THE EFFECTIVENESS OF ECONOMIC SANCTIONS: THE CASE OF CUBA[±]

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I. Introduction

This paper starts with a review of more recent scholarship on the effectiveness of economic sanctions, with a particular focus on the question of whether sanctions succeeded in promoting respect for human rights and democracy. On the basis of available evidence, this will lead to some concluding remarks on those aspects which are likely to make economic sanctions a successful foreign policy tool. We will then look at the case of Cuba and the impact of the U.S. embargo and existing economic restrictions. A concluding chapter will finally suggest a number of general policy lessons for the U.S. and the E.U.

II. Review of Literature on the Effectiveness of Sanctions

One of the most widely used forms of political conditionality is the threat, or actual deployment, of economic sanctions. The logic of economic sanctions is based on the assumption that they cause economic costs to the targeted government or entity which will both harm the legitimacy and coercive capacity of the targeted party. It is assumed that the sanctions force the regime or group concerned to concede to the sender's demands[1] since economic coercion will reduce resources available to the state to pay key political, economic

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[1] Johan Galtung, *On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia*, 19 WORLD POLITICS 378, 378-416 (1967).

or social domestic support structures. Moreover, sanctions are expected to deny the regime the essential military equipments used for internal repression or external aggression. Opposition groups might therefore feel more confident to challenge the leadership of the regime in question. As a result, the targeted regime might be more willing to give in to external and internal demands for behavioral change. Countries depending on a single export or massive imports of food, raw materials and oil, are likely to be most affected by economic sanctions. On the other hand, efficacy is undermined when targeted countries have multiple borders with non-sanctioning states as direct neighbors. Furthermore, sanctions have little leverage over domestic power formations challenging the ruling elite when target governments do not have to deal with strong opposition movements.[2]

Economic sanctions have become a common tool of coercion in the 1980s and 1990s, with 67 sanctions alone in the last decade of the 20th century, up from 40 in the decade before. The most representative empirical studies on the effectiveness of sanctions as compared to their intended policy objectives conclude that sanctions fail in 65% to 95% of all cases studied.[3] Financial sanctions seem to have a higher success rate (41%) than trade sanctions (25%).[4] This can partly be explained by the fact that some financial sanctions fall under the category of 'targeted measures.' However, once deployed outside comprehensive embargoes, targeted sanctions could only account for a 25% success rate.[5]

If one looks, however, at sanctions dealing with regulatory issues and not just highly politicized matters of contention such as territorial disputes, politico-ideological conflicts or nuclear

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[2] Thomas G. Weiss, *Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses*, 36 J. PEACE RES. 499, 500 (1999).

[3] G.C. HUFBAUER, J.J. SCHOTT & K.A. ELLIOT, ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY 71 (2d ed. 1990) (1949); s*ee also* Robert A. Pape, *Why Economic Sanctions Still Do Not Work*, 23 INT'L SEC. 66, 66-77 (1998).

[4] *Id.*

[5] Gary C. Hufbauer & Barbara Oegg, *Targeted Sanctions: A Policy Alternative?* Symposium, *Sanctions Reform? Evaluating the Economic Weapon in Asia and the World,* PETER. INST. FOR INT'L ECON. (Feb 2000).

proliferation, the picture seems to be different, with some 55% of sanctions deployed considered to be successful.[6] This concerns measures addressing, for instance, the violation of environmental regulations, labor standards, or money-laundering conventions.[7] This data, however, is biased in the sense that it does not discriminate between adversaries and allies as targeted parties. Sanctioning allies tends to work better than sanctioning adversaries. Allies use sanctions against one another especially in the areas of 'low politics,' such as trade, etc to defend economic self-interest but clearly refrain from going beyond these narrowly defined goals.[8]

Moreover, a different and more recent strand of scholarship suggested that the effectiveness debate failed to include the study of sanctions threatened but not deployed.[9] Empirical evidence indicates that threats to sanction non-complying countries tend to have a higher success rate than the actual application of sanctions. This is particularly true for threats transmitted to allies. Yet, the logic also holds in the case of adversaries. Targets expecting future conflict with the sender tend to prefer non-compliance with a sanction actually deployed given their concern that compliance would send the wrong signal to the sender, that is, the target would develop a reputation for giving in to the sanctions, perceived by the elites as being detrimental towards the pursuit of their domestic and international interests. In other words, at least some sanctions that are deployed are predestined to fail.[10]

A. Negative Externalities of Sanctions

Quite a number of scholars hold that economic sanctions are not

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[6] Daniel W. Drezner, *The Hidden Hand of Economic Coercion*, 57 CAMBRIDGE J. 643, 654-55 (2003).

