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**THE POLITICS OF HELMS-BURTON:  
Explaining a Cold War Policy in the Post-Cold War Era**

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## **Introduction**

Why was the Cuban Liberty and Democratic Solidarity (Libertad) Act--commonly known as the Helms-Burton Act--passed by the United States Congress and signed by President Clinton? The law (PL 104-114) has generated much international controversy and anger. The European Union contemplates a dispute hearing over the Act in the World Trade Organization. Canada and Mexico argue that some Helms-Burton provisions violate NAFTA. This law has brought the United States into conflict with its major trading partners over a small Caribbean island. The substance of the Act reflects Cold War perspectives, utilizing the economic and political might of the United States to isolate and punish a Communist country. However, it is being implemented in a post-Cold War environment, thereby resulting in alliance stress and international disputes. How, then can one interpret the passage of PL 104-114? This paper argues that domestic politics, rather than international politics, best explains why Helms-Burton became law. But, "domestic politics" does not imply a single factor. Rather, a number of factors that shape domestic politics contributed to the legislative success of Helms-Burton.

This paper begins with a brief summary of the Cuban Liberty and Democratic Solidarity (Libertad) Act signed into law by President Clinton. Particular attention is paid the key features of the bill. Then, the focus shifts to an analysis of the decision-making process: the paper asks the critical question "Why was Helms-Burton introduced to and ultimately passed by Congress?" The main actors behind the bill as well as the intentions and context of the Congress process are assessed. Then, the paper explores President Clinton's acceptance of Helms-Burton. Next, the international response to Helms-Burton is briefly reviewed. Finally, the paper concludes with an evaluation of the lessons of Helms-Burton. What does the passage of the Act tell us about US foreign policy-making?

The end of the Cold War has changed many things. In particular, it has increased the impact of domestic politics on foreign-policy making. Consequently, policy that may seem dated can--and will--emerge from the foreign policy process when domestic political issues, events, and environments encourage that type of policy.

## **Brief Summary of Helms-Burton**

The Cuban Liberty and Democratic Solidarity Act is divided into 4 parts, each addressing a different element. Overall, the Act includes statutes aimed at: (1) augmenting the existing embargo; (2) identifying the conditions necessary for the termination of the embargo; (3) penalizing foreign "traffickers" in confiscated property and providing a remedy for those deprived of their property; and, (4) preventing foreign "traffickers" (as well as their spouses and minor children) from entering the United States. This section examines the general features of each of these four titles. Space limitations preclude an assessment of all elements of the laws.

The first substantive part of Helms-Burton is entitled “Strengthening International Sanctions against Castro Government.” Accordingly, most of the regulations specified in this section focus on tightening the economic alienation of Cuba. It identifies actions that the US should take in international fora (UN, OAS, IMF) to encourage isolation of Cuba and sanctions against Cuba by other countries. Title I also rescinds previous blanket exclusions to contact with Cuba, such as academic travel. It broadens the scope of embargo and existing penalties to include new types of exchanges, such as debt swap and debt equity measures adopted by other countries. And, codifies the embargo. Section 102 (h) states that: “The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act”.<sup>1</sup> This provision was not included in either the House or Senate version of the bill. Rather, it was added in conference. In essence, it removes from the President the power to modify the embargo without legislative acquiescence. Prior to Helms-Burton, the embargo was enacted under executive order, which allowed the President complete discretion about the scope and content of the embargo. Title I of the Cuban Liberty and Democratic Solidarity (Libertad) Act changes this.

The next section outlines “Assistance to a Free and Independent Cuba.” Title II orders the President to develop a plan for US policy toward a post-Communist Cuba. Both domestic and international measures are noted. The section also establishes the “conditions under which a government in Cuba will be considered transitional or democratically-elected”.<sup>2</sup> Included are such features as the release of all political prisoners, the recognition of the right of independent political activity, and the termination of interference with Radio or Television Marti. This section also specifies that a free and independent Cuba would not have Fidel or Raul Castro as part of the government (in any capacity). Another potentially contentious criteria is that a transition government must be “taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property”.<sup>3</sup> These conditions are particularly important since Section 204 links the end of the economic embargo to a democratic transition. Specifically, the law states

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

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<sup>1</sup> Public Law No. 104-114, 110 Stat. 785 (March 12, 1996) [hereafter Act], Section 102 (h).

