A Call for Cuba's Removal from the List of State Sponsors of Terrorism

A conference sponsored by the Center for International Policy and the Latin America Working Group

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Prepared remarks by:

Wayne Smith of the Center for International Policy will discuss the history of the list, the long-standing lack of evidence on which to base it, and how Cuba could easily be removed from it.

Robert Muse (Muse and Associates) will describe how the list opens the way to questionable court judgments against Cuba, eventually creating perhaps an insurmountable obstacle to renewed trade relations.

Carlos Alzugaray (University of Havana's Center for the Study of the U.S.) will point out that the list came out in a Cold-War context which no longer exists and now works against a change of policy.

Sarah Stephens (Center for Democracy in the Americas) will discuss how keeping Cuba on the list reflects the archaic view that the aim of U.S. policy is to suffocate Cuba economically so that it will fail. Its designation as a State Sponsor of Terrorism subjects Cuba to sanctions above and beyond those imposed by the embargo.

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Including Cuba on the Terrorist List Damages U.S. Interests

By Wayne S. Smith

There are those who believe that by placing Cuba on the list of state sponsors of terrorism, the U.S. is besmirching Cuba's reputation and standing but in a way that does no harm to the U.S. But this is woefully wrong. Keeping Cuba on the list causes serious damage to the U.S. in a number of ways, as our speakers will point out. For one thing, it opens the way for exile court claims against Cuba. In one recent case, the award to the claimant was for almost three billion dollars! And under existing laws, these awards would have to be paid before relations could be normalized between the U.S. and Cuba. We may soon reach a sum which could virtually rule out normalization. The U.S. may not be interested in normalization now, but at some point it will be – only to find perhaps that it has impaired the way.

And of course, the fact that we keep Cuba on the list without any evidence that it should be there seriously undercuts our own credibility. And there is no evidence. One need only look at the State Department reports over the past few years to see that that is the case. Its authors have not come up with a single example of a terrorist act, or support for terrorist acts, on Cuba's part. Nothing.

Indeed, it can be said that keeping Cuba on the list harms the U.S. far more than it harms Cuba How does that make any sense whatever?

Presentation at the Conference Calling for Cuba's removal from the list of States Sponsors of Terrorism organized by the CIP and the LAWG (Dec 1, 2011)

Adverse Consequences of Court Judgments Against Cuba

Robert Muse

Introduction

Judgments that are being entered against Cuba with increasing frequency in Florida's Dade County courts ought to be a subject of concern to policymakers who hope to one day see normalized trade relations with Cuba. A few years ago the *Weiniger/McCarthy* cases (I will describe them in a moment) emptied the Government of Cuba bank accounts that had been frozen in New York since the early 1960s. Therefore, the issue is no longer that of preserving funds for use in the settlement of expropriation claims at the time relations between the U.S. and Cuba are normalized. Instead, the new judgments are worrisome because they could obstruct or even prevent a such future normalization of relations.

(i) Background

Like the *Weiniger/McCarthy* cases, the new court awards have their origins in Miami law firms filing what are, demonstrably, false claims in pursuit of large contingency fees based on a third or more of any court award. In every case the judgments are awarded by default because Cuba does not file a response. However, those awards are so utterly without legal basis under controlling statutory law as to cause Cuba to simply refuse to pay them (with consequences I will discuss in a moment), if they are raised by the U.S. in a normalization of relations context. In addition, the Miami court awards are also offensive, on principle and in practice, to every Cuban on the island, because, if paid, they would divert funds from public projects—this fact also argues strongly against Cuba paying the awards, again with consequences I will address in a moment.

(ii) The Potential Problem

The cases began with *Weiniger* and *McCarthy* a couple of years ago. Those cases involved the deaths of two men during the Bay of Pigs invasion. Who the first Pete Willard bombed and strafed Cuba in a B-26 painted in Cuban Air Force colors before being shot down and killed when he brandished a pistol and a grenade as he tried to get to the beach where the invasion force was trapped. The second landed a dinghy in Cuba loaded with incendiary bombs that were to be detonated in Havana during the landings at Playa Giron. He was shot as a saboteur.

