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CUBA AND THE EUROPEAN UNION:

The Difficulties of Dialogue

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THE SUSPENSION OF NEGOTIATIONS FOR A COOPERATION AGREEMENT

When the Cuban air force shot down two US civilian aircraft on 24 February 1996 it marked the beginning of a toughening of the situation in Cuba. The incident provoked two external reactions: the enactment, on 12 March 1996, of the Helms-Burton law, which reinforces the US embargo on Cuba; and the interruption of negotiations with the European Union (EU) on a possible cooperation agreement. Future relations between the EU and Cuba currently depend on three key factors: the internal situation in Cuba; the impact of the Helms-Burton law on the process of reform in the country and on European economic interests; and progress made in the continuing EU-Cuba dialogue.

On 7 May 1996 European Commission Vice-president Manuel Marín announced in an official communiqué that the conditions for submitting a draft cooperation agreement had not been met within the term established by the European Council at the Madrid summit of 15-16 December 1995. He stressed that although the EU would not for the moment negotiate an accord, it would continue political dialogue with the Cuban government. This announcement lowered expectations that relations with the island would be normalized, and Cuba remains the only Latin American country that has no cooperation accord with the EU. Negotiations with Havana were suspended in response to two developments:

First, the shooting down of two US civilian aircraft that had allegedly violated Cuban air space. All four crew-members, belonging to the Miami-based Cuban exile group "Brothers to the Rescue", were killed in the incident. On the same day, Concilio Cubano, a coalition of some 130 dissident groups, had planned a public meeting in Havana to celebrate the 20th anniversary of the Cuban Constitution and to test the charter's guarantee of the right to free assembly and free association. Several days before the incident, the police began detaining members of Concilio Cubano, causing the Havana meeting to be cancelled.

Second, the differences between the EU and Cuba regarding the release of political prisoners and political liberalization on the island. The EU insisted on the need for democratic concessions by the Cuban government, since all EU cooperation agreements are linked to the political situation in the signatory countries. Cuba argued that negotiations should be held without pre-conditions and that it would not accept "excessive" political demands or give any guarantee that reforms would continue.

Both factors were decisive in halting the process begun in 1995, when a number of factors suggested a substantial change in EU-Cuban relations:

- In response to the Commission's recommendation of 28 June 1995 that exploratory talks with Cuba be initiated, a delegation of the EU *troika* (France, Italy and Spain) visited Cuba on 6-10 November to hold talks with the government on the possibility of signing a cooperation agreement.
- In the Madrid summit of 15-16 December, the European Council approved the continuation of dialogue with Cuba and asked the European Commission to present

a draft negotiation mandate for a cooperation agreement, to be examined by the Council in the first half of 1996.

- Commission Vice-president Manuel Marín met Fidel Castro and members of the Cuban government during a visit to Cuba on 8-10 February 1996 to negotiate the most contentious aspects of the proposed accord: amnesty for political prisoners and a democratic opening. After meeting prominent members of the opposition, including representatives of Concilio Cubano, he announced that political considerations posed obstacles to an agreement.

This position was confirmed during the 7 May visit to Brussels of Isabel Allende, Vice-Minister for Foreign Relations, despite her affirmation of Cuba's interest in reaching an agreement with the EU. Political differences, as well as the destruction of the two planes - an act that was condemned in official statements by the European Council and the European Parliament (EP) - halted negotiations on an accord with Cuba. The current stagnation is reminiscent of the situation in 1989-1990, when Europe and Cuba began a process of rapprochement that was abruptly paralyzed by the "embassies crisis", when hundreds of Cubans took refuge in European diplomatic missions in Havana. This, then, is the second occasion that an improvement in relations has been interrupted by an external incident.

