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- found no mention of July 15th.
- highlighted provisions about President's reports to Congress
- supposed to take effect Aug. 1 - Pres. can delay if reports to Cong. 15 days before (July 15th?)

and that all funds appropriated for such
t in support of the goals of the program.

6.



PUBLIC LAW 104-114 [H.R. 927]; March 12, 1996

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY
(LIBERTAD) ACT OF 1996

For Legislative History of Act, see Report for P.L. 104-114 in
U.S.C.C. & A.N. Legislative History Section.

An Act to seek international sanctions against the Castro government in Cuba, to plan for
support of a transition government leading to a democratically elected government in
Cuba, and for other purposes.

Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Cuban Liberty
and Democratic Solidarity (LIBERTAD) Act of 1996".

(b) TABLE OF CONTENTS.—The table of contents of this Act
is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.
- Sec. 4. Definitions.
- Sec. 5. Severability.

TITLE I—STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE
CASTRO GOVERNMENT

- Sec. 101. Statement of policy.
- Sec. 102. Enforcement of the economic embargo of Cuba.
- Sec. 103. Prohibition against indirect financing of Cuba.
- Sec. 104. United States opposition to Cuban membership in international financial
institutions.
- Sec. 105. United States opposition to termination of the suspension of the Cuban
Government from participation in the Organization of American States.
- Sec. 106. Assistance by the independent states of the former Soviet Union for the
Cuban Government.
- Sec. 107. Television broadcasting to Cuba.
- Sec. 108. Reports on commerce with, and assistance to, Cuba from other foreign
countries.
- Sec. 109. Authorization of support for democratic and human rights groups and
international observers.
- Sec. 110. Importation safeguard against certain Cuban products.
- Sec. 111. Withholding of foreign assistance from countries supporting Juragua nu-
clear plant in Cuba.
- Sec. 112. Reinstitution of family remittances and travel to Cuba.
- Sec. 113. Expulsion of criminals from Cuba.
- Sec. 114. News bureaus in Cuba.
- Sec. 115. Effect of Act on lawful United States Government activities.
- Sec. 116. Condemnation of Cuban attack on American aircraft.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

- Sec. 201. Policy toward a transition government and a democratically elected gov-
ernment in Cuba.
- Sec. 202. Assistance for the Cuban people.
- Sec. 203. Coordination of assistance program; implementation and reports to Con-
gress; reprogramming.
- Sec. 204. Termination of the economic embargo of Cuba.
- Sec. 205. Requirements and factors for determining a transition government.
- Sec. 206. Requirements for determining a democratically elected government.

file
Cuba

Sec. 207. Settlement of outstanding United States claims to confiscated property in Cuba.

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS

- Sec. 301. Findings.
 Sec. 302. Liability for trafficking in confiscated property claimed by United States nationals.
 Sec. 303. Proof of ownership of claims to confiscated property.
 Sec. 304. Exclusivity of Foreign Claims Settlement Commission certification procedure.
 Sec. 305. Limitation of actions.
 Sec. 306. Effective date.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

Sec. 401. Exclusion from the United States of aliens who have confiscated property of United States nationals or who traffic in such property.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of—

(A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;

(B) 36 years of communist tyranny and economic mismanagement by the Castro government;

(C) the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and

(D) the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.

(3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.

(4) The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violations of fundamental human rights, have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.

(5) As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.

(6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.

(8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

(9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

(10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.

(11) The Cuban Democracy Act of 1992 calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(12) Amendments to the Foreign Assistance Act of 1961 made by the FREEDOM Support Act require that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to "terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance".

(13) The Cuban Government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.

(14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.

(15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.

(16) Fidel Castro has defined democratic pluralism as "pluralistic garbage" and continues to make clear that he has no intention of tolerating the democratization of Cuban society.

(17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.

(18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights (which protects the right to leave one's own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).

(19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.

(20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

(21) The Cuban Government has consistently refused access to the Special Rapporteur and formally expressed its decision not to "implement so much as one comma" of the United Nations Resolutions appointing the Rapporteur.

(22) The United Nations General Assembly passed Resolution 47-139 on December 18, 1992, Resolution 48-142 on December 20, 1993, and Resolution 49-200 on December 23, 1994, referencing the Special Rapporteur's reports to the United Nations and condemning violations of human rights and fundamental freedoms in Cuba.

(23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security."

(24) The United Nations has determined that massive and systematic violations of human rights may constitute a "threat to peace" under Article 39 and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.

(25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.

(26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of "all necessary means" to restore the "democratically elected government of Haiti", and the democratically elected government of Haiti was restored to power on October 15, 1994.

(27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years, and the continued failure to do so constitutes ethically improper conduct by the international community.

(28) For the past 36 years, the Cuban Government has posed and continues to pose a national security threat to the United States.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;

(2) to strengthen international sanctions against the Castro government;

(3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;

(4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;

(5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and

(6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

SEC. 4. DEFINITIONS.

As used in this Act, the following terms have the following meanings:

(1) AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE.—The term "agency or instrumentality of a foreign state" has the meaning given that term in section 1603(b) of title 28, United States Code.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(3) COMMERCIAL ACTIVITY.—The term "commercial activity" has the meaning given that term in section 1603(d) of title 28, United States Code.

(4) CONFISCATED.—As used in titles I and III, the term "confiscated" refers to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(5) CUBAN GOVERNMENT.—(A) The term "Cuban Government" includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term "agency or instrumentality of the Government of Cuba" means an

agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to "a foreign state" deemed to be a reference to "Cuba".

(6) **DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.**—The term "democratically elected government in Cuba" means a government determined by the President to have met the requirements of section 206.

(7) **ECONOMIC EMBARGO OF CUBA.**—The term "economic embargo of Cuba" refers to—

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

(8) **FOREIGN NATIONAL.**—The term "foreign national" means—

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(9) **KNOWINGLY.**—The term "knowingly" means with knowledge or having reason to know.

(10) **OFFICIAL OF THE CUBAN GOVERNMENT OR THE RULING POLITICAL PARTY IN CUBA.**—The term "official of the Cuban Government or the ruling political party in Cuba" refers to any member of the Council of Ministers, Council of State, central committee of the Communist Party of Cuba, or the Politburo of Cuba, or their equivalents.

(11) **PERSON.**—The term "person" means any person or entity, including any agency or instrumentality of a foreign state.

(12) **PROPERTY.**—(A) The term "property" means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of title III of this Act, the term "property" does not include real property used for residential purposes unless, as of the date of the enactment of this Act—

(i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or

(ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) **TRAFFICS.**—(A) As used in title III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,

without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include—

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(14) **TRANSITION GOVERNMENT IN CUBA.**—The term "transition government in Cuba" means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 205.

(15) **UNITED STATES NATIONAL.**—The term "United States national" means—

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

SEC. 5. SEVERABILITY.

If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

TITLE I—STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT

SEC. 101. STATEMENT OF POLICY.

It is the sense of the Congress that—

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory international embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti;

(3) any resumption of efforts by any independent state of the former Soviet Union to make operational any nuclear facilities in Cuba, and any continuation of intelligence activities by such a state from Cuba that are targeted at the United States and its citizens will have a detrimental impact on United States assistance to such state; and

(4) in view of the threat to the national security posed by the operation of any nuclear facility, and the Castro government's continuing blackmail to unleash another wave of Cuban refugees fleeing from Castro's oppression, most of whom find their way to United States shores, further depleting limited humanitarian and other resources of the United States, the President should do all in his power to make it clear to the Cuban Government that—

(A) the completion and operation of any nuclear power facility, or

(B) any further political manipulation of the desire of Cubans to escape that results in mass migration to the United States,

will be considered an act of aggression which will be met with an appropriate response in order to maintain the security of the national borders of the United States and the health and safety of the American people.

SEC. 102. ENFORCEMENT OF THE ECONOMIC EMBARGO OF CUBA.

(a) POLICY.—

(1) RESTRICTIONS BY OTHER COUNTRIES.—The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(2) SANCTIONS ON OTHER COUNTRIES.—The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of that Act against countries assisting Cuba.

(b) DIPLOMATIC EFFORTS.—The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.

(c) EXISTING REGULATIONS.—The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) TRADING WITH THE ENEMY ACT.—

(1) CIVIL PENALTIES.—Subsection (b) of section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16(b)), as added by Public Law 102-484, is amended to read as follows:

"(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

"(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the direction of the Secretary of the Treasury, be forfeited to the United States Government.

"(3) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

"(4) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code."

(2) CONFORMING AMENDMENT; CRIMINAL FORFEITURE.—Section 16 of the Trading with the Enemy Act is further amended by striking subsection (b), as added by Public Law 102-393.