<sup>2</sup> Committee of Conference, Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, H.R. No. 104-468, 104th Congress, 2nd session 65 (1996) [hereafter Conference Report].

<sup>3</sup> Act, Section 205 (b) (2) (D).

steps contribute to a stable foundation for a democratically elected government in Cuba. (emphasis added)<sup>4</sup>

The ultimate termination (as opposed to suspension) of the embargo depends upon the transition government of Cuba leading to a democratic government, as determined by the President and agreed to by the Congress. This section also establishes a check upon presidential actions. Section 204 (e) “Review of Suspension of Economic Embargo” mandates that the President “report to the Congress no less frequently than every 6 months” after suspending the embargo on “the progress being made by Cuba toward the establishment of ...(a) democratically elected government.” If the Congress disagrees with the President’s assessment of the situation in Cuba, the suspension of the embargo “shall cease to be effective upon the enactment of a joint resolution”.<sup>5</sup> These measures further enhance the power of Congress to control Cuban embargo.

Title III of the Cuban Liberty and Democratic Solidarity (Libertad) Act, Protection of Property Rights of United States Nationals, has garnered most of the attention given to Helms-Burton. This arises from the fact that the provisions within this section have generated the most controversy both in the United States and abroad. Title III allows for law suits in the United States against companies that are using (“trafficking”) items confiscated by the Cuban government after 1959. For the first two years of the law, this right was extended only to those who had filed a claim with the Foreign Claims Settlement Commission. After March 1998, though, the law allows anyone who *is currently* a US citizen to file a claim--even if they were not US citizens at the time the confiscation took place. Title III of the Act has never been put into practice since the law allows for 6-month waiver of implementation of Title III provisions by the President. President Clinton’s waiving of Title III since signing the bill has generated much criticism by proponents of Helms-Burton, though.

The final part of Helms-Burton, Title IV, Exclusion of Certain Aliens, is another measure to punish those foreigners (non-Cubans) who are profiting from confiscated property. The law orders the denial of visas to enter the United States to people who work for entities that use confiscated materials and/or properties. This includes businesses who purchase goods made by elements (or on the grounds) of property that had been confiscated. Furthermore, Helms-Burton extends the denial of visas to spouses and minor children of affiliated people. The law does have a provision that permits a waiver by the State Department on a case-by-case basis for medical reasons.

### **Analysis - Why Did Helms-Burton Pass in Congress?**

As the above section outlines, Helms-Burton greatly strengthens the economic embargo against Cuba and moves aggressively to punish foreigners who do not participate in the embargo against Cuban and “traffick” in confiscated property. The paper now turns to the question of “why?” What led to the introduction of this new step in US-Cuban relations? Who championed the measure? And, finally, what led to its passage in both the House and the Senate.

The Cuban Liberty and Democratic Solidarity (Libertad) Act was introduced by Representative

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<sup>4</sup> Act, Section 204 (a).

<sup>5</sup> Act, Section 204 (e) (1-4).

Dan Burton (R-Indiana) in the House Feb 14, 1995. The Senate sponsor was Senator Jesse Helms (R-NC) who placed the bill for considered on September 27, 1995, following a favorable vote in the House of Representatives on September 21, 1995. Both gentlemen, who gave their names to the popular title for the Act are very conservative Republicans. For both, the Cuban Liberty and Democratic Solidarity (Libertad) Act was an ideologically consistent policy: both men oppose most favored nation status for China and normalized relations with Vietnam. Furthermore, both men have leadership roles in the foreign policy making committees of the US Congress. This is particularly important since the Act was first introduced in the House at the start of the 104th Congress, following Republican victory in November 1994 which gave the party a majority in both House and Senate. The 104th Congress saw the installation of Senator Helms as the chair of the Senate Foreign Relations Committee, and Representative Burton assumed chairmanship of the House Sub-Committee on the Western Hemisphere. Both men and their staffs (including the Committee and Sub-Committee staffs) were instrumental in writing the legislation. Not surprisingly, co-sponsors in the House and Senate included members of the Florida delegation and the New Jersey delegation (the two states with the largest Cuban-American communities). The specifics of the bill were developed in consultation with House and Senate Republican foreign relations staff, as well as Cuban-American interest groups.<sup>6</sup> The Act was structured to achieve three goals: first, it was to strengthen embargo against Cuba; second, it intended to pressure other countries to stay away from Cuba; and finally, the members wished to obtain Congressional control over the Cuba policy.

