

*A Review of European Perceptions  
of Cuba*

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# A REVIEW OF EUROPEAN PERCEPTIONS OF CUBA<sup>1</sup>

*Joaquín Roy*

## Introduction

The commemoration of the 100th anniversary of the birth of the Cuban Republic on May 20, 2002, provided an opportunity to review not only the survival of the Cuban regime, but also the whole history of the Cuban nation.<sup>2</sup> This event coincided with the historic visit of former President Jimmy Carter to Havana<sup>3</sup> and the reiteration of the unwillingness of the United States to terminate its embargo of Cuba, as expressed by President George W. Bush in an unprecedented speech in Washington and on a trip to Miami.<sup>4</sup> At the same time, friction has increased between Cuba and some influential Latin American countries, as in the special case of Mexico. The tension generated in the aftermath of the vote taken by the United Nations Commission for Human Rights in Geneva in April 2002, which criticized Cuba's human rights practices, revealed a definite crack in the comfortable linkage previously enjoyed by Castro with most countries of the hemisphere (with the notable exception of the United States). On October 23, 2002, when the European Parliament (EP) approved the award of the Sakharov Prize to Cuban dissident Oswaldo Payá for his record in the defense of human rights and especially for his leadership in the "Varela Project," the overall panorama of the relations of the European Union (EU) with Cuba acquired a new look, signifying the confirmation of a long pattern of the EU's perceptions of and policy toward Cuba.<sup>5</sup> Cuba's decision to allow Payá to travel to Strasbourg to receive the award was taken simultaneously with the EU's announcement of the opening of a delegation in Cuba, while Castro surprisingly declared that Cuba would reapply to become a member of the Africa, Caribbean, Pacific (ACP) Cotonou Convention. It is time, therefore, for a historical review and a consideration of the most salient aspects of European-Cuban relations and some of the pending issues.

## Historical Introduction

Five main currents of influence and pressure contributed to the insertion of Cuba in the international scene in the last century, coming from the United States, Spain, Caribbean and Latin American regional linkages, the Soviet Union during its three decades as a superpower, and Europe at large. The first linkage was implemented by the United States when it intervened in what was essentially an internal affair between Spaniards and Cubans. More precisely, this was a conflict between interests that wanted to maintain a solid political link with Madrid and others that envisioned a path similar to the one taken almost a century earlier by the rest of the nascent Spanish American republics. Almost simultaneously with the United States' pulling Cuba into its sphere of influence and making the nature of being Cuban parallel the adoption of U.S. customs,<sup>6</sup> Spain's civil society reacted rather unconsciously. Expelled as a political power, Spain refused to be pushed off the map in Cuba and demographically answered the American challenge in the only way it could. As a result of economic conditions in Spain, opportunities in Cuba, social networks, and a deliberate policy of the Cuban elites to attract immigrants in order to alter the demographic balance between people of color and whites, massive emigration from Spain proceeded to the island, a unique case in contemporary history in which a colonial power sent more emigrants to its former colony than in earlier times.

While the linkage with the United States is an unavoidable subject of research and meditation, less attention has been given to the interest expressed by Europe in maintaining a relationship with Cuba, especially after the triumph of the Cuban Revolution. Evidence shows that the presence of European interests in

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Cuba (those of both Spain and the rest of Europe) remained steady throughout the twentieth century and constituted a solid line of international linkage without noticeable breaks. Cuba's bondage to the Soviet Union appears to be an exception in assessing the lasting effects of the presence of foreign powers, especially when comparing Cuba's heavy dependency during the heightened years of the Cold War and its irrelevancy today. A Europe in transformation has added another factor to Cuba's international linkages: the institutional collective framework of the European Union, the sixth factor in the overall global anchoring of Cuba.

Spain's relationship with Cuba can be subdivided into a set of attitudes or modes illustrated by a series of words that in Spanish end in "-ión" (and in English as "-ion"). During the colonial period, those words were of a different nature: occupation, evangelization, colonization, exploitation, immigration, importation (of slaves), fusion (of races), repression, re-concentration (Weyler's policy), and late military and political reaction. During the later stages, Spain had to endure the policy of pressure (*presión*) and later of intervention by the United States, provoked by an explosion (the *U.S.S. Maine*, which blew up in Havana Harbor). After the defeat of 1898 (*el Desastre*), Spain reacted first with deep commotion, followed by resignation. This was illustrated by a still-popular phrase, "*Más se perdió en Cuba*," (More was lost in Cuba), which captured a permanent place in the language to depict the relative value of any loss compared to the importance of what happened in 1898. Domestically, Spanish politicians and intellectuals reacted with an agenda dominated by a deep sense of meditation (on the role of the Generation of '98), along with a sense of *regeneración*. The negative consequence was the substitution of Africa for Cuba, and the results included the colonial war in Morocco, the dictatorship of Primo de Rivera, and the path to the tragic Spanish Civil War.<sup>7</sup>

During the first decades of the twentieth century, Spain's new agenda in Cuba was dominated by a compulsive and involuntary "policy" of migration, propelled by hunger, desire to avoid the draft, and family ties. Spain's policies were maintained by a sense of historical obligation toward the former colony despite the difficulties caused by official measures (the so-called "law of 50 percent," by which companies were forced to employ a minimum of 50 percent of Cuban nationals) and Spanish dictator General Francisco Franco's affinity with the regime of Cuban President Fulgencio Batista. After 1959, Cuba (and some other countries in the Americas, such as Argentina) became part of a "foreign policy of *substitución*," which allowed the Spanish regime to be compensated for its limitations on the European scene by cultivating a feeling of autonomy in Latin America. A sort of mutual, cautious admiration and respect between the Cuban and Spanish leaderships solidified diplomatic relations between two very distinct regimes, and an era of normalization in spite of ideological differences ensued. Among other factors, both Castro and Franco held Western liberal democracy in contempt and resented Anglo-Saxon domination and the subsequent Latin submission. On a more practical level, Franco maintained relations with Castro for a variety of reasons (expecting to receive compensation for expropriations, to pay off the trade debt, and, most importantly, to avoid isolation from Latin America).<sup>8</sup> Ironically, in more recent years, confrontation has been caused by expropriation of Spanish interests in Cuba and by the expulsion of religious orders. This was followed by an incident prompted by Spanish Ambassador Juan Pablo de Lojendio in protest of Castro's accusations. Clashes have continued between the Cuban leadership and the Spanish democratic administrations of Prime Ministers Felipe González and José María Aznar. In essence, the official attitude of Spain's democratic leaders toward Castro has not changed dramatically since 1976. Cordial relations mixed with persuasion to reform have been the norm, only exacerbated in tone by Aznar's public demands on Castro. A popular word in contemporary Spanish seems to illustrate very aptly these cyclical incidents: a policy of *follón* (brawl), considered to be "low intensity." After all, fights like these happen in families.

After the end of the Cold War and the disappearance of Soviet subsidies, a Cuban policy of luring foreign investment through joint ventures resulted in a notable increase in European, and especially Spanish, investment. *Inversión* was the fitting label for this new aggressive attitude of Spanish interests in Cuba, expressed in highly visible sectors such as tourism through the construction of hotels. The survival of the Cuban regime after the first half of the 1990s led the United States to toughen measures discouraging foreign investment on the island. The result has been frontal clashes between European interests and the United States over the extraterritorial aspects of U.S. legal initiatives.<sup>9</sup>

Meanwhile, the rest of what used to be Western Europe proceeded to normalize relations (although conditioned to each case) by simply considering Cuba at the same level as the German Democratic Republic, Vietnam, or China. Simultaneously, the European Union integration process had produced an elaborate set of

institutional procedures, rules of law, and protocols. Jealously preserving the most sensitive areas of foreign policy for themselves, the various governments of the EU member states maintained autonomous attitudes toward Cuba. In each case, they took into account special interests, were inspired by good intentions<sup>10</sup> (in the best tradition of development aid), and shared a minimum of common ground in the institutional framework of the EU. The overall result, using labels similar to those of the Spanish case, is a policy that paradoxically combines notable contradiction (if not a violation of EU common regulations) and obvious confusion, with a profile of cohesion and a strategy of persuasion. A European policy of “carrot” provides the best illustration, as opposed to the “stick” used by the United States. The EU, as a whole, has seldom crossed the line to the point of applying *presión*. However, at the end of the day, its policy shares one characteristic with the Spanish policy: frustration, which is a feeling also suffered by the United States, although elevated in that case to the category of irritation, if not upgraded to another level of activity perceived by Cuba as aggression. Although a planned policy of confrontation with the United States has not been a fixed part of the script, in certain episodes, concrete measures of the European Union and individual member states have responded to U.S. actions. In Cuba, the Europeans have encountered the only business terrain on earth where they do not have to compete with U.S. economic interests. Pretending in an exaggerated way that the United States does not exist in the Cuban scenario (even in its political dimension), Europeans have had their finest hour of cooperation when confronting U.S. policies, in contrast to their difficulties in crafting a common strategy toward the Cuban regime.<sup>11</sup> European governments have elected to design an alternative approach and defended it against U.S. pressures.

The official European attitude toward Cuba and its problems with the United States can be illustrated by three fragments of three distinct and contradictory declarations of the European Union: 1) “The European Union condemns the repeated violations of human rights in Cuba, in particular in the political field. The EU believes that the U.S. trade embargo against Cuba is primarily a matter that has to be resolved bilaterally.”<sup>12</sup> 2) “The U.S. has enacted laws that purport to regulate activities of persons under the jurisdiction of the member states of the European Union; this extra-territorial application violates international law and has adverse effects on the interest of the European Union.”<sup>13</sup> 3) “If Cuba wishes to receive a favorable treatment through a cooperation agreement, it must show progress in the democratic process.”<sup>14</sup>

However, European trade and economic relations with Cuba have been developing at a pace autonomous from the collective attitude toward the Cuban regime and independent of the constraints imposed by the United States, and, more importantly, in reaction to U.S. measures. In Europe, while the reactions of different governments revealed an impressive unity in opposition to the U.S. Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (called the Helms-Burton Act or law for bill sponsors Senator Jesse Helms, R-N.C., and Representative Dan Burton, R-Ind.), individual countries such as the United Kingdom and Spain show distinctive attitudes according to their special relationships with the United States and Cuba, respectively. The European Union is the institutional framework that has been the most reactive source. The EU has provided the most effective answer to the Helms-Burton law to date and at the same time has coordinated the machinery for a compromise with the United States to avert a trade war of serious consequence.

Ironically, what was originally a U.S.-Cuban conflict that had escalated into a wider confrontation with transatlantic consequences has given way to an isolated compromise issued from Washington regarding the Cuban revolutionary process. (This was to happen in 1998, when the EU and the United States signed a “truce” to settle their differences over investments in Cuba. Later on in the text, this will be explained in more detail.) Significantly, while the Monroe Doctrine was prompted by the insertion of Russia into the American continent, the Helms-Burton corollary was developed when the Soviet Union disappeared and Cuba lost its most important supporter and the cause of its conflict with the United States.

## Europe’s Relations with Revolutionary Cuba

### *United States-EU Conflict and Cooperation*

In the public opinion domain, since the mid-1990s, the Helms-Burton law has inflicted considerable damage on transatlantic relations at a time when any trade disagreement could unleash a serious confrontation in the restructuring of economic blocs. Between the end of the Cold War and the crisis of September 11, 2001, Europeans had come to terms with the idea of accepting U.S. leadership in difficult scenarios such as the

Persian Gulf War and the pacification of the former Yugoslavia. France had shown willingness to reinsert itself into the European security network, especially in the context of the North Atlantic Treaty Alliance (NATO). A consensus had been reached regarding economic and military cooperation with Russia. A future North-Atlantic free trade agreement was always feasible because of the simple fact of the similarities between the U.S. and the European economies. In contrast, the dispute over Cuba has been an anomaly.

It is true that discrepancies have existed between the United States and Europe.<sup>15</sup> Because of the technical profile of most of the areas of disagreement (before September 11) and the fact that they do indeed involve substantial economic and financial interests, the conflict over Cuba and Helms-Burton presents a significant contrast. On the one hand, the topic of the Cuban embargo receives disproportionate attention in the media and political circles. On the other, Cuba's relatively unimportant role commands little attention in scholarly global analyses of EU-U.S. relations.<sup>16</sup>

### *Cuba's Trade Tilting Toward Europe*

Simultaneously with the economic reforms that took place in Cuba after the end of the Cold War, Cuba's former dependency on the Soviet bloc began to shift to a sort of normalization of relations with members of the European Union. The history of relations between revolutionary Cuba and what was called Western Europe during the Cold War provides some clues to the lack of agreement between the United States and Europe in the 1990s. Although in the 1960s and 1970s nothing existed comparable with today's incipient EU Common Foreign and Security Policy, a pattern of similarities was revealed in the way different European states dealt with Cuba. Each one maintained a link in clear violation of U.S. pressures and admonitions. While Federal Germany's moderate linkage with Cuba contrasted with the intimate relationship between the communist German Democratic Republic (GDR), Britain (under both Conservative and Labor governments) and France (under President Charles De Gaulle) provided Cuba with the necessary industrial products to keep part of its economy afloat. However, in global terms, the tallies of Western Europe-Cuba trade were modest when compared with Cuba's dependency on the Soviet bloc. Yet, in strategic terms, some observers considered that "without European links, the Revolution might well have floundered."<sup>17</sup>

At the end of the 1980s, Cuba's trade with today's European Union member states was only 6 percent of the total trade between Havana and the rest of the world. By the mid-1990s, 38 percent of Cuban imports and 29 percent of exports were with the European market.<sup>18</sup> More than half of all joint ventures in Cuba were established with European investments.<sup>19</sup> Aid funding came from Europe also, from 6 million ECUS in 1993 to a high of 15 million in 1995.

In recent years, European reactions to the Helms-Burton law could be divided into the moves by the most influential countries and the collective measures of EU institutions.<sup>20</sup> Individually, European countries showed a remarkable consensus in opposition to the Helms-Burton law. "Special relationships" (as in the case of the United Kingdom) with the United States seemed not to be an obstacle to creating appropriate protective mechanisms against the effects of the successive measures leading to the Cuban Democracy Act of 1992 (called the Torricelli Act for bill sponsor Robert Torricelli, R-N.J.) and Helms-Burton laws.