(3) CLERICAL AMENDMENTS.—Section 16 of the Trading with the Enemy Act is further amended—

(A) by inserting "SEC. 16." before "(a)"; and

(B) in subsection (a) by striking "participants" and inserting "participates".

(e) DENIAL OF VISAS TO CERTAIN CUBAN NATIONALS.—It is the sense of the Congress that the President should instruct the Secretary of State and the Attorney General to enforce fully existing regulations to deny visas to Cuban nationals considered by the Secretary of State to be officers or employees of the Cuban Government or of the Communist Party of Cuba.

(f) COVERAGE OF DEBT-FOR-EQUITY SWAPS BY ECONOMIC EMBARGO OF CUBA.—Section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and"; and

(4) by adding at the end the following flush sentence: "As used in this paragraph, the term 'agency or instrumentality of the Government of Cuba' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to 'a foreign state' deemed to be a reference to 'Cuba'."

(g) TELECOMMUNICATIONS SERVICES.—Section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)) is amended by adding at the end the following new paragraphs:

"(5) PROHIBITION ON INVESTMENT IN DOMESTIC TELECOMMUNICATIONS SERVICES.—Nothing in this subsection shall be construed to authorize the investment by any United States person in the domestic telecommunications network within Cuba. For purposes of this paragraph, an 'investment' in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.

"(6) REPORTS TO CONGRESS.—The President shall submit to the Congress on a semiannual basis a report detailing payments made to Cuba by any United States person as a result of the provision of telecommunications services authorized by this subsection."

(h) CODIFICATION OF ECONOMIC EMBARGO.—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, all be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act.

SEC. 103. PROHIBITION AGAINST INDIRECT FINANCING OF CUBA.

(a) PROHIBITION.—Notwithstanding any other provision of law, loan, credit, or other financing may be extended knowingly to a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act, except for financing by the United States national making such claim for a transaction permitted under United States law.

(b) SUSPENSION AND TERMINATION OF PROHIBITION.—

(1) SUSPENSION.—The President is authorized to suspend the prohibition contained in subsection (a) upon a determination made under section 203(c)(1) that a transition government in Cuba is in power.

(2) TERMINATION.—The prohibition contained in subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates as provided in section 204.

(c) PENALTIES.—Violations of subsection (a) shall be punishable by such civil penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) DEFINITIONS.—As used in this section—

(1) the term "permanent resident alien" means an alien lawfully admitted for permanent residence into the United States; and

(2) the term "United States agency" has the meaning given the term "agency" in section 551(1) of title 5, United States Code.

SEC. 104. UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.

(a) CONTINUED OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution until the

President submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) TRANSITION GOVERNMENT.—Once the President submits a determination under section 203(c)(1) that a transition government in Cuba is in power—

(A) the President is encouraged to take steps to support the processing of Cuba's application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power, and

(B) the Secretary of the Treasury is authorized to instruct the United States executive director of each international financial institution to support loans or other assistance to Cuba only to the extent that such loans or assistance contribute to a stable foundation for a democratically elected government in Cuba.

(b) REDUCTION IN UNITED STATES PAYMENTS TO INTERNATIONAL FINANCIAL INSTITUTIONS.—If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to either of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) DEFINITION.—For purposes of this section, the term "international financial institution" means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

SEC. 105. UNITED STATES OPPOSITION TO TERMINATION OF THE SUSPENSION OF THE CUBAN GOVERNMENT FROM PARTICIPATION IN THE ORGANIZATION OF AMERICAN STATES.

The President should instruct the United States Permanent Representative to the Organization of American States to oppose and vote against any termination of the suspension of the Cuban Government from participation in the Organization until the President determines under section 203(c)(3) that a democratically elected government in Cuba is in power.

SEC. 106. ASSISTANCE BY THE INDEPENDENT STATES OF THE FORMER SOVIET UNION FOR THE CUBAN GOVERNMENT.

(a) REPORTING REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress toward the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) CRITERIA FOR ASSISTANCE.—Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(11)) is amended by striking "of military facilities" and inserting "military and intel-

facilities, including the military and intelligence facilities at Lourdes and Cienfuegos.

(c) INELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended—

(A) by striking "or" at the end of paragraph (4);
(B) by redesignating paragraph (5) as paragraph (6); and
(C) by inserting after paragraph (4) the following new paragraph:

"(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance for, or engaging in nonmarket based trade (as defined in section 498B(k)(3)) with, the Cuban Government; or"

(2) DEFINITION.—Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)) is amended by adding at the end the following new paragraph:

"(3) NONMARKET BASED TRADE.—As used in section 498A(b)(5), the term 'nonmarket based trade' includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

"(A) exports to the Cuban Government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

"(B) imports from the Cuban Government at preferential tariff rates;

"(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban Government is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs; and

"(D) the exchange, reduction, or forgiveness of debt of the Cuban Government in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

"(4) CUBAN GOVERNMENT.—(A) The term 'Cuban Government' includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

"(B) For purposes of subparagraph (A), the term 'agency or instrumentality of the Government of Cuba' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to 'a foreign state' deemed to be a reference to 'Cuba'."

(3) EXCEPTION.—Section 498A(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(c)) is amended by inserting after paragraph (3) the following new paragraph:

"(4) The assistance is provided under the secondary school exchange program administered by the United States Information Agency."

(d) FACILITIES AT LOURDES, CUBA.—

(1) DISAPPROVAL OF CREDITS.—The Congress expresses its strong disapproval of the extension by Russia of credits equivalent to \$200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

(2) REDUCTION IN ASSISTANCE.—Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended by adding at the end the following new subsection:

"(d) REDUCTION IN ASSISTANCE FOR SUPPORT OF INTELLIGENCE FACILITIES IN CUBA.—

"(1) REDUCTION IN ASSISTANCE.—Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this Act an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.

"(2) WAIVER.—(A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the Lourdes facility with officials or agents of the Cuban Government.

"(B) At the time of a certification made with respect to Russia under subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.

"(C) The report required by subparagraph (B) may be submitted in classified form.

"(D) For purposes of this paragraph, the term 'appropriate congressional committees' includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(3) EXCEPTIONS TO REDUCTIONS IN ASSISTANCE.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

"(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

"(B) democratic political reform or rule of law activities;

"(C) technical assistance for safety upgrades of civilian nuclear power plants;

"(D) the creation of private sector or nongovernmental organizations that are independent of government control;

"(E) the development of a free market economic system;

"(F) assistance under the secondary school exchange program administered by the United States Information Agency; or

"(G) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160)."

SEC. 107. TELEVISION BROADCASTING TO CUBA.

(a) **CONVERSION TO UHF.**—The Director of the United States Information Agency shall implement a conversion of television broadcasting to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) **PERIODIC REPORTS.**—Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director of the United States Information Agency shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

(c) **TERMINATION OF BROADCASTING AUTHORITIES.**—Upon transmittal of a determination under section 203(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

SEC. 108. REPORTS ON COMMERCE WITH, AND ASSISTANCE TO, CUBA FROM OTHER FOREIGN COUNTRIES.

(a) **REPORTS REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, and by January 1 of each year thereafter until the President submits a determination under section 203(c)(1), the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12-month period.

(b) **CONTENTS OF REPORTS.**—Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is available:

(1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.

(2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.

(3) A description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.

(4) A determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States national.

(5) A determination of the amount of debt of the Cuban Government that is owed to each foreign country, including:

(A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and

(B) the amount of debt owed the foreign country that has been exchanged, forgiven, or reduced in return for

a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

(6) A description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.

(7) An identification of countries that purchase or have purchased, arms or military supplies from Cuba or that otherwise have entered into agreements with Cuba that have a military application, including:

(A) a description of the military supplies, equipment, or other material sold, bartered, or exchanged between Cuba and such countries;

(B) a listing of the goods, services, credits, or other consideration received by Cuba in exchange for military supplies, equipment, or material; and

(C) the terms or conditions of any such agreement.

SEC. 109. AUTHORIZATION OF SUPPORT FOR DEMOCRATIC AND HUMAN RIGHTS GROUPS AND INTERNATIONAL OBSERVERS.

(a) **AUTHORIZATION.**—Notwithstanding any other provision of law (including section 102 of this Act), except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including the following:

(1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.

(2) Humanitarian assistance to victims of political repression, and their families.

(3) Support for democratic and human rights groups in Cuba.

(4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

(b) **OAS EMERGENCY FUND.**—

(1) **FOR SUPPORT OF HUMAN RIGHTS AND ELECTIONS.**—The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.

(2) **ACTION OF OTHER MEMBER STATES.**—The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member states of the Organization to join in calling for the Cuban Government to allow the immediate deployment of independent human rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.