THE INTERNAL SITUATION IN CUBA

Several factors now indicate a hardening of the **political climate in Cuba**. The "planes crisis", which led to the passing of the Helms-Burton law, was closely linked to the Cuban domestic situation. Many analysts consider it no coincidence that the aircraft were attacked on the same day as the meeting planned by Concilio Cubano and the 20th anniversary of the entry into force of the Cuban constitution. Police actions against Concilio were interpreted as a response to the strengthening of Cuban dissident groups and their heightened organizational capacity. In this context, the downing of the aircraft entailed both costs and benefits for the Cuban regime:

- the passing of the Helms-Burton law whose sanctions (despite their economic cost) have provoked a dispute between the United States and the EU, and have strengthened Cuba's position in Latin American and international fora with regard to the embargo;
- the Cuban regime's international image was considerably damaged by the human rights violations (the death of the aircraft's four crew-members and the reprisals against Concilio Cubano);
- the incident could also adversely affect talks with moderate exile groups which began in 1994, since it has strengthened the position of hardliners in Miami;
- by focusing attention on an external threat, the incident allowed an internal realignment around the socialist regime.

The latter point was reflected in the report by the Central Committee on the country's political and social situation, presented on 23 March 1996 by Raúl Castro, Minister for the Revolutionary Armed Forces and considered by some analysts to be a representative of the regime's "conservative" wing. The report was interpreted by some analysts as a warning to reformist sectors both within and outside the regime. It is worth noting in that respect that, for the first time, a Politburo document was published in full in *Granma* and that part of the debate was broadcast on television.

According to the report, the United States is using a two-track strategy to bring about the downfall of the Cuban government: economic "strangulation" through the embargo, and the destabilization of the regime from within. With regard to the latter strategy of internal subversion, the document criticized the activities of "free-thinkers" in certain academic institutions, non-governmental organizations (NGOs) and the media. To combat these trends, the Cuban Communist Party would impose a single, consistent and tough policy. The report also denounced delinquency, speculation and prostitution. The current police campaign against drug-trafficking and prostitution, as well as the possible amendment of the Criminal Code, not only reflect Cuba's growing social problems but also indicate a stricter policy against illicit activities. This suggests that Fidel Castro used the toughening of US policy against Cuba to carry out an internal readjustment designed to limit political activity and halt the possible advance of reformers and opposition movements. To this end, the position of conservative sectors in the party and the army has been strengthened, at least for the moment.

Although there are no signs of immediate political change in Cuba, three crises in the post-Cold War era are indicative of the climate of political tension:

- the "embassies crisis" in the summer of 1990, which ended with the voluntary exile of hundreds of Cubans;
- the "boat-people crisis" in the summer of 1994, when many Cubans died in the attempt to leave the country on flimsy craft and when, on 5 August, thousands openly protested against the regime in Havana;
- the "planes crisis", which was closely linked to the meeting planned by Concilio Cubano.

In order to overcome these crises, particularly in the latter two cases, attention was diverted away from internal problems and towards external factors - usually the United States. In the "boat-people crisis" the Cuban government singled out US immigration policy as the cause of the problem. The United States was forced to accept the "boat people" and change its immigration policy towards Cuba. On 4 September 1994, both governments signed an immigration accord which ended the previous automatic right to political asylum for Cubans and established an annual quota of 20,000 visas.

The planes crisis may be viewed in a similar light. Some observers argue that the destruction of the aircraft diverted attention away from the lack of freedom of expression in Cuba and towards the need to close ranks in the face of an external threat from the United States. Castro thereby achieved a dual aim: he showed that Cuba defends its sovereignty against alleged incursions, and he used the Helms-Burton law to justify a tightening of internal control. This interpretation is at odds with the official Cuban

version and also with the opinion of other observers, who argue that Brothers to the Rescue had previously violated Cuban air space on many occasions to carry out political acts (dropping leaflets), which justified a strong reaction from Cuba.