The passage of the Cuban Liberty and Democratic Solidarity (Libertad) Act was fairly straightforward in the House of Representatives. After being introduced on February 14, 1995, it was referred to the relevant committees. In July the marked up version of the bill was reported on by the House Committee on International Relations and in August 1995 it was placed on the calendar. On September 21, 1995, the bill was passed by the House by a vote of 294 to 130.<sup>7</sup> The vote was predominantly along party lines, although not exclusively so. When analyzing the vote, one finds that 97% of the Republicans who voted on the bill supported it. In contrast, 62% of the Democrats who voted on the bill opposed it (importantly, though, over 30% of the Democrats in the House voted in favor of the House version of the Cuban Act).

The course of Helms-Burton on the Senate side was not quite as smooth. Following approval in House in September, Senator Helms introduced the bill to the Senate. During the month of October, the bill was debated, with amendments being introduced and defeated. A filibuster was staged in protest of the law. The White House, via the Secretary of State, expressed its opposition to the bill. In a letter to Speaker Gingrich in September 1995, Secretary Christopher stated that he would recommend that the President veto the bill.<sup>8</sup> When the Senate was unable to obtain a vote of cloture, Senator Helms stated that “if cloture is invoked, .... (he would) lay before the Senate amendment No. 2936, the Libertad Act< with titles I and II only.”<sup>9</sup> Following

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<sup>6</sup> Phone interview, Congressional source, March 5, 1998.

<sup>7</sup> Roll No. 683.

<sup>8</sup> Andreas F. Lowenfeld, “Agora: The Cuban Liberty and Democratic Solidarity (Libertad) Act,” The American Journal of International Law, No. 3, July 1996, fn 3, pg. 419.

<sup>9</sup> Congressional Record-Senate, October 18, 1995, pg. S15277.

this, the Senate voted 98-0 in favor of cloture. Then, the amended version of the bill--with titles III and IV deleted--was introduced. On October 19, 1995, the Senate voted 74 to 24 in favor of the amended version of Helms-Burton. As with the House vote, the Senate vote fell along party lines: Democrats provided 92% of the opposition to the bill, while Republicans comprised 70% of the favorable votes. Only two Republican Senators voted against the bill (Hatfield of Oregon and Jeffords of Vermont). However, the bill that passed the Senate had significant differences from that of the House version.

On November 7, 1995 the House requests a conference committee with the Senate because of the important differences in the two versions of the bill. At the beginning of the conference, neither side is open to completely adopting the other's version. Senate Republicans, though, openly stated their intention of reincorporating titles III and IV into the final version of the bill.<sup>10</sup>

On November 7, 1995 the House appoints its members of the conference committee. In addition to Representative Burton, a sizeable contingent of the Florida delegation is included, as well as two members of the New Jersey delegation. On December 14, 1995 the Senate selects conferees, including Senator Helms. While the majority of the participants had voted in favor of the bill (7 of the nine House conferees and 5 of the 7 Senate conferees), opponents were not absent from the table.

Action in the Congress on the bill seemed to stall after the appointment of the conference committee. The conference committee did not meet. Even more importantly, a presidential veto appeared to be assured. And, if the President vetoed the bill, an override in the Congress would be difficult. A vote along straight party lines would prevent proponents of the bill from gaining two-thirds of the vote. However, events outside of Congress intervened. On Saturday, February 24, 1996 the Cuban Air Force shot down two U.S. civilian aircrafts piloted by members of a Cuban-American organization, Brothers to the Rescue. On February 28, 1996 the conference committee met, quickly resolved disputed provisions and filed its report. The conference version placed title III and title IV back into the bill. Despite this, position by the President is revoked (see discussion below for greater details about the presidential decision-making process), and passage seems assured.