(3) **VOLUNTARY CONTRIBUTIONS FOR FUND.**—Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the United States proportionate share of assistance to Cuba by any international organization, the President should provide not less than \$5,000,000 of the voluntary contributions of the United States to the Organization of American States solely for the purposes of the special fund referred to in paragraph (1).

(c) **DENIAL OF FUNDS TO THE CUBAN GOVERNMENT.**—In implementing this section, the President shall take all necessary steps to ensure that no funds or other assistance is provided to the Cuban Government.

SEC. 110. IMPORTATION SAFEGUARD AGAINST CERTAIN CUBAN PRODUCTS.

(a) **PROHIBITION ON IMPORT OF AND DEALINGS IN CUBAN PRODUCTS.**—The Congress notes that section 515.204 of title 31, Code of Federal Regulations, prohibits the entry of, and dealings outside the United States in, merchandise that—

(1) is of Cuban origin;

(2) is or has been located in or transported from or through Cuba; or

(3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

(b) **EFFECT OF NAFTA.**—The Congress notes that United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba. The statement of administrative action accompanying that trade agreement specifically states the following:

(1) "The NAFTA rules of origin will not in any way diminish the Cuban sanctions program. . . . Nothing in the NAFTA would operate to override this prohibition."

(2) "Article 309(3) [of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that United States products are not exported to Cuba through those countries."

(c) **RESTRICTION OF SUGAR IMPORTS.**—The Congress notes that section 902(c) of the Food Security Act of 1985 (Public Law 99-198) requires the President not to allocate any of the sugar import quota to a country that is a net importer of sugar unless appropriate officials of that country verify to the President that the country does not import for reexport to the United States any sugar produced in Cuba.

(d) **ASSURANCES REGARDING SUGAR PRODUCTS.**—Protection of essential security interests of the United States requires assurances that sugar products that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States are not products of Cuba.

SEC. 111. WITHHOLDING OF FOREIGN ASSISTANCE FROM COUNTRIES SUPPORTING JURAGUA NUCLEAR PLANT IN CUBA.

(a) **FINDINGS.**—The Congress makes the following findings:

(1) President Clinton stated in April 1993 that the United States opposed the construction of the Juragua nuclear power plant because of the concerns of the United States about Cuba's ability to ensure the safe operation of the facility and because

of Cuba's refusal to sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.

(2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.

(3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba's nuclear reactors.

(4) In a September 1992 report to the Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including—

(A) a lack in Cuba of a nuclear regulatory structure;

(B) the absence in Cuba of an adequate infrastructure to ensure the plant's safe operation and requisite maintenance;

(C) the inadequacy of training of plant operators;

(D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing system for the plant, found that 10 to 15 percent of those sites were defective;

(E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and

(F) the possible inadequacy of the upper portion of the reactors' dome retention capability to withstand only 7 pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.

(5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area near Cienfuegos because the Cuban Government was not forthcoming with information.

(6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.

(7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.

(8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the coast of the Gulf of Mexico as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

(9) The Cuban Government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.

(10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently

that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.

(11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a support group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) WITHHOLDING OF FOREIGN ASSISTANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President shall withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

(2) EXCEPTIONS.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform or rule of law activities;

(C) the creation of private sector or nongovernmental organizations that are independent of government control;

(D) the development of a free market economic system;

(E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160); or

(F) assistance under the secondary school exchange program administered by the United States Information Agency.

(3) DEFINITION.—As used in paragraph (1), the term "assistance" means assistance under the Foreign Assistance Act of 1961, credits, sales, guarantees of extensions of credit, and other assistance under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act, and any other program of assistance or credits provided by the United States to other countries under other provisions of law.

SEC. 112. REINSTITUTION OF FAMILY REMITTANCES AND TRAVEL TO CUBA.

It is the sense of the Congress that the President should—

(1)(A) before considering the reinstitution of general licenses for family remittances to Cuba, insist that, prior to such reinstitution, the Cuban Government permit the unfettered operation of small businesses fully empowered with the right to hire others to whom they may pay wages and to buy materials necessary in the operation of the businesses, and with such other authority and freedom as are required to foster the operation of small businesses throughout Cuba; and

(B) if licenses described in subparagraph (A) are reinstituted, require a specific license for remittances described in subparagraph (A) in amounts of more than \$500; and

(2) before considering the reinstitution of general licenses for travel to Cuba by individuals resident in the United States

who are family members of Cuban nationals who are resident in Cuba, 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.

SEC. 113. EXPULSION OF CRIMINALS FROM CUBA.

The President shall instruct all United States Government officials who engage in official contacts with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

SEC. 114. NEWS BUREAUS IN CUBA.

(a) ESTABLISHMENT OF NEWS BUREAUS.—The President is authorized to establish and implement an exchange of news bureaus between the United States and Cuba, if the exchange meets the following conditions:

(1) The exchange is fully reciprocal.

(2) The Cuban Government agrees not to interfere with the establishment of news bureaus or with the movement in Cuba of journalists of any United States-based news organizations, including Radio Marti and Television Marti.

(3) The Cuban Government agrees not to interfere with decisions of United States-based news organizations with respect to individuals assigned to work as journalists in their news bureaus in Cuba.

(4) The Department of the Treasury is able to ensure that only accredited journalists regularly employed with a news gathering organization travel to Cuba under this subsection.

(5) The Cuban Government agrees not to interfere with the transmission of telecommunications signals of news bureaus or with the distribution within Cuba of publications of any United States-based news organization that has a news bureau in Cuba.

(b) ASSURANCE AGAINST ESPIONAGE.—In implementing this section, the President shall take all necessary steps to ensure the safety and security of the United States against espionage by Cuban journalists it believes to be working for the intelligence agencies of the Cuban Government.

(c) FULLY RECIPROCAL.—As used in subsection (a)(1), the term "fully reciprocal" means that all news services, news organizations, and broadcasting services, including such services or organizations that receive financing, assistance, or other support from a governmental or official source, are permitted to establish and operate a news bureau in the United States and Cuba.

SEC. 115. EFFECT OF ACT ON LAWFUL UNITED STATES GOVERNMENT ACTIVITIES.

Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency, or of an intelligence agency, of the United States.

SEC. 116. CONDEMNATION OF CUBAN ATTACK ON AMERICAN AIRCRAFT.

(a) FINDINGS.—The Congress makes the following findings:

(1) Brothers to the Rescue is a Miami-based humanitarian organization engaged in searching for and aiding Cuban refugees in the Straits of Florida, and was engaged in such a mission on Saturday, February 24, 1996.

(2) The members of Brothers to the Rescue were flying unarmed and defenseless planes in a mission identical to hundreds they have flown since 1991 and posed no threat whatsoever to the Cuban Government, the Cuban military, or the Cuban people.

(3) Statements by the Cuban Government that Brothers to the Rescue has engaged in covert operations, bombing campaigns, and commando operations against the Government of Cuba have no basis in fact.

(4) The Brothers to the Rescue aircraft notified air traffic controllers as to their flight plans, which would take them south of the 24th parallel and close to Cuban airspace.

(5) International law provides a nation with airspace over the 12-mile territorial sea.

(6) The response of Fidel Castro's dictatorship to Saturday's afternoon flight was to scramble 2 fighter jets from a Havana airfield.

(7) At approximately 3:24 p.m., the pilot of one of the Cuban MiGs received permission and proceeded to shoot down one Brothers to the Rescue airplane more than 6 miles north of the Cuban exclusion zone, or 18 miles from the Cuban coast.

(8) Approximately 7 minutes later, the pilot of the Cuban fighter jet received permission and proceeded to shoot down the second Brothers to the Rescue airplane almost 18.5 miles north of the Cuban exclusion zone, or 30.5 miles from the Cuban coast.

(9) The Cuban dictatorship, if it truly felt threatened by the flight of these unarmed aircraft, could have and should have pursued other peaceful options as required by international law.

(10) The response chosen by Fidel Castro, the use of lethal force, was completely inappropriate to the situation presented to the Cuban Government, making such actions a blatant and barbaric violation of international law and tantamount to cold-blooded murder.

(11) There were no survivors of the attack on these aircraft, and the crew of a third aircraft managed to escape this criminal attack by Castro's Air Force.

(12) The crew members of the destroyed planes, Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandro, were United States citizens from Miami flying with Brothers to the Rescue on a voluntary basis.

(13) It is incumbent upon the United States Government to protect the lives and livelihoods of United States citizens as well as the rights of free passage and humanitarian missions.

(14) This premeditated act took place after a week-long wave of repression by the Cuban Government against Concilio Cubano, an umbrella organization of human rights activists, dissidents, independent economists, and independent journalists, among others.

