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### Recommended Citation

Sadowski, Richard. "Cuban Offshore Drilling: Preparation and Prevention within the Framework of the United States' Embargo." *Sustainable Development Law & Policy* 12, no. 1 (2011): 37-39, 63-65.

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# CUBAN OFFSHORE DRILLING: PREPARATION AND PREVENTION WITHIN THE FRAMEWORK OF THE UNITED STATES' EMBARGO

by *Richard Sadowski\**

## INTRODUCTION

Cuba plans to drill seven exploratory oil wells in the Gulf of Mexico by 2014.<sup>1</sup> Some argue that the threat of Cuban offshore oil drilling will increase the embargo's costs and that U.S. oil companies will miss out on oil exploration that will go to foreign countries.<sup>2</sup> In response, some U.S. lawmakers and U.S. oil lobbyists have advocated for an exception to the Cuban embargo permitting energy cooperation.<sup>3</sup> Notwithstanding these concerns, the long-standing Cuban embargo is an economic restriction with a significant purpose and should not so easily be forsaken.

This article argues that, despite the added pressure Cuba's offshore oil developments have placed on U.S. policy, the embargo's twin goals of bringing democracy to the Cuban people and ending their oppressive rule have not been met. Thus, now is not the time to lift or ease the embargo. The embargo itself serves to restrict Cuba's drilling efforts<sup>4</sup> and new legislation may further hamper Cuba's exploration.<sup>5</sup> Additionally, the economic concerns of the U.S. energy industry do not warrant a change in the U.S. foreign policy toward Cuba, and those concerns can be better met by tapping U.S. resources. Furthermore, fears of a Cuban oil spill can be assuaged through less drastic measures such as an oil spill emergency response agreement with Cuba, similar to the one that the United States has enacted with Mexico.

## THE EMBARGO

In 1960, President Eisenhower ended U.S. sugar purchases from Cuba and halted all oil deliveries to Cuba in response to the then new communist government under Fidel Castro.<sup>6</sup> These sanctions were put into place to destabilize Castro's new government and promote democracy.<sup>7</sup> The Foreign Assistance Act of 1961 authorized the president to impose a "total embargo upon all trade between the United States and Cuba."<sup>8</sup> On February 7, 1962, President Kennedy signed an Executive Order<sup>9</sup> utilizing this authority to initiate the Cuban embargo.<sup>10</sup> This was followed by the enactment of the Cuban Assets Control Regulations on July 8, 1963,<sup>11</sup> under the Trading with the Enemy Act ("TWEA").<sup>12</sup>

In 1996, during the Clinton administration, the Helms-Burton Act<sup>13</sup> was passed in an effort to prevent foreign companies from trading with Cuba.<sup>14</sup> The Helms-Burton Act also codified much of the embargo as well as restricted the power of the President to unilaterally remove the embargo.<sup>15</sup> President Obama recently eased restrictions through the Omnibus Appropriations Act of 2009<sup>16</sup> and has planned even further changes.<sup>17</sup>

The Cuban government applauded these new measures, but averred that the United States did not go far enough to ease the economic sanctions.<sup>18</sup> According to the Cuban Foreign Minister, Bruno Rodriguez, U.S. policy has, in fact, become more restrictive.<sup>19</sup> Indeed, these changes stop well short of ending the embargo<sup>20</sup> or even opening dialogue between the United States and Cuba.<sup>21</sup> Ultimately, trade between the United States and Cuba remains heavily restricted.

## RESTRICTIONS RELEVANT TO CUBA'S OIL EXPLORATION

The embargo on Cuba has widespread and significant economic effects for both the United States and Cuba. Various provisions of the embargo impact Cuba's ability to obtain U.S. technology and to work with U.S. companies.<sup>22</sup> Additionally, TWEA prohibits U.S. oil exploration companies from dealing with Cuba by prohibiting the transfer of assets in which the Cuban government or Cuban nationals have an interest.<sup>23</sup>

On September 9, 2009, Platte River Associates ("PRA"), a U.S. company, was fined for violating TWEA.<sup>24</sup> PRA sold oil and gas exploration software to the Spanish oil company Repsol<sup>25</sup> even though PRA was told that the software was being utilized for drilling in Cuban waters.<sup>26</sup> Describing the seriousness of the violations, United States Attorney David Gaouette explained that "[t]rading with the enemy is a serious crime, and in this case, a Colorado company has been rightfully held accountable for committing that crime."<sup>27</sup> PRA was sentenced to a fine of \$14,500 for its violations.<sup>28</sup> This case exemplifies the extent of the embargo and the related laws to restrict Cuba's access to offshore-drilling technology.

## INCREASED PRESSURE TO END THE EMBARGO

A U.S. Geological Survey estimates that Cuba's offshore oil fields hold at least four and a half billion barrels of recoverable oil and ten trillion cubic feet of natural gas.<sup>29</sup> Cupet, the state-owned Cuban energy company, insists that actual reserves are double that of the U.S. estimate.<sup>30</sup> One estimate indicates that Cuba could be producing 525,000 barrels of oil per day.<sup>31</sup> Given this vast resource, Cuba has already leased offshore oil exploration blocks to operators from Spain, Norway, and India.<sup>32</sup> Offshore oil discoveries in Cuba are placing increasing pressure for the United States to end the embargo. First, U.S. energy companies are eager to compete for access to Cuban oil reserves.<sup>33</sup>

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Secondly, fears of a Cuban oil spill are argued to warrant U.S. investment and technology.<sup>34</sup> Finally, the concern over Cuban offshore drilling renews cries that the embargo is largely a failure and harms human rights.