[7] *Id.* at 652-53.

[8] Drezner, *supra* note 6, at 649-52.

[9] Dean Lacy & Emerson M.S. Niou, *A Theory of Economic Sanctions and Issue Linkage: The Role of Preferences, Information, and Threats*, 66 J. POL. 25, 38 (2004).

[10] A. Cooper Drury & Yitan Li, *Threatening Sanctions When Engagement Would Be More Effective: Attaining Better Human Rights in China*, 5 INT'L. STUD. PERSP. 378, 380 (2004).

only ineffective but also counterproductive, underlining notably the unintended humanitarian consequences because of the economic hardship suffered by innocent citizens.[11] As such, broad economic sanctions tend to undermine the human rights situation in targeted countries since they negatively affect public health, education and provision of other public services catering for the basic needs of the population. The 'collateral damage' of economic sanctions may even reach the political sphere by triggering social upheaval, riots and political instability.[12] Comprehensive sanctions generally negatively impact the socio-economic and political situation of the average citizen, while political elites remain insulated from the restrictive measures. Most observers would argue that governments and elites care first and foremost about their domestic political and economic power positions and far less about the fallout for the population - at least as long as this does not undermine their power base.[13]

Sanctioning parties often overlook three key consequences of external punishment when applying restrictions to a targeted regime:

First, contrary to the intended effect of undermining domestic support, external restrictions can produce solidarity with the targeted regime if the regime succeeds in painting the foreign acts as hostile to the country's sovereignty and integrity or even to the economic and social well-being of the population. Leaders of a sanctioned regime tend to exploit the shared sense of misery to broaden domestic political support, leading to the so-called 'rally-round-the-flag' effect.[14] They will also link domestic political opponents to foreign interference, trying to undermine their political legitimacy among the population and stigmatize them as acting on behalf of a

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[11] George A. Lopez & David Cortright, *Economic Sanctions and Human Rights: Part of the Problem or Part of the Solution?*, 1 INT'L J. HUM. RTS. 1, 1-25 (1997); *see also* A. Cooper Drury & Yitan Li, *U.S. Economic Sanction Threats Against China: Failing to Leverage Better Human Rights*, 2 FOREIGN POL'Y ANALYSIS 307, 307-24 (2006).

[12] Nikolay Marinov, *Do Economic Sanctions Destabilize Country Leaders?*, 49 AM. J. POL. SCI. 564, 564-76 (2005).

[13] *Id.*

[14] Weiss, *supra* note 2, at 502.

hostile foreign power.

Second, the significance of vested domestic economic interest is frequently ignored. "Black and gray markets thrive, as powerful players carve out monopoly or near-monopoly positions in the provision of scarce goods, and as smugglers realize large profits on scarce but price-inelastic goods."[15] Those rent seekers create profitable alliances with organs of state power. In those cases where the regime controls all major economic assets sanctions will encourage the regime to prioritize scarce economic resources to activities devoted to military and security needs. Those military-technocrat interest groups have little incentive in seeing the external restrictions decrease.

Third, sticks can trigger a greater commitment to the targeted regime's political or ideological agenda, by claiming that external punishment impedes the pursuit of the government's policies initially meant to benefit the population. Moreover, in totalitarian regimes able to guarantee basic needs satisfaction at a low level, average citizens tend to support the targeted regime's agenda if they fear that the external sanctioning actor is likely to cause insecurity in the future, putting at stake the relative stability and social achievements enjoyed under the targeted regime in the past.[16] In sum, external punishment backfires when domestic perceptions, power configurations, interests and reactions are not properly understood and assessed.

B. Impact of Economic Sanctions on Democracy

Very few studies have attempted to analyze the specific impact of economic sanctions on democracy. In the most recent and most comprehensive study[17] the authors looked at those 102 countries that, according to the Freedom House index, were considered "less

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[15] Miroslav Nincic, *The Logic of Positive Engagement: Dealing with Renegade Regimes*, 7 INT'L STUD. PERSP. 321, 324 (2006).

[16] *Id*. at 324-25.