(15) The wave of repression against Concilio Cubano, whose membership is committed to peaceful democratic change in

Cuba, included arrests, strip searches, house arrests, and in some cases sentences to more than 1 year in jail.

(b) STATEMENTS BY THE CONGRESS.—(1) The Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996.

(2) The Congress extends its condolences to the families of Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandro, the victims of the attack.

(3) The Congress urges the President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

SEC. 201. POLICY TOWARD A TRANSITION GOVERNMENT AND A DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.

The policy of the United States is as follows:

(1) To support the self-determination of the Cuban people.

(2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

(3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.

(4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.

(5) In solidarity with the Cuban people, to provide appropriate forms of assistance—

(A) to a transition government in Cuba;

(B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and

(C) to support such a democratically elected government.

(6) Through such assistance, to facilitate a peaceful transition to representative democracy and a market economy in Cuba and to consolidate democracy in Cuba.

(7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.

(8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.

(9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.

(10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.

(11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.

(12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.

(13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.

(14) To take steps to remove the economic embargo of Cuba when the President determines that a transition to a democratically elected government in Cuba has begun.

(15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.

(16) To pursue trade relations with a free, democratic, and independent Cuba.

SEC. 202. ASSISTANCE FOR THE CUBAN PEOPLE.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President shall develop a plan for providing economic assistance to Cuba at such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 203(c)) is in power.

(2) EFFECT ON OTHER LAWS.—Assistance may be provided under this section subject to an authorization of appropriations and subject to the availability of appropriations.

(b) PLAN FOR ASSISTANCE.—

(1) DEVELOPMENT OF PLAN.—The President shall develop a plan for providing assistance under this section—

(A) to Cuba when a transition government in Cuba is in power; and

(B) to Cuba when a democratically elected government in Cuba is in power.

(2) TYPES OF ASSISTANCE.—Assistance under the plan developed under paragraph (1) may, subject to an authorization of appropriations and subject to the availability of appropriations, include the following:

(A) TRANSITION GOVERNMENT.—(i) Except as provided in clause (ii), assistance to Cuba under a transition government shall, subject to an authorization of appropriations and subject to the availability of appropriations, be limited to—

(I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs, as is necessary to meet the basic human needs of the Cuban people; and

(II) assistance described in subparagraph (C).

(ii) Assistance in addition to assistance under clause (i) may be provided, but only after the President certifies to the appropriate congressional committees, in accordance with procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, that such assistance is essential to the successful completion of the transition to democracy.

(iii) Only after a transition government in Cuba is in power, freedom of individuals to travel to visit their relatives without any restrictions shall be permitted.

(B) DEMOCRATICALLY ELECTED GOVERNMENT.—Assistance to a democratically elected government in Cuba may, subject to an authorization of appropriations and subject to the availability of appropriations, consist of economic assistance in addition to assistance available under subparagraph (A), together with assistance described in subparagraph (C). Such economic assistance may include—

(i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

(ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;

(iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;

(iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(v) assistance provided by the Trade and Development Agency;

(vi) Peace Corps programs; and

(vii) other appropriate assistance to carry out the policy of section 201.

(C) MILITARY ADJUSTMENT ASSISTANCE.—Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.

(c) STRATEGY FOR DISTRIBUTION.—The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.

(d) DISTRIBUTION.—Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, including humanitarian, educational, labor, and private sector organizations.

(e) INTERNATIONAL EFFORTS.—The President shall take the necessary steps—

(1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this Act; and

(2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.

(f) COMMUNICATION WITH THE CUBAN PEOPLE.—The President shall take the necessary steps to communicate to the Cuban people the plan for assistance developed under this section.

(g) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

(h) REPORT ON TRADE AND INVESTMENT RELATIONS.

(1) REPORT TO CONGRESS.—The President, following the transmittal to the Congress of a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees a report that describes—

(A) acts, policies, and practices which constitute significant barriers to, or distortions of, United States trade in goods or services or foreign direct investment with respect to Cuba;

(B) policy objectives of the United States regarding trade relations with a democratically elected government in Cuba, and the reasons therefor, including possible—

(i) reciprocal extension of nondiscriminatory trade treatment (most-favored-nation treatment);

(ii) designation of Cuba as a beneficiary developing country under title V of the Trade Act of 1974 (relating to the Generalized System of Preferences) or as a beneficiary country under the Caribbean Basin Economic Recovery Act, and the implications of such designation with respect to trade with any other country that is such a beneficiary developing country or beneficiary country, or is a party to the North American Free Trade Agreement; and

(iii) negotiations regarding free trade, including the accession of Cuba to the North American Free Trade Agreement;

(C) specific trade negotiating objectives of the United States with respect to Cuba, including the objectives described in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)); and

(D) actions proposed or anticipated to be undertaken, and any proposed legislation necessary or appropriate, to achieve any of such policy and negotiating objectives.

(2) CONSULTATION.—The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees and shall seek advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974 regarding the policy and negotiating objectives and the legislative proposals described in paragraph (1).

SEC. 203. COORDINATION OF ASSISTANCE PROGRAM; IMPLEMENTATION AND REPORTS TO CONGRESS; REPROGRAMMING.

(a) COORDINATING OFFICIAL.—The President shall designate a coordinating official who shall be responsible for—

(1) implementing the strategy for distributing assistance described in section 202(b);

(2) ensuring the speedy and efficient distribution of such assistance; and

(3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 202(b), including resolving any disputes among such agencies.

(b) UNITED STATES-CUBA COUNCIL.—Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council—

(1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and

(2) to establish periodic meetings between representatives of the United States and Cuban private sectors for the purpose of facilitating bilateral trade.

(c) IMPLEMENTATION OF PLAN; REPORTS TO CONGRESS.—

(1) IMPLEMENTATION WITH RESPECT TO TRANSITION GOVERNMENT.—Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b).

(2) REPORTS TO CONGRESS.—(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 202(b)(2) (A) and (C) to the transition government in Cuba under the plan of assistance developed under section 202(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) IMPLEMENTATION WITH RESPECT TO DEMOCRATICALLY ELECTED GOVERNMENT.—The President shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 202(b).

(4) ANNUAL REPORTS TO CONGRESS.—Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report

on the assistance provided under the plan developed under section 202(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

(d) REPROGRAMMING.—Any changes in the assistance to be provided under the plan developed under section 202(b) may not be made unless the President notifies the appropriate congressional committees at least 15 days in advance in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SEC. 204. TERMINATION OF THE ECONOMIC EMBARGO OF CUBA.

(a) PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action created in section 302 with respect to actions thereafter filed against the Cuban Government, to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.

(b) SUSPENSION OF CERTAIN PROVISIONS OF LAW.—In carrying out subsection (a), the President may suspend the enforcement of—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with respect to the "Republic of Cuba";

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005);

(4) section 902(c) of the Food Security Act of 1985; and

(5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) ADDITIONAL PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba, including the restrictions under part 515 of title 31, Code of Federal Regulations.

(d) CONFORMING AMENDMENTS.—On the date on which the President submits a determination under section 203(c)(3)—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking "Republic of Cuba";

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and

(4) section 902(c) of the Food Security Act of 1985 is repealed.

(e) REVIEW OF SUSPENSION OF ECONOMIC EMBARGO.—

(1) REVIEW.—If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section

203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) JOINT RESOLUTIONS.—For purposes of this subsection, the term "joint resolution" means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress disapproves the action of the President under section 204(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on ____," with the blank space being filled with the appropriate date.

(3) REFERRAL TO COMMITTEES.—Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) PROCEDURES.—(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

SEC. 205. REQUIREMENTS AND FACTORS FOR DETERMINING A TRANSITION GOVERNMENT.

(a) REQUIREMENTS.—For the purposes of this Act, a transition government in Cuba is a government that—

(1) has legalized all political activity;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government—

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments

of time for such access and the times of day such allotments are given; and
 (C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(7) does not include Fidel Castro or Raul Castro; and

(8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

(b) **ADDITIONAL FACTORS.**—In addition to the requirements in subsection (a), in determining whether a transition government in Cuba is in power, the President shall take into account the extent to which that government—

(1) is demonstrably in transition from a communist totalitarian dictatorship to representative democracy;

(2) has made public commitments to, and is making demonstrable progress in—

(A) effectively guaranteeing the rights of free speech and freedom of the press, including granting permits to privately owned media and telecommunications companies to operate in Cuba;

(B) permitting the reinstatement of citizenship to Cuban-born persons returning to Cuba;

(C) assuring the right to private property; and

(D) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(3) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States; and

(4) has permitted the deployment throughout Cuba of independent and unfettered international human rights monitors.