#### ECONOMICS: U.S. COMPANIES WANT IN

For U.S. companies, the embargo creates concern that they will lose out on an opportunity to develop a nearby resource.<sup>35</sup> Oil companies have a long history of utilizing political pressure for self-serving purposes.<sup>36</sup> American politicians, ever fearful of high energy costs, are especially susceptible to oil-lobby pressures.<sup>37</sup> This dynamic was exemplified in 2008, when then-Vice President Dick Cheney told the board of directors of the U.S. Chamber of Commerce that “oil is being drilled right now sixty miles off the coast of Florida. But we’re not doing it, the Chinese are, in cooperation with the Cuban government. Even the communists have figured out that a good answer to high prices is more supply.”<sup>38</sup>

This pressure for U.S. investment in oil is exacerbated by America’s expected increase in consumption rates.<sup>39</sup> Oil company stocks are valued in large part on access to reserves.<sup>40</sup> Thus, more leases, including those in Cuban waters, equal higher stock valuation.<sup>41</sup> “The last thing that American energy companies want is to be trapped on the sidelines by sanctions while European, Canadian and Latin American rivals are free to develop new oil resources on the doorstep of the United States.”<sup>42</sup>

#### THE BP DISASTER ADDS TO CONCERNS

Further pressure on the embargo comes from those voicing environmental concerns about Cuba’s drilling plans.<sup>43</sup> These concerns are undoubtedly more poignant in the wake of British Petroleum’s (“BP”) historically tragic Deepwater Horizon oil spill.<sup>44</sup> Currently, there is no agreement between the United States and Cuba to deal with oil spills.<sup>45</sup> The embargo would prevent, or at least hamper, any efforts by U.S. companies to aid any cleanup efforts.<sup>46</sup> In addition, the embargo bans U.S. technologies designed to prevent or contain oil spills from being sold to Cuba.<sup>47</sup>

David Guggenheim, a senior fellow at the Washington Ocean Foundation punctuated the United States’ concerns over the potential impacts of Cuba’s drilling by remarking that “the Gulf isn’t going to respect any boundaries when it comes to oil spills.”<sup>48</sup> This statement was recently exemplified by Cuba’s own expressed fears that oil from the BP disaster would reach its shores.<sup>49</sup> The Deep Horizon oil spill’s threat was enough that several Cuban leaders called for the reexamination of Cuba’s own plan to extract oil off its shores.<sup>50</sup> Nonetheless, Cuba’s oil exploration plans seem unfazed.<sup>51</sup>

#### OPPONENTS ARGUE THE EMBARGO HARMS HUMAN RIGHTS AND DOES NOT WORK

Many critics of the embargo complain that the policy is inherently ineffective and actually exacts a human toll.<sup>52</sup> They note that many of the societal ills of the Cuban people are furthered by the embargo’s economic impacts on Cuba.<sup>53</sup> For instance, the American Association for World Health’s year-long study of Cuba concluded that the embargo itself has led

to increased suffering and death in Cuba, a condition that has been aggravated by the passage of the Helms-Burton Act.<sup>54</sup> The study found that “the declining availability of foodstuffs, medicines and such basic medical supplies as replacement parts for 30-year-old X-ray machines is taking a tragic human toll.”<sup>55</sup> Further, they argue that the opposition of the Cuban people to the embargo is ignored.<sup>56</sup> Opponents view the embargo as a hypocritical U.S. policy that allows enthusiastic trade with China, a communist nation where political oppression is at least as great as in Cuba.<sup>57</sup> These criticisms put further demands on the United States to end the embargo in the interest of human rights.<sup>58</sup>

### DEALING WITH CUBA’S OIL PLANS WITHOUT COMPROMISING THE EMBARGO

#### THE EMBARGO IS STILL NECESSARY

Despite calls for its revocation, the embargo’s purpose is as important now as when it was enacted. Cuba is still an oppressive country.<sup>59</sup> Cubans may not leave the country without permission and still lack fundamental freedoms of expression.<sup>60</sup> José Miguel Vivanco, the director of Americas division at Human Rights Watch, notes that as “Cuba’s draconian laws and sham trials remain in place, [the country] continue[s] to restock the prison cells with new generations of innocent Cubans who dare to exercise their basic rights.”<sup>61</sup> Moreover, a recent proposal by the Cuban Communist Party makes clear that there will be no change in the country’s oppressive one-party political system.<sup>62</sup> In doing so, the lengthy document declares “[o]nly socialism is capable of overcoming the current difficulties and preserving the victories of the revolution.”<sup>63</sup> Cuba’s treatment of its own citizens is a situation the United States cannot ignore. The embargo’s twin goals of backing democracy and ending oppressive rule have not been met. Until they are, the embargo must remain in place.

### CALMING ENVIRONMENTAL FEARS WITH AN OIL SPILL RESPONSE AGREEMENT WITH CUBA

Fears that Cuban offshore drilling poses serious environmental threats because of the proximity to the United States and the prohibition on U.S. technology transfer are overblown. Cuba has at least as much incentive to ensure safe-drilling practices as does the United States, and reports indicate that Cuba is taking safety seriously.<sup>64</sup> Lee Hunt, President of the Houston-based International Association of Drilling Contractors, said, “[t]he Cuban oil industry has put a lot of research, study and thought into what will be required to safely drill,” and that “they are very knowledgeable of international industry practices and have incorporated many of these principles into their safety and regulatory planning and requirements.”<sup>65</sup> Thus, while the economic embargo of Cuba restricts American technology from being utilized, foreign sources have provided supplemental alternatives.<sup>66</sup>

Further, spill response planning can be implemented before drilling begins. The United States currently has oil spill response agreements with Mexico<sup>67</sup> and Canada,<sup>68</sup> but not with Cuba.<sup>69</sup> As the Deepwater Horizon spill highlighted, planning for disaster is essential. To achieve this goal, the United States can model

a Cuban plan on the Joint Contingency Plan between the United Mexican States and the United States of America Regarding Pollution of the Maritime Environment by Discharge of Hydrocarbons or Other Hazardous Substances (“MEXUS Plan”).<sup>70</sup> That plan originates from an agreement between Mexico and the United States signed on July 24, 1980, and developed in accordance with the International Convention on Oil Pollution Preparedness, Response and Cooperation, adopted on November 30, 1990.<sup>71</sup> The Plan pre-designates on-scene coordinators, a joint response team, response coordination centers, rapid notification protocols, and communications procedures for the event of an oil disaster.<sup>72</sup> The Plan has triumphed in test simulations, which validates its concepts.<sup>73</sup>

The United States must initiate the same level of planning with Cuba. Given the proximity of potential Cuban wells to the Florida coast, the need for a contingency plan is clear. Fortunately, the MEXUS Plan provides a guiding framework upon which the United States and Cuba can draw. Furthermore, a recent Congressional report indicates that Cuba is open to certain bilateral agreements with the United States, noting Raul Castro’s willingness to engage with the United States where mutual interests exist.<sup>74</sup> Since an oil spill agreement is of mutual interest, both countries should work to draft and implement it.