[17] A.C. Drury & D. Peksen, *Economic Sanctions and Democracy* 4 (Aug. 2008), *available at* http://www.allacademic.com//meta/pmlaaparesearchcitation/2/7/9/1/6/pages279160/p279160-1.php.

democratic" and "non-democratic" for the 1972-2000 period. This set of data was computed against the number of economic sanctions (aid suspension was not taken into account) imposed on any of these countries during the abovementioned period. No difference was made between unilateral sanctions initiated by individual states and multilateral sanctions applied under the auspices of the U.N. or regional organizations, including the E.U. The paper concludes that "economic coercion carries significant negative externalities" and that "sanctions deteriorate the level of democratic governance in targeted countries."[18] Contrary to their intended purposes, they provide leaders of targeted regimes with more incentives to employ repression, thus contributing to the decrease in respect for civil liberties and political rights.[19] These findings confirm that (there is no quotation, just a footnote as reference) sanctions create new capabilities and incentives within the target that lead the regime to restrict the democratic freedoms of citizens in order to preserve its hold on power.[20] Specifically, economic coercion creates new capabilities for the regime by:

> (1) reducing available resources within the target which subsequently make the regime's remaining resources more valuable; and
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> (2) generating new incentives for the state to restrict democratic freedoms. In particular, they provide encouraging signals to domestic opposition groups to be more active thereby giving the leadership a stronger reason to repress and make targeted elites less conciliatory toward the sender as a result of the domestic cost of conceding to foreign economic pressure for political reform.[21]

In other words, sanctions permit a targeted regime to condemn opponents and reward supporters by allocating scarce resources, thus

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[18] *Id.* at 20.
[19] *Id.* at 24.
[20] *Id.* at 9-16.
[21] *Id*. at 7.

decreasing the viability of domestic political opposition or reform.[22]

The study, however, seemed to have overlooked two important aspects. First, no distinction has been made between unilateral/individual and multilateral sanctions. Consequently, the data set does not include variables to control for parallel international, regional or bilateral support enjoyed by the targeted regime during the application of the sanctions. These support structures tend to undermine significantly the effectiveness of the sanctions regime imposed. For instance, the failure to isolate the target from support in general (Cuba) and especially within its immediate neighborhood (Burma), often provided by black market operators (Zimbabwe, Haiti) and focusing on illicit trade in drugs (Burma), arms (Congo) and raw materials (Liberia), explains both the limited reach of economic coercion and the counterproductive 'collateral damage' on political reform. However, these regional factors support the overall finding that sanctions generally fail in furthering the cause of democracy. Second, by not including the suspension of aid as one important independent variable, the authors, in their concluding remarks, cannot convincingly argue the case of using foreign aid and/or provisions of low-interest loans as "effective ways to get a target to change its policies."[23] It would therefore be useful to test this assertion on the basis of available studies on the impact of aid conditionality on political reform.

1. Incentives Conditionality: Withdrawal and Use of Development Aid

A paper examining the incentives conditionality of four main donors (Sweden, U.K., U.S. and the E.U.) during the period 1990-1996 for 29 developing countries concluded that aid restrictions proved to be ineffective in contributing to political reform in recipient countries.[24] The findings were based on testing a number

[22] Weiss, *supra* note 2, at 502.

[23] Drury & Peksen, *supra* note 17, at 25.

[24] Gordon Crawford, *Foreign Aid and Political Conditionality: Issues of Effectiveness and Consistency*, 4 DEMOCRATIZATION 69, 70, 102 (1997).

of fundamental assumptions concerning key factors impacting on aid conditionality:

> 1) domestic position of the recipient government and its power base;
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> 2) recipient's government's ability to use the occasion of external intervention to strengthen its position domestically;
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> 3) extent of dependency on aid of the recipient country;
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> 4) magnitude and importance of the relations between the sanctioning donor and the recipient;
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> 5) probability that a unilateral action may develop into a snowball effect; and
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> 6) degree of an internationally coordinated donor action.[25]

Weak effectiveness was largely due to the weakness of restrictive measures imposed by the donors rather than the strength of the targeted government. Problematic was also the inconsistent application of aid sanctions, with donors failing to ensure fair and equal treatment of all recipient countries because of the "continued subordination of human rights and democracy to other foreign policy concerns, notably economic self-interest."[26] The author's conclusion, however, according to which "greater consistency in policy application implies the extension to aid restrictions to a larger number of cases, with tougher measures imposed . . . [and is] likely to enhance effectiveness"[27] is not supported by empirical evidence. Nor does the study provide an answer to the question on how aid sanctions can effectively contribute to human rights improvements or political reform in targeted countries.