For example, as early as 1992 (before the Torricelli and Helms-Burton bills), the UK was the first European state to enact a very specific mechanism, the "Protection of Trading Interests (United States Cuban Assets Regulations),"<sup>21</sup> as a shield against damages caused by the unilateral U.S. embargo. Crafted in the same spirit as Canada's protective measures, this British regulation ordered that no person would comply or permit compliance with any requirement or prohibition associated with the U.S. Cuban assets regulations. The blocking regulation and critical commentaries on the U.S. measures marked the culmination of a steady British policy of opposing U.S. demands, an attitude that goes back to the very beginning of the Cuban Revolution. London maintained cordial, profitable relations with Cuba while the UK decolonized its Caribbean islands.<sup>22</sup> Sensitive areas such as the selling of Sea Fury military airplanes to Cuba and the transportation of Soviet crude oil caused some friction with the United States. Temporary friction between Havana and London over Cuba's support of the Argentine invasion of the Malvinas/Falklands was not a major obstacle. At the end of the 1980s, Cuba occupied sixth place in Latin America as a destination of British products. In the early 1990s, UK-Cuba trade ranked fifth among EU-Cuba transactions, but in recent years it has fallen behind the commercial links with other EU states. By the end of the 1990s, Cuba's debt to the UK had reached a



modest figure equivalent to US\$198 million.

French leaders of all political parties have expressed displeasure with Helms-Burton. This is simply a confirmation of a long pattern of independent policy espoused by Paris in many scenarios partially or in those primarily dominated by the United States, as illustrated by the renewed French grandeur brandished by De Gaulle in the 1960s. The activities of Fidel Castro's armies in Africa and Cuba's support for Algerian independence raised the concerns of French authorities, but with the passing of time these isolated sources of confrontation gave way to very cordial relations.

With the end of the Cold War, France became Cuba's second-ranking EU trading partner. An impressive 22.3 percent of European exports to Cuba were French, while 18.8 percent of all Cuban imports originated in France. The benefits for France are represented in the fact that while in the 1980s a maximum of only 1.5 percent of total French trade was with Havana, in recent years this figure has increased to 4 percent. Economics, culture, and politics go hand in hand. French cultural activities today are well established in Cuba.<sup>23</sup>

The traditionally excellent French-Cuban relationship received an impressive boost during the mandates of President François Mitterrand. Foreign Minister Claude Cheysson was the crafter of the ambitiously autonomous French policy in the Caribbean and Central America, a design that he duplicated when he was appointed EU commissioner in charge of North-South relations. It is not surprising that Mitterrand called the Helms-Burton law "stupid" and gave Castro a warm state reception when he visited Paris for a function of the United Nations Education, Scientific, and Cultural Organization (UNESCO). Although Mitterrand's successor, the conservative President Jacques Chirac, adopted a more cautious policy toward Cuba and gave an award to Cuban dissident leader Elizardo Sánchez, France reaffirmed its independent policy.

Although the European Union and the United States signed a compromise agreement to avoid confrontation in the World Trade Organization (WTO), this decision did not seem to slow the bilateral activities of France. The French government had earlier crafted a commercial agreement with Cuba to protect investments. It was signed in April 1997 by Franck Borotra, the French minister of industry, and Ibrahim Ferradaz, the Cuban minister for foreign investment and international cooperation.<sup>24</sup> This was interpreted as "a new European challenge to the Helms-Burton" law, resulting in displeasure in Washington. The U.S. government commented that it was expecting "equal activism" from the French government in its actions "for the protection of human rights in Cuba." The French government responded by reviewing the recent history of similar agreements accorded by other foreign states. In fact, no fewer than 18 countries already had similar arrangements. Germany, the UK, Italy, and Spain were the European states that preceded France. The French minister then took the opportunity to issue a critical assessment of "extraterritorial measures," such as the Helms-Burton law, which try to curtail foreign investment in Cuba. The agreement also included clauses in case of expropriations and specified the appropriate compensation in order to ensure that investors would feel protected even in the event of a political change.<sup>25</sup>

Among the many French companies with substantial interests in Cuba are Alcatel, Pernod, Pierre Cardin, and Rhône-Poulenc. In harmony with the symbolism of French culture, a group of French enterprises led by the gas and electric public conglomerate (EFDF-GDT) and coordinated under the Lyon-Havana agreement has financed the nightlight system for the waterfront of the Cuban capital, which centers on Morro Castle, the jewel of Cuban colonial architecture.<sup>26</sup> Another important French enterprise with investments in Cuba is the oil conglomerate Total. This company has been the source of a major disagreement between the United States and France, which has the potential to seriously damage world commercial networks. However, the main reason for the confrontation is over investment not in Cuba, but in Iran. The French government elected to link the extraterritoriality of the Helms-Burton Act and the Iran-Libya Sanctions Act of 1996 (ILSA) and not only threatened to veto the planned transatlantic free-trade arrangement, but also put pressure on the European Commission to make the suspension of both laws mandatory for participation in the discussions of the Multilateral Agreement on Investment (MAI).<sup>27</sup> Incidentally, the French opposition to the free-trade pact is linked not solely to the Helms-Burton controversy, but also to the French government's displeasure over the European Commission's decision to discuss a matter that France considers the exclusive prerogative of the European Council.<sup>28</sup> The most recent expression of France's attitude toward Cuba was made in the aftermath of President Bush's speech of May 20, 2002, reiterating the French government's policy of opposition to the U.S. embargo while siding with the rest of EU members on democracy issues in the UN Human Rights Commission.<sup>29</sup>

The attitude of the Federal Republic of Germany before the collapse of the Berlin Wall was reticent and cautious toward Cuba because of Cuba's close relations with the communist German Democratic Republic.<sup>30</sup> The 5 percent of total Cuban trade controlled by the GDR was surpassed in volume only by Cuba's trade with the Soviet Union. As a result of that intimate relationship, Cuba and West Germany did not maintain diplomatic relations between 1963 and 1975. Bonn held a respectful wait-and-see attitude. When the Cold War ended, with the country reunited, German policy toward Cuba revealed a sort of double track. On the one hand, Germany has become one of Cuba's standard trading partners by virtue of Germany's industrial power and strong presence in Latin America. Although German business people have been cautious, an Investment Promotion and Guarantee Agreement signed in 1996 has helped to promote new activities. German companies operating in Cuba include Mercedes-Benz, BASF, Bayer, LTU, and Lufthansa. German tourists in Cuba rank among the top spenders. German hotel investment is surpassed only by that of Spain. On the other hand, the German government implemented a policy of restraint concerning human rights and democratization. German requirements for granting Cuba a cooperation agreement have been criticized by Cuban observers for imposing a double standard as compared with the guidelines for agreements with Asia and possibly with other countries of Latin America. While the concepts of democratization and human rights are inserted into the conditions for development aid to Latin America (with a special focus on Cuba), they are absent in documents outlining relations with Asian countries. While Cuba appreciates Germany's opposition to the Helms-Burton law and the consistent voting pattern of the Bonn government at the United Nations regarding the embargo, Germany's conditionality for aid is attributed to U.S. influence.<sup>31</sup>

Italians have become the leaders in tourism to Cuba, and commercial links between the two countries have become very strong.<sup>32</sup> The fashionable Italian Benetton stores are an ideal target for legal suits under Helms-Burton because of their visibility in tourist zones. Italian investment also has shown a certain degree of autonomy when compared to the rest of European involvement in Cuba. For example, the Italian cruise industry (along with its U.S. and Norwegian counterparts, the most important in the world) demonstrated a keen interest in expanding traditional Caribbean circuits by covering Cuban ports of call. Infrastructure projects were planned for Havana piers, but were later put on hold.<sup>33</sup> This contradictory signal matches the characteristics of the most recent episode of serious confrontation with the United States over the guidelines of the Helms-Burton law.

While commercial and investment arrangements depend on the continuous implementation of the compromise crafted by the European Union and the U.S. government, the prospect of a confrontation in the WTO remains a perturbing possibility with unpredictable consequences for new ventures.<sup>34</sup> This is the reason that some companies have elected to follow a safe route, just in case. An example was the deal crafted between ITT and the Italian company STET (since mid-1997, Telecom), apparently under the impact of pressure exerted by the U.S. State Department. Taking over about 30 percent of the shares of the Cuban telephone system that the Mexican company Domos elected to abandon, the Italian company agreed to pay ITT (the U.S. former operator of the Cuban telephone network) an undisclosed amount, rumored to be about \$300 million,<sup>35</sup> although the figure was also quoted as being only \$30 million.<sup>36</sup> The U.S. State Department issued statements praising the negotiation.<sup>37</sup> The Cuban American National Foundation (CANF) expressed satisfaction, but raised concerns over the continuation of a business link with Cuba.<sup>38</sup> This deal raised eyebrows in diplomatic, business, and political circles in Europe and was taken as a sign that the Italian company elected to protect its investments in the United States by paying the price demanded by Washington. This constituted a dangerous precedent in view of an explicit policy against compensation announced by the European Commission, but the executive body of the EU elected not to counteract, claiming that STET's move was not a violation of the regulations.<sup>39</sup>

Ironically, what may be viewed as a victory for the backers of Helms-Burton has caused other side effects. In the first place, the original political arguments behind the Helms-Burton law were mixed with the topic of compensation for former U.S. properties. Then the aura of principles, human rights, and democracy faded away, and some European circles began to treat the U.S. imposition of the embargo as hypocritical. The deal between ITT and STET reveals an unethical contradiction of U.S. policy. By paying a fee, the previously labeled "trafficker" now is permitted to be a legal partner of the Marxist, totalitarian human rights violator, Fidel Castro. The difference is based not on principles, but on money. The U.S. hard-line attitude is therefore weakened by this pragmatic policy.<sup>40</sup> It reveals the worst stereotype of the United States in world perceptions,



subject to puns, jokes, and old-fashioned anti-imperialist postures. Ironically, this pragmatic policy also has expanded the coalition of opposition against the Helms-Burton law in other countries, especially in Spain, where the Socialist opposition has been eager to use any opportunity to confront the conservative government and denounce unethical U.S. actions. Critics now also include many sectors of the Cuban exile community, who understandably are incensed by the fact that collaboration with Castro is a sin that can be redeemed at an affordable price. Finally, the STET negotiation generated extreme concern if taken as a dangerous precedent in similar cases that have been affected by the Iran-Libya Sanctions Act (ILSA) (called the D'Amato act for bill sponsor Alfonse D'Amato, R-N.Y.), such as Total's agreement for oil exploration in Iran, a decision contested by the United States.<sup>41</sup>

An added dimension related to this arrangement has contributed further to the confusion, confirming that the Cuban-American hopes of receiving proper restitution or compensation through the Helms-Burton act have been unfounded. According to the logic neatly expressed by The New York Times' correspondent Floyd Norris, whatever was the exact figure that the Italian conglomerate agreed to pay ITT for the privilege of dealing with the Cuban telephone system, the final result was that all the compensation was enjoyed solely by ITT.<sup>42</sup> The problem is that the original property was distributed into common and preferred stock. ITT only owned 65.6 percent of the common stock. In other words, most of the stock was owned by other shareholders who were originally Cubans.<sup>43</sup> However, when in 1970 the United States Foreign Claims Settlement Commission decided the number of claimants of expropriated properties and how much they were entitled to receive, the result was that ITT and the U.S. owners were due US\$130 million. The Commission, understandably, could not award any claim to non-U.S. citizens at the time of the expropriations. The Italian company followed the U.S. law and agreed to pay compensation to a minority of the stockholders of the Cuban telephone company. The majority, as they were not U.S. citizens in 1960, would not be able to receive anything, and, while Title III of the Helms-Burton law is suspended, they cannot sue in U.S. courts against anybody "trafficking" in the original property. This makes the parallel with the Bacardí case obvious. The rum conglomerate was originally owned by Cuban nationals. Relying on an activated Title III, the major owners, unable (as a non-U.S. company) to be in the original list of claimants, had been expecting to sue "traffickers," and in addition receive (as individual U.S. citizens and former Cuban citizens) compensation from the "traffickers."

Moreover, the STET-ITT deal was the first practical case that confirmed some warnings made by Congress. Ironically, instead of deepening the embargo, the Helms-Burton law had been encouraging more foreign investment in Cuba by speculative interests. Some claimants of expropriated property may find it more profitable to take a portion of the profits of the operation rather than litigate against the "traffickers." What the law has accomplished is to create a loophole for violation of the permanent U.S. embargo. Potential foreign investors may find this system, conditioned to profits, safer than venturing into Cuba on their own.<sup>44</sup>

### *Early EU Warnings*

As a reflection of the attitudes of the member states to the announcement of the Torricelli law, the main EU institutions issued declarations and approved resolutions<sup>45</sup> extremely critical of the policies of the United States, leading to the final series of measures approved and implemented to confront the Helms-Burton law. Concurrently, it must be stressed, the EU has systematically denounced violations of human rights in Cuba.<sup>46</sup> Representative of the official EU attitude toward the embargo were the words issued in 1994 by Ambassador Gerhard Henze, Germany's representative to the General Assembly of the United Nations, who was acting as president of the EU: "Because of its choices in economics and politics, the Cuban government is largely responsible for the deterioration of the situation in the country; the EU condemns the repeated violations of human rights in Cuba, in particular in the political field; we have opposed U.S. legislative initiatives, including the CDA, designed to further tighten the unilateral trade embargo against Cuba by the extraterritorial application of U.S. jurisdiction. We believe that such measures violate the general principles of international law and sovereignty of independent states; the EU believes that the U.S. trade embargo against Cuba is primarily a matter that has to be resolved bilaterally."<sup>47</sup>

This two-pronged approach has been consistent over the years: opposing the U.S. unilateral measures and at the same time placing conditions on EU humanitarian aid delivery, commercial preferences, and comprehensive cooperation agreements. In this specific terrain, Cuba still is the exception in the Western

Hemisphere. The political and human rights profile of the Cuban regime is the main obstacle to the implementation of a global package. However, the European Commission held the hope that by applying a simultaneous dual-track approach (trade and investment with Cuba while applying pressure for human rights), Brussels would obtain better results than does the U.S. stick policy. However, inexorable events detoured the path toward an agreement.

### *The Failure of the Cooperation Agreement*

The shooting-down of the “Brothers to the Rescue” planes on February 23, 1996, and subsequent U.S. approval of the Helms-Burton law forced the discontinuation of a cooperation agreement between Brussels and Havana. These two crucial events also formed the background for the subsequent measures taken by the EU: the approval of a statute blocking Helms-Burton and the formulation of a Common Position on Cuba, a condition for future arrangements.

However, the abrupt ending of negotiations for the cooperation aid agreement revealed the meanderings of arduous and difficult path that was doomed to failure. Following a recommendation of the European Commission made on June 28, 1995, a delegation of the Troika (France, Spain, and Italy) traveled to Havana from November 6-10, 1995, for exploratory conversations. The European Council (under Spanish presidency) held in Madrid on December 15, 1995, gave the Commission the duty of presenting a draft of a cooperation agreement to be ready during the next six months. For this purpose, Manuel Marín, the senior Spanish commissioner and the vice president of the European Commission, visited Havana from February 8-10, 1996, when he met with Fidel Castro and other Cuban leaders. As he was leaving Havana, the Cuban government arrested leading dissidents, sending a message rejecting the call to reform human rights policies. Just a few days later, Cuban Air Force MiGs shattered all plans with their shootdown of Brothers to the Rescue planes.