#### THE UNITED STATES SHOULD FIRST UTILIZE U.S. OIL RESOURCES

The United States’ thirst for oil should first be quenched with local resources before resorting to end the embargo. Allowing U.S. companies access to Cuban offshore oil fields would effectively allow those companies to drill for oil in waters closer to the U.S. coast than laws currently allow.<sup>75</sup> J. Larry Nichols, Chairman of Devon Energy, an independent U.S. oil and natural gas producer, opined that “[w]hen U.S. companies are not even allowed to drill in the eastern half of the Gulf of Mexico, we have a long way to go before we can think about international waters off the coast of Cuba.”<sup>76</sup> If access to oil is indeed the main U.S. rationale behind lifting the embargo, this need is best met by first allowing companies to drill more extensively in U.S. waters.<sup>77</sup>

Moreover, dependence on other countries for oil is not a responsible option.<sup>78</sup> Because the United States has the best oil safety standards in the world, it is most environmentally competent to tap America’s own natural resources.<sup>79</sup> Furthermore, because drilling has yet to start, there is time yet for Cuban political change to occur.<sup>80</sup> Not only is there simply no pressing need for Cuban oil, as portrayed by U.S. oil lobbyists, but U.S. resources offer a more attractive alternative.<sup>81</sup>

#### RECENT ECONOMIC POLICY CHANGES IN CUBA SIGNAL THE END OF OPPRESSIVE CUBAN RULE

Economic pressure has been weighing heavy on the Castro regime, foreshadowing an end to its oppressive rule over Cuba.<sup>82</sup> When asked if Cuba’s economic system was still worth exporting, Fidel Castro admitted, “[t]he Cuban model doesn’t even work for us any more.”<sup>83</sup> Stephen Wilkinson, a Cuba expert at the London Metropolitan University, notes that Castro’s words

are not a condemnation of socialism but rather “an acknowledgment that the way in which the Cuban system is organized has to change . . . [w]e can now expect a lot more changes and perhaps more rapid changes as a consequence.”<sup>84</sup> Fidel’s departure as the leader of Cuba and Raul’s subsequent economic reforms are indicative of imminent political changes, and signal the end of communism in Cuba.<sup>85</sup> These developments may result in an improvement in Cuban human rights and social conditions. For example, Raul has already eased the impact of the world food crisis, released prisoners, and commuted death sentences.<sup>86</sup>

#### CONGRESSMAN BUCHANAN’S BILL TO STOP CUBAN OFFSHORE DRILLING IS THE PROPER ACTION FOR THE UNITED STATES

On January 21, 2011, Florida Congressman Vern Buchanan introduced a bill in the House of Representatives aimed at thwarting Cuba’s drilling efforts.<sup>87</sup> The bill would permit the U.S. Secretary of the Interior to deny drilling leases to foreign companies that deal with countries under U.S. trade sanctions, including Cuba.<sup>88</sup> Following the successful application of U.S. pressure on Repsol to pull out of drilling in Iran, Buchanan’s bill is designed to again put pressure on Repsol to pull out of Cuban drilling plans.<sup>89</sup> Buchanan’s bill could threaten Repsol’s projects elsewhere in U.S. territory where the company operates rigs near Texas and Louisiana.<sup>90</sup>

While the success of the bill is not yet certain,<sup>91</sup> foreign firms should seriously weigh the rewards of Cuban oil against the possible risk of being ostracized by America economically.<sup>92</sup> Mr. Buchanan’s bill is the proper approach for U.S. legislation and policy to make a stand against Cuba’s offshore oil exploration.<sup>93</sup>

#### CONCLUSION

Since its inception, the Cuban embargo has ebbed and flowed in severity and support. While the measure seems to be increasingly unpopular, it takes legitimate aim at a Cuban regime characterized by intolerance and oppression. Though the Castros utilize the embargo as a scapegoat upon which to blame Cuba’s failures,<sup>94</sup> recent changes suggest the embargo is indeed close to accomplishing its goals.<sup>95</sup> Despite this, critics, including U.S. oil producers, want the embargo dropped.

Regardless of criticism, the embargo must remain in place until its goals are met. Environmental fears can be effectively countered through bilateral response and preparation agreements with Cuba. Also, economic and energy needs are more properly addressed through drilling U.S. resources. Ultimately, with the aid of legislation such as Buchanan’s bill, the United States should exercise its political and economic power to pressure foreign companies to avoid offshore drilling in Cuba. The United States can dissuade foreign investment without compromising the embargo. It appears an end to oppressive communist rule in Cuba is nearing. Now is the time for the United States to both reject offshore drilling in Cuba and demonstrate resolve in meeting the goals of the economic embargo. 

**Endnotes:** Cuban Offshore Drilling: Preparation and Prevention within the Framework of the United States’ Embargo *on page 63*

<sup>102</sup> See *id.* (revealing ExxonMobil's contribution of \$70,600 to Sen. Cornyn's campaign).

<sup>103</sup> S. 782, 112th Cong SA 429 (proposing exclude listing of the lesser prairie chicken); S. 782, 112th Cong SA 397 (proposing exclude listing of the sagebrush chicken).

<sup>104</sup> See, e.g., DEFENDERS OF WILDLIFE, INVESTING IN NATURE: THE ECONOMIC BENEFITS OF CONSERVING NATURAL AREAS IN NORTHEAST FLORIDA (2004), [http://www.defenders.org/resources/publications/programs\\_and\\_policy/science\\_and\\_economics/conservation\\_economics/valuation/investing\\_in\\_nature.pdf](http://www.defenders.org/resources/publications/programs_and_policy/science_and_economics/conservation_economics/valuation/investing_in_nature.pdf) (detailing the economic benefits of resource conservation in northeast Florida, including benefits flowing from increased tourism, recreation opportunities and quality of life); ECONORTHWEST, COALITION FOR SONORAN DESERT PROTECTION, ECONOMIC BENEFITS OF PROTECTING NATURAL RESOURCES IN THE SONORAN DESERT 1, 27 (2002), <http://www.sonorandesert.org/uploads/files/economicreport.pdf> (discussing the economic benefits of protecting resources in the Sonoran Desert); NIEMI ET AL., *supra* note 11 (describing the economic benefits that resulted from forest protection in the Pacific Northwest).

<sup>105</sup> See generally Thomas M. Power, *Public Timber Supply, Market Adjustments, and Local Economies: Economic Assumptions of the Northwest Forest Plan*, 20 CONSERVATION BIOLOGY 341 (2006) (deconstructing the Northwest Forest Plan in the Pacific Northwest to stabilize local economies).