Another comprehensive cross-national, comparative study on

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[25] *Id.* at 72.
[26] *Id.* at 69.
[27] *Id.* at 104.

the effects of foreign aid on democracy[28] holds that no statistically significant impact of foreign aid on democratic governance was observed. Knack's findings, however, are problematic themselves: the computed Official Development Assistance data are not divided by democracy and non-democracy assistance provided. In other words, Knack proves that total aid flows to a given country do not have a measurable effect on political democracy.[29] However, his findings do not refute the assertion that specifically targeted democracy programs could impact positively on democratic governance.[30] Precisely for these reasons Knack's findings are partly contested by a USAID-commissioned evaluation of USAID's democracy and governance assistance program during the period 1990-2003, covering over one hundred countries and measuring the aid impact against the Freedom House and Polity IV scores for democracy.[31] The study concluded a modest but statistically significant correlation between aid and democracy improvement.[32] On the other hand, the relationship with human rights appeared to be negative.[33] Moreover, the rigorously quantitative analysis could not explain why democracy assistance, together with all other independent variables used in the regression, did "not account for the lion's share of variation in country-year Freedom House and Polity IV scores."[34] In other words, the study appears to have failed to control for those factors having exercised the most significant impact on democracy variation outcomes. It seems that, so far, comparative empirical evidence does not support the assumption that sanctions or aid conditionality succeeded in promoting the cause of democratic governance.

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[28] *See generally* Stephen Knack, *Does Foreign Aid Promote Democracy?*, 48 INT'L STUD. Q. 251, 251 (2004).

[29] *Id.*

[30] *Id.*

[31] *See* Steven E. Finkel et al., Effects of U.S. Foreign Assistance on Democracy Building: Results of a Cross-National Quantitative Study 11(2006), *available at* http://www.usaid.gov/ourwork/democracyandgovernance/ publications/ pdfs/impact_of_democracy_assistance.pdf.

[32] *Id.* at 82-87.

[33] *Id.* at 85.

[34] *Id.*

2. Inducements versus Sanctions – or Do They Go Together?

As a result of these empirical findings on economic sanctions and aid conditionality recent research focused on the logic of constructive engagement. The leading hypothesis is that positive inducements can modify the targeted regime's motivations so that 'sticks' become less necessary.[35] An interesting study of the effects of sanctions on Iraq, Iran, Libya and North Korea concluded that "sticks are often counterproductive, as the renegade regime's authorities, seeking above all to secure their domestic position, find that it may be bolstered by external confrontations. By a symmetrical logic, carrots, viewed through the lenses of incentives that are endogenous to the positive inducements, can modify the regime's motivations in a process of political transformations. . . Positive inducements are most likely to be effective when the regime is experiencing unstable equilibrium, as comparison with Saddam Hussein's Iraq and Muammar Qaddafi's Libya indicates."[36]

On the other hand, under conditions of regime stability, incentives such as expanded trading opportunities, access to foreign investment, inflow of development aid, tend to be of limited relevance to the elites and the regime's political calculus.[37] If, and once conditions are conducive, i.e. when the targeted country experiences regime instability, domestic political opposition benefiting from foreign inducements, can create a political reality that corresponds to internationally acceptable regime behavior. In this context Nincic makes a useful distinction between "trading carrots," i.e. inducements that open space for dialogue and cooperation in the short term, and "catalytic carrots," i.e. inducements that provide the ground for political reform in the medium to longer run.[38] Given the limitations of the study more research is needed to test this assumption and allow for a robust

[35] Miroslav Nincic, *The Logic of Positive Engagement: Dealing with Renegade Regimes*, 7 INT'L STUD. PERSP. 321, 321 (2006).

[36] Nincic, *supra* note 15, at 338.

[37] *Id.* at 327.

[38] *Id.* at 325-26.

hypothesis on the effectiveness of a consequential incentive-based approach.

A somewhat differently nuanced position arguing the case for a combined 'carrots and sticks approach' has recently been taken by the European Parliament. In an effort to improve the European foreign policy instrument of restrictive measures/sanctions in the field of human rights the European Parliament, by a resounding majority, adopted on September 4, 2008, the Resolution "On the Evaluation of E.U. sanctions as part of the E.U.'s actions and policies in the area of human rights."[39] In an explanatory statement the Rapporteur to the Parliament, Hélène Flautre, summarizes the main findings of the report:

> The political effectiveness of sanctions and their harmful side-effects are now the subject of much controversy: the suffering of populations as a result of unduly extensive sanctions, such as embargoes (Iraq), encouragement to criminal networks, black markets in certain products (Burma) and the danger of human rights violations in the blacklisting method. Similarly, criticisms regarding the application of double standards, based on the strategic importance of the partner (Russia), political differences within the Council (Israel, Cuba) and geographical location, tend to undermine its credibility.[40]

Despite the justified criticisms regarding the political effectiveness and harmful side-effects of sanctions, the Parliament holds that the instrument should not be abandoned but improved in order to become a more meaningful tool in furthering the cause of human rights. Underlining the nature of the E.U. as a 'soft power,' the E.U. should deliberately promote an approach where the steps between sanctions and incentives are closely tied in its efforts to

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[39] Remarks of Hélène Flautre, EUR. PARL. DOC. (Minutes A6-0309) (Sept. 4, 2008).