On March 5, 1996, the Senate voted in favor of the conference version, 74 to 22. Four Democratic Senators shifted their votes from earlier opposition to support. This was partially balanced by 2 Democrats who reversed their previous support for the bill (due to its inclusion of title III and title IV). On the other side, two Republicans ceased to support Helms-Burton, again because of the reintroduction of title III and title IV into the conference version. On March 6, 1996 the House voted on the conference version. It gained significant ground in lower house: 336 representatives in favor (a net gain of 42 votes) of Helms-Burton, with 86 in opposition. While support in the House was fairly bipartisan, opposition to the bill was almost exclusively Democratic (93% of the votes).

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<sup>10</sup> See, for instance, Congressional Record, Senate, October 18, 1995, pg. S15278 where Senator Gramm (R-TX) states: "I want to see us go to conference. I want to put title III back in the bill and bring it back to the Senate and fight for its passage."

In order to understand the quick resolution of conference differences and the speedy vote in favor of the bill, one must consider the context in which the conference version was considered. For most everyone, even opponents of Helms-Burton, the shooting down of an unarmed civilian plane by the Cuban government was reprehensible. Some action on the part of the United States seemed appropriate and desirable. Overall, public opinion was conducive to some type of strong response. First, approximately 67% of the public considered Cuba to be of vital interest to the United States. Public sentiment was not strongly in favor of the Cuban government or Castro: only North Korea, Iran and Iraq were more unpopular than Cuba in the eyes of the US public. Indeed, only Saddam Hussein was a more disliked international leader.<sup>11</sup> The criticism generated by the shoot down, coupled with the dislike of Cuba on the part of the US public, became even more influential given the electoral calendar. In March of 1996, the election year was beginning to gain momentum. Not only was the entire House up for re-election, and the first electoral test of the new Republican majority, but also 1996 was a presidential election year. Domestic political considerations all prompted a strong response to the shoot down. Passage of a strong version of the Helms-Burton was viewed in that light. And, survey reports suggest that this was an accurate assessment. Over 90% of the US public believed that passage of Helms-Burton was not only correct but, if anything, *not strong enough*. Only 7% of those polled felt that US actions were too strong.<sup>12</sup>

### **Analysis - Why Did President Clinton Sign Helms-Burton?**

Passage by the Congress does not necessarily translate into automatic passage into law. And, prior to February 24, 1996, the Cuban Liberty and Democratic Solidarity (Libertad) Act faced considerable opposition by the White House. The executive branch argued in testimony, letters, press releases, and statements that Helms-Burton would be detrimental to US national interests<sup>13</sup>. While President Clinton stated that he supported the purpose of the bill--the removal of Castro from Cuba and the establishment of a democratic Cuba--he doubted the effectiveness and legality of specific measures of Helms-Burton. This rejection of the bill centered on opposition to title III and title IV of the measure. As under Secretary Tarnoff stated:

... while [the White House] supported many of the objectives of the Helms-Burton draft legislation ... namely the promotion of an acceleration of democracy in Cuba, the endorsement of the continued vigilance and reinforcement of the embargo, the other provisions of the Cuban Democracy Act, and also features of that bill which allow the United States to begin assistance to a transition government in Cuba, all of those [are regarded] as quite positive. There are, nonetheless, certain other aspects of the bill, the

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<sup>11</sup> Chicago Council on Foreign Relations, American Public Opinion Report - 1995, "Figure III-1: US Vital Interests" and "Figure III-3: Thermometer Ratings".

<sup>12</sup> Lydia Saad, "Cuba Gets Little Sympathy From American Public," <http://www.gallup.com/news/960315.html>.

<sup>13</sup> See, for instance, the October 6, 1995 press briefing by Mike McCurry and comments made there by Richard Nuccio, the Special Assistant to the President and Secretary of State for Cuba.

extraterritoriality of it and other things which do causes problems.<sup>14</sup>

After February 24, 1995 and the Brothers to the Rescue incident, presidential opposition evaporated. President Clinton explicitly linked his support for Helms-Burton to the event.<sup>15</sup> As noted above, public opinion in the United States dictated a strong response to incident. And, President Clinton had just begun his 1996 presidential campaign. There were multiple electoral pressures. First, overall public sentiment encouraged a decisive reaction. Second, the electoral power of the Cuban-American community made this imperative.