The incident may also have repercussions for the liberalization process and the **economic situation in Cuba**. Some observers have suggested that the Castro government might use the planes crisis as an excuse for slowing down economic liberalization. The Cuban administration, on the other hand, has stressed that the process of economic reform is irreversible and will continue as planned. Since 1993, the government has introduced a number of measures designed to allow Cuba to survive without help from the former socialist bloc and adapt at least part of its economy to market conditions:

- The holding of foreign currency was legalized on 26 July 1993. This was the first step towards a growing "dollarization" and the co-existence of an official economy in pesos and another in dollars. Government sources state that half the Cuban population has access to dollars.
- On 8 September 1993, self-employment was authorized in 135 sectors, where 208,000 people now work. This measure came in response to the growing problem of unemployment which, according to the Ministry of Labour, affects 9% of the population in Havana; according to some experts, it could be as high as 20% in some provinces.
- One week later, a decree-law converted state-owned farms into smaller cooperatives and parcels of land were handed over to individuals.
- The Free Agricultural and Livestock Market and the Free Industrial and Craft Market were opened at the end of 1994, under the condition that state demand be met first.
- A new investment law came into force on 5 September 1995. This law opens up almost all sectors of the Cuban economy to foreign investors and authorizes the creation of companies with 100% foreign capital.
- As a counterpart to this law, on 6 June 1996 the establishment of free zones and industrial parks free from customs duties and taxes was approved. This is largely an attempt to counteract the negative effects of the Helms-Burton law.

Such reforms led to a slight economic recovery in 1995: official figures show that GDP rose by 2.5%, the public deficit fell and foreign direct investment reached a total of \$2.1 billion. Earnings from tourism rose 20% over the previous year. The government predicts economic growth of 5% in 1996, and sugar production of 4.4 million tonnes, after the previous year's crop had fallen to an historic low of 3.3 million tonnes.

Two factors might slow economic recovery: the impact of the Helms-Burton law on new investment inflows, and the internal situation on the island, which may cause a slowing of the pace of reforms. The recent imposition of a number of bureaucratic obstacles and taxes on the self-employed have been interpreted as an early sign of this. Economic

liberalization has caused a break with the traditional systems of Cuban society and has led to a greater social differentiation among the population. Reforms have also provoked discussion and the formulation of new ideas among the population. The liberalization process has presented the government with a dilemma: economic recovery is only possible with resources from abroad, which requires some adaptation to market conditions and reduces the state's control over the economy. Furthermore, the price to be paid for limiting the scope for private initiative could be greater international isolation and a possible reduction of investment inflows. Recent events in Cuba suggest that, contrary to official declarations, the government might have chosen the latter option.

European business executives have hitherto played an active role in the incipient process of economic reform in Cuba, benefitting from the new business opportunities that the country offers to foreign investors. Although in 1989 only 6% of Cuba's foreign trade was with the EU, Europe is now a key partner: in 1994 it was the main market for Cuban imports (38%) and exports (29%). It is also Cuba's second-largest foreign investor - almost half of the 230 joint ventures have European capital - and is its most important source of economic and humanitarian cooperation, which increased from 6 million ECUs in 1993 to 15 million ECUs in 1995. Due to their increasing economic activity on the island, Germany, Italy, Spain, and the United Kingdom have signed agreements for the reciprocal promotion and protection of investments with Cuba, while France and the Netherlands are negotiating similar accords.

THE IMPACT OF THE HELMS-BURTON LAW ON EU-CUBAN RELATIONS

European investment and reform in Cuba are threatened by the enactment, on 12 March 1996, of the *Cuban Liberty and Democratic Solidarity Act*, otherwise known as the Helms-Burton law, in response to the destruction of the two civilian aircraft. Since its most controversial provisions had been re-incorporated, the version signed by the US president was harsher than that approved by the House and the Senate in 1995. Considering that Bill Clinton had previously spoken against the law and that there was some speculation that he would veto it, its passing is closely linked to the US election campaign and the chance to win votes in the Cuban-American community.

The law codifies the existing embargo against Cuba, effectively making it US law. It can not be lifted by presidential decree, but only by an act of Congress, and only then if there is a transition to democracy on the island. The law also provides a number of extra-territorial measures that affect all countries investing in Cuba:

- Title III stipulates that US citizens whose property was confiscated by the Castro government can file claims before the US federal courts against companies that "traffic" in expropriated assets. The law allows compensation of up to three times the original value of the assets or conversion of the assets to investment, which has been interpreted as an indirect formula for US companies to enter Cuba. The US Foreign Claims Settlement Committee has already recognized 5,911 claims and, after 1998, Cuban-Americans can register their confiscated assets and file claims.