[40] European Parliament, Committee on Foreign Affairs, Report on the Evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights, EUR. PARL. DOC. A6-0309 (July 15, 2008).

combine carrot and stick techniques under the framework of a wider and more coherent human rights strategy in sanctioned countries. Moreover, a strategy of openness and dialogue should address the authorities and the civil society, the leaders of the targeted regime and its opponents alike.

C. Overall Findings on the Effectiveness of Economic Sanctions

To sum up, scholarship on the effectiveness of sanctions agrees that first, economic sanctions more often than not fail to fulfill their objectives, especially if the matter of contention revolved around fundamental political conflicts, and that second, neither classic economic sanctions nor aid conditionality had a tangible impact on human rights improvements and better democratic governance. As far as economic sanctions are concerned and on the basis of available evidence preconditions for success seem to be:

> a) well-defined, narrow objectives to ensure transparency concerning expectations and outcomes for all parties concerned;
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> b) a thorough assessment and review mechanism, with a clearly defined exit clause to allow for performance-based monitoring and subsequent policy adjustment;
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> c) a high degree of relevant regional and multilateral cooperation to effectively isolate the target from sanctions-undermining support structures;
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> d) an effective focus on the party responsible for the violation of international law to avoid collateral damage to the average citizen, i.e. smart sanctions explicitly targeting the personal, financial and political interests of the perpetrators (mostly the elite);
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> e) prior use of credible threats rather than actually deploying sanctions as a measure of first resort; and
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> f) in terms of conceiving a comprehensive strategy, integrate threats of sanctions and the possibility of their eventual application into an overall process of

> constructive engagement, dialogue and negotiation which also includes rewards for 'good behavior,' e.g. so-called 'inducements' or 'carrots' implying enhanced political, economic and development cooperation with the consenting target.

III. The Case of Cuba

A. The U.S. Embargo and Existing Economic Restrictions

The U.S. embargo against Cuba represents a commercial, economic, and financial embargo imposed on the Cuban government in 1962. Initially, the embargo was enacted as a measure against the expropriation of assets owned by U.S. citizens and companies by the Castro regime during the period 1959-1961.[41] The embargo was reinforced in October 1992 by the Cuban Democracy Act (the "Torricelli Law")[42] and in 1996 by the Cuban Liberty and Democracy Solidarity Act (known as the Helms-Burton Act)[43] which penalizes foreign companies that do business in Cuba by preventing them from doing business in the U.S. The Helms-Burton Act includes a variety of provisions to bring about "a peaceful transition to a representative democracy and market economy in Cuba."[44] With a view to appeasing allies notably in Europe Title III of the Act (i.e. the right to file private law suits against foreign companies found to be 'trafficking' in property formerly owned by US persons, including Cubans who have obtained U.S. citizenship after the date of the expropriation) has been suspended by the U.S. president ever since the law entered into force.[45]

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[41] Luisette Gierbolini, *The Helms-Burton Act: Inconsistency with International Law and Irrationality at Their Maximum*, 6 J. TRANSNAT'L L. & POL'Y 289, 293-94 (1997).

[42] Cuban Democracy Act of 1992, Pub. L. No. 102-484, § 1706, 106 Stat. 2578 (1992).

[43] Cuban Liberty & Democratic Solidarity Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (1996).

[44] *Id.*

[45] *See generally* JOAQUÍN ROY, CUBA, THE UNITED STATES, AND THE HELMS-BURTON DOCTRINE: INTERNATIONAL REACTIONS (John M. Kirk ed., University Press of Florida 2000) (offering the first full-length analysis of the Helms-Burton

In response to pressure from American agribusiness, the embargo was relaxed by the Trade Sanctions Reform and Export Enhancement Act of October 2000, allowing the sale of agricultural goods and medicine to Cuba for humanitarian reasons.[46] These purchases have grown ever since 2002, despite new legislation introduced during the second term of the Bush administration concerning out front cash payment, i.e. prior to shipping of the goods from the U.S., to the American exporter.[47] These limitations notwithstanding, in 2008, the U.S. was the most important food supplier of Cuba and its 5th largest trading partner overall.[48]

In an effort to discredit Havana, the Bush administration continued to put Cuba on the State Department's list of countries considered to be state sponsors of terrorism, together with Syria, Iran and Sudan (Libya, Iraq and, most recently, North Korea have been taken off that list during the last few years).[49] In order to discourage non-U.S. foreign prospective investors from doing business in Cuba the U.S. authorities, under the Bush administration, have threatened economic operators with significant interests in the U.S. and suspected to be in violation of Helms-Burton to abstain from continuing their business in Cuba. In several cases, fines have been imposed.[50] Furthermore, in line with its stated policy of furthering regime change in Havana, in 2004 the Bush administration further stifled restrictions on travel to Cuba by allowing visits of Cuban-

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law and its background).