The *Weiniger/McCarthy* cases are bad enough in the minds of Cubans because they involved hostile acts against Cuba, but at least they involved the deaths of American citizens. The new judgments that I will describe in a moment—and those to come—do not. Instead they involve the deaths of Cuban citizens who most often opposed the present Cuban government, usually violently. As I implied before, however Cubans may feel about their government, this is something they believe that the U.S. has no business interfering in—and they will doubtless punish any Cuban public figure who would spend national assets in paying such judgments, hence the probable resistance of *any* government in Cuba—present or future—to paying the awards coming from Dade County courts.

But, a refusal by Cuba to pay the U.S. court awards will leave every agency or instrumentality of the Cuban government (and any private entity in a joint venture or contractual relationship with Cuba or one of its agencies and instrumentalities—i.e. Cuba Tobacco) at risk of someday having any of its property that enters the U.S. attached in execution of those awards. (E.g. Cubana Airline's planes; ships; cigars; bank accounts set up to pay for U.S. exports, etc., etc.).[1]

At some point companies will want to import many products of Cuban origin into the United States. Changes in 2008 to the Foreign Sovereign Immunities Act give judgment creditors against Cuba greatly enhanced new attachment remedies against property in which a Cuban agency or instrumentality has any interest—even if a third party (e.g. foreign joint venture partners) has an interest in that property.

[1] In January of 2008 the Foreign Sovereign Immunities Act (FSIA) was altered, at §1610, to add a new subsection (g) which allows for the attachment and execution on *any* property of a foreign state with a §1605A judgment against it (i.e. a judgment against a "terrorist sponsoring nation"), even if the government instrumentality that finds its assets in the U.S. attached had no connection to the events that were the basis for the court's award, and even if there are other non-state joint or beneficial owners of that property. As a result, an attorney for families with judgments against Libya for a Berlin night club bombing recently moved to attach the assets of two Washington, D.C. law firms and a lobbying firm that represent Libya. "'If they have to do business with American firms, they are going to have to pay their debts. That's all there is to it,' said Thomas Fay, an attorney representing victims of the 1986 terrorist attack at Berlin's La Belle discotheque." *The Hill*, June 4, 2008.

The vulnerability of Cuban assets to constant property seizures in the U.S. could go further in its consequences than simply putting Cuban assets that enter the U.S. at risk, they could also well operate as a powerful disincentive for Cuba to ever normalize its relations with the U.S. For several reasons claims settlements have been described as the "*sine qua non* of normalized relations between two countries." *Shanghai Power Co. v. United States*, 4 Cl. Ct. 237, 245 (1983), *aff'd,* 765 F.2d 159 (Fed. Cir. 1986). So, to the extent the judgments are viewed by the U.S. as unresolved claims of U.S. citizens against Cuba, their unsuccessful espousal by the Department of State could well abort the normalization of relations between the U.S. and Cuba.

Recent Cases

In April a jury awarded the representative of the estate of a man named Rafael Del Pino $230 million. Not long after, a judge awarded the family of a man named Aldo Sera $94.6 million. Both judgments were entered in the Miami-Dade County Court.

In the first case it was alleged in a very confused and semi-literate complaint (e.g., "At all times relevant hereto, Rafael Del Pino was executed by hanging") that Del Pino, who had been "a friend of Fidel Castro and was involved in the Cuban Revolution," was "executed" in 1979. According to Hugh Thomas' history of Cuba, Del Pino betrayed Fidel Castro's July 26 Movement, in 1956, by acting as a paid informant for the Batista government. (He informed Batista of the location of an arms cache stored in a house in Mexico that was to be used in Castro's Sierra Maestra campaign).[2] According to Thomas, Del Pino left for the U.S. after the incident in Mexico. He returned to Cuba, again according to Thomas, "in 1959 to lead an abortive expedition against Castro and to receive a thirty-year sentence." Evidently he died while in prison.

In the second case, Aldo Vera was the "former Chief of Police of Havana" whose relatives claimed he was murdered by "Cuban agents" in Puerto Rico in 1976. Before his death he organized and ran a paramilitary group (the Fourth Republic) with the objective of overthrowing the Cuban government.

[2] *Cuba: The Pursuit of Freedom*.

In 2007, $400 million was awarded to the family of a Cuban/U.S. dual national (Bobby Fuller) who was born and lived his entire life in Cuba where his grandparents had immigrated in the early 20th century. In 1960, he went to Florida to organize an "invasion of Cuba" by four Americans and twenty-three Cubans. He was apprehended and executed in October of that year.