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- Title IV prohibits company executives, shareholders and their families that "traffic" in former US properties in Cuba from entering the United States. This sanction affects companies which continue in Cuba after 12 March.

Although there is no official information as yet, the first "blacklists" have been published and the United States has already sent warning letters to some companies. European sources suggest that the law could, in theory, affect over 100 European companies. The large companies involved include *Sheritt International* from Canada, the Mexican *Domos* telecommunications company and the *Cemex* cement company, Spain's *Grupo Sol* and *Argentaria*, the *Benetton* textile company and the *STET* telecommunications company from Italy, *Pernod/Ricard* from France, the *Tate & Lyle* sugar company from the United Kingdom and *Mercedes Benz* from Germany.

The Clinton administration will inevitably face growing opposition to the Helms-Burton law from its main trade partners: the EU, Canada and Latin America. There has been a unanimous, negative reaction throughout the hemisphere:

- the Cuban government described the law as unacceptable and on 23 March 1996 filed a formal claim at the World Trade Organization (WTO);
- on 27 May the Rio Group issued a statement condemning the law; the Group is studying counter-measures;
- Mexico and Canada have stated that the law violates the rules of the North American Free Trade Agreement (NAFTA) and have threatened trade reprisals;
- on 4 June 1996, with only the United States voting against, the Organization of American States (OAS) passed a resolution on freedom of trade and investment in the hemisphere in which it requests that the legal validity of the extra-territorial measures of the Helms-Burton law be verified.

The EU, Canada and Mexico consider that the law violates international law and is incompatible with WTO rules, according to which unilateral trade sanctions are only legitimate if they have been approved by international bodies or treaties. The United States, for its part, refers to international law on expropriations. However, the Helms-Burton law has a wider impact than a mere legal dispute or protection of business interests in Cuba. Most of the United States' trading partners consider that Washington is violating the international rules of free trade by passing unilateral sanctions that restrict investment by third countries. European Commission officials recalled that in the New Transatlantic Agenda, signed on 3 December 1995 in Madrid, the United States committed itself to free trade. The fact that the United States is preparing similar sanctions against Libya and Iran - where European economic interests are much greater than in Cuba - has fed the suspicion in the EU that the Helms-Burton law could be the first of a number of laws designed to defend US interests, to the detriment of international trade rules.

Such fears have made the law a point of conflict in relations between the EU and the United States. The governments of Cuba's main trading partners in the EU - France, Germany, Italy, Spain and the United Kingdom - have filed official protests against the extra-territorial measures, although the United Kingdom is still the only European country to have passed its own law prohibiting the application of extra-territorial

sanctions and to consider trade reprisals. In view of the extent of the dispute, the EU has adopted a number of specific measures:

- on 26 April the European Council condemned the extra-territorial provisions which were classified as a unilateral measure that conditions and restricts the EU's economic relations with third countries;
- as a result of this statement, the European Commission began steps to negotiate an agreed solution with the United States in the WTO;
- the EP Resolution of 24 May 1996 requested that the European Council draw up a regulation prohibiting compliance with the extra-territorial provisions.

If bilateral negotiations with the United States break down, the EU could begin legal proceedings at the WTO and, finally, adopt trade reprisals. Nevertheless, European Commission officials consider that the EU is unlikely to go so far. From the European point of view, it would be a risky initiative since the United States is the EU's main trade partner and an open trade war would not appear advisable.