While protesting the approval of Helms-Burton, the European institutions condemned the violent act against the unarmed planes. The incident received a double answer: The U.S. government reinforced the embargo, and the EU slammed the brakes on the cooperation agreement. In any event, the possibilities for a EU-Cuba agreement based on the conditions of Brussels were slim, just considering the fragility of the internal political conditions at the time. The reform of the Cuban penal code and the recognition of the internal opposition were the basic requirements for the signing of the cooperation package. This was a serious obstacle to Cuban approval.<sup>48</sup> Castro considered it a humiliation and in turn elected (as usual) to take advantage of the situation, claiming to be the target of harassment and international conspiracy.

This lack of understanding between the EU and Cuba is still the subject of debate. According to one line of interpretation, the disdain professed by Havana was the proverbial straw that broke the camel’s back for the EU. Manuel Marín, the seasoned EU leader, demonstrated that he tried until the last minute and finally (in the words of insiders) “threw in the towel.” Another interpretation is that Marín, in reality, had set the bar too high on purpose.<sup>49</sup> Knowing that the Cuban leader would become increasingly reluctant and would show even more resistance to change, the European conditions were placed at a higher level.<sup>50</sup> The imminent change of government in Madrid as a result of the March 1996 elections was as coincidental as the change of leadership in Paris, in both cases from a Socialist government to a conservative one. In more strategic terms, the pact failed because it was interpreted as an offer from a coalition with the United States, something that Castro was not ready to allow.<sup>51</sup> From a Cuban perspective, a reasonable interpretation is that the EU plan was considered as aiming at “regime change” Although it was supposed to be a more subtle and softer road than the one sought by the United States, in any event it meant to change the political regime with a sort of glasnost, and Castro was not ready to repeat the experience of ousted Soviet leader Mikhail Gorbachev.

Although the meeting of minds between Brussels and Washington at that time was impressive and frequent consultations among U.S.-Cuba policy protagonists and Spanish, Italian, and French counterparts were carefully undertaken, a pact between Europe and the United States on Cuba was not explicitly and publicly acknowledged. However, the Cuban government suspected that some sort of agreement was in the works. On a personal level, the bold move may have failed because of a lack of calculation on the part of Marín, a thesis that is contradicted by the usually impressive, skillful tactics exerted by the young, but veteran, vice president of the European Commission. In any event, it is hard to believe that the attempt to win an agreement with Castro was executed without close consultation with the rest of the Commission and influen-

tial sectors in Spain, especially in Marín's own political party, the Socialist Workers Party (Partido Socialista Obrero Español — PSOE), still led by Felipe González. Propelled by a high degree of good intentions and a sense of a historic opportunity, Marín was convinced that he could obtain what others had failed. In the end, he felt that he was taken in by Castro's apparent willingness to negotiate. This experience left a traumatic, indelible mark in the mind of Marín, who decided to maintain a distance from direct negotiations with Cuba.<sup>52</sup> With the "Latin American option" of a cooperation agreement closed to Cuba, the alternative route of the ACP Lomé Convention was left open. This alternative (a "back door," according to a cynical view) was to be energetically explored by the Cuban government. Incidentally, the record of attempts to influence the evolution of the Cuban regime in the early 1990s includes triangular diplomacy involving the cooperation of prominent Latin American figures such as writers Gabriel García Márquez and Carlos Fuentes.

Once the rapprochement failed, a second hard-line response from Brussels came as a supplement to the EU criticism against Helms-Burton. While the planned blocking statute represented a first for EU activities, the critical Common Position on Cuba, the first Position formulated for a Latin American country, would have a place in the annals of the European Union's incipient foreign policy.<sup>53</sup> The spirit and the letter of the Common Position have been maintained to date, with the expected protests of the Cuban government. The renewal of this policy took place during the Council of Ministers meeting held in Brussels on December 9, 1997,<sup>54</sup> and it was confirmed after the signing of the May 1998 truce between the United States and the EU.

### *The Blocking Statute and the First Understanding*

Meanwhile, evidence of an under-the-table compromise between the EU and the United States surfaced in the media. One article reported, "The U.S. is asking for a gesture from the European Union to delay the execution of the Helms-Burton law. . . . Washington wants the European Union to make a 'political gesture' regarding the Cuban regime to allow Clinton to concentrate on the electoral campaign and to help him suspend the application of the Helms-Burton law." Among the conditions of this "gesture," it was mentioned that investments should benefit the whole of Cuban society and that companies should not be forced to deal directly and exclusively with the Cuban government.<sup>55</sup> The intermediaries in this "negotiation" might have been the members of a delegation of Euro-parliamentarians who visited Washington, among them some members of the Spanish Partido Popular, including Carlos Robles Piquer, Guillermo Galeote, José Ignacio Salafranca, and Gerardo Fernández Albor, who had direct knowledge of Cuban problems and, more broadly, of European-Latin American relations. Even though it was not exactly what may have been expected, the suspension of negotiations for the cooperation and aid agreement between Brussels and Havana certainly seemed to have fit the bill as the awaited "gesture."

Other ambivalent decisions also were taken within the context of the EU actions, all dictated by the constraints of the forums in which the Spanish government and the leaders of the party in power had to act. For example, during its May 1996 meeting, the Organization for Economic Cooperation and Development (OECD) avoided issuing a condemnation of the United States for its retaliation against Cuba and China, while discouraging measures in opposition to the agreements emanating from the WTO.<sup>56</sup>

Under the Damocles' sword of Helms-Burton, the EU decided to denounce the law in the WTO, stating that the procedure could not wait until after the U.S. elections. During the second half of 1996, the U.S. government made a considerable effort to convince the EU to find an elegant face-saving solution. However, the European governments had their hands tied by a new measure adopted by the Council of Ministers (also known as the Council of the European Union) in November. They could not afford to appear to be negotiating under the threat of retaliation. The Parliament and the Commission already had issued sufficient signs of protest.<sup>57</sup> It was now the turn (acting on Spanish initiative) of the Council to counteract the consequences derived from the U.S. law.

The Council's regulation against the application of the Helms-Burton law was published on November 22, 1996.<sup>58</sup> It is significant that the mechanism chosen was the highest in the ranking of EU legislation. Regulations issued by the Commission are mostly administrative and technical in detail. Regulations given by the Council are concerned with important, broader, controversial matters. Regulations are binding on all member states and do not need to be translated or interpreted into national law. This specific regulation contains protective measures against the extraterritorial effects of the Helms-Burton law.

First, the EU Council established its justification for opposing this and other laws. The EU has had (since the foundation of the European Community, its predecessor) as one of its objectives contribution to “the harmonious development of world trade and to the progressive abolition of restrictions on international trade.” Moreover, the EU “endeavors to achieve to the greatest extent possible the objective of free movement of capital between member states and third countries, including the removal of any restrictions on direct investment – including investment in real estate, establishment, the provision of financial services, or the admission of securities to capital markets.” In accordance with these goals, the EU Council Regulation’s main objectives were set: “The U.S. has enacted laws [the Torricelli and Helms-Burton laws<sup>59</sup>] that purport to regulate activities of persons under the jurisdiction of the member states of the European Union; this extra-territorial application violates international law and has adverse effects on the interest of the European Union. . . . Therefore, the Regulation provides protection against the extra-territorial application of these laws and binds the persons and interests affected to inform the Commission. . . . No judgment of a court outside the European Union regarding the effects of these U.S. laws will be recognized and no person shall comply with any requirement or prohibition derived from them; [in consequence] [a]ny person affected shall be entitled to recover any damages caused by the application of these laws.”<sup>60</sup>

With the measures taken by the European institutions, especially the Commission and the Council of Ministers, the EU aimed to concentrate on removing what it perceived as the most adverse effects of Title III and Title IV of the Helms-Burton law. More than anything else, the blocking statute supplied protection against the extraterritorial application of the U.S. laws.

The Council was then confronted with a choice. The first option was to restrict the scope of the regulation to the objective of the commercial policy, which is an exclusive EC competence. In other words, the EU should stick to trade issues. As a second option, the EU measures would not limit its actions to merely commercial ventures, but would also include other objectives. Clearly, the measures proposed went far beyond the common commercial policy. Measures adopted under article 113 of the EC Treaty must deal specifically with international trade. The proposed measures did not. Therefore, Huber reasoned, “Rather than limit its actions to the objectives covered by the exclusive EC competence under the common commercial policy, the Council added the objective of Article 73c, concerning the free movement of capital.”<sup>61</sup> The dilemma is that “assessing whether action is necessary is partly a legal and partly a political matter,”<sup>62</sup> with the result of finding the borderline between the regulation and the Joint Action. One consequence of the decision is that the “member states have to take measures themselves by legislating in order to implement the Joint Action and to determine the sanctions to be imposed in the event of a breach of the provisions of the regulation. Predicting what many observers still are asking, the EU jurist answered that it may be ‘too early to assess how provisions on authorizations for compliance will operate, how many persons will ask for such authorization, and how many authorizations will be granted.’”<sup>63</sup>

Incidentally, another interesting detail in the text and spirit of the EU regulation makes it suspect as part of a “conspiracy.” A close comparative analysis of Canadian, Mexican, and European anti-Helms-Burton measures reveals a pattern of striking, but unsurprising, similarities: It appears that the drafters in the various corresponding legislatures and agencies were in close contact. While EU officials may claim to have approved the most comprehensive blocking statutes, the British certainly were first, even before the enactment of the Helms-Burton law.

As a result of successive warnings<sup>64</sup> demanding a U.S. rectification that never materialized, the actions and reactions of Brussels and Washington led to a dead-end street. On February 3, 1997, a definitive legal initiative against the United States was to have been debated within the framework of the WTO. The EU had warned that the temporary suspension of Title III was not sufficient. The rest of the law was still considered a violation of the principles of commercial exchange guaranteed by the WTO. As a first action, therefore, the organization had to form a panel charged with producing an opinion within six months. The United States countered that the Helms-Burton law was not an issue of concern to the WTO since the limitations imposed on trade with Cuba were a matter of U.S. national security. Ironically, this amounted to an explicit admission that the law has a political objective, as its most ardent advocates had made abundantly clear all along.

This give-and-take between Europe and the United States continued. It appeared that the EU had left the sensitive issue of Cuba untouched and seemed not to be concerned with the political and social evolution (or lack of it) of the Cuban regime. Brussels wanted to set the record straight.



### *A Spanking for Cuba: The “Common Position”*

On December 2, 1996, the powerful EU Council of Ministers of Economy and Finance (also known as ECOFIN) approved a Common Position on Cuba. Its objective was “to encourage a process of transition to pluralist democracy and respect [for] human rights and fundamental freedoms.”<sup>65</sup> Normally, such action would be buried in the hundreds of documents approved by the EU institutions. This was a novelty, however, for different reasons. First, it was about Cuba, the country that was the center of the Helms-Burton controversy. Second, the measure came just after the European Union issued the Regulation and the Joint Action opposing the U.S. law. Third, it was the first Common Position to be applied to a Latin American country, specifically the only country that still does not enjoy a cooperation agreement with Brussels. Finally, it was the first of such actions under the newly inaugurated Common Foreign and Security Policy (CFSP, better known as PESC in French and other languages). However, any observer of the EU’s relations with Cuba could detect that the Common Position did not have any spectacular revelations; it was the confirmation of a well-established policy. Because such measures are binding in all EU member states, in a way critics of Helms-Burton must admit that the EU had in effect codified its foreign policy toward Cuba. However, in contrast to U.S. policy, the EU made it clear that it wanted to continue a dialogue with Cuba.<sup>66</sup>

The Common Position on Cuba can be traced back to a Resolution of the European Parliament of 1993, a document of the European Commission of June 28, 1995, and a petition of the European Council meeting in Madrid on December 15-16, 1995. When negotiations ceased in 1996 due to the combined events of the Brothers to the Rescue attack and the passing of the Helms-Burton law, and with the new government in power in Madrid, Spain presented the initial Common Position proposal on November 14. It was processed through the scrutiny of the Political Committee of the EU Council on November 25. Some members considered the wording too close to the U.S. thesis and demands. While the UK sided with Spain, most of the influential members (Germany, Belgium, France, Italy, and the Netherlands) asked for changes. Rejected were the project to name one representative in each embassy in Havana to contact dissidents, cooperation with the UN Rapporteur for Cuba, and the demand that all Cubans be allowed to travel.<sup>67</sup>

The final document included several significant items. First, the EU stated that it encourages a peaceful transition in Cuba to a pluralist democracy. The EU prefers this to come from the initiative of the Cuban government, not by coercion from outside. Second, if Cuba wishes to receive favorable treatment through a cooperation agreement, it must show progress in the democratic process. This progress should be reflected in periodic semester reports submitted by the Commission to the Council. The reports should include respect for human rights, release of political prisoners, reform of the criminal code, and an end to the harassment of dissidents. Third, the EU wants to maintain dialogue not only with the Cuban government, but also with all sectors of the Cuban society. Fourth, on the other hand, the EU recognizes the progress made in economic reforms and is willing to offer economic cooperation through the member states. Finally, humanitarian aid will continue through appropriate NGOs.<sup>68</sup>

The Common Position would also have a place in the annals of the EU’s incipient foreign policy.<sup>69</sup> The spirit and the letter of the Common Position have been maintained to date, with the expected protests of the Cuban government. Havana claimed that the Common Position was intimately linked to a May 25, 1996, visit by Vice President Al Gore to Madrid, to the announcement of the termination of Spanish humanitarian aid to Cuba, to links between Aznar and the CANF, and to the establishment of a Hispano-Cuban Foundation in Madrid.<sup>70</sup> In any event, the EU’s conditions loomed in the background of the negotiations of the failed Lomé Convention membership, resulting in the Cuban government’s abandonment of the negotiations in April 2000. According to most observers (in EU institutions, ACP structure, individual governments<sup>71</sup>), Havana’s view was that the high political price to be paid (political requirements, especially in the human rights area) was not worth the economic benefits to be gained.

Understandably, the EU’s set of conditions was not well received by the Cuban regime. Conditions imposed by the EU on Cuba contrasted with the lack of similar requirements in other cases, such as those of Morocco, Israel, and Guatemala, and with the fact that the EU is “implementing a customs union agreement with Turkey and signed four cooperation agreements with China, accused of human rights violations.”<sup>72</sup> The Cuban government has claimed that this contrast is a gesture to the United States. However, the EU has



consistently drawn the line in this type of cooperation agreement in the Western Hemisphere by its precondition of the existence of a formal system of liberal democracy and then its addition of the democratic clause, accepted by all the signatories, by which the agreement is terminated if a government falls under an autocratic rule. All this aptly explains why, in revenge for the public humiliation of being subject to conditions, the Cuban government said the political conduct of the regime would not be subordinated to the terms of the EU report. Moreover, Spain became the object of retaliation in the form of withdrawal of the *placet* (acceptance of a diplomatic appointment) for the new Spanish ambassador to Cuba, unleashing one of the most serious diplomatic crises ever to occur between the two countries, just months before the commemoration of the 1898 war of independence. Also, understandably, the Common Position was extremely well appreciated by the U.S. State Department.<sup>73</sup> As promised, as a reward for the European gesture, a more concrete and positive U.S. response was forthcoming from the White House.

