passed by the 87th Congress. In 1962, President John F. Kennedy issued an executive order implementing the trade embargo. The move was a response to Fidel Castro's expropriation of American assets and his decision to offer the Soviet Union a permanent military base and an intelligence post just 90 miles off the coast of Florida at the height of the Cold War. Castro's decision confirmed Cuba as the Soviet Union's main ally in the Western Hemisphere.

For three decades, Cuba was a threat to U.S. national security. Not only did Cuba export Marxist-Leninist revolutions to Third World countries (most notably, Angola and Nicaragua), but more important, it also served as a base for Soviet intelligence operations and allowed Soviet naval vessels port access rights. However, with the collapse of the Soviet Union and the subsequent end of Soviet subsidies to Cuba in the early 1990s, that threat virtually ceased to exist. Trade sanctions against Cuba, however, were not lifted. The embargo was instead tightened in 1992 with the passage of the Cuban Democracy ("Torricelli") Act.

The justification for that act was not national security interests but the Castro regime's form of government and human rights abuses. That change of focus was reflected in the language of the act, the first finding of which was Castro's "consistent disregard for internationally accepted standards of human rights and for democratic values." In 1996, Congress passed the Cuban Liberty and Democratic Solidarity ("Libertad") Act, a bill that President Clinton had threatened to veto but instead signed into law in the aftermath of the downing of two U.S. civilian planes by Cuban fighter jets in international airspace.

Unintended Consequences of a Flawed Policy

The Libertad Act—better known as the Helms-Burton Act for its sponsors Sen. Jesse Helms (R-NC) and Rep. Dan Burton (R-IN)—is ill conceived. It grants U.S. citizens whose property was expropriated by Castro the right to sue in U.S. courts foreign companies and citizens "trafficking" in that property (Title III). That right—not granted to U.S. citizens who may have lost property in other countries—is problematic because it essentially extends U.S. jurisdiction to the results of events that occurred in foreign territory.

By imposing sanctions on foreign companies profiting from property confiscated by the Castro regime, the Helms-Burton Act seeks to discourage investment in Cuba. However, while Helms-Burton may have slowed investment in the island, U.S. allies (in particular Canada, Mexico, and members of the European Union) have never welcomed that attempt to influence their foreign policy by threat of U.S. sanctions.

In May 1998, the Clinton administration and the European Union (EU) reached an agreement that excludes citizens of EU countries from Titles III and IV (denying entry visas to the executives of companies "trafficking" in confiscated property) of the Helms-Burton Act in exchange for guarantees from the EU not to subsidize investments in expropriated properties. The Bush and Obama administrations continued the policy of repeatedly waiving Title III of the act. But only Congress can repeal both titles.

Moreover, the economic sanctions continue to be the best excuse that the communist regime has for its failed policies. Cuban officials have estimated the cumulative cost of the embargo at more than \$116.8 billion. They incessantly condemn U.S. policies for causing the meager existence of their people, even though Cuba accepted more than \$100 billion in subsidies and credits from the Soviet Union during their three-decade

relationship and in recent years received up to 20 percent of its annual gross domestic product in the form of subsidized oil from Venezuela. Elizardo Sánchez Santa Cruz, a leading dissident, has aptly summed up that strategy: “[Castro] wants to continue exaggerating the image of the external enemy which has been vital for the Cuban Government during decades, an external enemy which can be blamed for the failure of the totalitarian model implanted here.” Cuban dissident blogger Yoani Sánchez called the embargo “the regime’s excuse for all its failures” and pointed out that its existence has undermined the work of dissidents on the island.

Ironically, the economic sanctions became somewhat of a U.S. security liability. A 2007 report by the Government Accountability Office pointed out that enforcing the embargo and travel ban diverted limited resources from homeland security that could be used to keep terrorists and criminals out of the United States. The report warned that arrival inspections from Cuba intended to enforce the embargo were “straining Customs and Border Patrol’s capacity to inspect other travelers according to its mission of keeping terrorists, criminals, and inadmissible aliens out of the country.”