SEC. 206. REQUIREMENTS FOR DETERMINING A DEMOCRATICALLY ELECTED GOVERNMENT.

For purposes of this Act, a democratically elected government in Cuba, in addition to meeting the requirements of section 205(a), is a government which—

(1) results from free and fair elections—

(A) conducted under the supervision of internationally recognized observers; and

(B) in which—

(i) opposition parties were permitted ample time to organize and campaign for such elections; and

(ii) all candidates were permitted full access to the media;

(2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(3) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;

(4) is committed to making constitutional changes that would ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights by the citizens of Cuba;

(5) has made demonstrable progress in establishing an independent judiciary; and

(6) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

SEC. 207. SETTLEMENT OF OUTSTANDING UNITED STATES CLAIMS TO CONFISCATED PROPERTY IN CUBA.

(a) **REPORT TO CONGRESS.**—~~Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall provide a report to the appropriate congressional committees containing an assessment of the property dispute question in Cuba, including—~~

(1) an estimate of the number and amount of claims to property confiscated by the Cuban Government that are held by United States nationals in addition to those claims certified under section 507 of the International Claims Settlement Act of 1949;

(2) an assessment of the significance of promptly resolving confiscated property claims to the revitalization of the Cuban economy;

(3) a review and evaluation of technical and other assistance that the United States could provide to help either a transition government in Cuba or a democratically elected government in Cuba establish mechanisms to resolve property questions;

(4) an assessment of the role and types of support the United States could provide to help resolve claims to property confiscated by the Cuban Government that are held by United States nationals who did not receive or qualify for certification under section 507 of the International Claims Settlement Act of 1949; and

(5) an assessment of any areas requiring legislative review or action regarding the resolution of property claims in Cuba prior to a change of government in Cuba.

(d) **SENSE OF CONGRESS.**—It is the sense of the Congress that the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition

for the full resumption of economic and diplomatic relations between the United States and Cuba.

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS

SEC. 301. FINDINGS.

The Congress makes the following findings:

- (1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.
- (2) The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development.
- (3) Since Fidel Castro seized power in Cuba in 1959—
 - (A) he has trampled on the fundamental rights of the Cuban people; and
 - (B) through his personal despotism, he has confiscated the property of—
 - (i) millions of his own citizens;
 - (ii) thousands of United States nationals; and
 - (iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.
- (4) It is in the interest of the Cuban people that the Cuban Government respect equally the property rights of Cuban nationals and nationals of other countries.
- (5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.
- (6) This "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States—
 - (A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and
 - (B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.
- (7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban Government "would complicate any attempt to return them to their original owners".
- (8) The international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.

(9) International law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory.

(10) The United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.

(11) To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.

SEC. 302. LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES NATIONALS.

(a) CIVIL REMEDY.—

(1) LIABILITY FOR TRAFFICKING.—(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 303(a)(2), plus interest; or

(III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and

(ii) court costs and reasonable attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) PRESUMPTION IN FAVOR OF THE CERTIFIED CLAIMS.—There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) INCREASED LIABILITY.—(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to—

- (i) a person against whom the action is to be initiated, or
 - (ii) a person who is to be joined as a defendant in the action,
- at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of—

- (i) the amount determined under paragraph (1)(A)(ii), and
- (ii) 3 times the amount determined applicable under paragraph (1)(A)(i).

(D) Notice to a person under subparagraph (B)—

- (i) shall be in writing;
- (ii) shall be posted by certified mail or personally delivered to the person; and
- (iii) shall contain—

(I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor;

(II) a demand that the unlawful trafficking in the claimant's property cease immediately; and

(III) a copy of the summary statement published under paragraph (8).

(4) APPLICABILITY.—(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment.

(C) In the case of property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) TREATMENT OF CERTAIN ACTIONS.—(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.

(B) In the case of any action brought under this section by a United States national whose underlying claim in the

action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

(6) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(7) LICENSES NOT REQUIRED.—(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act.

(B) Notwithstanding any other provision of law, and for purposes of this title only, any claim against the Cuban Government shall not be deemed to be an interest in property the transfer of which to a United States national required before the enactment of this Act, or requires after the enactment of this Act, a license issued by, or the permission of, any agency of the United States.

(8) PUBLICATION BY ATTORNEY GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title.

(b) AMOUNT IN CONTROVERSY.—An action may be brought under this section by a United States national only where the amount in controversy exceeds the sum or value of \$50,000, exclusive of interest, costs, and attorneys' fees. In calculating \$50,000 for purposes of the preceding sentence, the applicable amount under subclause (I), (II), or (III) of subsection (a)(1)(A)(i) may not be tripled as provided in subsection (a)(3).

(c) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in this title, the provisions of title 28, United States Code, and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of title 28, United States Code.

(d) ENFORCEABILITY OF JUDGMENTS AGAINST CUBAN GOVERNMENT.—In an action brought under this section, any judgment against an agency or instrumentality of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(e) CERTAIN PROPERTY IMMUNE FROM EXECUTION.—Section 1611 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes."

(f) ELECTION OF REMEDIES.—

(1) ELECTION.—Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) TREATMENT OF CERTIFIED CLAIMANTS.—(A) In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949—

(i) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;

(ii) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between

the amount of the recovery and the amount of the certified claim; and

(iii) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in clause (i) to the same extent as any certified claimant who does not bring an action under this section.

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) DEPOSIT OF EXCESS PAYMENTS BY CUBA UNDER CLAIMS AGREEMENT.—Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified claims after the application of subsection (f) shall be deposited into the United States Treasury.

(h) TERMINATION OF RIGHTS.—

(1) IN GENERAL.—All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government—

(A) may be suspended under section 204(a); and

(B) shall cease upon transmittal to the Congress of a determination of the President under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) PENDING SUITS.—The suspension or termination of rights under paragraph (1) shall not affect suits commenced before the date of such suspension or termination (as the case may be), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension or termination had not occurred.

(i) IMPOSITION OF FILING FEES.—The Judicial Conference of the United States shall establish a uniform fee that shall be imposed upon the plaintiff or plaintiffs in each action brought under this section. The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section. The fee under this subsection is in addition to any other fees imposed under title 28, United States Code.

SEC. 303. PROOF OF OWNERSHIP OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—

(1) CONCLUSIVENESS OF CERTIFIED CLAIMS.—In any action brought under this title, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V

of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) CLAIMS NOT CERTIFIED.—If in an action under this title a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this title and do not constitute certifications under title V of the International Claims Settlement Act of 1949.

(3) EFFECT OF DETERMINATIONS OF FOREIGN OR INTERNATIONAL ENTITIES.—In determining the amount or ownership of a claim in an action under this title, the court shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) AMENDMENT OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949.—Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section:

"DETERMINATION OF OWNERSHIP OF CLAIMS REFERRED BY DISTRICT COURTS OF THE UNITED STATES

"SEC. 514. Notwithstanding any other provision of this Act and only for purposes of section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, a United State district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996), resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba."

(c) RULE OF CONSTRUCTION.—Nothing in this Act or in section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed—

(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

(2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before the date of the enactment of this Act.

SEC. 304. EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE.

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 303, is further amended by adding at the end the following new section:

"EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE

"SEC. 515. (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any person who was ineligible to file a claim under section 503, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any district court of the United States have jurisdiction to adjudicate any such claim.

"(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of capital stock of nationals of the United States owning claims certified by the Commission under section 507."

SEC. 305. LIMITATION OF ACTIONS.

An action under section 302 may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

SEC. 306. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsections (b) and (c), this title and the amendments made by this title shall take effect on August 1, 1996.

(b) SUSPENSION AUTHORITY.—

(1) SUSPENSION AUTHORITY.—The President may suspend the effective date under subsection (a) for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before such effective date that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) ADDITIONAL SUSPENSIONS.—The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(c) OTHER AUTHORITIES.—

(1) SUSPENSION.—After this title and the amendments of this title have taken effect—

(A) no person shall acquire a property interest in any potential or pending action under this title; and

(B) the President may suspend the right to bring an action under this title with respect to confiscated property for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) ADDITIONAL SUSPENSIONS.—The President may suspend the right to bring an action under this title for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(3) PENDING SUITS.—The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension had not occurred.

