

## U.S. SANCTIONS AGAINST CUBA: A JUST WAR PERSPECTIVE

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A friend who worked in the Administration told me that when President Bush received the report of his Commission for Assistance to a Free Cuba in 2004—a report that brought new limits on family remittances, gift parcels, and visits—the only question that he returned to his staff was whether elderly Cubans would be harmed.

This anecdote may or may not be accurate, but it reflects a consideration that is voiced virtually every time America imposes economic sanctions. A sense of ethics impels American policymakers to explain how, as we seek to coerce foreign governments to change their conduct, we focus the impact of those sanctions as much as possible on the government, not the governed.

This paper discusses the practices of U.S. Administrations with regard to humanitarian impacts of economic sanctions, the Cuba sanctions in general, and then examines the new sanctions imposed on Cuban families in 2004 against the principles of Just War theory. When considered as a matter of common ethics or in light of the more rigorous tests of Just War theory, the Administration's restrictions on visits and acts of charity between members of Cuban families are unjustifiable.

### COMMON PRACTICE: HUMANITARIAN EXCEPTIONS

Last May, Undersecretary of State Nicholas Burns explained the Administration's policy regarding possible sanctions against Iran in response to that country's active support of terrorism and its possible development of a nuclear weapons program. "Any sanctions we would consider will be specifically tar-

geted to hurt the regime, not the great majority of innocent Iranians," he said. Two months earlier, he described an initiative to provide concrete benefits to the people of this terrorist state through \$5 million in scholarships. "If Iranians are banned from playing Mozart in Iran, we will help them to do so in our country," he told Congress.

Not all countries subject to U.S. sanctions receive benefits such as scholarship programs, but time and again one sees an effort to shield common citizens from hardships imposed by sanctions aimed at the government.

In current U.S. sanctions regimes that include export restrictions, there are exceptions for food and medical exports in the cases of Syria and Sudan, as was the case with U.S. sanctions against Libya. The international sanctions imposed on Iraq before the war included the oil-for-food program; this program became famous for its corruption, but for purposes of this discussion it illustrates a clear international consensus that the humanitarian needs of Iraqis should not go unmet as a result of sanctions against Saddam Hussein. When international sanctions were imposed on Haiti's military government in 1991, exception was made for humanitarian goods.

There are many more examples, and in all cases but one I found that the humanitarian exception was generally accepted and not the subject of controversy. That single case—the exception that proves the rule—was Cuba, where the proposal in Congress to allow food and medical sales was met with strong resistance in 1999 and 2000 based on the argument

that U.S. exports would strengthen Cuba's government.

While the pattern of U.S. practice in applying sanctions is clear, one does not find a formal doctrine governing use of sanctions. However, in the current and previous Administrations, there are numerous statements like that of Undersecretary Burns where the United States explains how ordinary citizens are excluded from the impact of economic sanctions. For example, former Secretary of State Albright in 2001 noted that "sanctions—like force—can be a blunt instrument" and said that when the Clinton Administration imposed sanctions, it did not intend "to create unnecessary hardships for innocent people, especially children and infants. Good intentions, however, do not always translate into good results."

### **CUBA EMBARGO**

My aim here is not to examine the ethics of the overall U.S. embargo, but I would like to state a few considerations.

The embargo is a complex web of prohibitions on transactions with Cuba and, by extension, on all manner of American contacts with Cubans.

I do not believe that countries have a God-given right to trade with one another or that our unilateral trade embargo is in itself unethical.

Nor do I agree with President Bush when he said in 2001, obviously not speaking about Cuba, that "open trade is not just an economic opportunity, it is a moral imperative." I do believe in free trade as a natural counterpart of economic liberty within our own economy; it promotes welfare here and abroad—and as President Bush stated in those same remarks five years ago, it promotes openness and perhaps even democracy. There are moral virtues to be found in all that, but I view the overall free trade issue through a practical, not a moral prism. His rhetoric aside, it seems that President Bush agrees, because he is willing to limit trade through selected use of economic sanctions to achieve political goals. Indeed, if sanctions succeed in their task of persuasion, they are a morally superior option if they achieve a morally laudable goal and supplant the alternative of the use of military force.

With respect to Cuba, it must be said that Cuba's economy is shaped fundamentally by Cuban economic policies, not the U.S. embargo. Centralization, collectivism, state control, bureaucracy, and restrictions on private initiative are fundamentally to blame for the hardships that many Cubans face in their daily lives. However, while the U.S. embargo plays second fiddle, it does add to the hardships. Travel is but one example. Across Cuba one observes that spending by foreign travelers generates jobs with higher-than-average pay in the state tourist enterprises, in thousands of small private businesses that operate legally (home rentals, artisans, restaurants, taxis), and among Cubans who engage in enterprise without licenses. American travelers would dramatically expand this varied, high-income sector, to the benefit of many thousands of Cuban families.