[46] Trade Sanctions Reform and Export Enhancement Act of 2000, Pub. L. No. 106-387, § 908, 114 Stat. 1549 (2000).

[47] Michael Margulies, *Stronger Trade or Stronger Embargo: What the Future Holds for United States-Cuba Relations*, 8 ASPER REV. INT'L BUS. & TRADE L. 147, 153-56 (2008).

[48] Office of Global Analysis, FSA, and USDA, *Cuba's Food & Agriculture Situation and Report* 31 (2008), *available at* http://ffas.usda.gov/itp/cuba/CubaSituation0308.pdf.

[49] Congressional Research Services, *Foreign Affairs, Defense, and Trade Division, Report on Cuban and State Sponsors of Terrorism List* 5 (2005), *available at* http://www.fas.org/sgp/crs/terror/RL32251.pdf.

[50] Sven Kühn von Burgsdorff, *Problems and Opportunities for the Incoming Obama Administration*, 4 (Jean Monnet/Robert Schuman Paper Series Vol. 9, No. 6, Mar. 2009), *available at* http://www6.miami.edu/eucenter/publications/vonBurgsdorfUSvsCubalong09edi.pdf.

Americans to their family only once every three years.[51] The amount of transferable remittances was also reduced to a maximum of 1.200 USD per person per year and could only benefit the most immediate family members in Cuba.[52]

B. Was the Embargo Effective? The Impact on Cuba

Contrary to the intended purposes, the U.S. embargo and the restrictions imposed by the Bush administration did not succeed in ousting Fidel Castro or triggering regime change in Havana. The negative externalities observed in the majority of countries against which economic sanctions had been applied could also be confirmed in the Cuban case:

Since the U.S. took an extremely public policy stance towards Cuba, Havana had a distinct disincentive to offer any positive behavior to Washington in the face of threats and sanctions. Moreover, as a matter of both national pride and cool political calculations the Cuban leadership had to signal to the U.S. that human rights were non-negotiable sovereignty issues.

From the outset, the U.S. sanctions failed in mobilizing domestic opponents because they were simply too weak to challenge the regime. With the advent of the Bush administration the sanctions even undermined the infant political opposition movements because the regime condemned opponents by stigmatizing them as 'mercenaries' paid by the U.S. to topple the Cuban government. By associating opponents and human rights defenders with Washington's agenda for regime change the authorities attempted to delegitimize their quest for political reform and respect of fundamental freedoms. As a result, the majority of Cuban dissidents sought to distance themselves from Washington and support offered through U.S. channels.

Using the pretext of foreign intervention, the Cuban regime decided to crack down on those human rights activists perceived as becoming too vocal a source of public discontent. The viability of

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[52] *Id.*

the emerging illegal political opposition became seriously undermined following the arrests of 75 dissidents in March 2003, many of whom have actively worked for the Oswaldo Payá-led Varela project seeking a referendum on political reform.

The regime has successfully exploited the nearly five-decade old embargo in general and the Bush restrictions of 2004 in particular, by denouncing the measures as foreign aggression and calling for a 'rally-round-the-flag' as the only remedy to counteract the U.S. 'assault' on national sovereignty. Indeed, the quasi-totality of the Cuban population rejects the U.S. embargo, but mostly because it deprives them of access to U.S. consumer goods and fluid contacts with the American people, including those family members having fled the island.

Furthermore, the Cuban regime succeeded in translating the 'rally-round-the-flag' effect into increased cohesion between the leadership and those strata of society believing in the legitimacy of the goals of the Revolution, namely in the field of social justice. The regime, rather successfully, painted the Revolution's social *acquis* as being under constant threat by the U.S. embargo. As a result, important segments of the Cuban population are fearful that the U.S. agenda is not only driven by regime change but also by taking away Cuba's social agenda.

Havana claims that total losses caused by the U.S. embargo during the past 47 years stand at well above 90 billion USD. Official U.S. sources believe this figure to be in the range of some 120 million USD annually since 1991 (reaching today around 2.5 bio USD), i.e. after the collapse of the Soviet Union as Cuba's key political ally and economic benefactor. In either case Havana can plausibly argue that the U.S. sanctions affect negatively Cuba's economic and social development and cause harm to the Cuban people.