Cuban-Americans were closely associated with the Helms-Burton legislation. A major interest group, the Cuban-American National Foundation, strongly lobbied for the bill. And, the Free Cuba PAC made significant contributions to major supporters of the bill. Even without the Brothers to the Rescue shooting, the Cuban-American community would have been exerting strong pressure on President Clinton to approve some version of the bill. While Cuban-Americans make up only 4.8% of the overall Hispanic population in the United States (and Hispanics comprise 9% of the country's population as of 1990),<sup>16</sup> the group exercises considerable political leverage. Most Cuban-Americans are located in two states, Florida and New Jersey (675,786 in Florida and 87,085 in New Jersey).<sup>17</sup> Florida offers 25 electoral votes in the presidential election, while New Jersey is worth 15. The Cuban-American community votes as a bloc, usually around to single issue of US-Cuban relations. This provides the group with political resources. In 1996, the popular vote in Florida for President Clinton was 2,546,870 while Dole gathered 2,244,536 votes. That represents a difference of only 302,334 votes; the Cuban-American community could have swayed the vote. This type of political forecasting and calculation had to be part of President Clinton's decision-making process.

Thus, at the signing ceremony on March 12, 1996 President Clinton embraced the legislation as a "justified response to the Cuban government's unjustified, unlawful attack on two unarmed U.S. civilian aircraft that left three U.S. citizens and one U.S. resident dead."<sup>18</sup> The President argued that the bill did not unduly infringe on his foreign policy prerogatives.<sup>19</sup> Furthermore, President

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<sup>14</sup> Press Briefing by Attorney General Janet Reno and General John Sheehan, Commander in Chief of the U.S. Atlantic Command, and Under Secretary of State, May 2, 1995. Comments made by Under Secretary of State for Political Affairs, Peter Tarnoff.

<sup>15</sup> See, for instance, the February 26, 1996 speech by the President when he offers a six-part response to the shoot down--one of which was to "move promptly to reach agreement with the Congress on the pending Helms-Burton Cuba legislation".

<sup>16</sup> "We the American ... Hispanics," U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, September 1993, pgs. 4 and 2.

<sup>17</sup> 1990 US Census Data, Database C90STF3C1.

<sup>18</sup> Statement by the President, March 12, 1996, Office of the Press Secretary.

<sup>19</sup> The full text of the President's statement reads:

Today I have signed into law H.R. 927, the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996." This Act is a justified response to the Cuban government's unjustified, unlawful attack on two unarmed U.S. civilian aircraft that left three U.S. citizens and one U.S. resident dead. The Act imposes additional sanctions on the Cuban regime, mandates the preparation of a plan for U.S. assistance to transitional and democratically elected Cuban governments, creates a cause of action enabling U.S. nationals to sue those who expropriate or "traffic" in



Clinton has also argued that the ability of the president to the waiver implementation of title III precludes alliance difficulties.<sup>20</sup>

## Responses to Helms-Burton

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expropriated properties in Cuba, and denies such traffickers entry into the United States. It is a clear statement of our determination to respond to attacks on U.S. nationals and of our continued commitment to stand by the Cuban people in their peaceful struggle for freedom.

Immediately after Cuba's brutal act, I urged that differences on the bill be set aside so that the United States could speak in a single, strong voice. By acting swiftly -- just 17 days after the attack -- we are sending a powerful message to the Cuban regime that we do not and will not tolerate such conduct.

The Act also reaffirms our common goal of promoting a peaceful transition to democracy in Cuba by tightening the existing embargo while reaching out to the Cuban people. Our current efforts are beginning to yield results: they are depriving the Cuban regime of the hard currency it needs to maintain its grip on power; more importantly, they are empowering the agents of peaceful change on the island. This Act provides further support for the Administration's efforts to strengthen independent organizations in Cuba intent on building democracy and respect for human rights. And I welcome its call for a plan to provide assistance to Cuba under transitional and democratically elected governments.

Consistent with the Constitution, I interpret the Act as not derogating from the President's authority to conduct foreign policy. A number of provisions -- sections 104(a), 109(b), 113, 201, 202(e), and 202(f) -- could be read to state the foreign policy of the United States, or would direct that particular diplomatic initiatives or other courses of action be taken with respect to foreign countries or governments. While I support the underlying intent of these sections, the President's constitutional authority over foreign policy necessarily entails discretion over these matters. Accordingly, I will construe these provisions to be precatory.