Still, while this is a very debatable proposition, I argue that while it has been a political and strategic blunder to maintain the embargo ever since the Cold War ended, it is primarily not a moral issue. My judgment would be the opposite in the almost inconceivable event that the embargo were internationalized, as some in the United States desire. A global cutoff of trade would represent a decision on the part of the international community to drive the Cuban economy into the ground and to inflict harsh, predictable misery on the Cuban people. This would be the practical equivalent of a blockade and the moral equivalent of siege warfare. Absent an act of war committed by Cuba, it would be impossible to justify such an action against the Cuban population.

### **THE 2004 FAMILY SANCTIONS**

The new sanctions imposed in 2004 as a result of the first report of the Administration's Commission on Assistance to a Free Cuba, specifically the new regulations that limit assistance and visits to Cuban families, mark a turning point in U.S. sanctions policy.

One finds only one remotely comparable measure in the U.S. sanctions levied against Burma; remittances to households are restricted to \$300 every three months, and the remittances can be sent to relatives and non-relatives alike.

The 2004 Cuba family sanctions are far more extensive, a carefully crafted set of measures that directly target the welfare of families. Cutting through their regulatory language, the impact of these sanctions is as follows:

- Americans, including those not of Cuban descent, can no longer send cash remittances to Cuban families with which they have no blood or marriage relation.
- The definition of “family” is changed so that cousins, aunts, uncles, nephews, and nieces are excluded; Cuban Americans may not visit these relations at all nor may they send them remittances.
- Cuban Americans may visit immediate family once every three years for no more than 14 days. There is no exception for humanitarian emergency or bereavement. It is permissible to send remittances to immediate family, with a \$300 per three-month limit.
- Gift packages sent to immediate relatives may no longer include clothing, seeds, personal hygiene items, veterinary medicine, fishing equipment, and soap-making equipment. One may continue to send food, medicine, medical equipment, radios, and batteries. In the Federal Register notice of this action, it was explained that the prohibited items “decrease the burden on the Cuban regime to provide for the basic needs of its people.”

### JUST WAR IMPLICATIONS

These new sanctions brought to mind an article that historian Luis Aguilar, my former professor at Georgetown University and a university classmate of Fidel Castro, wrote in *El Nuevo Herald* in 1999 as Congress began to consider legislation to allow food sales to Cuba. In the article, “*Reevaluando el embargo*,” Professor Aguilar argued through an analogy that the embargo may have lost its practical and moral justification:

... it is possible to defend the bombing of a town, if this hard punishment succeeds in weakening or defeating an enemy. But if it is demonstrated that the bombardment, or any such action, is hurting the people but is far from weakening the military power of

the enemy, it would be necessary to stop the attack and resort to other methods.

Without citing Just War theory, Professor Aguilar was making clear reference to this body of thought by focusing on two of its standards. First is one of the theory’s standards for judging the decision to wage war (*jus ad bellum*): that the party may only reach that decision in a just manner if it has a clear prospect of success. Infliction of endless suffering, even in a just cause, is not a justifiable use of force. Second is one of the standards for judging *jus in bello*, or just means of waging war, which holds that a warring party has an obligation to discriminate between combatants and noncombatants in its use of force.

While the United States is using economic sanctions and not military force against Cuba, I argue that its actions can fairly be evaluated under Just War standards for two reasons.

First, while economic sanctions are often used to exert an intermediate level of pressure that falls between diplomatic statements and the use of force, the aim of the U.S. sanctions against Cuba is equal to that of an armed conflict: to bring an end to a foreign government. The Administration does not apply the term “regime change” to its Cuba policy, but it clearly aims to change Cuba’s political order—to “hasten the end of the dictatorship in Cuba,” in Secretary Rice’s words. When the Commission’s 2004 report was released, the State Department announced that when Cuban President Fidel Castro leaves office, the United States “will not accept a succession scenario,” and “there will not be a succession” from one socialist government to another—two clear signals that the aim of the policy is to interrupt the process set forth in Cuba’s socialist constitution. And in specific regard to the 2004 family sanctions, a State Department official noted: “What is important to remember is that these are a means to an end: the end of the Castro dictatorship.”

Second, while U.S. sanctions affect the finances of the Cuban government, they also affect the welfare of Cuban citizens who are “noncombatants”—they are targeted by the sanctions because they live in Cuba, not because they have a specific affiliation with the

Cuban government. While U.S. sanctions are ultimately intended to change the Cuban government's behavior, the 2004 family sanctions in the first instance target family welfare, and use that impact as leverage to attempt to change Cuban government behavior.

### APPLYING JUST WAR STANDARDS

In this discussion, I will set aside the debatable issue of whether the United States meets the Just War standard of having a just cause in seeking to bring an end to the Castro government. For the sake of argument, I'll stipulate that the cause is just.

The second issue is whether U.S. actions discriminate between combatants and noncombatants, or between the government and ordinary citizens. By their very nature, the new family sanctions do not discriminate. In fact they target the welfare of ordinary citizens, regardless of the fact that the focus of policymakers is the secondary economic impact on the Cuban government when fewer visits take place, and fewer gift parcels and cash remittances arrive. The clearest example is that of an elderly Cuban woman dependent on a Miami cousin to send money each month to supplement her \$4-per-month pension. The Miami cousin, whose loved one in Cuba is now too-distant-a-relative under U.S. regulations, had to face a choice: stop the support or break U.S. law.