New Cuba Policy Based on American Principles

Washington’s policies toward Cuba should be consistent with traditional American principles. First, the United States should restore the practice of granting political asylum to Cuban refugees. The 1994 and 1995 immigration accords between the Clinton administration and the Cuban government have turned the United States into Havana’s de jure partner in oppressing those Cubans who risk their lives to escape repression. The “wet feet, dry feet” policy, which grants political asylum to Cuban refugees who make it to the U.S. shore on their own and forces the U.S. Coast Guard to return to Cuba those refugees that it picks up at sea, should be eliminated. Instead, the U.S. government should grant political asylum to all Cubans who escape the island.

There is no reason to believe that Cuban refugees would not continue to help the U.S. economy as they always have. The 1980 boatlift, in which 120,000 Cuban refugees reached U.S. shores, proved a boon to the economy of southern Florida. In addition, since the Cuban-American community has repeatedly demonstrated its ability and desire to provide for refugees until they can provide for themselves, such a policy need not cost U.S. taxpayers.

Second, the U.S. government should protect its own citizens' inalienable rights and recognize that free trade is itself a human right. As James Dorn of the Cato Institute says, "The supposed dichotomy between the right to trade and human rights is a false one. . . . As moral agents, individuals necessarily claim the rights to liberty and property in order to live fully and to pursue their interests in a responsible manner." In the case of Cuba, U.S. citizens and companies should be allowed to decide for themselves—as they do in the case of dozens of countries around the world whose political and human rights records are less than admirable—whether and how they should pursue trade there.

Third, U.S. policy toward Cuba should focus on national security interests, not on transforming Cuban society or micromanaging the affairs of a transitional government, as current law obliges Washington to do. That means lifting the remaining economic sanctions. Those measures will ensure a more peaceful and smooth transition in Cuba.

Fourth, Cuban exiles should be allowed to participate in the transformation of Cuban society. However, their participation need not require the U.S. government's active involvement. Thus, Radio and TV Marti, government entities that broadcast to Cuba, should be privatized or closed down. If the exile community believes that those stations are a useful resource in its struggle against the Castro regime, it has the means—there are no legal impediments—to finance such an operation.

Conclusion

Despite all the changes in the bilateral relationship, one thing remains constant: the repressive nature of Cuba's regime. The Communist Party maintains its firm grip on power. Dissidents are constantly harassed, and arbitrary detentions of peaceful opposition activists have actually increased since normalization. The much-heralded economic reforms launched after Raúl Castro came to power in 2006 are moving at a glacial pace. Approximately 20 percent of Cubans already work in the private sector, but the constraints imposed by the government on local businesses through high taxes and stifling regulations suggest that the regime is interested in doing as little reform as possible to keep the economy afloat while maintaining strict control over the population. If there is a lot of enthusiasm about Cuba lately, it has to do more with what Washington is doing than what Havana is actually delivering.

However, this should not be seen as an indictment of the Obama administration's rapprochement: Washington's previous policy of isolating

the island was utterly counterproductive. In recent years, with the ascendancy of left-wing governments in Latin America, and with U.S. influence dwindling in the region, Cuba saw its influence rise. The island even hosted all of Latin America's heads of state in a summit in 2013—the resulting declaration cynically called for strengthening democracy and human rights in the region. The U.S. approach toward Cuba failed to bring about democracy on the island and instead provided Havana with an excuse to portray itself as the victim of U.S. aggression; the Obama administration did right by shifting course.

The future of freedom in Cuba depends ultimately on Cubans themselves. Unfortunately, Cuba's prospects will be limited as long as it retains its failed communist system. But through engagement, Washington may be able to nudge developments on the island, such as the rate of business formation and the spread of ideas through higher interaction between American tourists and locals. That is why Congress should pick up where President Obama left off and move to fully end the remaining sanctions on Cuba.

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