Another case in 2007 awarded a Cuban plaintiff named Jerez $200 million for alleged maltreatment in Cuban jails. He was imprisoned in 1964. It is unclear when he was released, but the judgment states that he moved to the United States in 1980 and was naturalized as a U.S. citizen in 1993.

Added together the four judgments described above total nearly $850 million. Interest on those awards under Florida law is an astonishing 11% per year until satisfied.[3] (I should point out that it is difficult to arrive at a final figure for current Dade County Court awards against Cuba. The judgments I have just described (i) appeared in media I routinely monitor for Cuba-related stories (e.g. *The Miami Herald*), or (ii) have been discovered by a periodic review of the Dade County Circuit Court's docket). I will refrain from giving details of judgments entered in the past couple of years, it is enough to say that that they continue to roll in. For example, on August 23 of this year a Miami judge awarded $2.8 billion in damages for the suicide of a Cuban American's father in Cuba in 1961. The father owned a car dealership, a ranch, a gas station and other assets. Following their nationalization he killed himself. Each year close to $300 million a year in interest will be added to that award.

The Continuing Legal Infirmities of Recent Cases

The cases I have outlined above could only have been brought under one of the statutory exceptions to Cuba's sovereign immunity. Yet none applied. Therefore, just as in the *Weiniger/McCarthy* cases, the exception falsely alleged by the plaintiffs' lawyers—and accepted passively by the courts—was §1605(a)(7) of the Foreign Sovereign Immunities Act ("FSIA").[4]

Under both the old §1605(a)(7) (and the new §1605A(a)(1),(2)) a plaintiff seeking damages against a sovereign defendant for an "extrajudicial killing" must prove that the defendant country was "designated as a state sponsor of terrorism at the time the act occurred, unless later so designated as a result of such act." As I

[3] See §55.03 of the Florida Code.

[4] In January of this year the section was moved to the end of §1605 and re-labeled §1605A. It was amended at the same time, as I will discuss later.

demonstrated to an unresponsive judge in the *Weiniger/McCarthy* cases, Cuba was designated by the State Department in 1982. That means it was not susceptible to suit until three years after Del Pino died; six years after Vera's death and at least twenty years after the death and maltreatment alleged in the 2007 cases of Jerez and Fuller. (I will explain later that judge's failure to dismiss the *Weiniger/McCarthy* cases followed from the U.S. government's failure, when asked its position by the court, to request such a dismissal).

The Problem

The *Weiniger/McCarthy* cases demonstrated to the Florida plaintiffs' bar that the judiciary will grant default judgments against Cuba without those lawyers establishing the most basic elements of subject matter jurisdiction under FSIA—i.e. that Cuba was listed as a state sponsor of terrorism *at the time of the actions complained of in the suit*. (The provision of §1608(e) of FSIA that no default judgment shall be entered against a sovereign defendant "unless the claimant establishes his claim by evidence satisfactory to the court" has been ignored, without exception, by the judiciary in cases involving Cuba).[5] As a result of this continuing dereliction by the courts, we can expect more cases to come.

Not only will emboldened trial lawyers continue to file suits for acts occurring before Cuba was designated as a state sponsor of terrorism, they will also start filing suit in earnest (as they did in the *Jerez* case) where the alleged victims were not, as required by FSIA, at §1605A(a)(2)(ii)(I), U.S. nationals at the time of their death or injury.[6]

Possible Remedies

To avoid a buildup of judgments that could one day obstruct the normalization of relations with the U.S., Cuba could try to stop repeated default judgments from being entered against it. It can do this by claiming sovereign immunity in lieu of filing a responsive pleading. However, there is resistance in Havana to recognizing the jurisdiction of U.S. courts, even if only to assert

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[5] This has happened notwithstanding the admonition found in *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232 (D.C. Cir. 2003) where the Court said in a case involving Iran: "The Foreign Sovereign Immunities Act—FSIA—does not automatically entitle a plaintiff to judgment when a foreign state defaults. The court still has an obligation to satisfy itself that plaintiffs have established a right to relief [under] 28 U.S.C. §1608(e)."

[6] How for example did Del Pino become a U.S. citizen between his flight to the U.S. from Mexico in 1956 and his imprisonment in Cuba in 1959? U.S. citizenship requires at least five years permanent residence. How would a Cuban national achieve that status in three years or less under the extremely restrictive U.S. immigration laws in place in 1956?

sovereign immunity. As Cuban officials know, nothing in U.S. courts is simple when it comes to their country. They understandably fear that lengthy and expensive litigation would follow any assertion of sovereign immunity.