In spite of all the friction, and in compliance with the terms of the Common Position, the EU has maintained its humanitarian aid to Cuba through programs administered by the European Community Humanitarian Office (ECHO). Since 1993, the EU has granted Cuba US\$64 million to cover damage by storms and flooding and for diverse medical programs. Funds are distributed through European NGOs. As an added sign of willingness to cooperate, Cuba has welcomed the European common currency (the euro), to be adopted mandatorily in different operations on the island as announced by the president of Cuba's Central Bank, Francisco Soberón.<sup>74</sup> Cuban authorities are in favor of the new European money "because it threatens to reduce the power of the dollar, and that is good for the world and it is good for Cuba."<sup>75</sup> Among the financial reasons for accepting the euro, Soberón listed the ending of dependency on the monetary system of one country the fact that more than 50 percent of Cuba's tourism is of European origin, and the fact that 44 percent of Cuba's trade is with the European Union.

### *Clinton's Suspension of Title III and the Second Understanding*<sup>76</sup>

In an effort to diffuse tensions and as an apparent counter-gesture to the European concessions as expressed by the Common Position on Cuba, on January 3, 1997, U.S. President Bill Clinton suspended Title III of the Helms-Burton law for the second time.<sup>77</sup> This second suspension by President Clinton (the first was executed the previous June), coupled with renewed talks emphasizing support for a democratic transition in Cuba, diffused tensions with the European Union and mildly changed U.S. perceptions in the international arena. Welcoming the move, the U.S. media commented that the change shifted the blame from the United States "as an international bully and embargo tightener to Castro, as a democracy and human rights laggard."<sup>78</sup>

On May 18, 1998, at the conclusion of the E.U.-U.S. Summit held in London under the chairmanship of UK Prime Minister Tony Blair (as EU president) and President Clinton, the European Union and the United States announced a new agreement. Both parties declared that they had reached a new Understanding that in essence would freeze the application of the controversial Helms-Burton and D'Amato acts in reference to investment in Cuba, Libya and Iran.<sup>79</sup> The agreement confirmed and expanded the spirit and the letter of the previous 1997 Understanding.<sup>80</sup>

The 1998 agreement marked a major milestone in the evolution of EU-U.S. relations. It confirmed the 1997 promise by the EU not to pursue retaliatory measures against the United States in the WTO. Surprisingly, and resulting in protests by numerous observers and governments, the EU accepted the U.S. assessment that some of Cuba's past expropriations might have been executed in violation of international law. The White House, in exchange, promised to pressure the U.S. Congress to further neutralize the application of the Helms-Burton legislation. The United States and the European Union agreed to establish a Registry of Claims and to work jointly in the negotiation of the Multilateral Agreement on Investment (MAI), a negotiation that appeared at that time to be on track to yield a successful agreement. The United States agreed to respect the current status of foreign investment in Cuba and not to make pre-May 1998 expropriations the target of legal suits under Title III of the Helms-Burton law; future expropriations and subsequent investment in such properties would be mutually scrutinized. In a most controversial move, the EU agreed to discourage post-1998 investments in properties whose ownership was questionable by denying the customary diplomatic protection, insurance, commercial and tax incentives, and other support. Investment in properties illegally

expropriated after May 18, 1998, would be prohibited. In sum, the agreement confirmed the approach laid out a year earlier. EU insiders have hailed this agreement as an example of “creative conflict management.”<sup>81</sup> However, the agreement was not free of problems. It was reluctantly accepted by some of the EU member states,<sup>82</sup> various commentators,<sup>83</sup> and U.S. sources.<sup>84</sup> Understandably, Cuba opposed the arrangement.<sup>85</sup> Moreover, its implementation was conditioned on hard-to-get congressional cooperation.<sup>86</sup> The deal was linked to the overall development of policies regarding sensitive European interests in Libya and Iran.<sup>87</sup>

A combination of time restrictions and the need to adopt language pleasing to all parties generated a very confusing document. The EU position stressed the “political” nature of the agreement, denying legally binding status, explicitly stating that the implementation of the Understanding was void until evidence of a waiver on Title IV was in hand. Moreover, the EU declared that it was not obliged to follow the U.S. position on the questionable legality of the Cuban expropriations, with the clarifications that investment in Cuba was still possible and that the denying of official support was at the discretion of EU governments. Finally, guidelines pointed out that any prohibition of investment in Cuba would apply only to expropriations that would take place after May 18, 1998, the date of the agreement, but not to any of the controversial expropriations that took place before. Finally, the EU Commission advised its diplomatic representations to highlight that the accord rested on the good faith of the U.S. Congress in waiving Titles III and IV; only if the latter occurred would the deal be effective.<sup>88</sup>

The 1998 Understanding was criticized immediately by several governments. Belgium explicitly claimed that article 73C of the Maastricht Treaty prohibits limitations to capital movement and investment.<sup>89</sup> The French representatives insisted that the “ball is in the U.S. court” and that the EU simply had to wait for the U.S. legal modifications and waivers.<sup>90</sup> Legal commentators pointed out the apparent contradiction between the new political Understanding and the strict legality of the previous measures taken by the EU, especially the Council Regulation and the Joint Action of November 1996.<sup>91</sup> On the political level, critical voices stressed that the new Understanding violated the spirit of the Regulation because it recognized the political aim of the Helms-Burton law in implementing restrictive economic measures with the objective of producing a change in the Cuban regime.<sup>92</sup> A contrast became evident between the explicit declarations of the European Union’s Regulation (away from interference in the internal affairs of Cuba) and the explicit aim of the Helms-Burton law (conditioning the end of the embargo on the termination of the current regime). Regarding the EU constitutional field, observers questioned the competence of the sole EU negotiator, Commission Vice President Sir Leon Brittan, to sign agreements that transcend the commercial boundaries of the explicitly pooled sovereignty and, in contrast, pertain to the foreign policy and security sector that is still the prerogative of the member states.<sup>93</sup>

Spanish negotiators in Brussels admitted that the agreement was imperfect. In particular, they stressed that the new Understanding had only political value and lacked juridical force. On the one hand, they pointed out that the Helms-Burton law had acted as a deterrent to Spanish investments in Cuba. The Understanding extended the freeze on U.S. retaliation from the six-month presidential waiver to an indefinite term. They also were pleased that no investors in “illegally” expropriated properties would be under the threat of U.S. penalties and that only official incentives would be denied. With the new deal, only certain investments would be subject to discussion. In sum, the new pact created a climate of lessened tensions; a potential environment of permanent conflict with the United States had disappeared.

On the other hand, Spain’s diplomats noted that Commissioner Brittan had acted not only in representation of the Commission but also on behalf of the European Union, in matters that exceeded the strictly commercial boundaries. Second, they expressed concern about the fact that the final text apparently granted former Cuban citizens the right to have access to a future register of illegal expropriations in the setting of the MAI, a major point of contention with Helms-Burton. In addition, the Understanding added confusion to the concept of covered transactions.<sup>94</sup>

The absence of an additional agreement with a more convincing legal status reduced the Understanding to a temporary — though with the hope of becoming permanent in practical terms — truce between Washington and Brussels. In fact, from the U.S. point of view, the only decision that still matters is the execution of the “escape hatch” waiver provision granted to the president in the U.S. legislation for the suspension of Title III. Title IV can still be potentially activated, as was demonstrated by the frequent demands made by Senator Jesse Helms (R-N.C.) to pressure the State Department for the denial of visas to executives of alleged “traf-

fickers” (most noticeably, Sol Meliá of Spain).

The ambivalent atmosphere of the agreement was lost on Spanish critics, who disagreed with the Spanish government regarding its claim that current and future investments in Cuba were better protected than before the Understanding. During the parliamentary debate, Congressman Ignasi Guardans described the prospects of Spanish investment in Cuba as a higher risk than “opening a hotel in Rwanda.”<sup>95</sup> Sharing the views of most of his colleagues, he protested the right of Commissioner Brittan to enter into agreements involving issues of national sovereignty (diplomatic protection) that were not within the realm of the Commission. The fact that this parliamentarian was the spokesman for the center-right Catalán party, whose congressional backing had insured the survival of the Spanish government since the 1996 election, exemplifies the use of the Helms-Burton law in the internal politics of Spain and confirms that political alignments are not guaranteed when Cuba is the subject.<sup>96</sup>

The language of the U.S. congressional debate over the Understanding was colorful and full of expressions that normally were not present in the tame vocabulary of Spain’s Minister of Foreign Affairs Abel Matutes. For example, Minister Matutes reported that displeased backers of the D’Amato law (sanctioning investment in Libya and Iran) had stated that the U.S. negotiators had caved under pressure from the EU, and using a figure of speech that is now understood to mean, “We bent over backwards for them,” he quoted the U.S. negotiations as having said in Spanish, “*Se han bajado los pantalones.*” He also added that Republican Party leader Newt Gingrich allegedly had expressed himself in similar terms.<sup>97</sup>

### *Some Conclusions*

The EU-U.S. Understanding has earned a place as an example of diplomatic negotiation. The agreement can be considered a case of a successful arrangement (regardless of the negative labels) because, among other reasons, it fulfilled the main objective sought by its parties: to avert a serious confrontation. In other words, the EU has refrained from initiating a process against the United States in the WTO, and the United States has maintained the partial freezing of the Helms-Burton law. Many observers agree that, in effect, the Understanding confirmed the death of the Helms-Burton law, although the Understanding by itself has not been the only cause for its virtual termination.

There may be some value in identifying the major factors behind the agreement and the subsequent neutering of the most damaging aspects of the Helms-Burton law. Identification of the major factors behind the agreement and the subsequent neutering of the most damaging aspects of the Helms-Burton law may be of some interest. For example, the Understanding was possible mainly because Cuba is not worth a commercial war between the two major world economies. The Helms-Burton law was, in effect, stillborn with the inclusion of the clause that allowed the president of the United States to suspend Title III, the law’s most internationally controversial ingredient. In any event, from the point of view of the theory of negotiations, the Understanding is a model because it granted both parties a sense of success. The more time passes without conflict, the more successful the parties will feel.

For the continued success of the agreement, a policy plan was recommended by the United States for the European front. However, while all the previously approved measures were maintained in force, a cautious attitude by the EU (toward both Cuba and U.S. policies) continued through inertia. For example, the 1996 Council Regulation, giving legal guarantees and protections to European companies investing in Cuba while mandating the prohibition on accepting the U.S. demands, should be fully implemented. The EU Common Position and Joint Action of 1996 imposed on Cuba as conditions for better economic and aid relations have remained, but they have not been energetically enforced.

Common sense recommends that coordination of policies (especially within the EU structure) should be a priority to prevent U.S. and Cuban protagonists from taking advantage of divisions on the European side. When possible, contradictions or violations of EU mandates should be avoided, as was the case in the STET-ITT deal, by which the Italian company compensated the U.S. communication conglomerate for the use of the previously owned Cuban phone system. This is not an easy task. It is impeded by the fragile EU Common Foreign and Security Policy (CFSP) and the tenuous Common Position on Cuba. The latter is described by cynics as being neither “common” (unified and shared) nor a “position” (setting forth means and ends).<sup>98</sup>

## **An Overall Assessment of the European Union's Relations with Cuba<sup>99</sup>**

### *A Nation-by-Nation Profile*

Variation seems to be the order of the day regarding European national attitudes toward Cuba, which explains the lack of a cohesive, well-coordinated policy. While Belgium can be labeled as a neutral observer, more critical when led by conservatives than by social democrats, Austria prefers a cultural approach, and the most critical states are led by Sweden with its "Nordic fundamentalism" based on pressures to respect human rights. Germany has opted for a gradual rapprochement, and the UK tilts toward change through trade and cooperation. The special relationship between Spain and Cuba has neutralized most of the hard-line attitude tested by Prime Minister José María Aznar after coming to power in 1996. Italy has replicated the engagement policy of France, while Portugal has inserted Cuba into its Latin American foreign policy. Direct government contacts have multiplied, and only Finland does not have an embassy in Havana (for economic reasons).<sup>100</sup>

The European media has ceased to look at Cuba through the lens of the Cold War, resulting in mixed views in political analyses of the Castro regime. In general, European newspapers seem to recognize the advances of the Cuban Revolution while still criticizing the human rights violations and economic weaknesses of the regime. In terms of volume, Cuba seems to enjoy disproportionate attention in the European media, considering the relative value of the country in terms of global trade and economic interests. While the British press seems to be more objective, Cuban affairs can become a subject of debate at the level of internal politics in Spain. Political parties are equally subdivided into ultra-conservatives who reject direct contact with Castro, far-left nostalgics who retain loyalties to the Cuban Revolution, and the majority of others who favor a critical dialogue as the best way to guarantee a peaceful transition. Most lively on Cuban affairs are the European NGOs (sponsored by the Catholic church, universities, and companies) that deal with Cuba, and regional and local governments, especially in Spain and Italy.<sup>101</sup> Pax Christi, one of the most vocal and influential church-related NGOs, has issued critical reports on European involvement in Cuba.<sup>102</sup>

Bilateral development aid and tourism are two of the most important sources of European involvement in Cuba. Almost 70 percent of Cuba's cooperation assistance comes from Europe, led by Spain (16.8 percent) and followed by the Commission. Italy leads in tourism (13 percent), while direct investment seems to be a contest between Spain and Italy.<sup>103</sup> Considering this impressive level of engagement, it is not surprising that only Sweden has no bilateral cooperation agreement with Cuba, and 10 European countries have investment protection agreements with Havana. Spain leads the European pack in the number of agreements of various kinds with the Cuban government, followed by Italy, the country that in 1993 inaugurated the investment protection pacts.<sup>104</sup>

### *The ACP: a Back Door to the EU?*

No matter how we see the close relationship between Cuba and the European countries, the stark reality is that Cuba is the only Latin American country that does not enjoy a bilateral cooperation agreement with the EU. A search through the official EU web pages can generate a sense of confusion and frustration because Cuba does not have a place like any other Latin American country in the External Relations structure and does not occupy a specific place in the framework of the Development Directorate General.<sup>105</sup> With the derailment of the process toward the signing of the post-Lomé agreements, EU officers in the Development Directorate of the Commission, dealing with the Cuba dossier, used to joke that they were commissioned to take care of the ACP countries . . . and Cuba. But they had not been given any documents while relevant files were frozen across Brussels in the offices of the External Relations Directorate. Moreover, across the Atlantic and the Caribbean, the EU delegation to Mexico was, in diplomatic theory, accredited to Havana. It is hoped that the opening of the new EU delegation in Cuba will make direct communications much easier.