The humanitarian and economic costs of the economic sanctions are clearly instrumentalized by the regime and serve as a much welcome scapegoat for 1) blaming domestic inefficiencies and hardship on the embargo, and 2) justifying stifling public policy responses such as drastic austerity measures to contain public

spending or tighter control to fight informal sector activities.

Last but not least, it comes as no surprise that in a tightly state-controlled economy such as in Cuba, scarce economic resources are increasingly controlled by the most trusted segments of the regime, which in Cuba's case is the military. Today, two thirds of Cuba's foreign exchange generating economic activities are directly managed or controlled by the armed forces.

A sober analysis of these impacts leads to the conclusion that the U.S. economic sanctions actually strengthened the regime and weakened the opposition. But that is not all. Despite the Bush Administration's continuing attempts to starve the Cuban regime of foreign exchange through a number of restrictive measures, the U.S. continued to be one of the leading foreign exchange providers and trade partners of Cuba throughout 2008: apart from remittances of the Cuban exile community, estimated to fluctuate between 800 million to 1 billion USD annually (which can only be spent in the state-run shops where few over-prized imported consumer goods are offered), accumulated imports of U.S. agricultural producers reached more than 2.5 billion USD during the period January 2002-October 2008.[53]

Furthermore, by accepting 20,000 legal immigrants from Cuba every year since 1995 under the U.S.-Cuban migration accord and by applying the wet foot-dry foot policy to Cuban illegal immigrants, the U.S. is by far the major recipient of those Cubans who wish to leave the island for good, be it for economic or political reasons (some 350.000 Cuban immigrants came to the U.S. since 1994).[54] This, in turn, contributed to the fact that no critical mass of popular discontent could establish itself in Cuba – very much contrary to what had occurred in the Eastern and central European countries prior to the fall of the Berlin Wall. Last but not least, the continuation of a hostile policy towards Cuba made it rather easy for the Cuban regime to blame all malaise in daily Cuban life on the Bush administration whose international image stands at an all-time

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[53] Kühn von Burgsdorff, *supra* note 50.

[54] Ted Henken, *Of Rafters and Refugees*, *in* CUBA TODAY: CONTINUITY AND CHANGE SINCE THE 'PERIODO ESPECIAL' 147-48 (Mauricio A. Font eds., 2004).

low. In other words, it is not without irony that the U.S. served as the handy scapegoat for all hardship on the island while, as a matter of fact, U.S. immigration policy, remittances and exports eventually helped in stabilizing the Cuban regime.

IV. Strategic Choices for Washington and Brussels

It is common knowledge that the constructive engagement approach of the E.U. towards Cuba is not shared by the U.S. which for the past 47 years opted for a policy mix of coercion and sanctions.[55] It has been standard policy that the U.S. will only deal with a Cuban government which is democratically elected and respects the essential civil and political rights of its citizens. The E.U.'s and the U.S.' dominant strategies towards Cuba, i.e. constructive engagement for the E.U. versus sanctions for the U.S., lead to a negative equilibrium (in game theory terms) where it is impossible to approach the 'Cuban issue' in the context of regular transatlantic talks from a common platform. Despite sharing, in principle, similar objectives for Cuba, i.e. democracy and respect of fundamental freedoms and basic human rights, Brussels and Washington employ very different policy tools. The combined result translates into a situation where Brussels and Washington are unable to move forward together.

V. What are the Policy Lessons for Dealing with Cuba?

The analysis of the impact of the U.S. embargo against Cuba clearly demonstrates that the economic sanctions not only failed in attaining their intended purposes, but also proved to be counterproductive in all respects and at all levels. A brief recollection of present foreign relations shows that Cuba is by no means isolated (see, for example, current relations with the E.U., Venezuela, China, Canada, Brazil and, as of recent, even Russia) and

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[55] *See* Mark P. Sullivan, *Cuba: U.S. Restrictions on Travel and Remittances*, Congressional Research Service (Jan. 21, 2009), *available at* http://www.fas.org/sgp/crs/row/RL31139.pdf. The only exception was the Carter administration in the late seventies. *Id*.

certainly finds itself in a position where it can count on substantial international and regional support both in the economic and political arenas. While the E.U. seems to enjoy little leverage over developments on the island, the key variables in Havana's external relations equation are, without any doubt, Venezuela and the U.S. Venezuela because it eases Cuba's hard budget constraints by basically bankrolling the Castro government through the mutually beneficial barter agreement[56] (and the U.S. because its incoherent policy mix towards Cuba provides both the external enemy for Havana, much needed for internal cohesion and to justify repression and domestic development failures, and, at the same time, an important source of hard currency income and consumer goods at competitive import costs. Against this background and under the assumption that the external situation does not change fundamentally in the short to medium term, it is difficult to imagine that the Castro regime is willing to trade significant political or even economic concessions to the U.S. (for instance, in exchange for lifting the embargo, as Washington so requires) or other international players in the foreseeable future.