(d) RESCISSION OF SUSPENSION.—The President may rescind any suspension made under subsection (b) or (c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

(a) GROUNDS FOR EXCLUSION.—The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act—

(1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;

(2) traffics in confiscated property, a claim to which is owned by a United States national;

(3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) DEFINITIONS.—As used in this section, the following terms have the following meanings:

(1) CONFISCATED; CONFISCATION.—The terms "confiscated" and "confiscation" refer to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(2) TRAFFICS.—(A) Except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—

(i) transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property,

(ii) purchases, receives, obtains control of, or otherwise acquires confiscated property, or

(iii) improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act to manage, lease, possess, use, or hold an interest in confiscated property,

(ii) enters into a commercial arrangement using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include—

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(c) EXEMPTION.—This section shall not apply where the Secretary of State finds, on a case by case basis, that the entry into the United States of the person who would otherwise be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) TRAFFICKING.—This section applies only with respect to acts within the meaning of "traffics" that occur on or after the date of the enactment of this Act.

Approved March 12, 1996.

Helms-Burton Act -

Cuban Liberty and
Democratic Solidarity Act

Signed March 12, 1996

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Authors: JERRY GRAY
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Length: Long (1255 words)
Subjects: UNITED STATES INTERNATIONAL RELATIONS; CUBA-INTERNATIONAL
RELATIONS-US; LAW & LEGISLATION; FOREIGN INVESTMENTS;
ECONOMIC CONDITIONS & TRENDS; POLITICS & GOVERNMENT;
AIRLINES & AIRPLANES ; CUBAN-AMERICANS; ELECTION ISSUES;
PRESIDENTIAL ELECTION OF 1996; IMMIGRATION & REFUGEES;
EMBARGOES & ECONOMIC SANCTIONS; CIVIL WAR & GUERRILLA
WARFARE; ASSETS, FROZEN; CUBA; UNITED STATES
Names: CLINTON, BILL (PRES) ; CASTRO, FIDEL (PRES)
Companies: BROTHERS TO THE RESCUE

Abstract: Driven largely by the downing of two civilian American
planes by the Cuba military, Congressional negotiators and
the White House agreed on Feb 28, 1996 on a package of
sanctions intended to punish Fidel Castro by curbing
foreign investment in Cuba. The measure, which President
Clinton had previously opposed, would give the weight of
law to the nearly 40-year-old embargo against Cuba. That
would prevent any president from acting on his own to
loosen or tighten sanctions as relations with Cuba change.

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Article Text:

WASHINGTON, Feb. 28 -- Driven largely by the downing of two civilian
American planes by the Cuban military, Congressional negotiators and the
White House agreed today on a package of sanctions intended to punish
Fidel Castro by curbing foreign investment in Cuba.

The measure, which President Clinton had opposed until this week, would
give the weight of law to the nearly 40-year-old embargo against Cuba that
has been the policy of every American President since Mr. Castro came to
power. That would prevent any President from acting on his own, as Mr.
Clinton and others have in the past, to loosen or tighten sanctions as
relations with Cuba change.

But the package, the most tangible reaction yet to the downing of the planes last Saturday, also includes more potent provisions that supporters said would deter foreign investment in Cuba and thus hasten the downfall of an ailing regime.

One provision would deny visas to anyone -- corporate officer, principal, controlling shareholder -- with a stake in a property confiscated in the 1959 Cuban revolution from someone who is now a United States citizen. A senior Administration official said billions of dollars' worth of property now controlled by foreign companies in Cuba could be affected.

'I don't expect our allies will be pleased with this legislation, but we believe it advances an important part of our foreign policy,' the official said.

Another provision would allow American citizens whose property was confiscated by the Castro Government to file suit in the United States against any foreign company using that property. But in a concession to win the support of the Administration, it would give the President the right to waive that rule every six months to keep the courts from being choked with lawsuits.

No other nation observes the United States embargo on Cuba. Canadian, Mexican and French companies, among others, have sizable investments there. Canada, for example, imports about \$225 million of Cuban goods a year and sends Cuba about \$160 million worth of Canadian goods. Canada is expected to challenge the policy under the North American Free Trade Agreement.

Only last summer, Secretary of State Warren Christopher recommended that Mr. Clinton veto this bill. But Cuba's downing of the planes, which had taken off from Florida, put enormous political pressure on the President to act decisively. Mr. Clinton only narrowly lost Florida to George Bush in 1992, and the state is considered a key battleground in this election year.

On Monday, President Clinton imposed limited sanctions against the Cuban Government, closing off charter air routes, restricting the movements of Cuban diplomats in the United States and expanding the broadcasting range of Radio Marti, the Government-supported anti-Castro radio station.

But Mr. Clinton's actions were roundly criticized as weak and ineffective by some Cuban-American leaders, by Congressional Republicans and by nearly all of the Republican Presidential contenders. And when Congress reconvened on Tuesday after a nearly monthlong recess, supporters of the stronger bill moved immediately to revive it.

Most of the corporate giants in the United States, as well as the United States Chamber of Commerce and the Association of Exporters and Importers, oppose the measure.

'What we hear from the C.E.O.'s is they feel the legislation will make it impossible for U.S. companies to develop a position within the Cuban market, while providing more opportunities for companies in other countries,' said John S. Kavulick, president of the United States-Cuba Trade and Economic Council, which represents more than 100 companies.

Other officials said the maker of Bacardi rum, which had vast holdings in Cuba before the revolution, made a major lobbying effort for the measure.

Senator Christopher J. Dodd, Democrat of Connecticut and general chairman of the Democratic Party, said, 'The heart of this bill is special interest legislation par excellence.'

But backers of the legislation touted it as the tool that would drive President Castro from office after 36 years in power. 'He is on the ropes,' said Representative Dan Burton, a Republican from Indiana and a co-sponsor of the bill. 'I think this is the last nail in his coffin.'

Representative Robert G. Torricelli of New Jersey, the senior Democrat

on the International Relations Subcommittee on the Western Hemisphere, said the measure 'makes continued foreign investment by multinational corporations in Cuba very unlikely.'

'You can either come to the United States and do business, or you can choose to do business with Fidel Castro and his \$300-per-capita national income,' he said.

A jubilant Senator Jesse Helms of North Carolina, the chairman of the Senate Foreign Relations Committee and the other co-sponsor of the bill, said, 'I have one message for Mr. Castro today: adios, Fidel.'

The sponsors said a conference bill would be brought to the floors of the Senate and the House in the next few days and sent to the White House by early next week.

President Clinton has indicated he will sign the legislation, which is formally known as the Cuban Liberty and Democratic Solidarity Act but is more commonly referred to as the Helms-Burton Act.

Opponents argue that in their haste to punish Mr. Castro, supporters of the bill are turning Washington's policy on Cuba in the wrong direction.

'We seem to have lost sight of the national interest and how best to promote it,' said Representative Lee H. Hamilton of Indiana, the senior Democrat on the House International Relations Committee. 'We are voting today on a conference report that represents far more than a message. If enacted, it will cast in concrete policy mistakes that will not be easily undone.'

Mr. Hamilton said that if the legislation were approved, it would isolate the Cuban people and 'increase the risk of violent upheaval, and increase the risk of a massive flow of refugees to U.S. shores.'

The legislation puts the Clinton Administration in a political vise. On one side are Washington's allies, especially Canada, which has long objected to the unilateral trade embargo against Cuba and the limits it places on their trade. The bill urges the President to seek an international embargo against Cuba through the United Nations Security Council.

But Mr. Clinton is facing more pressure in an election year from opponents who threaten to turn his Cuban policy into a major political issue.

'The President, in light of the incident Saturday, believes tightening the embargo on Cuba is necessary now, both to deal with this incident and promote our overall goal of Democratic change in Cuba,' said Michael D. McCurry, the White House spokesman.

Differing versions of the legislation passed the Republican-controlled House and Senate last fall, but were stalled after the Administration objected to the lawsuit provision in the House bill.

But the legislation was moved to the political front burner after Cuban MIG fighters shot down the two civilian planes on Saturday. The Clinton Administration maintains the planes were shot down in international airspace; Cuba says they were within its territorial limits.

Four people were aboard the two planes, all of them Cuban-Americans working with Brothers to the Rescue, a Miami-based group of Cuban exiles opposed to the Castro Government who have harassed Cuba before. Officials say the four were presumably killed.

F.B.I. Says Pilot Was Informant

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CUBA; UNITED STATES
Names: CLINTON, BILL (PRES); HELMS, JESSE (SEN); BURTON, DAN (REPR)
Companies: BROTHERS TO THE RESCUE (ORGN)

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Article Text:

The Clinton Administration has done many things right and one thing terribly wrong in response to Cuba's shootdown of two unarmed planes flown by Miami-based exiles.

Providing a Coast Guard escort to accompany an exile flotilla to the site of the downing today registers American determination to protect the security of international waters and airspace. Equally important, it minimizes the risk of either the exiles' or Havana's provoking a new incident. The Administration's decision earlier this week to suspend charter flights to Cuba and to impose travel restrictions on Cuban diplomats in this country made clear that Havana had attacked not just anti-Castro activists but international law itself.