This anomaly was further complicated when Cuba became a member of the ACP countries without being a signatory of the Cotonou agreements without being a signatory of the Cotonou agreements, the successor of Lomé. Nonetheless, as we have seen, Europe as a whole is Cuba's most important trade and investment source. Europe has replaced the Soviet Union as Havana's main commercial partner. With the disappearance of the Soviet bloc, Europe can afford to accept Cuban exceptionalism and has developed a



policy that can be labeled “conditioned constructive compromise,” based more on the carrot than the stick. However, Brussels has not used its economic leverage to pressure Cuba on a political level. The peculiar political structure of the EU has helped reinforce this weakness. European persuasion is reduced to the spirit and the content of the Common Position of 1996, which in turn owes its development to the aftermath of the confrontation over the Helms-Burton law.<sup>106</sup> The Common Position, renewed every six months, is a precondition for a bilateral agreement between the EU and Cuba, a requirement that has been explicitly rejected by Havana.<sup>107</sup> It calls for a pacific transition to a pluralist democracy, preferably led from the top, with the benefit of development aid being channeled through European and Cuban NGOs. Observers have noted that this Common Position is void in view of the volume of bilateral relations with the majority of the most important member states. Cuba’s most important partner, Spain, has basically violated the Common Position, both in terms of trade and aid, and under both socialist and conservative governments. Only the Nordic countries seem to respect the terms of the position.

A rough picture of the attitudes of the different member states toward Cuba shows a southern bloc composed of Spain, Portugal, Italy, and France acting as main political and economic allies. In contrast, Germany, the UK, and Sweden seem to distance themselves politically. Less influential in world affairs, Austria, Belgium, and Finland have little at stake in the Caribbean and Latin America. A group of “blockers” (Finland, the Netherlands, Sweden, and the UK) seem to slow down the process of the post-Lomé arrangement, while the “openers” (France, Portugal, Spain, and Italy) favor a positive approach. The “mediators” (Austria, Belgium, and Germany) remain ready to serve accordingly.<sup>108</sup>

In addition, institutional relations have been difficult for two sets of reasons. The first difficulty consists of uncomfortable personal linkages and references, not by chance implicating Spanish officials. When a deal seemed to be closer, the insistence of Commissioner Manuel Marín on the human rights issues became an insurmountable obstacle.<sup>109</sup> The cloudy atmosphere has worsened since the new Commission was established and the Cuban leadership insulted the new High Representative for the Common Foreign and Security Policy, Javier Solana. Friction also appeared to exist between the EU officers and Cuban ministers during the Lomé negotiations. The second origin of difficulties seems to derive from external crises. As seen above, the first one was the shooting down of the Brothers to the Rescue planes, and the second was the Elián González crisis.

Efforts to secure a post-Lomé deal were on a sure path, initiated in Brussels in September 1998<sup>110</sup> and culminating in the signing of the new agreement on June 23, 2000, in Cotonou. Havana was not dealing any more with one office in Brussels, but rather with a multilateral group of 77 countries. However, Castro rejected the procedure, claiming the resolution issued by the Human Rights Commission was one-sided, and he suspended the scheduled visit of the troika composed of the present presidency, the previous, presidency, and the Commission.<sup>111</sup> Ironically, the climate for Cuban membership in Lomé was positive, shifting toward a normalization of the EU-Cuba relationship, this time anchored in the ACP multilateral context.<sup>112</sup> Only some European governments seemed to oppose, led by the UK, the Netherlands, and Sweden; the UK apparently threatened to veto the arrangement when it would come to the Council. Nevertheless, Cuba branded the EU conditions as “arrogant,” “unacceptable,” and dependent on the “U.S. policy.”<sup>113</sup> Supporters of Cuba’s membership and most neutral observers considered the Cuban reaction as unexpected and violent. In fact, the decision was a slap in the face of ACP members that advocated Cuba’s membership. ACP diplomats in Brussels confessed on the record to being surprised although, off-the-record, seasoned ambassadors had suspected the outcome and were not caught off guard.<sup>114</sup> EU Commission officers expressed tongue-in-cheek satisfaction with what they feared was the result of hard work with high expectations. The decision was taken after a complete internal debate on the cost and benefits. The Cuban government figured the economic benefits did not provide adequate compensation for its loss of political independence and insertion into a multilateral dialogue with unforeseeable consequences when dealing with democracy and human rights. In a gathering of high government officials of the Caribbean and Central America, off the record, Castro called the deal “demasiado fastidio para tan poca plata” [too big of a nuisance for so little money].<sup>115</sup>

In the sequel to this mini-drama, some months later, on December 14, 2000, Cuba became the 78th member of the ACP group. The novelty of the event is that Cuba joined the ACP without signing the Cotonou convention.<sup>116</sup> To the confusion of experts and unguarded observers, this anomaly led some to believe that Cuba had, in fact, obtained the same benefits. The charter of this organization (in essence an international



organization like any other) had to be amended to provide for a new member that will not use the only and unique service of the organization: the trade and cooperation benefits from EU member states. In comparative terms, Cuba's membership in the ACP is like belonging to an exclusive golf club without being able to play golf, able only to watch others play and to walk around the facilities.<sup>117</sup> Seasoned observers may point out that this is another example of an EU compromise to accommodate difficult circumstances and give the impression to the three parties (the EU member states, the ACP countries, and Cuba) that they have won something in preparation for Cuba's becoming a full member some day. Critics of the overall picture may claim that this reveals only a certain degree of absurdity, with no substantial results.

### *EU and U.S. Policies Toward Cuba*

While the EU considers the U.S. policy of isolation antagonistic, counterproductive, and dominated by domestic politics, many in the United States consider the European attitude to be immoral and motivated by economic benefits. Susanne Gratius, a leading analyst in the field and main author of most research developed by the now defunct Institute for European-Latin American Relations (Instituto de Relaciones Europeo-Latinoamericanas – IRELA) in recent years, has outlined the main axis of conflict.<sup>118</sup>

Regarding the means employed, the EU prefers an open economic and diplomatic avenue, while the United States opts for isolation and sanctions. The reality is that neither policy has succeeded, and the two approaches have neutralized each other. Instead of fostering change in Cuba, they actually have contributed to the maintaining of political status quo. The EU policy of "constructive compromise" has not resulted in reforms because it has been neutralized by U.S. sanctions, with the result of circling the wagon around by Castro. In turn, the U.S. embargo is neutralized by the EU's economic cooperation with Cuba. Regarding the objectives to be obtained, the EU clearly seeks a gradual and pacific transition piloted from the top of the system. The Helms-Burton law aims at a sudden collapse in Cuba and conditions all future help on the disappearance of the current leadership. The EU promotes Cuba's becoming a regional partner, a move that the United States opposes. Regarding sovereignty, the EU accepts Cuba's right to choose its own system and recognizes its leadership, while the United States prefers to deal with sectors of the exile community. While Europe recognizes the nationalization of properties in Cuba, the United States considers nationalization illegal and demands the return of property. Absent the ideological purposes of the Cold War, EU-U.S. disagreement over Cuba centers around economic interests; to impede European presence in Cuba is the main objective of U.S. laws. While the EU deals with the Cuban leadership as main interlocutor and respects the accomplishments of the Revolution, the United States prefers to negotiate with the opposition, seeking the destruction of the Cuban political system.

In this confusing panorama, Europe has proceeded with a dual approach of economic engagement and political conditionality, which was hardened after the fiasco over the post-Lomé membership. This approach could bring the EU position closer to the U.S. attitude in the event of a combination of developments including the bad experience over Lomé, the convenience of reaching a permanent settlement on the Helms-Burton law, the conviction that change will not come through a carrot policy, some sort of alliance between the United States and Spain similar to the arrangement that led to the approval of the Common Position, and the help of what is called "Nordic fundamentalism" on human rights.

In summary, EU policy on Cuba differs from the U.S. attitude in its acceptance of Havana's sovereignty, its choice of political actors, and its recognition of the accomplishments of the Revolution. The EU is expected to continue to follow a double track, combining supranational conditions with "bilateral constructive compromise."

Observers believe that a complete normalization of relations with Cuba would require not only a consensus inside the EU's institutional framework, but also a leader in mediation who could find common ground. When Spain changed political leadership in 1996, its mediating role vanished, creating a chasm between those who favor economic engagement and those who want political divorce from Cuba. Gratius refers to those who fear that in the long run, this division of EU objectives will leave Cuba under the influence of the United States once the transition is completed.

Common-sense solutions, espoused by independent think tanks and EU officials in off-the-record declarations, offer a composite of a potential EU common policy for effective conflict prevention. Such a

policy must be based on the strengthening of a political dialogue coordinated by a special observer in the framework of the CFSP (a move that faces financial difficulties) using a “Cuba initiative” (following the lines of a British idea) with a clear coordination of national policies and programs and giving special attention given to the outstanding debt problem.<sup>119</sup>

## Current Symptoms

### *Some Considerations*

Predictions of future EU moves with regard to Cuba can be based on a reading of several recent events and announcements. It is reasonably expected that the EU will continue the policy of persuading Cuba toward a political reform. Brussels will also maintain a limited profile of normalcy with Havana in the diplomatic field, stressing that the door of opportunity regarding the ACP deal is open. In any event, European actions will be always cautious of a potential novel U.S. response and the subsequent highly predictable, Cuban reactions.

As a sample of the obvious contradiction between bilateral engagement and supranational conditioning, the record shows that the EU demonstrates impressive coherence on two fronts in the context of the United Nations. On the one hand, the EU bloc has opposed the embargo and the Helms-Burton law. This is a sign of the slow, but steady, buildup of an incipient EU common foreign policy. Europe can muster a solidarity much superior to that of Latin America. Moreover, in the annual conference of the Human Rights Commission, Europe is highly unified, while Latin American countries seem to go their separate ways, although the 2002 vote showed some improvement. Since 1996, the year of the approval of the Helms-Burton law and the subsequent passage of the Common Position on Cuba, the European states have maintained a solid-bloc attitude toward both items. Not only have the EU members voted in unison, but they have also voted in conjunction with candidate countries that expect to join the European Union in the near future, in compliance with the rule of coherence in foreign policy. It would augur ill for the initiation rites if a candidate country voted differently in international settings from the EU member states. In contrast, Latin American governments seem to have at least three fronts regarding Cuba. Some vote for; some abstain; and some others oppose, according to circumstances or changes in the executive powers.<sup>120</sup>

Other EU diplomatic moves reflect a certain degree of ambivalence and contradiction depending on the prevailing circumstances, on who is holding the EU presidency, and on what kind of individual conflicts and priorities member states have regarding Cuba. For example, in one of the latest attempts to speed up the process of a closer relationship with Cuba, Belgian Vice Premier and Foreign Minister Louis Michel, also holding the presidency of the EU, visited Havana in August 2001, which raised expectations in EU circles, caused irritation in Cuba, and also provoked concern in the U.S. Department of State. The Cuban government officially considered the visit in its Belgian dimension, while Spain reduced its representation in the Troika (as the country in line for the next EU presidency) to the minimum. The visit, announced to the EU Commission with barely five days notice, served to somewhat smooth friction between Brussels and Havana caused by the Geneva ballot. The EU wanted to send a message of holding the door open, and the Cuban government managed to demonstrate that it counted with Brussels, especially during the Belgian presidency. This linkage was predicted to become more difficult during the Spanish presidency in the first semester of 2002, with Madrid heavily pressed by crucial EU pending issues such as the debate of the future of Europe, the plans for enlargement, and economic dimensions in the new euro era. A new spate of disagreement with Brussels while Spain was at the wheel of the EU might not have been the most beneficial outcome for any party, but it might have helped Castro tactically, as it has on other occasions.<sup>121</sup>

### *Some EU Current Fronts*

In the absence of the standard binational cooperation agreement, the standing EU policy toward Cuba can be subdivided into three main areas: a relationship based on humanitarian grounds, an attitude toward the anchoring of Cuba in its natural habitat, and the most complex area, the setting of the ACP framework.

Regarding humanitarian assistance, the EU record shows that the funds provided by the Commission have increased in the line of cooperation assistance delivered through NGOs during the past five years: from

€0.6 million in 1997 to €5.4 million in 2001, with a peak of €8.2 million in 2000. Waiting for quality proposals, the Commission considers it essential to ensure that NGO projects meet the criteria of financial and institutional sustainability, to allow for long-term impact at the beneficiary level. In the view of Brussels, if properly conducted and monitored, NGO cooperation may therefore effectively contribute to the development of the incipient civil society in Cuba.<sup>122</sup>

With respect to humanitarian aid and development assistance, this item on a programmable basis was phased out. A comprehensive evaluation conducted in April/May 2000 concluded that Cuba is no longer in a state of emergency. A final humanitarian aid allocation of €8 million was channeled through the 2001 European Community Humanitarian Office (ECHO) funds. In addition, the Commission allocated €0.5 million to address the emergency needs of the affected population in the region of Matanzas, in the wake of Hurricane Michelle (November 4, 2001). In sum, since 1993, the EU has financed close to €125 million of assistance measures, of which nearly two-thirds have been in the field of humanitarian aid. It is estimated that some 16 percent of the Cuban population has benefited from this aid. Following the Commission's decision to phase out humanitarian aid, measures supporting economic reform and civil society development have been increasing. Assistance to Cuba has been financed in the past and will continue as long as programmable funds are not available. It is expected that on average between €15 and €18 million will be used for environmental programs in Cuba.<sup>123</sup>

The exception made for this line of assistance is based on the seriousness of Hurricane Michelle's destruction, estimated at \$1.8 billion and considered the worst natural calamity in Cuba in 50 years. Thus, the justification was found for the use of €0.5 million earmarked to provide medical and other emergency supplies for affected persons. As far as disaster prevention is concerned, the Commission in December 2001 approved funding for Cuba in the amount of €0.92 million in the context of a regional program for the Caribbean.

The EU Commission and other EU entities are aware of the seriousness of the Cuban economic situation. In addition to the damage caused by natural disasters, the Cuban government has seen a severe drop in fiscal revenues and foreign exchange because of consequences of the September 11 attack. Tourism decreased by 13 percent and 20 percent in September and October 2001, respectively, and U.S. remittances were reduced by 60 percent. On top of that, Russia's decision to close its Cuban "spy station" represented an annual loss of some \$200 million. In this dark setting, Cuba must look to its natural geographical setting. In consequence, the EU Commission clearly favors promoting the regional integration of Cuba into the Caribbean, Latin American, and ACP context. In this connection, the opportunities provided by the follow-up to the EU-Latin America-Caribbean Summit held in Rio in 1999, in terms of support measures and partnerships, should be fully exploited. The Commission also is willing to facilitate Cuba's participation in regional measures under the auspices of CARIFORUM (Caribbean Forum), which Cuba has been a member of since October 2001, through relevant budget lines. A financial proposal under the 2002 budget foresaw Cuba's participation in a regional Caribbean project to fight swine fever.