As long as Havana can afford to ignore external pressure for democratic governance and respect for human rights (in other words, has no incentive to comply with requests from the U.S. and the E.U.), it can be safely assumed that the Cuban government will not base its political and economic relations with other countries or institutions on this premise. Hugo Chavez' Petrodollars, Cuba's ability to forge new international alliances in the region and beyond and its concern with Washington's agenda as the key reference point for domestic and foreign policy decisions define Havana's strategic room of maneuver.

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[56] *See* U.S. Department of State, Background Note: Cuba, http://www.state.gov/r/pa/ei/bgn/2886.htm (last visited May 1, 2009). Cuba is President Chavez' most important political ally in the region. And so is Hugo Chavez Fidel Castro's key and unconditional supporter. In the context of the ALBA free trade agreement (Bolivia, Nicaragua and Honduras are also members) Cuba receives close to 100,000 barrels-per-day of Venezuelan crude oil in exchange for essentially medical services (alphabetization campaigns, community services, sports training and provision of security services are also part of the oil-for-services barter package). *Id.*

Against this background only a fundamental overhaul of U.S. policy towards Cuba could become a real 'game changer,' that is, Washington would have to give up its confrontational policy of coercion and adopt constructive engagement towards Cuba, inspired by its experiences in Eastern and Central Europe, Vietnam and China throughout the eighties and nineties.[57] In addition, the U.S. needs to change its international human rights reputation which was severely damaged by U.S. engagements in Iraq and the treatment of prisoners in Guantánamo Bay. The perception that the U.S. does not do its utmost to fully respect international law is an issue that renders difficult joint efforts to make the U.N. Council on Human Rights a meaningful instrument for acting decisively against human rights violations.[58] If the U.S. wants to act more effectively in multilateral fora in general, Washington, as a matter of priority, needs to restore U.S. credibility, thus making human rights a more defendable key priority in international relations. Together the E.U. and the U.S. stand a far better chance of furthering democratic change and sustainable improvement of the living conditions in Cuba. It is also then that other foreign partners, notably from Latin America, could

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[57] *See* Josep M. Colomer, *Symposium: Whither Goes Cuba? Prospects for Economic & Social Development Part I of II: Cuba & Democratization: Should Sanctions Be Lifted?: Who Could End The Embargo? A Game-Theoretical Perspective*, 14 TRANSNAT'L L. & CONTEMP. PROBS. 163 (2004)(All U.S. administrations have opted, and in the case of China as early as in the mid seventies, for an approach based on dialogue and, where possible, trade with the Communist countries. The Soviet Union and its east European allies have been engaged in the Helsinki process which aimed, inter alia, at introducing a dialogue on human rights and democracy in East-West relations); s*ee also* Alexander Boldizar & Outi Korhonen, *Out of a Tangled Skein into the International: The Development of Legal Culture*, 5 ANN. SURV. INT'L & COMP. L. 163 (1999).

[58] *See* Noah Bialostozky, *The U.S. and the U.N. Human Rights Council: No Instant Gratification*, Human Rights Tribune, Apr. 16, 2009, *available at* http://www.humanrights-geneva.info/The-US-and-the-UN-Human-Rights,4340.
The compromise found on 18 June 2007 in Geneva before the U.N. Council of Human Rights on dropping the country procedures against Cuba and Belarus was definitely influenced by the impression of the majority of the 47 UNCHR members that singling out Cuba for human rights violations and not equally targeting the much contested Guantánamo Camp of the U.S. would amount to an inconsistent, politically motivated and thus discriminatory measure. Press Release, U.S. Mission to the United Nations in Geneva (Jun. 19, 2007), *available at* http://www.usmission.ch/Press2007/0619HRCConclusion.html.

be more easily approached to engage on Cuba along commonly agreed upon agendas.

A realistic scenario, however, has to consider that political change in Cuba will probably take longer and will most likely be preceded by economic reform measures coming from the regime itself. Foreign actors wishing to assist in this process in a meaningful way are well advised to pursue a long term, incentives-based approach to both the Cuban authorities and Cuba's emerging civil society, including the political opposition.