The other possibility is that the U.S. government intervene to seek the dismissal of cases where the requirements of FSIA are not met.[7] Such intervention is accomplished under *Federal Rule of Civil Procedure 24*. In *Roeder v. Islamic Republic of Iran*, 195 F. Supp. 2d 140 (D.D.C. 2002), *aff'd*. 333 F.3d 228 (D.C. Cir. 2003), the U.S. government successfully sought leave to intervene in a case against Iran brought by U.S. diplomats and Marines held hostage and maltreated in the U.S. Embassy in Tehran in 1979-1980. The government's purpose in seeking to intervene was to request that the court vacate a default judgment against Iran on the grounds of lack of subject matter jurisdiction i.e.: "…because the exceptions to FSIA created by the Antiterrorism Act do not apply here because Iran was not designated as a state sponsor of terrorism as a result of this hostage-taking." The court allowed the intervention (and vacated its earlier default judgment) on the ground that "the United States has an undeniable interest in the enforcement of its laws [i.e. FSIA]."[8] By startling contrast, when the court in the *McCarthy/Weiniger* case asked the U.S. government what its position was on the litigants seizing government of Cuba frozen bank accounts, the response was tautological in that it said, in paraphrased form: "Plaintiffs are legally authorized to execute upon blocked Cuban assets if they are legally authorized to execute upon such assets."

The State Department has no excuse for not declaring immediately the U.S. national interest in a cessation of baseless judgments against Cuba. At the same time it should seek the dismissal of all bogus actions pending against that country. Finally, it should move to vacate as void *ab initio* all bogus judgments currently entered against the government of Cuba.

[7] See 28 U.S.C. § 517: "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State . . ."

[8] Note that under *F.R. Civ. P. 60(b)4*, a judgment may be vacated if it is "void." Moreover *Rule 60* "does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding . . . or to set aside a judgment for fraud upon the court."

Cuba, the United States and the State Department's LSST: Who wins? Who loses?

By Carlos Alzugaray Treto
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Conference calling for Cuba's removal
from the List of State Sponsors of Terrorism
Co-sponsored by the Latin American Working Group & the Center for International Policy
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Initial remarks

- Thanking Mavis & Wayne &, why not, the State Department.
- Obama, 2009: "The United States seeks a new beginning with Cuba."
- Hillary Clinton, 2009: "We are continuing to look for productive ways forward because we view the present policy as having failed."
- LASA Washington 2001: how to envisage normalization to begin
- No hesitation then, no hesitation today: Get Cuba out of the LSST.
- Old thinking: denounce the existence of the list and point out that a very compelling case could be made that the US has practiced "state terrorism" against Cuba.
- But will seek that new beginning.
- Who wins and who loses by keeping Cuba in the terrorist list.
- How can we handle the issue so as to get it out of the way.

Who wins and who loses

- In Cuba:
  - The people of Cuba. Example UNICEF aid.
  - Cuban civil society.
  - Cuban government. Mixed.
- In the U.S.:
  - The American people.
  - The administration.
  - Most Cuban Americans.
  - Only winners: minority groups who have a political agenda with Cuba.
- Terrorism: the elephant in the room.

What is to be done?

- **The TACE project.**
- **Quainton Alzugaray article Pensamiento Propio 34, CRIES, Buenos Aires.**
- **First we should focus on the current reality, instead of repeatedly revisiting the history of the 1960s,1970s and 1980s.**
- **Both countries publicly condemn terrorism and support international cooperation.**
- **Mutual respect. Less rhetorical debate. Regimen change.**
- **Act on the Cuban proposal which is on the table.**
- **Get Cuba off the list.**
- **Joint Public Declaration on terrorism.**

Sarah Stephens
CIP/LAWG forum on Cuba and the State Sponsors of Terror List

Let me begin by offering my thanks to Wayne Smith and Mavis Anderson for organizing this event and inviting me to participate in it. I am happy to be here with my fellow panelists –I strongly agree with what's been said so far – and I am pleased to be joining in this discussion with all of you.

My remarks about the state sponsors' list focus on four key areas.

First: what the designation means for Cuba.

Second: why it's bad policy for the United States and not in our national interest.

Third: why it's a symbol of what's wrong politically with how the U.S. makes Cuba policy; it's what a colleague of mine calls the self-licking ice cream cone theory.