More complex is the pending issue of the consequences of the impasse over the application for the Cotonou agreement. Following the 9th Evaluation of the Common Position, the Council concluded on June 25, 2001, that the EU would welcome a constructive dialogue with Cuba on a future cooperation framework based on respect for democratic principles, human rights, and the rule of law. This conclusion was reiterated by the Council in its 10th Evaluation of the Common Position on December 10, 2001, doubly ratified in June and December of 2002, with the 11th and 12th evaluations,<sup>124</sup> an attitude that has been explicitly rejected by Cuba.<sup>125</sup> The Council deliberately chose this formulation as an implicit reference to Cotonou because the same text is contained in Article 9 of the Agreement. Cuba has so far not submitted any request for membership unless Castro confirms his intention made on December 12, as discussed below). It must be understood that it is not EU policy to take an official position on a matter such as the admission of a new member to Cotonou unless the interested third party has formally introduced a membership request. The EU will therefore not be in a position to pronounce on Cuba's eventual membership in Cotonou before coming into possession of a Cuban request. In consequence, if Cuba were to approach the ACP-EU Council of Ministers with a new request for accession to Cotonou, "the competent bodies would have to assess the matter on the basis of the relevant Article of the Cotonou Agreement (Article 94) as any other third party request."<sup>126</sup>

However, if accepted by the ACP-EU Council of Ministers as a new member and subject to the conclu-

sion of the ratification process in the member states, Cuba would not automatically be in a position to enjoy the financial benefits under the Agreement since Article 94 also stipulates that Cuba's eventual accession would not infringe on the benefits enjoyed by the ACP states signatory to this Agreement under the provisions on development cooperation. Since the allocations for the 77 ACP Cotonou members have already been distributed on an indicative basis, Cuba would not receive monies under the present 9th EDF. It is, however, important to recall that the EU could decide to add a specific budget line, as was the case with South Africa, in order to finance cooperation measures benefiting Cuba under this Agreement. It is equally important to recall in this connection that Cuba, once it became a member, would have to meet the essential elements of the Cotonou acquis (as in the case of EU membership) in order to enjoy eventual financial and commercial benefits under the Agreement.<sup>127</sup>

An intriguing subject related to this complex membership procedure is the attitude of some individual member states. It is a fact, never confirmed in public, that some EU member states continue to object to Cuba's accession to Cotonou at this stage because Cuba allegedly has not made progress in improving human rights. EU officials are careful to differentiate some issues. They point out that Article 94 sets out the formal requirements for membership to Cotonou. Eligible is any "independent State whose structural characteristics and economic and social situation are comparable to those in the ACP States." It is interesting to note that no other conditions are mentioned. If Cuba submits a request for accession, this request will be assessed on no other grounds than the ones contained in the Cotonou Agreement.

However, the question of whether to what extent Cuba meets the democracy and human rights criterion, as defined in Article 9, is to be discussed only after Cuba is a member of the Agreement. The award of financial and commercial benefits under the Agreement is subject to full respect for the stipulations of Article 9. This is not an issue while Cuba is not a Cotonou member state. It must be noted that while the Common Position is a unilateral foreign policy statement of the EU, Cotonou is a multilateral partnership agreement constituting mutual rights and obligations under international law. This is separate from the annual UN Geneva evaluation of human rights, although it would seem inconsistent if the EU member states and candidates were to approve Cuba's credentials for Cotonou while at the same time voting solidly in the United Nations to censure Cuba.

On a more politically oriented level, during the EU Spanish presidency of the first semester of 2002, relations with Cuba reflected the impasse met during the previous Belgian presidency. The end balance was mixed. What was perceived by Cuba as a "window of opportunity" (since the subsequent presidencies of Spain, Denmark, and Greece would not make Cuba-EU relations a priority in the sense expected by Havana) did not materialize beyond the trip taken by Belgian Foreign Minister Michel to Cuba in August 2001 and the low-level Troika trip of December 2001.<sup>128</sup>

### *Other Actors to Be Considered*

The other possible source of EU reactions to external events regarding Cuba may come from a much-heralded (especially after September 11) new policy of the United States. As in the past, European attitudes toward Cuba sometimes seem to be reactive to what the United States does (such as passage of the Helms-Burton law) or does not do (abstain from trade with Cuba). In the post-September 11 world, rumor had it that President Bush had decided to place Cuba in the overall picture of states and governments that need to be confronted, perhaps not as directly as the "axis of evil" formed by North Korea, Iran, and Iraq, but to the point of addressing the transition or forcing it in the direction most favorable to Washington or to the influential sectors of Cuban exiles. Using concrete incidents (detention of a U.S. diplomat in the Havana airport, friction with Latin American countries, an incident with Mexico that led to a scandal about the taping of conversations between Castro and Mexican President Vicente Fox, dissident unrest), the "new" policy consisted of the coordinated efforts of several agencies, spearheaded by a Cuban affairs team in the State Department and the Security Council, which provided support for the rather weakened members of Congress in the fight against the softening of the embargo. Although the use of force was not contemplated, attempts to activate Helms-Burton were said to have been included in a theoretical wide road map, in clear violation of the 1998 Understanding. The novelty of the new policy lay in the identification of international terrorism as the new enemy and in the abandonment of multilateralism. This approach seemed to match the apparent conciliatory attitude



of Castro in some contradictory declarations in the aftermath of the September 11 attacks and his subsequent pledge to cooperate on the use of U.S. military facilities at Guantánamo. However, when President Bush spoke on May 20, 2002, the anniversary of the birth of the Cuban Republic, in a speech given at the White House and later in the day during a fundraising trip to Miami, the new policy was reduced to a confirmation of the continuation of the embargo, conditioned upon calling for elections in 2003. This event contrasted with the more newsworthy visit of former President Jimmy Carter to Havana, where he critiqued the Cuban regime in a very intelligent way, by making the Varela Project known to Cubans without alienating his host.<sup>129</sup> Carter's diplomacy, in turn, contrasted with President Bush's speech in Miami and subsequent declarations made by State Department officials on Cuba's connections with international terrorism, ending with the anticlimax of the non-renomination of Otto Reich as assistant secretary of state, a move caused by a wider inter-American climate.<sup>130</sup>

Naturally, this new scenario has to take into account two other actors. The first is the Cuban government, which is always ready to follow the "road less traveled," as accurately portrayed by Michael Erisman.<sup>131</sup> The second is a conglomerate of international interests (in the Caribbean vicinity and in Europe), which may consider that a sudden destabilization of the Cuban regime is not in the best interests of all. Recent signs indicate that the weight of Cuba's international activity and concerns has tilted toward the Western Hemisphere and away from Europe, which is perceived as concentrating on more pressing issues, such as enlargement, the rise of the right, and immigration, added to crucial disagreements over the consequences of the attacks of September 11. This shift is confirmed by the absence of Castro in the II EU-Latin American-Caribbean Summit held in Madrid on May 17-18, 2002, replicating his decision not to attend the Ibero-American Summit held in Lima in 2001 and in the Dominican Republic in 2002, an annual event where the Cuban leader had been the main protagonist of polemics.<sup>132</sup> The likely reasons behind his absence include a calculation that he would not reap the expected benefits and might risk a losing confrontation with some vocal counterparts, primarily Spain's Prime Minister Aznar.

It remains to be seen whether an (very unlikely) activation of Title III of the Helms-Burton law would cause a European reaction that would endanger the future of a WTO besieged by a politically loaded litigation, the main reason for the crafting of the 1997 and 1998 understandings. However, all of this reasonable logic seems to belong to the pre-September 11 world scene. After that historic event, all seems to be as predictable as unimaginable. Since the fall of the Berlin Wall, "the future is not what it used to be." Now, however, the future appears to be even more unpredictable. The future of Cuba, and hence the European attitude, fall under the constraint of too many variables.

All things considered, in the event that the U.S.-Cuba relationship continues to be trapped in its impasse of 43 years while Castro's inexorable biological transition proceeds in Havana, the European attitude is unlikely to change drastically. The EU as an entity will continue to condition a bilateral agreement to a minimum of progress in the political field, while the Common Position will be reduced to an endorsement of this policy. In the aftermath of Carter's visit to Cuba, this attitude was confirmed by EU Commissioner Chris Patten, in the context of the II EU-Latin American Summit, when he qualified Cuba's respect for human rights as lacking.<sup>133</sup> The bulk of the available assistance will be dedicated to obtain a minimum of anchoring Cuba in the market economy.<sup>134</sup> In contrast, Castro invested his political capital in courting his neighbors in the setting of CARICOM's Summit, held in Havana in December 2002, where Cuba would receive encouragement for a deeper relationship with the ACP group, an offer that the Cuban leader took upon himself with renewed energy.<sup>135</sup>

### *Significant Year-End Developments*

The year 2002 ended with two important developments on EU-Cuba relations. First, Castro surprisingly announced on December 8 that Cuba would reapply for accession to the Cotonou agreement,<sup>136</sup> and, second, the European Commission made official the opening of a full Delegation in Havana. The background to these twin details is a combination of interlaced developments involving more than the two basic actors.

As outlined above, after a six-year period of frosty relations prescribed by the Common Position of 1996, the Belgian presidency led the first modest troika approach in December 2001. However, during the first semester of 2002, the Spanish presidency did not take any initiative to further the dialogue with Havana



(in spite of a wide consensus recommending consultations). During the second part of 2002, the Danish presidency decided to insert the dialogue with Cuba into a wider EU-Latin America setting. While several member states expressed renewed interest in furthering bilateral commercial relations, a majority in both the Council and the European Parliament consider the Common Position as a limiting factor that conditions the potential use of available instruments in the fields of political, economic and development cooperation on progress in respecting civil and political rights in Cuba.

As a first move from the ACP Group, a request was made on September 26, 2002, to grant Cuba the status of an observer for the Economic Partnership Agreement negotiation process. Although the member states were divided, a clear majority of states were in favor of the request advocating Cuba's regional political and economic integration. On November 4, 2002, the EU troika met with Cuba in Copenhagen, with the Commission represented by Poul Nielson. Both parties were frank but not aggressive in their positions. On one hand, disagreement continued on the EU Common position; on the other, the human rights situation in Cuba and cooperation in the area of human rights discussed while Cuba committed to pursue reforms to establish a more market-oriented economy. Cuba then hinted at its probable candidacy for membership in the Cotonou Agreement, a thought that was strongly encouraged by the Commission. Cuba then agreed to the Commission proposal to set up a EU-Cuba task force to identify solutions in the field of investment and trade. As a result of behind the scenes negotiations, a potential compromise solution suggested by the Commission and supported by the member states was contemplated: Cuba would be given an "informal" observer status during the "all-ACP" phase of the Economic Partnership negotiations.

Following the XII Evaluation of the EU Common Position, for the first time all member states are willing to reconsider the instruments available, with a view to making them more effective in the pursuit of the objectives of the Common Position. Following a Commission proposal, the Council adopted the Conclusions that reconfirmed the Common Position on December 10, 2002. However, the Council introduced two important modifications: 1) On the one hand, there were no limitations for development of cooperation measures any more, as long as they undertake to meet the objectives of the Common Position (respect of human rights and democracy, improvement of living standards of the Cuban population, and promotion of sustainable economic growth); 2) On the other, they extended the term for periodic reviews of the Common Position from 6 to 12 months, with the intention of giving both parties a longer term for pursuing a political dialogue.<sup>137</sup> Almost simultaneously, in Havana on December 8, Castro announced before a meeting of all the CARICOM heads of government, at the celebration of the 30th anniversary of the opening of diplomatic relations between Cuba and four Caribbean states that have frontally challenged the U.S. embargo, that Cuba intends to join the Cotonou Agreement. Castro's announcement raises the question: How will the EU react?

Cuba, understandably, would like to receive an answer before it submits its application. The problem is that the EU will not reveal its decisions a priori. EU policy is that it does not take an official position on a matter such as the admission of a new member to Cotonou until the interested third party has formally introduced a membership request. Therefore, the EU will not be in a position to pronounce itself on Cuba's eventual membership in Cotonou before being in possession of the Cuban request. In consequence, if Cuba were to approach the ACP-EU Council of Ministers with a new request for accession to Cotonou, then the competent EU institutional bodies would have to assess the matter on the basis of the relevant part of the Cotonou Agreement (Art 94) as any other third party request.

However, Cuba, if accepted by the ACP-EU Council of Ministers as a new member and subject to the conclusion of the ratification process in the member states, would not automatically be in a position to enjoy the financial benefits under the Agreement. This is stipulated in article 94, dictating in consequence that Cuba's eventual accession would not infringe on the benefits enjoyed by the ACP states signatory to this Agreement under the provisions on development cooperation. Since the allocations for the 77 ACP Cotonou members have already been distributed on an indicative basis, Cuba would not receive funds under the present 9th European Development Fund (EDF). It would be feasible that the EU could decide to add a specific budget line, as was the case with South Africa, in order to finance cooperation measures benefiting Cuba under this Agreement. It is equally important to recall in this connection that Cuba, once a member, would have to meet the essential elements of the Cotonou *acquis* (as in the case of EU membership) in order to enjoy the eventual financial and commercial benefits deriving from the Agreement.

An intriguing subject related to this complex membership procedure is the attitude of some individual

member states. It is a fact, never confirmed in public, that some EU member states continue to object to Cuba's accession to Cotonou at this stage because, in their judgment, it has not made progress toward improving its human rights record. EU officials are careful to differentiate some issues. They point out that Article 94 sets out the formal requirements for membership to Cotonou. Eligible is any "independent State whose structural characteristics and economic and social situation are comparable to those in the ACP States." It is interesting to note that no other conditions are mentioned. If Cuba submits a request for accession, this request will be assessed on no other grounds than the ones contained in the Cotonou Agreement.

However, the question if and to what extent Cuba meets the democracy and human rights criterion, as defined in Art 9, is to be discussed only after Cuba is a member of the Agreement. The award of financial and commercial benefits under the Agreement is subject to fully respecting the stipulations of Article 9. This, however, is not an issue while Cuba is not a Cotonou member state. It has to be understood that while the Common Position is a unilateral foreign policy statement of the EU, Cotonou is a multilateral partnership agreement constituting mutual rights and obligations under international law. This is separate from the annual Geneva UN evaluation of human rights, although it would be strange to note that while the EU member states and candidates vote solidly to censure Cuba, it would look inconsistent if they would approve Cuba's credentials for Cotonou. However, it has to be recalled that the EU has consistently supported motions in the UN criticizing the human rights situation in countries with cooperation agreements, including Lomé and Cotonou signatories.