However, the Administration is about to make a huge mistake by signing into law a bill, sponsored by Senator Jesse Helms and Representative Dan Burton, that aims to coerce other countries into joining the American embargo of Cuba. By dropping his opposition to the bill, Mr. Clinton junks his own balanced policy for encouraging democracy in Cuba and signs on to an approach that will inevitably slow the opening of Cuban society and pick a pointless quarrel with American allies.

The bill threatens foreign companies with lawsuits and their executives with exclusion from American soil if they use any property in Cuba ever confiscated from anyone who is now a United States citizen. Some of its provisions appear to violate international law and trade treaties, and the Administration had been saying since last summer that it would veto the measure unless these provisions were removed.

The United States is the only country that maintains an economic embargo against Cuba, an outdated policy that has failed in 35 years to topple the Castro Government. Trying to coerce other countries to join the embargo is offensive to American allies and unlikely to succeed.

Backers of the Helms-Burton bill believe the Cuban economy has been so enfeebled by the loss of subsidized Soviet trade that the Castro regime can be brought down with one final shove. But Cuba's economy, though hurting, has already revived from the depths of the early 1990's. Its recovery has been built on austerity, limited reforms and new trade relationships with the rest of the world. It is unrealistic to think that a reinforced American embargo would bring Mr. Castro down.

What Havana really worries about is the resurgence of opposition in Cuba itself. Opposition groups have been invigorated by Cuba's widened contacts with the outside world. They are also encouraged by a more supportive attitude on the part of Miami-based exile organizations. These used to view all Cubans who remained on the island, even opposition activists, with suspicion. Now groups like Brothers to the Rescue, the organization whose planes were shot down last week, see opposition groups

on the island as a key to political change.

The Castro regime is alarmed by this potential link between domestic opponents and outside support groups, heralded by Brothers to the Rescue's previous airborne leafletting of Havana. Indeed, Havana's concern over this prospect may have been a factor in last week's missile attack against the exiles' planes. Washington should be doing everything it can to promote opposition within Cuba by encouraging more human interchange between the island and the outside world, not less.

The Helms-Burton Act is not an appropriate response to Cuba's murderous deed. It is a wholesale policy reversal that weakens America's ability to encourage democracy in Cuba. Mr. Clinton should return to his original sound position.

Article Text:

HAVANA, March 29 -- Warning of what it described as a campaign by the United States to 'deceive, confuse and dismantle' the Cuban revolution, the Cuban Communist Party has called for strengthening ideological and economic orthodoxy and threatened 'severe punishment' for those who failed to comply.

The party's Central Committee endorsed a harder political line against what it said were Washington-supported 'Trojan horses' and 'fifth columnists' in its midst. Reports of the rare full session, which was held last weekend behind closed doors, only began to emerge this week.

Party leaders also sharply criticized features of the limited opening of the economy in the last three years, which has rescued the Cuban economy from the brink of collapse. Instead, they demanded increased self-reliance and discipline.

The actions come at a moment when relations between Cuba and the United States are unusually tense, a result of the episode on Feb. 24 in which the Cuban Air Force shot down two light planes belonging to a Miami-based Cuban exile group.

In retaliation, President Clinton signed the Helms-Burton Act, which intensifies and extends the longstanding American economic embargo against Cuba.

Ordinary Cubans, dissidents and foreign diplomats have expressed concern at the tone of the documents emerging from the party meeting, saying they augur a period of increased repression and retrenchment.

'This is a sea change in terms of moving to a much more rigid ideological position and a much more absolute control by the party of everything,' said one diplomat here.

In a report to the party conference published this week in Granma, the official newspaper of the Cuban Communist Party, Defense Minister Raul Castro, the country's second-most-powerful figure and the President's brother, argued that Cuba must at all costs avoid reforms of the type that 'undermined the Soviet Union and other socialist countries.'

Self-employed workers and intellectuals here are being used by Cuba's enemies, he complained, to weaken the authority of the party and the state and must be brought back into line.

President Fidel Castro led the closed two-day party plenum, the first since 1992. The full text of his remarks has not yet been made public, but Granma reported that he had told the 212 members of the Central Committee that the meeting marked 'the start of an intense ideological battle,' requiring the mobilization not only of party members 'but of the people as a whole.'

The effort is necessary because the country is experiencing 'particularly difficult and dangerous moments,' warned President Castro, who is also the head of the Communist Party. 'Revolutionary ideology has never been more necessary than today.'

Ricardo Alarcon, the Speaker of Parliament, said in an interview that the Central Committee session was to be followed by 'thousands of meetings throughout the country to discuss this report' in workplaces and schools.

The Helms-Burton Act will be a main focus of discussion, he said, and he predicted that the strengthening of the United States sanctions against Cuba would be especially useful in motivating young people, whose ideological commitment to the Cuban revolution has flagged considerably in recent years.

'We are profiting from Helms,' Mr. Alarcon said gleefully. 'He has served us on a silver plate something that is crucial from an ideological point of view.'

'Of course, we are going to play that card to death.'

Other Cuban officials said the call for ideological orthodoxy reflected a 'renewed confidence' resulting from a successful sugar harvest and predictions that the Cuban economy would grow by 5 percent this year,

after contracting by one-third since 1989.

But Vladimiro Roca, a leader of the coalition of dissident and human rights groups called the Concilio Cubano, contended that the tough line showed a 'fear and panic among the leadership of losing power.'

The Communist Party views the emergence of a vigorous sector of self-employed workers as a threat to its absolute control over the populace, Mr. Roca maintained. The emerging private sector is less dependent on the state and underlines the inefficiencies of a centralized economy, he said, and so 'the Government feels it has to brake this.'

In Raul Castro's speech, which was splashed over five pages of Granma on Wednesday and emphasized in television and radio reports, the Defense Minister expressed apprehension that the growing number of self-employed workers 'stimulates old and new forms of criminality' like profiteering and corruption. The phenomenon also is 'creating the basis for organized groupings, associations and actions free of the state' that could 'constitute a test tube for the subversive efforts of the enemy,' he said.

The solution to that problem, said Carlos Lage, Cuba's chief economic planner, in another lengthy speech to the conference, is increased supervision of the embryonic private sector. 'We must guarantee the control and combat the illicit enrichment' of self-employed workers, he said.

Mr. Lage also appeared to play down the importance of attracting foreign involvement in the Cuban economy, arguing that the main source of growth in the future must come from within, using Cuba's own untapped resources.

Foreign investment 'is necessary, is important,' he said.

'We have to promote it,' he said, 'but it is not the essential factor in our economy.'

Officials at Government ministries dealing with economic affairs said Mr. Lage's remarks did not signal a change in economic strategy and that reforms would continue, and perhaps even accelerate. But others who work in sectors dealing with foreigners expressed doubt about his emphasis on self-reliance and fortifying state control.

'This is a bad sign,' said a young Cuban employed by a private company that deals with foreign trade. 'We have to have more foreign investment in order to grow, because we do not have enough capital ourselves.'

Mr. Lage also said that despite the recovery of the Cuban economy, ordinary Cubans should expect to continue to live with the austerity that has been the main feature of life here since the collapse of the Soviet bloc in 1989.

'This is not the moment for wage increases, no matter how justified they may be,' he said.

In his speech, Raul Castro warned of deviations within the Communist Party itself, singling out for condemnation a respected research institute called the Center for Studies of America. 'Various comrades were falling into the spider's web spun by Cuba experts abroad, in reality servants of the United States and its policy of fomenting a fifth column,' he admonished.

The center is a semi-academic institution that focuses on political and economic developments in the Western Hemisphere, the United States included. But economists and political scientists at the institute have also argued and written in favor of more rapid and profound economic reforms within Cuba and for dialogue with Washington.

Cuban intellectuals and foreign diplomats here said that a purge of the institute had begun as a result of Mr. Castro's accusation and that it was likely to spread to other party research centers he has criticized. The director of the institute has been replaced by the head of the Communist Party's polling operations, and other specialists have also been removed from their posts, they said.

Raul Castro called for a similar campaign in the Government news media,

because 'we lowered our guard' and 'have ceased being vigilant in the observe of our own rules.' He said some publications used 'a language supposedly revolutionary that seems intended to serve as a smokescreen for their true intentions,' which he described as 'a diversionary role.'

Mr. Alarcon defended the dismissals at the institute, saying, 'The party has a right to say, we don't like this and we are going to make some changes.' Since the institute had been 'created by the Central Committee to be a kind of advisory group,' he added, it was perfectly proper to tell academic experts whose views are considered wrong that 'you are invited to do something else.'