Fourth: why removing Cuba from the list will not easy, and it's not a panacea, but would be a significant step forward.

First, this designation is a lie. It is an affront to Cuba's dignity. It is an abiding obstacle to our normalizing relations. Right now, it is an impediment to the process Cuba is undertaking to update its economic model.

My organization takes three or four trips to Cuba each year. When we take policy makers we are given the opportunity to meet with the foreign minister or other high officials at the Foreign Ministry. Those meetings cannot take place without the Cubans raising the issue of their designation as a State Sponsor of Terror. Frankly, it rankles them.

Cuba sees itself, with great justification, as a victim of U.S. support of terrorism. We are, after all, the country which sponsored the activities of Orlando Bosch and Luis Posada Carriles, and

turned a blind eye toward others, and then we shielded them all from responsibility for their violent actions. So, they ask, who are we to judge them?

The Cubans also know they're on the list for wholly political reasons. They see themselves as targets of a double-standard, especially when they see nations like Libya or North Korea removed. They are harmed by the designation economically; it raises their costs and complicates their ability to do financial transactions in the global economy.

Most of all, by their deeds and their words, they have actually taken the steps asked of them by the United States to eliminate the basis for their designation, only to see the goalposts moved again and again.

Read the excellent summary of the case by the Council on Foreign Relations. Cuba stopped supporting foreign insurgencies in Latin America and Africa twenty years ago. They do not provide material support to terrorist groups. They pose no military threat.

Then there was this cruel joke in the 2006 report. Cuba was kept on the list, in part, because it did not support the U.S. "war on terror," which presumably meant it didn't support keeping itself on the terrorism list, which had the perverse effect of keeping Cuba on the list: talk about a "Catch 22."

If you needed to hand an argument to the hardliners in Cuba about why it was pointless to try and reconcile with the United States that would be it.

My second point is that this really bad U.S. policy. When we treat Cuba as a state that sponsors terror –when it is not –we waste our tax dollars and undermine the credibility of our efforts against genuine threats.

We also alarm and anger our allies. They object to the reach of our sanctions across borders. This forms the basis of their complaints against the U.S. embargo when the U.N. condemns our sanctions every year.

All of this is likely to get worse, not better, as our enforcement of anti-terror and anti-money-laundering laws become more aggressive.

Already, these enforcement trends are causing foreign banks with interests in the U.S. to terminate their banking relationships with Cuba. They are deciding that the risk of doing business with Cuba that could trip them up with U.S. authorities is greater than the benefit of maintaining those relationships. They are cutting ties as a matter of business discretion, not U.S. law.

Britain's ambassador to Cuba told me in a meeting last June that the reach of our sanctions make it impossible for many small and medium sized businesses in the U.K. to make legal investments or legal transactions because of the risks involved. That's a loss for Cuba and a loss for British firms and workers.

This is serious business, but it sometimes reveals itself in farcical ways. Clif Burns at the Export Law Blog reported recently on this incident. An obscure office inside the S.E.C. wrote the United Parcel Service and challenged the fact that they delivered packages to Cuba because it is subject to economic sanctions and export controls. UPS wrote them back explaining they were allowed to deliver packages that contained lawful deliveries. The complexity and reach of our laws, at times, exceeds the ability of our enforcement agencies to apply them rationally.

Cuba's presence on the state sponsors' list is emblematic of our political dilemma. The definition of a self-licking ice cream cone is this: it is a process or thing that offers few benefits and exists primarily to justify its own existence. Cuba's designation is perfect for the hardliners in Congress to block otherwise rational policy changes or initiatives – because, after all, U.S. law says we'd be helping a state sponsor of terror. Let me give you three examples.

Congressman David Rivera uses it to justify trying to stop Repsol and Cuba from drilling together for oil. He said his legislation to block drilling was necessary to – and I quote – "ensure

that Florida taxpayers are not made to pay for an environmental disaster caused by a terrorist regime."

When Senators Menendez and Rubio sought to stop President Obama from increasing the number of airports allowed to serve the Cuban market, their legislation sought to prevent the expansion of direct flights to state sponsors of terrorism.

Finally, there is the case of Alan Gross. When Ileana Ros-Lehtinen questioned Secretary Clinton recently at a hearing, she stated that "the United States should not be negotiating with a state sponsor of terrorism." Apparently, this means we would leave Mr. Gross in prison permanently because we must not talk to Cuba about releasing him. And if he remains in prison, of course, all of the hardliners in Congress will use his captivity to justify never changing the policy.