The President must also be able to respond effectively to rapid changes in Cuba. This capability is necessary to ensure that we can advance our national interests in a manner that is conducive to a democratic transition in Cuba. Section 102(h), concerning the codification of the economic embargo, and the requirements for determining that a transitional or democratically elected government is in power, could be read to impose overly rigid constraints on the implementation of our foreign policy. I will continue to work with the Congress to obtain the flexibility needed if the United States is to be in a position to advance our shared interest in a rapid and peaceful transition to democracy in Cuba.

Finally, Title IV of the Act provides for the Secretary of State to deny visas to, and the Attorney General to exclude from the United States, certain persons who confiscate or traffic in expropriated property after the date of enactment of the Act. I understand that the provision was not intended to reach those coming to the United States or United Nations as diplomats. A categorical prohibition on the entry of all those who fall within the scope of section 401 could constrain the exercise of my exclusive authority under Article II of the Constitution to receive ambassadors and to conduct diplomacy. I am, therefore, directing the Secretary of State and the Attorney General to ensure that this provision is implemented in a way that does not interfere with my constitutional prerogatives and responsibilities.

The Cuban regime's lawless downing of two unarmed planes served as a harsh reminder of why a democratic Cuba is vitally important both to the Cuban and to the American people. The LIBERTAD Act, which I have signed into law in memory of the four victims of this cruel attack, reasserts our resolve to help carry the tide of democracy to the shores of Cuba.

<sup>20</sup> See, for instance President Clinton's Declaration on Helms-Burton Act Title III, July 16, 1996 where he argues that by suspending the right to file suit is "the best way to achieve the bipartisan objectives" and the "by working with our allies -- not against them -- we will avoid a split that the Cuban regime will be sure to exploit."

The assumption that full and vigorous implementation of the Cuban Liberty and Democratic Solidarity (Libertad) Act would generate alliance divisions was well founded. From the date of passage international opinion concerning the bill has been extremely negative. Indeed, Helms-Burton prompted a number of counter-legislation and threats of international adjudication. As one author notes, it shifted focus from condemnation of Cuban and the Brothers to the Rescue shooting to opposition to the Act.<sup>21</sup> The European Union has pressed for consideration of Helms-Burton by the World Trade Organization. Both the European Union and Canada developed “claw-back” clauses, enabling the recovery of amount obtained by US citizens in European and Canadian courts. Both have signaled that they will instruct their courts not to comply with the legislation. Two Canadian members of parliament submitted a law that would allow Canadian citizens to sue in Canada “traffickers” in confiscated property seized by the United States following the Revolution War (for which compensation was never paid). Canada and Mexico have asked for a ruling in the NAFTA dispute resolution panel about the legality of Helms-Burton under the NAFTA accords.

Overall, opposition has been widespread, loud, and insistent. Since President Clinton has continued to suspend the right to file suits, alliance response to a ruling in fact cannot be judged. However, the waiving of title III implementation has not succeeded in winning any allied converts to the Cuban Liberty and Democratic Solidarity (Libertad) Act. Likewise, the Act has not brought about the downfall of the Castro regime. In many respects, the situation in Cuba remains unchanged, while the Act has created tensions and conflict in the United States’ relationship with its closest allies. Seemingly, the Act has served no foreign policy purpose; its main impact has been within the domestic political arena.

### **Conclusion -- What Does this Tell Us about Us Foreign Policy Making?**

From a practical perspective, the logic of continued adherence to Helms-Burton is unclear. Foreign policy concerns in the economic realm are damaged, while little progress has been made in terms of isolating, damaging, and/or removing Castro from power.<sup>22</sup> The legislation appears to place “rollback” of Communism ahead of increasing economic cooperation and coordination with the closest of US allies. Yet, for all the confusion that Helms-Burton creates, it provides insight into the foreign policy-making process in the post-Cold War era.