<sup>106</sup> See NIEMI ET AL., *supra* note 11, at 3 (describing the widespread economic fears that were plaguing community members after Judge Dwyer instituted an injunction on timber sales).

<sup>107</sup> See *id.*

<sup>108</sup> See *id.* at 16 (recalling timber industry groups' predictions that owl protection would reduce total employment in Oregon by 102,000 and 150,000 jobs).

<sup>109</sup> See *id.* at 14-15 (commentating on public expressions of the economic fears associated with declines in timber sales).

<sup>110</sup> Power, *supra* note 104, at 348-9.

<sup>111</sup> See NIEMI ET AL., *supra* note 11, at 21-33. Ironically, Representative Pearce refers to the logging ban in the Pacific Northwest as being emblematic of the way in which wildlife protection causes economic distress. See Simonich, *supra* note 25.

<sup>112</sup> See ECONORTHWEST, *supra* note 103, at 1, 27 (concluding that the benefits of resource conservation in the Sonoran Desert are increasing relative to the costs of that conservation).

<sup>113</sup> See, e.g., *id.* at 38 (reporting that preservation of natural resources can lead to an economic stimulus in the local economy).

<sup>114</sup> Cf. U.S. FISH & WILDLIFE SERV. ET AL., *supra* note 40, at 22 (explaining that if certain soils are removed can result in active erosion or "blowouts" causing damage to the landscape).

<sup>115</sup> Cf. DAVIS ET AL., *supra* note 29, at 1, 14, 49 (stating that the Lesser Prairie Chicken's diet consists primarily of insects).

## Endnotes: CUBAN OFFSHORE DRILLING: PREPARATION AND PREVENTION WITHIN THE FRAMEWORK OF THE UNITED STATES' EMBARGO

*continued from page 39*

<sup>1</sup> See Shasta Darlington, *Cuban Offshore Oil Plans Gain Momentum*, CNN (Sept. 1, 2010), [http://articles.cnn.com/2010-09-01/world/cuba.oil\\_1\\_rig-cupet-drilling-companies?\\_s=PM:WORLD](http://articles.cnn.com/2010-09-01/world/cuba.oil_1_rig-cupet-drilling-companies?_s=PM:WORLD) (reporting that if drilling began in mid-year 2011, the exploratory wells would be completed by 2014). But see Jeff Franks, *Arrival of Cuba Offshore Oil Rig Delayed Again*, REUTERS (Oct. 12, 2011), <http://www.reuters.com/article/2011/10/12/cuba-oil-idUSN1E7930U020111012> (stating that the arrival of the oil rig has been delayed until December 2011).

<sup>2</sup> See Thomas Omestad, *Cuba Plans New Offshore Drilling in Search for Big Oil Finds in the Gulf of Mexico*, U.S. NEWS & WORLD REP. (Feb. 3, 2009), <http://www.usnews.com/news/energy/articles/2009/02/03/cuba-plans-new-offshore-drilling-in-search-for-big-oil-finds-in-the-gulf-of-mexico/> (noting that foreign firms have signed exploration and production agreements for 21 of the 59 blocks, are discussing contracts over the 23 additional blocks, and that some commentators foresee Cuban offshore drilling increasing the cost of the U.S. embargo policy).

<sup>3</sup> See *id.* (stating that some U.S. law makers have "urged that an exception be made in the embargo to permit energy cooperation").

<sup>4</sup> See, e.g., Press Release, The U.S. Attorney's Office, Dist. of Colo., Boulder Company Sentenced for "Trading with the Enemy" (Sept. 17, 2009), available at [http://www.justice.gov/usao/co/press\\_releases/archive/2009/September09/9\\_17\\_09.html](http://www.justice.gov/usao/co/press_releases/archive/2009/September09/9_17_09.html).

<sup>5</sup> H.R. Res. 372, 112th Cong. (2011) (permitting the U.S. Secretary of the Interior to deny drilling leases to foreign companies that deal with countries under U.S. trade sanctions, including Cuba).

<sup>6</sup> Sean Thomas, *50 Years of Sanctions: Time for a Cuban Healing*, RT POLITICS (edited Oct. 22, 2010, 05:09), <http://rt.com/politics/russian/us-cuba-economic-embargo/> ("In 1960, President Eisenhower enacted the first serious embargo against Cuba, halting all sugar purchases from the country, ending all oil deliveries and continuing arms embargos that were in place during the revolutionary period, starting in 1958.").

<sup>7</sup> See *id.* (noting that the embargo and the mobilization of Cuban exiles was an attempt to overthrow Fidel Castro and reestablish U.S. influence); See also John Sweeny, *Why the Cuban Trade Embargo Should Be Maintained*, HERITAGE FOUND. BACKGROUNDER, Nov 10, 1994, at 4, available at [http://thf\\_media.s3.amazonaws.com/1994/pdf/bg1010.pdf](http://thf_media.s3.amazonaws.com/1994/pdf/bg1010.pdf) (noting that the original goals of the embargo were to "compel Castro to open Cuba's economy and establish democracy, to weaken Cuba's communist regime, and to force Castro to relinquish power").

<sup>8</sup> 22 U.S.C. § 2370(a)(1) (2006).

<sup>9</sup> Proclamation No. 3447, 27 Fed. Reg. 1085 (Feb. 7, 1962).

<sup>10</sup> See Thom Woodroffe, *Time to Bring Cuba in from the Cold*, SYDNEY MORNING HERALD (Nov. 3, 2010) <http://www.smh.com.au/opinion/politics/time-to-bring-cuba-in-from-the-cold-20101103-17do3.html> (describing how President Kennedy signed the executive order implementing the Cuban embargo).

<sup>11</sup> These regulations prohibit United States Citizens and corporations from conducting business transactions with Cuba or Cuban nationals. The statute includes transactions involving property in Cuba or belonging to Cuban nationals unless the transaction occurs under license. See Cuban Assets Control Regulations, 31 C.F.R. § 515.201 (2011).

<sup>12</sup> The TWEA empowers the president to control or prevent trade with a foreign country at a time of war. See 50 U.S.C. § 1702 (2006).

<sup>13</sup> Helms-Burton Act of 1996, 22 U.S.C. §§ 6021-6091 (2006).