The decision to reapply for membership and its consequences need to be considered in a wider and more complex scenario. First, there is the financial exhaustion of Cuba by an accumulation of external shocks in 2001 (hurricane Michelle, September 11 attacks, closing of Russian military intelligence station, global economic slowdown, oil price increases), with the result that in 2002 Cuba faced a sizeable shortage in foreign hard currency, estimated at around \$500 million. As a remedy, the Cuban government made special efforts to attract more tourism and foreign direct investment as well as to agree with debtors on rescheduling arrangements. On the home front, however, measures to liberalize further the domestic economic environment, especially for the local entrepreneurial sector, have not been improved accordingly. The economic gap between Cubans who have access to U.S. dollars and those who do not is increasing. Internal political dissidence is also increasing. The crime rate is obviously on the rise, but tight police and law and order control have clearly succeeded in reducing its more visible effects. Police forces have harassed political dissidents (especially the organizers of the Varela Project) and independent journalists.

On the international front, after striking a rather conciliatory tone with the United States following the September 11 attacks, Cuba has recently embarked on a double-edged strategy: pursuing a more confrontational course with the Bush administration and engaging in a deliberate move to side with the growing U.S. anti-embargo lobby both in Congress and in the business community.

Following Cuba's narrow condemnation at the United Nations Commission on Human Rights, which was supported by several Latin American countries, including for the first time Mexico (with the taping of conversations held with President Fox), relations with the neighbors have become rather sour (with insulting remarks against Uruguay's president). Relations with the Caribbean are less problematic, with Cuba having signed partial free trade protocols with CARICOM in June 2001 and having joined CARIFORUM in October 2001.

Because of the current economic crisis in Cuba, the regime is interested in improving its relations with the EU. In spite of the Geneva confrontation and rejection of the conditions of the Common Position, a positive attitude toward Brussels has developed. Allowing Osvaldo Payá to travel to Europe to receive the Sakharov Prize is part of the strategy. In the context of this mild EU-Cuba "honeymoon," the Commission is accurately perceived by Cuba as a major, cohesive force for a deeper rapprochement. However, Brussels is well aware that Havana's latest moves are dictated by a long-term strategic interest. Castro does not expect any special softening of the official U.S. attitude after the Republican victory in the mid-term elections. Hence, he needs the Europeans for breathing space, pressed by financial shortfalls in Cuba and the rest of Latin America. The squeeze of oil from Venezuela is only one of the troubles. The economic opening from the United States has not come without a price — food and medicine sales are costly, as they have to be purchased on a cash basis.

In consequence, the EU Commission has opted once again for a policy of “constructive engagement,” as opposed to one based on coercion, hoping to prepare the foundations for change in the longer run. Along this line of thought, the opening of the EU Delegation in Havana will serve as the proper setting for the inclusion of Cuba in the new Asia-Latin American (ALA) Regulation (in which Cuba is already included in its 1992 arrangement), including a technical framework agreement governing the implementation of EU aid. This new instrument allows for substantially wider development assistance objectives than under the Common Position, although this measure remains as the EU policy toward Cuba. The Council Conclusions of December 10 have significantly widened the scope of EU development cooperation in Cuba, thus taking away the sector limitations imposed in 1996. The new ALA Regulation establishes clear principles for programming through a Country Strategy Paper and a multi-annual indicative program, limits the role of member states at the project approval stage, and allows untying of aid at the regional level.

On balance, there is still a sense of moderate frustration, combined with some resignation, as a common denominator of the European attitude. This perception will survive, provided the Cuban internal situation does not worsen beyond the tolerable limits of international impact. However, in the event that during the path to a definite transition the European policy of economic engagement renders the expected results, a sense of satisfaction will be visible. Meanwhile, each one of the member states will continue to proceed in the defense of its best interests and historical obligations. Frustration will diminish as long as the emphasis is put on lessening the tensions in preparing the way for a peaceful transition, under the assumption that the future of Cuba is, after all, in the hands of the Cubans. A Declaration of the EU Spanish presidency welcoming the Varela Project was explicit in this line of thought, widely shared by a majority of the decision-making and opinion circles of the EU: [The project] “will succeed in opening a debate in favor of the process of a peaceful transition toward a pluralist democracy and reconciled Cuban society.”<sup>138</sup> The European Parliament’s award of the Sakharov Prize to Oswaldo Payá,<sup>139</sup> the renewed offer of constructive engagement, and the opening of a EU Delegation in Havana are confirmation of this line of thought and policy.

Only future developments on the road to transition will indicate whether the European Union’s efforts will result in frustration and irritation or match European expectations and persuasion on Cuba, overcoming internal and inter-state contradictions, as a logical reward for European good intentions.

## **APPENDIX I**

### **COMMON POSITION of December 2, 1996, defined by the Council on the basis of Article J.2 of the Treaty on the European Union on Cuba.**

*OFFICIAL JOURNAL NO. L 322 , 12/12/1996 P. 1*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union and, in particular, Article J.2 thereof,

HAS DEFINED THE FOLLOWING COMMON POSITION:

1. The objective of the European Union in its relations with Cuba is to encourage a process of transition to pluralist democracy and respect for human rights and fundamental freedoms, as well as a sustainable recovery and improvement in the living standards of the Cuban people. A transition would most likely be peaceful if the present regime were itself to initiate or permit such a process. It is not European Union policy to try to bring about change by coercive measures with the effect of increasing the economic hardship of the Cuban people.
2. The European Union acknowledges the tentative economic opening undertaken in Cuba to date. It is its firm wish to be Cuba's partner in the progressive and irreversible opening of the Cuban economy. The European Union considers that full cooperation with Cuba will depend upon improvements in human rights and political freedom, as indicated by the European Council in Florence.
3. In order to facilitate peaceful change in Cuba, the European Union
  - a. Will intensify the present dialogue with the Cuban authorities and with all sectors of Cuban society in order to promote respect for human rights and real progress towards pluralist democracy;
  - b. Will seek out opportunities - even more actively than heretofore - to remind the Cuban authorities, both publicly and privately, of fundamental responsibilities regarding human rights, in particular freedom of speech and association;
  - c. Will encourage the reform of internal legislation concerning political and civil rights, including the Cuban criminal code, and, consequently, the abolition of all political offences, the release of all political prisoners and the ending of the harassment and punishment of dissidents;
  - d. Will evaluate developments in Cuban internal and foreign policies according to the same standards that apply to European Union relations with other countries, in particular the ratification and observance of international human rights conventions;
  - e. Will remain willing in the meantime, through the member states, to provide ad hoc humanitarian aid, subject to prior agreement regarding distribution; currently applicable measures to ensure distribution through non-governmental organizations, the churches and international organizations will be maintained and, where appropriate, reinforced. It is noted that the Commission is proceeding on the same basis;
  - f. Will remain willing, through the member states, also to carry out focused economic cooperation actions in support of the economic opening being implemented. It is noted that the Commission is proceeding on the same basis.
4. As the Cuban authorities make progress towards democracy, the European Union will lend its support to that process and examine the appropriate use of the means at its disposal for that purpose, including:
  - The intensification of a constructive, result-oriented political dialogue between the European Union and Cuba,
  - The intensification of cooperation and, in particular, economic cooperation,
  - The deepening of the dialogue with the Cuban authorities, through the appropriate instances, in order to explore further the possibilities for future negotiation of a Cooperation Agreement with Cuba, on the basis of the relevant conclusions of the European Councils in Madrid and Florence.
5. The implementation of this common position will be monitored by the Council. An evaluation of this common position will be undertaken after six months.

6. This common position shall take effect on 2 December 1996.
7. This common position shall be published in the Official Journal.

Done at Brussels, 2 December 1996.

For the Council  
The President  
R. QUINN

## **APPENDIX II**

### **General Affairs Council. Conclusions**

#### **X Evaluation of the Common Position on Cuba**

**December 10, 2001**

The Council took note of the tenth evaluation of the EU Common Position on Cuba and acknowledged the efforts made in recent months to open a constructive and frank dialogue on all issues of common interest, in keeping with its conclusions on the ninth evaluation of the Common Position last June.

The Council reiterated that the objectives of the European Union toward Cuba remain the encouragement of a process of transition to pluralist democracy and respect for human rights and fundamental freedoms, a lasting economic recovery and a rise in living standards for the population.

Following a detailed examination and exchanges of information – notably during the recent political dialogue between the EU Troika and Cuba – the Council observes that the situation in that country is still seriously wanting as regards the recognition and application of civil and political freedoms and the refusal of the Cuban authorities to contemplate reforms leading to a political system based on those values.

However, it notes that there are a few signs of movement: greater religious freedom, the fact that the death penalty has not been carried out for two years, a marked decrease in the number of political prisoners and an increase in the number of United Nations human rights instruments ratified.

The Council also welcomes the decision taken by the Cuban Parliament at its sitting on 4 October to approve Cuba's accession to all the UN Conventions on terrorism.

The Council therefore considers that the Common Position is still valid and remains the basis of the European Union's policy toward Cuba. The Council considers it essential to continue the dialogue in order to produce tangible results, particularly as regards future cooperation based on respect for democratic principles, human rights, fundamental freedoms and the rule of law. In that context, the Council would point out that it expects to see meaningful indications from the Cuban Government that it is moving to achieve the Common Position's objectives.

The Council points out that it is extremely important to the EU that Cuba should abide by the principles of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. It hopes that Cuba will be able to sign these two Covenants at the earliest opportunity.

In connection with Cuba's current economic difficulties, the Council underlines the importance of the increased economic links, trade and tourism between the EU countries and Cuba in helping to improve the situation in the country. Accordingly, the Council urges Cuba to extend and develop the economic and legal reforms it has begun. In that connection, the Council considers that the EU must step up cooperation in Cuba, in particular through civilian and non-governmental organizations.



## **APPENDIX III**

### **General Affairs Council. Conclusions XI Evaluation of the Common Position June 17, 2002**

The Council took note of the eleventh evaluation of the European Union common position on Cuba. Major changes on the part of the Cuban government toward the accomplishment of the aims of the common position are still lacking. Therefore, the common position remains the basis of the European Union's policy toward Cuba and the Council took note of its continued validity. However, the Council noted some positive signs, such as greater religious freedom, the decrease of political prisoners, the non application of the death penalty for two years and a half and the ratification of more instruments on human rights. The Council, recalling the UNCHR Resolution of 19 April 2002, invites Cuba to sign the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights at the earliest opportunity. The Council noted some recent signs of increased openness by the Cuban authorities but considered that these are only the first steps.

The Council reiterated that the objective of the European Union toward Cuba remains the encouragement of a process of transition to pluralist democracy, the respect for human rights and fundamental freedom, as well as an economic recovery that allows an improvement in the living standards of the Cuban people. The Council expects positive steps by the Cuban government, which will lead to real reforms toward a political system, based on democratic values. In this sense, the Council follows with interest the evolution of the Varela project, legally based on the constitution, and encourages the Cuban government to consider it as a legitimate initiative since it represents an important effort to introduce these reforms.

The Council reaffirms that it is essential to deepen the political dialogue resumed between the EU and the Cuban authorities in order to produce tangible results, particularly in the political, economic and civil rights spheres, with the aim of future cooperation based on the respect for democratic principles, human rights and the rule of law. The Council considers that the EU should reinforce its cooperation efforts in the country supporting meaningful economic and legal reform and the civil society.

Within the framework of this dialogue, the European Union will continue to monitor the evolution of the human rights situation and the various initiatives within the constitutional process in Cuba.

## **APPENDIX IV**

### **General Affairs Council. Conclusions XII Evaluation of the EU Common Position on Cuba December 10, 2002**

The Council took note of the twelve evaluation of the European Union Common Position on Cuba and acknowledged the continuation of an open and constructive dialogue with Cuba on all issues of common interest. The Council reiterated that the objectives of the European Union policy toward Cuba remain the encouragement of a process of transition to pluralist democracy and respect for human rights and fundamental freedom, a lasting economic recovery and an improvement in the living standards for the population.

The Council noted that since the previous evaluation last June, there have been no significant positive steps by the Cuban Government leading to the accomplishments of the aims of the Common Position. Although recognizing some positive signs in the field of greater religious freedom, no progress is observed in the implementation of reforms leading to a political system that respects civil and political freedom. All civil initiatives, claiming political freedom and respect for civil rights and aiming at a political system based on democratic values, such as the Varela project, should be encouraged. In addition the Council would strongly urge the Cuban Government to take the necessary steps to ratify the UN Covenant on Political and Civil Rights as well as on Economic, Social and Cultural Rights.

## APPENDIX IV CONTINUED

The Council therefore reaffirms that the Common Position is still valid and remains the basis of the European Union's policy toward Cuba. In order to promote a more efficient pursuit of the aims of the Common Position the Council considers that the political dialogue should be continued in order to promote tangible results, particularly in the political, economic and civil rights spheres. At the same time the Council encourages the strengthening of the EU development cooperation in Cuba in areas that promote the transition to pluralist democracy and respect for human rights as well as in areas that improve the standards of living of the Cuban population and promote sustainable economic growth. The Council welcomes the decision of the Commission to open an office in Havana as one instrument to strengthening this cooperation. The Council decided to evaluate the Common Position in December 2003.

## APPENDIX V

**Table 1. EC Cooperation with Cuba 1997-2001 (Commitments)**  
**EC Cooperation with Cuba 1997-2001 (in € millions)**

<b>Budget line</b>	<b>Sector</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
B-210	Humanitarian aid	10.3	9.8	11.4	2.0	8.5
B-219	Disaster prevention					0.9
B-20	Food security	0.2	0.2	0.7	1.0	0
B-6000	General funds	0.6	2.4	2.8	8.2	5.4
B-311	Economic cooperation with Latin American countries	1.1	2.0	2.1	5.8	4.9
B-310	Financial & technical cooperation with Latin American countries	0	0	0	0	0
B-6200	Environment/tropical forests	0	0	0	0	0
<b>Total</b>		<b>12.2</b>	<b>14.4</b>	<b>17</b>	<b>17</b>	<b>19.7</b>

Source: European Commission, Directorate General of Development.