Caption:

Photo: Cuban leaders have called for a crackdown to enforce ideological and economic orthodoxy. President Fidel Castro spoke with his brother, Raul, the Defense Minister, at a meeting of Parliament in December. (Reuters) (pg. 12)

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Companies: GRUPO DOMOS (MEX)

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Article Text:

HAVANA -- Bolted to the front of the old phone company headquarters in this city's crumbling center is a bronze plaque commemorating Resolution No. 1 of Cuba's revolutionary Government: the nationalization of the telephone system on Aug. 6, 1960.

But so much of the old tower's ornate trim is flaking off and coming down that the sidewalk in front of the building had to be closed.

Both the plaque and the plummeting plasterwork put this relic of Havana's past squarely in the cross hairs of the latest weapon in the ideological battle between Cuba and the United States -- the Helms-Burton Act. The law tightens the 34-year-old embargo against Cuba by trying to restrict non-American foreign investment here.

Inside the 10-story phone company building are offices of Etecsa, a joint venture of the Cuban Government and a Mexican company called Grupo Domos, which bought 49 percent of the decrepit national system in 1994 for \$750 million. It is by far the biggest foreign investment in Cuba since the Communist Government of Fidel Castro began courting investors.

While company officials say they have no intention of pulling out, they admit that the uncertainty raised by the new law makes it far more difficult for them to raise the \$300 million they still need to go forward with their project, which is considered essential for Cuba's development.

Cuba Coming to See Law's Chilling Effect

Shaking confidence in Cuba is exactly what the law's drafters were after. The Cuban Government initially derided the law as powerless but later conceded the chilling effect it would have on foreign investment, while using it as provocation for a crackdown on economic reforms and political dissent.

The Helms-Burton Act was written and passed after intense pressure from anti-Castro Cubans in Miami who hoped to undermine the Castro Government. But many of the most vocal supporters of the bill also operate businesses. They want to weaken rival businesses, raise the cost of investing in Cuba and scare off non-American investors so that they can rush in after Mr. Castro falls and pick up the spoils.

No foreign project has been canceled yet, but international investors are nervously waiting to see how the United States will enforce the law, which takes effect Aug. 1, or whether President Clinton will use his authority to suspend its implementation until after the November elections.

'We're still doing our evaluations,' said Arturo Lopez, manager of the Havana Investment Fund, which had raised almost \$35 million before the law was passed. 'This law is going make an investment here a little more

difficult perhaps, but it will not stop it.'

Cuban officials say they have attracted \$2 billion in foreign investments, although Western diplomats here estimate the true figure to be half that. Whatever the real figure, all investments has been thrown into question by the Helms-Burton Act, which was signed by President Clinton just weeks after Cuban pilots shot down two unarmed planes flown by anti-Castro Cuban-Americans on Feb. 24, killing four men.

Many business executives here note that the law could hinder the kind of transition to a market economy that Washington seems to want. Since Cubans were given the right to own dollars and foreign companies were allowed to invest in Cuban businesses, dollars have been buying everything in Havana, from extra food to a working telephone line.

The 33 exchange at the start of most business telephone numbers here is now known as the money exchange because it means the holder pays the bill in dollars, and calls almost always get through. Not far from a sign in Havana proclaiming 'Socialism or Death' is an outdoor billboard for Adidas shoes.

Basically, the Helms-Burton Act gives American citizens the right to sue Domos and other foreign companies in a United States Federal court for profiting from property that was illegally confiscated during the Cuban Revolution.

Javier Garza Calderon, president of Domos, said in an interview in Mexico that he does not believe that the law applies to his company because he simply rents space in the old phone company building. It is now owned by the Government but used to belong to the American company ITT and the Cuban Telephone Company, which it ran, until the revolution. ITT has a \$130 million claim outstanding for all the property it lost in Cuba.

Domos is rapidly renovating alternate space -- in a building that never belonged to Americans -- just in case. But the new law so broadly interprets deriving benefit from confiscated property -- it uses the term 'trafficking' -- that Mr. Garza Calderon concedes that Domos could have trouble because some equipment, telephone lines and even the heavy black rotary dial phones still in use in some Cuban households once belonged to ITT.

'They could be considered to be deriving benefit if a call from Miami to some woman in Camaguey Province was made on the same old telephone her grandmother had,' said a Western diplomat in Cuba. 'No matter what their lawyers say, can they be sure that a Federal court somewhere in the United States will feel the same way?'

Cuban-American leaders in Miami have already installed Domos into what they call their 'Hall of Shame.'

'Here you have a foreign company buying at cut-rate prices property owned by American citizens, intending to share profits with Fidel Castro and then laughing all the way to the bank,' said Jorge Mas Canosa, head of the powerful Cuban American National Foundation.

But Mr. Mas Canosa may have had more than politics in mind. His Florida-based telecommunications company, Mastec, has been expanding aggressively in Latin America, and the entrance of the Mexicans represents increased competition.

Signs of Concern From Many Corners

Domos faces other potential problems. Under the law, Mr. Garza Calderon and his family could be denied visas to enter the United States, where his children now study.

Canon, Bayer, Benetton and dozens of other corporations that occupy space in confiscated Havana mansions also could face similar restrictions if former property owners have since become American citizens.

The Canadian Government has been among the most vocal opponents of the new law, asserting that it violates the terms of the North American Free

Trade Agreement. Latinvest Securities reports that stock in the Canadian mining company Sherritt International, which operates a nickel mine in Cuba, dropped 24 percent after the two planes were downed.

At first the Cuban Government minimized the effect of the law. Officials declared outright that there were no American properties in Cuba, and called the law 'Helms's dream,' after its sponsor, Senator Jesse Helms, the conservative Republican from North Carolina.

But as investors expressed their concerns, the Government was forced to reconsider. Roberto de Armas, an economist in the Foreign Ministry, now concedes that the flow of capital will probably slow until the United States makes clear how it plans to enforce the law. But he said the Government's policies will not change.

'The biggest blow to the Americans and their law will be when we give the figures for economic growth at the end of the year and they see that growth continues, albeit with problems in some sectors,' Mr. de Armas said. The expected growth rate for 1996 is between 4 and 5 percent, depending on the sugar harvest, now under way.

The stakes are high for Mexico, which has taken a lead in Cuban investments. It was during a state visit by Carlos Salinas de Gortari, then the President, in June 1994 that the Domos deal was announced. A project to rebuild the Cienfuegos refinery was also announced then but it was suspended last September.

An investment like Grupo Domos's was considered an important first step in strengthening both the Mexican and Cuban economies.

Company Scrambles To Save Its Venture

It turned out that the anchor of Cuba's economy that Domos bought was a rusting and battered one. For instance, Domos found that when the air conditioning in critical switching centers failed, workers had simply opened the windows, letting in dust and salt air that corroded contacts. Only 18 percent of the long distance calls made to Cuba were completed.

Because Grupo Domos lacked operating experience, it sold 25 percent of its stake to the Italian phone company Stet last April for \$291 million.

Domos wanted an American partner. Since 1992, a change in American law allowed long distance companies like AT&T and MCI to provide direct service to Cuba. They are doing so well that on Feb. 26, two days after the planes were shot down, a record 43,000 calls were registered between the United States and Cuba.

The signing of the Helms-Burton Act squelched any deal with an American company. The law specifically prohibits debt-for-equity swaps and bans any American company from investing in the domestic phone network in Cuba.

Since Domos has already earmarked \$180 million for direct investment in Cuba, it has little choice but to remain. The uncertainty caused by the Helms-Burton Act makes it virtually impossible for Domos to finance the \$300 million it still owes the Cuban Government. But it now seems that the Mexican Government, which strongly opposes the new law, will find a way to help Domos, and Cuba, save face. Although it once turned down Domos, the Mexican Government's export bank, Bancomext, is expected to come up with a loan for most of the \$300 million.

Mr. Garza Calderon said the Cuban-Americans in Miami who pressured President Clinton to sign the law are confused. He would like to invite Mr. Mas Canosa, with whom he does not see eye-to-eye either economically or politically, to Monterrey to discuss the improvements already made in Cuba: higher salaries for workers, new switching stations, better service and more lines.

'It is ridiculous that Mr. Mas Canosa opposes all those benefits for those Cubans living in Miami and those in Cuba as well,' he said. 'He's just taking the negative point of view.'

Caption:

Photo: The old telephone company building in Havana, left, is a target of the new United States law that would allow Americans to sue companies profiting from illegally confiscated property in Cuba. Barriers at the building's corner protect pedestrians from falling plaster. (Anthony DePalma/The New York Times)

Chart: 'A CLOSER LOOK: Sanctions Against Cuba -- The New Arsenal' lists the major provisions of the Helms-Burton Act.