The Helms-Burton law was one of the matters discussed at the EU-United States summit on 12-13 June in Washington although, in view of the current process of consultation in the WTO, it was not an outstanding issue on the agenda. On that occasion, the President of the European Commission, Jacques Santer, again emphasized the EU's rejection of the extra-territorial provisions. Given the EU's strong reaction, it is possible that the more controversial extra-territorial provisions may be toned down in order to prevent a trans-Atlantic trade dispute. Any decision on a possible implementation of the law must be made by 1 August 1996 since Title III, on the protection of US property in Cuba, comes into force on that date. According to the law, the president may suspend this provision for an indefinite period every six months if such a delay "is necessary to the national interest and will expedite a transition to democracy in Cuba".

Although it is likely that the extra-territorial provisions will only be applied selectively, they will have a psychological effect in the European business community, since investing in Cuba is now riskier than before. Predictions on the direct impact of the law vary: some experts consider that it will be minimal because it will not be possible to apply the measures; others foresee a reduction in new investments, although they consider that disinvestment will be negligible. For the moment, the Mexican company *Cemex* and the Spanish companies *Occidental Hoteles* and *Paradores de Turismo* are the only enterprises to have announced their withdrawal from the island, although, according to the Cuban Minister for Foreign Investment, Ibrahim Ferradaz, no company has given notice that it is abandoning its business in Cuba.

PROSPECTS FOR DIALOGUE BETWEEN THE EU AND CUBA

Although the Helms-Burton law could have an impact on economic relations, the internal situation in Cuba is central to any speculation about the country's future cooperation with Europe. The EU and its Member States have made it clear that a cooperation agreement with Cuba depends on significant political gestures, such as reform of the criminal code or the granting of more freedom for private initiative. In

this context, the report by the Politburo of 23 March was a setback in relations, particularly considering that the EU had given significant support to the NGOs and non-state sectors emerging on the island.

Although there will be no negotiations on a cooperation agreement for the moment, the EU has stressed that it will continue its dialogue with the Cuban authorities. This reveals a more flexible position than US policy on Cuba. Indeed, many Europeans consider that the embargo has not yielded any positive result, but has rather contributed to preventing democratic reform in the country. Unlike the United States, the EU considers that dialogue and support for the liberalization process in Cuba are more effective ways to encourage reform. Nevertheless, in its Madrid declaration, the European Council clearly stated that the United States and the EU may have chosen different methods, but they share a common aim: peaceful transition to democracy in Cuba.

After the passing of the Helms-Burton law and the tightening of the internal situation in Cuba, several factors indicate that the climate for dialogue has become less favourable:

- 1996 saw the end of the EU *troika* of Italy, Spain and France which, because of their historical and/or trade links with Cuba, were more interested than other EU Member States in signing a cooperation agreement with the country. It may be more difficult to resume the process of negotiation on an agreement with successive *troikas*.
- With the change of government in Spain and France, these countries changed their policy towards Cuba. Although the Partido Popular (PP) in Spain is opposed to the Helms-Burton law, it has altered the former government's policy towards Cuba. This was evident during the visit by US Vice-president Al Gore to Madrid on 25 May 1996, when José María Aznar announced the suspension of Spanish aid to Cuba, with the exception of humanitarian aid.
- The passing of the Helms-Burton law and the tougher US policy towards Cuba entails a greater risk for the EU if a cooperation agreement is eventually signed, since this step could worsen the European-US dispute over Cuba.

The most likely scenario for relations between Europe and Cuba is the maintenance of the *status quo*, with political dialogue, humanitarian and economic cooperation, trade and a similar or lower level of investment, due to the impact of the Helms-Burton law. In view of the recent interruption to the dialogue, the Vice-president of the European Commission, Manuel Marín, stated that negotiations on a cooperation agreement are unlikely to resume before the US presidential elections on November 4 this year.

The creation of NGOs on the island, economic reform and the incipient talks with moderate exile groups show that in recent years new areas of debate have opened up in Cuban society. The recent ideological campaign against certain state-run academic institutions shows that there are also greater differences of opinion within the regime. It is difficult to predict the outcome of these growing internal differences and contradictions. In any case, the current internal climate in Cuba shows that, contrary to some predictions made before the crisis, a political opening now seems less likely. Recent events have substantially lowered expectations of both an early signing of a cooperation agreement and of greater political liberalization.