<sup>14</sup> Woodroffe, *supra* note 8.

<sup>15</sup> 22 U.S.C. § 6064 (2006).

<sup>16</sup> John W. Boscaroli et al., *Export Controls and Economic Sanctions*, 44 INT'L LAW. 25, 33 (2010) (noting that the Omnibus Act lightens restrictions on travel and remittances to Cuba); 31 C.F.R. § 515.561.

<sup>17</sup> A January 14, 2011 press release announced changes to policies governing "(1) purposeful travel; (2) non-family remittances; and (3) U.S. airports supporting licensed charter flights to and from Cuba." The measures are said to "increase people-to-people contact; support civil society in Cuba; enhance the free flow of information to, from, and among the Cuban people; and help promote their independence from Cuban authorities." Press Release, The White House Office of the Press Secretary, Reaching Out to the Cuban People (Jan. 14, 2011), <http://www.whitehouse.gov/the-press-office/2011/01/14/reaching-out-cuban-people>.

<sup>18</sup> See Daniel Hernandez, *U.S. Opens the Door Further on Travel to Cuba*, L.A. TIMES (Jan. 25, 2010), <http://latimesblogs.latimes.com/laplaza/2011/01/cuba-travel-restrictions-obama-white-house-.html> (discussing loosening restrictions on Cuba under Obama and the Cuban government's response).

<sup>19</sup> See Nelson Acosta, *Cuba Says U.S. embargo has Toughened Under Obama*, REUTERS (Sept. 15, 2010), <http://www.reuters.com/article/idUSTRE68E4FS20100915> (quoting the Cuban Foreign Minister stating "[t]he embargo policy in the last two years, that is to say under the government of President Obama, has not changed at all . . . [i]n some aspects it has even hardened").

<sup>20</sup> See Howard LaFranchi, *Obama Eases Cuba Travel, but Embargo Remains*, CHRISTIAN SCI. MONITOR, Apr. 13, 2009, <http://www.csmonitor.com/USA/Foreign-Policy/2009/0413/p90s01-usfp.html> (stating the actual easing of sanctions is merely due to keeping family connections but really does nothing to change the economic sanctions placed on Cuba or better the Cuban-US relationship).

<sup>21</sup> It is important to note that the President alone cannot end the embargo; an act of Congress is required. PATRICK J. HANEY & WALT VANDERBUSH, THE CUBAN EMBARGO: THE DOMESTIC POLITICS OF AN AMERICAN FOREIGN POLICY 162 (2005).

<sup>22</sup> See Rachel D. Solomon, Note, *Cuban Baseball Players, the Unlucky Ones: United States-Cuban Professional Baseball Relations Should Be an Integral Part of the United States-Cuba Relationship*, 10 J. INT'L BUS. & L. 153, 169 (2011) ("The United States' embargo against Cuba stems from the 1917 Trad-

ing With the Enemy Act . . . , which bans transfers of property between United States citizens and enemy nations, unless authorized by the President.”)

<sup>23</sup> See 31 C.F.R. § 515.201 (identifying the specific transactions that are prohibited between Cuba and the United States and its territories).

<sup>24</sup> See *United States v. Platte River Assocs.*, CRIM.08-CR-00295-WYD, 2009 WL 130347 at 1, 2 (D. Colo. 2009) (holding that the providing computer software used in oil exploration to Cuba violated the TWEA and that the defendant engaged in illegal transactions with Cuba); See also Press Release, U.S. Attorney’s Office, *supra* note 4.

<sup>25</sup> Repsol holds oil exploration leases with Cuba. *Repsol has Contract for Oil Rig Said Cuba-Bound*, REUTERS (May 5, 2010), <http://www.reuters.com/article/2010/05/05/cuba-oil-repsol-idUSN0512908420100505>.

<sup>26</sup> *Platt River*, *supra* note 24, at 1.

<sup>27</sup> Press Release, U.S. Attorney’s Office, *supra* note 4.

<sup>28</sup> *Id.*

<sup>29</sup> See CHRISTOPHER SCHENK, UNITED STATES GEOLOGICAL SERVS., GEOLOGICAL ASSESSMENT OF UNDISCOVERED OIL AND GAS RESOURCES OF THE NORTH CUBA BASIN, CUBA (2010), available at <http://pubs.usgs.gov/of/2010/1029/pdf/OF10-1029.pdf> (noting that current data estimates 4.6 billion barrels of oil off of Cuba).

<sup>30</sup> Monica Hatcher, *Cuba Drilling Poses Spill Issue: Group Says Trade Embargo Could Hinder a Response by the U.S.*, HOUS. CHRON. (Sept. 6, 2010), <http://www.chron.com/disp/story.mpl/business/7186410.html>.

<sup>31</sup> Jeff Franks, *Cuban Oil Production Could be a Catalyst for a Change in Relations with U.S.* N.Y. TIMES, (Nov. 5, 2010), <http://www.nytimes.com/2008/06/12/business/worldbusiness/12iht-cubaoil.4.13670441.html>, at 1.

<sup>32</sup> *Id.*

<sup>33</sup> See Hilary Moise, *U.S. Embargo against Cuba under Growing Siege*, COUNCIL ON HEMISPHERIC AFF. (July 18, 2006), <http://www.coha.org/cuba-embargo-under-growing-siege/> (describing the unpopularity and unprofitability of the U.S. Embargo against Cuba among U.S. businesses).

<sup>34</sup> Hatcher, *supra* note 30.

<sup>35</sup> See Tim Padgett, *How Cuba’s Oil Find Could Change the US Embargo*, TIME (Oct. 23, 2008), <http://www.time.com/time/world/article/0,8599,1853252,00.html#ixzz13Li5cosN> (quoting Kirby Jones, the head of the U.S.-Cuba Trade Association, stating in reference to Cuban oil that “there will be a feeling that there is a real [U.S.] price to be paid for [maintaining] the embargo”).

<sup>36</sup> See Maryann Tobin, *Gov. Arnold Schwarzenegger Accuses Oil Companies of Self-Serving Greed*, EXAMINER.COM (Sept. 30, 2010), <http://www.examiner.com/political-spin-in-national/gov-arnold-schwarzenegger-accuses-oil-companies-of-self-serving-greed-video> (noting that Governor Schwarzenegger said that Texas oil companies who were pushing propositions in California were using “millions of dollars of scare-tactic advertising” to “manipulate the will of the people and the public good”); See also, *Story of Hatred of Rockefellers*, N.Y. TIMES (Aug. 12, 1907), <http://query.nytimes.com/mem/archive-free/pdf?res=F60C1EF8385512738DDDAB0994D0405B878CF1D3> (quoting Frank Rockefeller who describes his brother, oil baron, John D. Rockefeller as a “monster merciless in greed”).