The third issue, and the most critical in assessing U.S. policy, is whether the package of family sanctions has a prospect of success, on its own or as part of a larger "war" effort. In that they are part of a larger set of measures, all should be taken into account in this evaluation.

That package includes three main measures that have the task, under both Commission reports, of "hastening" Castro's downfall: the sanctions themselves, aid to dissidents, and U.S. government broadcasts. It is a tough task; regardless of our disagreement with Cuba's form of government, its 47-year tenure indicates political stability. According to former CIA director Porter Goss last year, "Castro's hold on power remains firm."

**Sanctions:** The Administration's policies assume that the ups and downs of the Cuban government's

hard currency earnings affect its hold on power. For that reason, the Administration added the 2004 family sanctions and estimates that it is cutting Cuban hard currency earnings by \$500 million per year.

But meanwhile, the CIA estimates that Cuba's economy grew at a rate of eight percent last year, a \$3 billion increase in economic output. Advances in the tourism, mining, and energy industries, combined with credits and subsidies from Venezuela and China and relationships with other economic partners, are allowing Cuba to absorb, if not ignore, the impact of Washington's new sanctions. (The State Department's Cuba Transition Coordinator testified last month that Venezuela's support for Cuba approaches \$2 billion annually.) Officials argue that U.S. sanctions drain resources that Cuban security agencies need for surveillance and repression of political dissidents—but reports from Cuba indicate, if anything, that the repression is increasing.

**Opposition aid:** Cuba's dissidents are valiant, and they have advanced important alternative public policy ideas. The Varela Project, a pro-reform petition drive, moved the opposition from the realm of human rights monitoring and policy criticism to citizen participation.

Yet by any measure, Cuba's opposition is not in an advanced state of development as a political movement. The signs that marked the growth in Eastern Europe's anti-communist opposition movements—large public demonstrations, the co-opting of state and party institutions such as official labor unions—are not present in Cuba.

Cuba's opposition faces significant obstacles. Many Cubans, especially youth, are disaffected from politics of any stripe. Dissatisfied Cubans rarely think of joining an opposition group—they concentrate on resolving immediate family needs, or they see emigration as a more promising solution. Moreover, Cubans know that dissident groups are infiltrated. In 2003, Havana unmasked twelve state security agents in the opposition's ranks; their stories were then told in detail in Cuban print and broadcast media.

Aid from the U.S. government or other outside sources does not seem to be the key variable affecting

the movement's strength, and there is little basis to expect that the additional \$46 million in taxpayer funds that have been promised over the next two years will make a difference. Arguably, many forms of U.S. "support"—especially those announced in public, in Miami, with fanfare—do Cuba's dissidents more harm than good.

The Cuban Democratic Directorate, a Miami organization that receives U.S. government funds, reports each year on the Cuban opposition's activities. Its latest report showed a 36 percent increase in the number of opposition actions between 2003 and 2004, from 1,328 to 1,805. However, the report described a decrease in the "intensity" of those actions because most—1,701, or 94 percent—are vigils in homes on behalf of political prisoners, protests carried out by prisoners themselves, or similar activities. Meanwhile, acts of more direct confrontation with the government declined 74 percent between 2002 and 2004.

**Broadcasting:** The 2004 Commission report emphasized efforts to strengthen the signal of Radio and TV Marti, including purchase of an airplane fitted with transmitters, to overcome Cuban jamming. However, while Radio Marti's AM signal is jammed, its shortwave signal is not. In spite of the fact that many Cubans have shortwave radios, Radio Marti's weekly listenership stands at only 1.7 percent of the Cuban audience, according to a 2005 Administration estimate. Apart from jamming, Radio Marti's audience is clearly limited by program quality, according to reports from Cuba.

### CONCLUSION

Taken together, this trio of policies seems to have no prospect of being politically decisive in Cuba, hence

no prospect of success according to the standards that Just War theory would apply.

The political programs—radio broadcasts and aid to dissidents—increasingly seem to be an effort to ignite from the outside a movement that, in order to gain real political strength, requires indigenous sparks. There seems to be far more organized political opposition abroad than inside Cuba.

The Bush Administration's Cuba family sanctions have precisely the impact that Just War theory teaches states and statesmen to avoid: They harm innocents while leaving the king unscathed. The restrictions on visits and material assistance hurt the Cuban families who are their direct target—but they are of little to no consequence to the Cuban government except as fodder for propaganda. The sanctions and other U.S. "transition" policies are highlighted all around Cuba in billboards, articles, and broadcasts.

In that the family sanctions are ineffective in achieving the Administration's goal, both on their own and as part of a larger policy package, they clearly fail to meet the standards in Just War theory that counsel against actions that cause human suffering with no prospect of ultimate political success.

"We honor the warm family ties, the faith, the history, and the heritage that unite us all," President Bush said in a taped message to the Cuban people in May 2005.

Through a change in course that eliminates his 2004 family sanctions, the President would better honor those family ties, his own family values, and the American interest in a policy toward Cuba that is both ethical and effective.