## NOTES

1. The research for and updating of this monograph regarding developments during the last two years has been carried out with partial sponsorship of grants awarded by The Dante B. Fascell North-South Center at the University of Miami and the European Commission. A considerable number of Latin American, Caribbean, and European government officials and EU Commission, Council, and Parliament staff have contributed with details and comments. All of them have elected to remain anonymous. In its basic format, the paper was presented at the conference on "Cuba: Integration into the International System," organized by the Pell Center for International Relations and Public Policy, Salve Regina University, Newport, Rhode Island, March 22-24, 2002. My gratitude is extended to Richard Nuccio and Alberto Coll for the kind invitation and to Aimee Kanner for editing parts of the manuscript.
2. Samples of thought-provoking articles include Guillermo Cabrera Infante, 2002, "La efemérides," *El País*, May 20; Antonio Elorza, 2002, "Cuba cumple cien años," *El País*, May 14; Carlos Alberto Montaner, 2002, "Por qué fracasó la República," *El Nuevo Herald*, May 19, 33A; Alberto Muller, 2002, "Centenario de la 'República fracasada'," *Diario las Américas*, May 21, 5A; Ariel Hidalgo, 2002, "Hacia una nueva República," *El Nuevo Herald*, May 28, 19A.
3. For a sample of media impact, see *The Economist*, 2002, "Playing Softball in Havana," May 18; Juan Aznárez, 2002, "La visita de Carter a Cuba abre una tímida esperanza de reformas," *El País*, May 19; "Carter en Cuba," 2002, *El País*, May 15; Max Castro, 2002, "A Tale of Two Presidents: Two Approaches to Cuba," *Miami Herald*, May 21; Jorge Domínguez, 2002, "Decisions to Make: Cuba's Elite Must Consider Life without Castro," *Miami Herald*, May 29, 7B. Also see Carter's column published upon his return: "Openings to Cuba," *Washington Post*, May 24, 2002, A35.
4. For speech excerpts, see *Miami Herald*, May 21, 2002, 10A; for a complete text of the speech in Spanish, see "Por la plena libertad de Cuba," *El Nuevo Herald*, May 21, 2002. For a sample of media repercussions, see Edward Alden, 2002, "Bush Rejects Calls," *Financial Times*, May 21, 2002; ABC "Cuba más isla que nunca," May 21.
5. Nancy San Martín, 2002, "Dissident in Cuba Wins Key Rights Award," *Miami Herald*, October 24, 1A; Pablo Alfonso, 2002, "Europa premia a disidente cubano," *El Nuevo Herald*, October 24, 1A; Carlos Díaz, 2002, "Premio Sajarov para Oswaldo Payá," *Diario las Américas*, October 24, 1A; European Parliament, 2002, "Winner of Sakharov Prize," October 23; AP, 2002, "Cuban Wins EU Human Rights Prize," *Washington Post*, October 23.
6. Louis A. Pérez, 2000, *On Becoming Cuban*, Chapel Hill, N.C.: University of North Carolina Press.
7. See the author's 1998 book titled *La siempre fiel: un siglo de relaciones hispano-cubanas* (Madrid: La Catarata/Universidad Complutense).
8. Manuel de Paz-Sánchez, 2001, *Zona de guerra: España y la revolución Cubana (1960-1962)* (Tenerife: Casa de la Cultura Popular Canaria).
9. For a review of European attitudes previous to the 1996 events (Brothers to the Rescue planes shot down, passing of the Helms-Burton law, and EU's Common Position), see Instituto de Relaciones Europeo-Latinoamericanas (IRELA), 1995, "Cuba: Economic Transformation and Cooperation with the European Union," Havana, December 4-7.
10. For a classic study, see Sherman Forman and Steward Patrick, 2000, *Good Intentions: Pledges for Aid for Postconflict Recovery* (Boulder, Colo.: Lynne Rienner Publishers). See also <[www.eurunion.org/legislat/extrel/cuba/cuba3.htm](http://www.eurunion.org/legislat/extrel/cuba/cuba3.htm)>.
11. This section, as well as most parts of this monograph, draws heavily on the content of the author's book titled *Cuba, the United States and the Helms-Burton Doctrine: International Reactions* (Gainesville, Fla.: University Press of Florida, 2000) and related articles.
12. European Union, Explanation of Vote, United Nations General Assembly, New York, October 26, 1994.
13. European Council Regulation, November 1996.
14. European Council Common Position, 1996. Available at <[www.eurunion.org/legislat/extrel/cuba/cuba3.htm](http://www.eurunion.org/legislat/extrel/cuba/cuba3.htm)>.
15. Francesc Granell, 1997, "Conflicto y cooperación entre Europa y EE. UU.," in *Política Exterior* 60 (11) (November-December), 35-53.
16. See, as an example, the same 1997 article by Granell. The topic of Helms-Burton occupies only one of the 18 pages of the text.

17. Alistair Hennessy and George Lambie, 1993, *The Fractured Blockade: West Europe-Cuban Relations during the Revolution* (London: Macmillan) 11-63.
18. Data from IRELA and the European Commission.
19. For a listing of foreign investments in Cuba, see table of U.S.-Cuba Trade and Economic Council, available at <<http://www.cubatrade.org/foreign.html>>. For a sample of foreign companies in Cuba, see <<http://www.cubatrade.org/nonus.html>>.
20. "Spat over Cuba," *The Economist*, May 25, 1996.
21. Order No. 2449, 1992.
22. For a comprehensive treatment of this relationship, see George Lambie, 1993, "Anglo-Cuban Commercial Relations in the 1960s: A Case Study of the Leyland Motor Company Contracts with Cuba," in *The Fractured Blockade: West Europe-Cuban Relations during the Revolution*, eds. Alistair Hennessy and George Lambie (London: Macmillan), 163-197. For a shorter view on the same topic, see Gareth Jenkins, 1993, "Trade Relations Between Britain and Cuba," in *Cuba's Ties to a Changing World*, ed. Donna Kaplowitz (Boulder, Colo., and London: Lynne Rienner). For a more recent review, see Wolf Grabendorff, 1997, "The Relationship between the European Union and Cuba," in *Cuba and the Caribbean: Regional Issues and Trends in the Post-Cold War Era*, eds. Joseph S. Tulchin, Andrés Serbín, and Rafael Hernández (Washington, D.C.: Latin American Program, the Woodrow Wilson International Center for Scholars), 207-242.
23. See Grabendorff 1970, 1997, "The Relationship between the European Union and Cuba." For a standard view of Cuba in academic and general public books, see Jean Lamore, *Cuba* (Paris: Presse Universitaire de France – PUF); Monroe Leigh, "Sabbatino's [Banco Nacional de Cuba v. Sabbatino, 84 S. Ct. 923 (1964)] Silver Anniversary and the Restatement: No Cause for Celebration," in *International Lawyer* 24 (Spring 1990), 1-20.
24. AFP and other news agencies, April 25, 1997; Octavi Martí, 1997, "Francia reta a EE.UU.," *El País*, April 26, 1997.
25. Associated Press, April 4, 1997.
26. AFP, November 17, 1997. Following in the steps of various French publications led by *Le Monde*, the weekly *L'Express* dedicated a special issue to Cuba with a full disclosure of the numerous links between France and Cuba: *Cuba: The Treasure Island*, December 5, 1997.
27. *Washington Post*, 1998, "France Threatens to Veto Free-Trade Pact," March 13.
28. Comments made by French Embassy sources during interviews on March 13, 1998.
29. "Réponse du porte-parole aux questions du point de presse," Ministère des Affaires Étrangères, May 21, 2002.
30. For a commentary on this relationship, see the section on Germany included in the article by Wolf Grabendorff, 1993, "The Relationship between the European Community and Cuba," in *Cuba's Ties to a Changing World*, ed. Donna Rich Kaplowitz (Boulder, Colo., and London: Lynne Rienner).
31. See Florentino Graupera, 1997, "Cuba and Germany in the 1990s: Towards a New Opening?," in *Revista de Estudios Europeos* 41 (January-March), 19-51; and Wolf Grabendorff, 1994, "Germany and Latin America," in *Europe and Latin America in the World Economy*, eds. Susan Kaufman Purcell and Francoise Simon (Boulder, Colo.: Lynne Rienner).
32. For a complete review from a Cuban perspective, see Nelson Roque Valdés, 1997, "Las relaciones Italia-Cuba en los noventa," *Revista de Estudios Europeos* 42 (April-June); and "La cooperación no gubernamental italiana hacia Cuba," 1997, *Mensaje de Cuba* 39-40.
33. Since Costa Cruise Line was bought by the U.S. company Carnival Cruise Lines, Costa ships no longer visit Cuban ports.
34. Juan Tamayo, 1997, "Talks to Deter Cuba Investment Falter," *Miami Herald*, August 17; AFP, 1997, "EU y Europa en nueva ronda sobre ley Helms," *El Nuevo Herald*, October 15.
35. Juan O. Tamayo, 1997, "Firma italiana se burla de ley Helms," *El Nuevo Herald*, March 6; Christopher



Marquis, 1997, "New Test Looms in Wrangle over Property Cuba Seized," *Miami Herald*, April 26; "Empresa podría evitar efecto de ley Helms," 1997, *El Nuevo Herald*, April 26.

36. *New York Times*, 1997, "ITT in Deal for Property Cuba Seized in '61," July 24.

37. AP, April 28, 1997.

38. "CANF Statement on STET-ITT Settlement Announcement," July 23, 1997.

39. EFE, 1997, "Comisión Europea no actuará contra STET por compensación a ITT," July 25.

40. As an example of the justifications endorsed by the main advocates of the law and its consequences, see the statement by Bill McCollum, president of the Judicial Subcommittee of the House, "El cumplimiento de la ley Helms-Burton," *El Nuevo Herald*, October 13, 1997.

41. Granell 1997, "Conflicto y cooperación," 49.

42. "What ITT and Castro Have in Common," December 7, 1997, B1.

43. This may seem to contradict Cuban-American sources who claim that the whole Cuban-American system was owned by U.S. interests. The reality is that the predominantly U.S. ownership was backed by individual Cuban capital.

44. For a complete review of this logic, see the lucid article by Susan Long, "A Challenge to the Legality of Title III of LIBERTAD and an International Response," in *Indiana International and Comparative Law Review* 7 (2) (1997), 467-496.

45. Normally very tame in language, the EU declarations have generally referred to the U.S. measures against Cuba as an "embargo." On at least one occasion, the term "blockade" has been used by the European Parliament. See, as an example, the Resolution of September 29, 1994.

46. See resolutions of the European Parliament of 1987, 1988, 1990, 1992, 1993, and 1996. For a complete, chronological review see IRELA's compilation of documents generated in the last 20 years of European Union-Latin American relations (IRELA, *Europa-América Latina: veinte años de documentos oficiales*, Madrid, 1996, 769-803).

47. Agenda Item 24, "Necessity of Ending the Economic, Commercial, and Financial Embargo Imposed by the United States of America against Cuba," "Explanation of Vote," New York, October 26, 1994.

48. See the essay by Angel Viñas, "La Unión Europea y Cuba: Historia de una acción de estrategia exterior en la post guerra fría," in *Temas de economía internacional: Volumen de homenaje a Rafael de Juan y Peñalosa*, ed. Teodoro Flores Gómez (Bilbao: Universidad del País Vasco, 1996), 311-359.

49. Richard Nuccio, Cuba special adviser to President Bill Clinton at the time, put the blame exclusively on Castro in an article published in *Los Angeles Times* on January 17, 1998, and widely distributed to other media (see, for example, "Es Castro quien aísla al país," *El Nuevo Herald*, January 22, 1998).

50. The Spanish expression to illustrate this would be "*Si no quieres caldo, toma dos tazas*" Roughly translated into English, this means, "The less you want to accept, the more we are going to demand" (interpretation based on anonymous EU Commission and Parliament sources).

51. See the 1998 paper by Richard Nuccio, "Cuba: A U.S. Perspective," paper presented at the conference on "Transatlantic Tensions: The Challenge of Difficult Countries" at the Brookings Institution, Washington, D.C., March 9-10, in *Transatlantic Tension: The United States, Europe, and Problem Countries*, ed. Richard N. Haass (Washington, D.C.: Brookings Institution, 1999), 7-28.

52. From EU Commission sources.

53. For a detailed review of these events, see IRELA 1996, *Cuba y la Unión Europea: Las dificultades del diálogo*, June 17.

54. EFE and other news wires, "Firme la UE frente a Cuba," reprinted in *Diario las Américas*, December 9, 1997.

55. ABC, March 9, 1996.

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

57. See the resolutions of the European Parliament of 1992, 1993, and 1996, and the declarations of the Council and the Presidency of the European Union of 1995. Complete texts are available in the compilation by IRELA, 1996, *Europa-América Latina: veinte años de documentos oficiales* (Madrid).

58. Council Regulation (EC) No. 2271/96. Earlier in the process, the Canadian and British press were following the preparations. As a sample, see "Europe's Cuba Law," *Maclean's*, November 11, 1996, 36; "A Facade of Unity: Europe's Foreign Policy," *The Economist*, November 2, 1996, 49.

59. An Annex specifically listed all U.S. legal measures that the European Union considers unacceptable. The list also includes the "Iran and Libya Sanctions Act" of 1996. See Marc C. Hebert, "Unilateralism as Defense Mechanism: An Overview of the Iran and Libyan Sanctions Act of 1996," *Yearbook of International Law*, University of Miami Law School, no. 5, 1996-1997, 1-28.

60. Jürgen Huber, 1997, "The Helms-Burton Blocking Statute of the European Union," *Fordham International Law Journal* 20 (3), 701, 702, 706.

61. *Ibid.*, 710.

62. *Ibid.*

63. *Ibid.*, 716.

64. "EU to Move Helms-Burton to WTO Dispute Settlement Panel," *European Union News*, October 1, 1996.

65. For a detailed analysis of the evolution of this U.S. measure, see IRELA, "The EU's Common Position on Cuba," December 13, 1996.

66. Juan Tamayo, 1996, "Europeans Get Tough in Policy on Cuba," *Miami Herald*, December 3.

67. IRELA, "The EU's Common Position on Cuba," December 13, 1996.

68. IRELA, "The EU's Common Position on Cuba," December 13, 1996, 2-3.

69. For a detailed review of these events, see: IRELA, *Cuba y la Unión Europea: Las dificultades del diálogo* (Madrid: IRELA, June 17, 1996).

70. IRELA 1996, *The EU's Common Position on Cuba*, 4.

71. Information from interviews conducted by the author in Brussels and Madrid during the months of June and July 2000.

72. Eduardo Perera Gómez, "Cuba and the European Union: Factors of Stagnation," *Revista de Estudios Europeos* 40 (Oct.-Dec. 1996), 113.

73. State Department Communiqué, December 3, 1996.

74. In fact, the euro is said to be in competition with the dollar in tourist resorts (Reuters, 2002, "El euro desafía al dólar en Varadero," *El Nuevo Herald*, May 25).

75. EFE, 1999, "Banco de Cuba, con grandes expectativas ante el euro," *El Nuevo Herald*, January 1.

76. This part expands a topic treated in the author's book titled *Cuba, the U.S. and the Helms-Burton "Doctrine": International Reactions* (Gainesville, Fla.: University Press of Florida, 2000). Research was undertaken during the summers of 2000 and 2001 (as a follow-up to interviews carried out in the summer of 1998) in Brussels and Madrid under the partial sponsorship of a grant awarded by the Dante B. Fascell North-South Center at the University of Miami.

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78. *Washington Post*, January 5, 1997.

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