<sup>37</sup> See Editorial, *The House and Global Warming*, N.Y. TIMES, June 26, 2009. At A24 (stating that the outcome of a House bill on global warming is dependent upon politicians who “fear higher energy costs for businesses and consumers.”).

<sup>38</sup> Zachary Goldfarb, *Cheney Pushes for More Drilling*, WASH. POST (June 12, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/06/11/AR2008061103948.html>.

<sup>39</sup> See Emily Gertz, *Can Offshore Drilling Really Make the U.S. Oil Independent?*, SCIENTIFIC AM. (Sept. 12, 2008), <http://www.scientificamerican.com/article.cfm?id=can-offshore-drilling-make-us-independent> (noting that the United States currently consumes 20 million barrels daily with projected consumption in 2030 of 23 million).

<sup>40</sup> *Id.*

<sup>41</sup> See *id.* (discussing that fuel prices are based on the amount of oil in known reserves and that increasing the reserves with Cuban oil will drive down the price).

<sup>42</sup> Simon Romero, *Spanish Seek Oil Off Cuba*, N.Y. TIMES (July 5, 2004), <http://www.nytimes.com/2004/07/06/business/international-business-spanish-look-for-oil-off-cuba-potential-shift-in-gulf-output.html?pagewanted=print>.

<sup>43</sup> See Nick Miroff, *Cuban Offshore Drilling Plans Raise U.S. Concerns*, NAT’L PUB. RADIO (Sept. 12, 2011), <http://www.npr.org/2011/09/12/140405282/cuban-offshore-drilling-plans-raise-u-s-concerns> (discussing U.S. oil experts’ trip to Havana to address environmental concerns).

<sup>44</sup> On April 20, 2010, an explosion on a BP operated oil rig in the Gulf of Mexico left eleven workers dead, sinking the rig two days later. For eighty-seven days the well discharged millions of gallons of oil and natural gas into

the ocean before finally being contained. Scientists are still assessing the spill’s impact on the Gulf of Mexico. See, e.g., Campbell Robertson & Leslie Kauffman, *Size of Spill in Gulf of Mexico Is Larger Than Thought*, N.Y. TIMES (Apr. 28, 2010), <http://www.nytimes.com/2010/04/29/us/29spill.html>; *Talk of the Nation: Assessing the BP Spill’s Impact*, NAT’L PUB. RADIO (Sept. 16, 2010), <http://www.npr.org/templates/story/story.php?storyId=129910789>.

<sup>45</sup> See Victoria Burnett, *U.S. is Urged to Plan Aid Cuba in Case of an Oil Spill*, N.Y. TIMES (Sept. 8, 2011), <http://www.nytimes.com/2011/09/09/world/americas/09cuba.html> (quoting William Riley, the co-chairman of the Deepwater Horizon oil spill investigation, as urging the United States to adopt plans for a Cuban oil spill).

<sup>46</sup> See David Goodhue, *Cuba Leases to Bring Deepwater Drilling Within 50 Miles of Key West*, WORKBOAT.COM (Sept. 9, 2010), <http://www.workboat.com/newsdetail.aspx?id=4294998861> (quoting Lee Hunt, president of the International Association of Drilling, as he discusses how the embargo would impede U.S. companies from aiding Cuba if an oil spill occurred).

<sup>47</sup> *Id.*

<sup>48</sup> Lesley Clark & Sara Kennedy, *Cuba Ready to Drill for Oil Deeper than BP*, PALM BEACH POST (Sept. 30, 2010), <http://www.palmbeachpost.com/news/world/cuba-ready-to-drill-for-oil-deeper-than-946069.html?printArticle=y>.

<sup>49</sup> See Rory Carroll, *Cuba Braces to Contend with BP Oil Spill*, GUARDIAN (June 16, 2010), <http://www.guardian.co.uk/world/2010/jun/16/cuba-braces-bp-oil-spill> (quoting several Cuban officials who were concerned about damage to Cuba due to the Deepwater Horizon oil spill).

<sup>50</sup> *Id.*

<sup>51</sup> Johannes Werner, *Oil Spill Doesn’t Slow Down Cuba’s Drilling Program*, ST. PETERSBURG TIMES (May 14, 2010), <http://www.tampabay.com/news/business/energy/oil-spill-doesnt-slow-down-cubas-drilling-program/1095064>.

<sup>52</sup> See Jack Nelson, *Embargo of Cuba Exact’s a ‘Tragic Human Toll,’ Health Report Charges*, L.A. TIMES, (Mar. 3, 1997), [http://articles.latimes.com/1997-03-03/news/mn-34339\\_1\\_health-association](http://articles.latimes.com/1997-03-03/news/mn-34339_1_health-association) (discussing the results of a study by the American Association for World Health which found that the embargo increased suffering and deaths in Cuba).

<sup>53</sup> See Joseph Bradica, *Havana Club Rum: One Step Back for U.S. International Trademark Policy*, 16 TEMP. INT’L & COMP. L.J. 147, 157 (2002) (noting that critics claim that the embargo, by preventing medical technology from arriving in Cuba, has led to a rise in disease).

<sup>54</sup> Nelson, *supra* note 52.

<sup>55</sup> *Id.*

<sup>56</sup> A survey of 135 Havana metropolitan area residents revealed that “an overwhelming majority” (ninety-three percent) was against the embargo, with seven percent responding that the embargo was good or did not matter. Alberto R. Coll, *Harming Human Rights in the Name of Protecting Them: The Case of the Cuban Embargo*, 12 UCLA J. INT’L L. & FOREIGN AFF. 199, 270–71 (2007).

<sup>57</sup> In contrast to America’s relations with Cuba, the United States has denounced China’s human rights record yet continued to trade heavily with the nation. A recent joint statement between China and the United States says China welcomes the United States as a stabilizing force in the Asia-Pacific region and the United States welcomes “a successful China that plays a greater role in world affairs.” See Lexington, *China in the Mind of America*, THE ECONOMIST, Jan. 22, 2011, at 43; See also Mark Knoller, *Obama: I’ll Stick with Embargo For Now*, CBS NEWS (April 20, 2009, 2:50 AM), <http://www.cbsnews.com/stories/2009/04/19/politics/100days/worldaffairs/main4955009.shtml> (discussing how some commentators criticize the United States for trading with China, a communist country with known human rights abuse issues, while not trading with Cuba).