First, it is clear that a multi-dimensional model of foreign policy making is necessary. Looking solely at a single factor -- elections, public opinion, partisan struggles, or institutional conflict -- is not sufficient to explain what policies are adopted and why. As this case study in foreign policy reveals, all of those elements (and others) need to be explored.

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<sup>21</sup> Lowenfeld, *op. cit.*, pg. 432.

<sup>22</sup> Title IV has been applied to several individuals in Canadian, Mexican, Israeli, and Italian firms. The Administration argues that “Rather than face this prospect [of not being able to enter the United States and conduct business], a significant number of foreign companies already has chosen to leave Cuba, thereby reducing the flow of resources the regime uses to maintain its grip on power.” President Clinton’s Declaration on Helms-Burton Act Title III, July 16, 1996.

One major insight gleaned from Helms-Burton is that the institutional struggle between the Congress and the White House continues. There is an unrelenting congressional march to assume greater control over foreign policy. One of the main goals of Helms-Burton is to place greater control over the embargo in the hands of Congress. President Clinton's remarks about unfettered "presidential prerogatives" notwithstanding,<sup>23</sup> by codifying the embargo, Helms-Burton necessitates Congressional action to terminate this policy. Prior to Helms-Burton, the president enjoyed complete discretion through the application of executive orders. This provides yet another verification of the trend toward Congressional resurgence in foreign affairs.

Second, the Cuban Liberty and Democratic Solidarity (Libertad) Act highlights the importance of elections in US foreign policy making. This importance is two-fold. The introduction of the Act and its initial success stems directly from the 1994 Congressional elections, which resulted in a Republican majority in the 104th Congress. So, students of foreign policy must investigate elections that precede decision making. At the same time, the upcoming elections November 1996 increased pressure on all parties to make an "appropriate response" to Brothers to the Rescue shoot down. The need for campaign contributions increased the leverage of PACs such as the "Free Cuba" group, who supported Helms-Burton, as well as wealthy individuals.<sup>24</sup> And, the lure of Florida's and New Jersey's electoral votes created a power pull for the presidency. Thus, forthcoming elections must also be assessed when investigating foreign policy making.

Public opinion clearly plays a role in foreign policy, although not always direct and obvious. As numerous studies have shown, the impact of public opinion on foreign policy making depends heavily on the particular circumstances. Elite consensus usually precludes a significant role for public opinion, while open debate of the issue draws the public into the process. Likewise, issues that are perceived to be crises or likely to impact on an individual's life generate more attention and public involvement. In the case of Helms-Burton, the pre-existing sentiment created an environment accepting of regulations such as those contained in the Act. It offered a broad parameter within which the specifics of how to isolate Cuba could be debated. Once the Brothers to the Rescue incident occurred, public opinion coincided with elite consensus, resulting in strong support for the measure. Clearly, the type of foreign policy issue and its saliency to the general public must be evaluated in order to calculate how public opinion influences the decision-making process.

The final factor necessary for a complete assess of decision making is, for lack of a better phrase, "key events". These are incidents outside of the policy process. In the case of Helms-Burton, there is the great "what if" question: what if the planes had not been shot down on February 24, 1996? The Brothers to the Rescue crisis acted as a catalyst for congressional action and presidential acquiescence. Even though the pressures and audience may have been essentially

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<sup>23</sup> See footnote 19.

<sup>24</sup> For instance, an examination of Representative Burton's campaign contributions reveals that he received more individual contributions in Miami, Florida than from any other city--including all of those in his home state. Indeed, Representative Burton raised more money (in terms of individual contributions) from Florida than from his home state: \$67,550 compared to \$42,490. Representative Burton also received \$4,600 from Free Cuba PAC. Source: Center for Responsive Politics.

domestic in this foreign policy process, without this pivotal international event, it is unlikely that Helms-Burton would have become law. This just serves to remind scholars that the larger international environment shapes foreign policy making in all instances.

With the end of the Cold War, US foreign policy has changed in many ways. The international environment is different. US priorities and concerns differ now as compared to the Cold War era. Old enemies have disappeared; economic challenges and collaboration have gained prominence. However, one aspect of US foreign policy has not been altered. Domestic politics still shape foreign policy making. As a result, policy that seems to harken back to the Cold War era can (and does) make its way through the foreign policy process to become law if the circumstances are right.