<sup>58</sup> See Nelson, *supra* note 52 (noting how the U.N. has passed resolutions condemning the embargo and requesting that the United States end the embargo).

<sup>59</sup> See *Castro Opponent Free After 17 Years in Jail*, REUTERS (April 3, 2007), <http://www.reuters.com/article/2007/04/23/us-cuba-prisoner-idUSN2331960920070423> (discussing the story of a Cuban political prisoner who was jailed after shouting slogans against Fidel Castro at a music concert).

<sup>60</sup> See Yoani Sanchez, *Communist Party Congress to Work on Economy but not Human Rights*, HUFFINGTON POST (Nov. 14, 2010, 6:09 PM), [http://www.huffingtonpost.com/yoani-sanchez/communist-party-congress\\_b\\_783317.html](http://www.huffingtonpost.com/yoani-sanchez/communist-party-congress_b_783317.html) (discussing how in Cuba one “cannot leave without permission” and “free association is punished”).

<sup>61</sup> *Cuba: Release of Dissidents Still Leaves Scores in Prison*, HUMAN RIGHTS WATCH (July 8, 2010), <http://www.hrw.org/en/news/2010/07/08/cuba-release-dissidents-still-leaves-scores-prison>.

<sup>62</sup> See Paul Haven, *Cuba to Chart Economic Future at Party Congress*, SEATTLE TIMES (Nov. 9, 2010), <http://seattletimes.nwsource.com/html/busi->

nesstechnology/2013384454\_apbcubapartycongress.html (discussing an economic proposal made by communist party leaders and affirming that Cuba will stay a one party socialist system).

<sup>63</sup> *Id.*

<sup>64</sup> See *Cuba to Study Oil Spill Risks and Prevention*, RADIO CADENA AGRAMONTE (Jan. 29, 2011), [http://www.cadenagramonte.cu/english/index.php?option=com\\_content&view=article&id=4151:cuba-to-study-oil-spill-risks-and-prevention&catid=2:cuba&Itemid=14](http://www.cadenagramonte.cu/english/index.php?option=com_content&view=article&id=4151:cuba-to-study-oil-spill-risks-and-prevention&catid=2:cuba&Itemid=14) (discussing Cuban officials planning workshops to study the threat and prevention of oil spills).

<sup>65</sup> *Cuba Looks to Cooperate on Offshore Safety*, UPSTREAMONLINE.COM (Aug. 25, 2010, 18:25 GMT), <http://www.upstreamonline.com/live/article227380.ece>.

<sup>66</sup> See Andres Schipani, *US Bill to Bar Oil Groups with Cuban Links*, FIN. TIMES (Feb. 25, 2011), <http://www.ft.com/cms/s/0/cdf8d4b4-4060-11e0-9140-00144feabdc0.html#axzz1F2K2yOqC> (noting that several foreign oil companies are trying to obtain licenses to drill in Cuba).

<sup>67</sup> *International Oil Spills*, U.S. DEP'T OF STATE, <http://www.state.gov/g/oes/ocns/opa/marine/oil/index.htm> (last visited Nov. 8, 2011).

<sup>68</sup> *Id.*

<sup>69</sup> See *id.* (listing exclusively all countries with which United States has oil spill agreements); See also Lesley Clark, *Coast Guard Preparing for Cuba Oil Spills*, McCLATCHY (Sept. 30, 2010), <http://www.mcclatchydc.com/2010/09/30/101416/coast-guard-preparing-for-cuba.html> (noting that no oil spill agreement exists between the United States and Cuba).

<sup>70</sup> The Joint Contingency Plan Between the United Mexican States and the United States of America Regarding Pollution of the Maritime Environment by Discharge of Hydrocarbons or Other Hazardous Substances, U.S.-Mex., Feb. 25 2000, 32 U.S.T. 5899 [hereinafter MEXUS Plan].

<sup>71</sup> *Id.* at 1; International Convention on Oil Pollution Preparedness, Response and Cooperation, Nov. 30, 1990, 1891 U.N.T.S. 51, S. Treaty No. 102-11.

<sup>72</sup> See DANIEL WHITING, 1997 INT'L OIL SPILL CONFERENCE, MEXUS PLAN: MEXICO/UNITED STATES BILATERAL RESPONSE PLAN 967, 967 (1997), <http://www.iosc.org/papers/01240.pdf> (stating that the agreement requires the “development of a bilateral response plan”).

<sup>73</sup> *Id.* at 168-69 (stating that elements of the plan were tested in 1995 and 1996 to determine their validity).

<sup>74</sup> STAFF TRIP REP. TO THE COMM. ON FOREIGN RELATIONS, 111TH CONG., CHANGING CUBA POLICY IN THE UNITED STATES NATIONAL INTEREST 6 (Comm. Print 2009) (stating that Cuban officials indicated to U.S. representatives that they were interested in cooperating with the United States on security and commerce issues).

<sup>75</sup> See *U.S. Rep. Cliff Stearns says Cuba and China are Partnering to Drill for Oil off Florida's Coast*, POLITIFACT FLORIDA (Mar. 30, 2010), <http://politifact.com/florida/statements/2010/mar/31/cliff-stearns/cliff-stearns-cuba-china-oil-drilling/> (stating that Cuba potentially could drill within forty-five miles off the coast of Florida, closer than U.S. companies are legally permitted).

<sup>76</sup> Franks, *supra* note 31.

<sup>77</sup> See Jillian L. Genaw, *Offshore Oil Drilling in the United States and the Expansion of Cuba's Oil Program: A Discussion on Environmental Policy*, 20 IND. INT'L & COMP. L. REV. 47, 70-71 (2010) (arguing that allowing U.S. oil companies to conduct more offshore drilling will reduce the risk of environmental harm by decreasing imports from foreign oil tankers, which have a higher rate of oil spills).

<sup>78</sup> See Maria Gavrilovic, *Obama Says Dependency on Foreign Oil Poses Terrorist Threat to U.S.*, CBS NEWS (July 11, 2008 2:24 PM), [http://www.cbsnews.com/8301-502443\\_162-4253821-502443.html](http://www.cbsnews.com/8301-502443_162-4253821-502443.html) (quoting Barack Obama stating that foreign countries can use profits from oil to fund terrorists); Sarah Palin 'Still Considering' 2012 Run, Admits She Gets Her 'Butt Kicked' in Polls, NYPOST.COM (posted Feb. 17, 2011 9:46AM), [http://www.nypost.com/p/news/local/palin\\_to\\_answer\\_questions\\_from\\_ny\\_h20Rw0ytsQeli7Rh2s9RCN](http://www.nypost.com/p/news/local/palin_to_answer_questions_from_ny_h20Rw0ytsQeli7Rh2s9RCN) (quoting Sarah Palin as saying that it made sense not to rely on foreign regimes that “can use energy as a weapon against us”).

<sup>79</sup> Genaw, *supra* note 77.

<sup>80</sup> See Franks, *supra* note 1.

<sup>81</sup> On the other hand, Cuban oil independence would likely result in loosening Venezuelan influence, a current concern of the United States. See Kristen Begg, *US Report Slams Cuba and Venezuela for Guerrilla Links*, COLOM. REP. (Aug. 5, 2010, 16:10), <http://colombiareports.com/colombia-news/news/11201-us-report-slams-cuba-and-venezuelas-terrorist-links.html>

(noting that the State Department listed Venezuela with countries that do not cooperate with U.S. anti-terrorism efforts).

<sup>82</sup> See Brian Latell, *Raul Skating on thin Ice*, MIAMI HERALD (Jan. 28, 2010), <http://www.miamiherald.com/2011/01/28/2038545/raul-skating-on-thin-ice.html> (“Raúl Castro’s performance of late has generated more doubts about the viability of the family dictatorship than at any time since he and Fidel won power more than 50 years ago.”).

<sup>83</sup> Rory Carroll, *Fidel Castro Says his Economic System is Failing*, GUARDIAN (Sept. 9, 2010), <http://www.guardian.co.uk/world/2010/sep/09/fidel-castro-cuba-economic-model>.

<sup>84</sup> *Id.*

<sup>85</sup> Raul Castro once told reporters asking if there would be changes to post-Fidel Cuba, “Yes, toward a better form of socialism and—here’s something you’ll like—toward a more democratic society.” Morgan Neil, *Younger Castro Hints at 'More Democratic' Cuba*, CNN (Feb 20, 2008), <http://edition.cnn.com/2008/WORLD/americas/02/20/raul.castro/index.html>.

<sup>86</sup> Leonard Doyle, *The End of Communism? Cuba Sweeps Away Egalitarian Wages*, INDEPENDENT (Jun. 13, 2008), <http://www.independent.co.uk/news/world/americas/the-end-of-communism-cuba-sweeps-away-egalitarian-wages-846248.html>.

<sup>87</sup> H.R. 372, 112th Cong. (2011).

<sup>88</sup> The bill would restrict U.S. offshore drilling licenses from companies that aid Cuban drilling efforts by amending the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337(a), to add: (9) The Secretary may deny issuance of an oil and gas lease under this Act, or a permit for exploration, development, or production under such a lease, to any person that has engaged in activities with the government of any foreign country that is subject to any sanction or an embargo established by the Government of the United States, including any sanction or embargo established under section 203 of the Emergency Economic Powers Act (50 U.S.C. 1702). *Id.* at § 1.

<sup>89</sup> See Kevin Derby, *Vern Buchanan Introduces Bill to Stop Cuban Offshore Drilling Near Florida*, SUNSHINE ST. NEWS (Jan. 21, 2011 11:45 AM), <http://www.sunshinestatenews.com/story/vern-buchanan-introduces-bill-stop-cuban-offshore-drilling-near-florida> (stating that Vern Buchanan believes his legislation, if passed, will induce Repsol into abandoning its Cuban drilling); See also Judson Berger, *Lawmaker Aims to Block Cuba Oil Drilling Near Florida Coast*, FOXNEWS.COM (Jan. 24, 2011), <http://www.foxnews.com/politics/2011/01/24/lawmaker-aims-block-cuba-oil-drilling-near-florida-coast/> (noting that Vern Buchanan wants to threaten Repsol’s assets in U.S. territory through the new bill).

<sup>90</sup> Berger, *supra* note 89.

<sup>91</sup> See *Repsol Continues with Drilling Plans in Cuba*, CUBA STANDARD (Jan. 29, 2010, 10:56 PM), <http://www.cubastandard.com/2011/01/29/repsol-continues-with-drilling-plans-in-cuba/> (noting how Repsol continues its plans to drill in Cuba despite the threat of Vern Buchanan’s bill).

<sup>92</sup> The United States has often sanctioned foreign companies for dealing with Cuba. See Juan O. Tomayo, *US Could Sanction Dutch Bank for Doing Business with Terror Sponsors*, MIAMI HERALD (July 27, 2011), <http://www.miamiherald.com/2011/07/27/2333786/us-could-sanction-dutch-bank-for.html#ixzz1fX4JT6PK> (reporting that Dutch Bank ING faces huge fines from the United States for possible transaction with Cuba); see also David M. Shamberger, *The Helms-Burton Act: A Legal and Effective Vehicle for Redressing U.S. Property Claims in Cuba and Accelerating the Demise of the Castro Regime*, 21 B.C. INT'L & COMP. L. REV. 497, 505 (1998) (noting that the U.S. government sanctioned two foreign companies, who operated in Cuba, by refusing access to their principals and families to America).

<sup>93</sup> But see Thomas Wire, *Misguided Effort on Cuba Oil Drilling*, ST. PETERSBURG TIMES (Feb. 7, 2011), <http://www.tampabay.com/opinion/editorials/misguided-effort-on-cuba-oil-drilling/1149686> (arguing that the United States should be pursuing cooperation with Cuba to prevent oil spills rather than attempting to stop the drilling).

<sup>94</sup> See, Thomas J. Donohue, *The Cuban Economic Embargo: Time for a New Approach*, CATO INST. (Feb. 15, 2000), [http://www.cato.org/pub\\_display.php?pub\\_id=5081&full=1](http://www.cato.org/pub_display.php?pub_id=5081&full=1) (stating that the embargo gives Fidel Castro an excuse for his failed economy).

<sup>95</sup> See Neil, *supra* note 76.