Ending Cuba's designation as a state sponsor of terror is the right thing to do. Cuba meets the criteria for delisting. We should do it now. But it's hard for me to imagine that happening, because that will require real leadership – a willingness to tell the truth, and to stand up to the hardliners, in an election year.

My organization believes that this is the least that we should be doing. Rather than treating Cuba as a pariah, we should treat Cuba as a partner. We published a book in 2009 about engagement with Cuba with chapters written by great scholars and experts in their fields.

General James T. Hill, the former commander of SOUTHCOM, wrote that we should cooperate with Cuba to fight international terrorism, narco-terrorism, natural disasters, and mass migration.

Randy Beardsworth, a Coast Guard veteran and homeland security advisor to Barack Obama and George W. Bush, argued that we should be including Cuba in regional anti-terrorism preparedness exercises.

Removing the designation would also enable the U.S. to support Cuba's drive to update its economic model. Doing so would make it easier to facilitate trade and make it easier for Cuba to

access high technology items. Removing Cuba from the list, as Richard Feinberg argues, would make it easier for Cuba to obtain economic advice from the international financial institutions. The Cuba Study Group argues that the terror list inhibits small business development.

In other words, the list blocks the U.S. from engaging in policies that would potentially help Cubans lead more prosperous and independent lives. And that is, after all, what U.S. policy is supposed to be all about, isn't it?

Presentation at the Conference Calling for Cuba's removal from the list of States Sponsors of Terrorism organized by the CIP and the LAWG (Dec 1, 2011).

On October 14, during a hearing about the future of U.S. Policy towards Iran and Syria before the House Foreign Affairs Committee, the State Department's Under-Secretary for Political Affairs Wendy Sherman confirmed that Cuba and the United States have discussed the imprisonment of US citizen Alan Gross in Havana.

Ms. Sherman answered a question by Cuban American Congressman David Rivera: "Has anyone in the Obama Administration discussed the possibility of making any concession or accommodation whatsoever to the terrorist Castro Dictatorship in exchange for the release of American hostage Alan Gross?" Mr. Rivera forced the Under Secretary to recognize that Cuba is on the Department's list of state sponsors of terrorism. After reminding her that the policy of the United States is not to negotiate with terrorists, Congressman Rivera pontificated that: "it is outrageous that we would be negotiating with a terrorist regime to release an American hostage".

This remarkably dishonest exchange is a demonstration about how the wrong inclusion of Cuba in the list of terrorist sponsoring countries is preventing the possibility of an honest and rational discussion of American policy toward the island.

The policy of not negotiating with terrorists is right. Nations should not give in to terrorist demands. Equally, a list of States Sponsors of Terrorism is a legitimate tool in the hands of the State Department to name and shame countries that support terrorist activities. When it is used following a security rationale, the list helps to mobilize the international community about the behavior of countries such as Syria, Iran and Sudan that support organizations that engage in attacks against civilians using terror as a political tool.

But none of this has anything to do with Mr. Gross or with Cuba. Rivera's references to terrorism and Alan Gross as a hostage are a manipulation. Cuba's presence on the list of state sponsors of terrorism is a sham.

Likewise, Gross was *arrested* in Cuba*, not kidnapped. Mr. Gross* was carrying out a project of the USAID under section 109 of the Helms-Burton Act. This US law that has been condemned by the United Nations for violating Cuban sovereignty. Its openly declared purpose is to overthrow the Cuban government.

Gross is not a hostage, he is a pawn, and he is trapped by the "anything goes" conceit of our regime change policy. If Washington were to negotiate with Cuba to achieve Gross' freedom, there would be absolutely no risk that Cuba would then kidnap other Americans as Hamas and Hezbollah do with Israeli citizens to begin other negotiations.

In the minutes that follow I am going to present an argument about how the unfair inclusion of Cuba in the list of States Sponsor of Terrorism is damaging American national interests. I will emphasize two central elements:

First: Why including Cuba on the terrorist list harms American efforts in the Global War against real Anti American terrorism.

Second: How the inclusion of Cuba on the terrorist list has made difficult the design of an effective, realistic, rational and coherent American policy towards Cuba. By such concept, I mean, a policy that serves US national interest reflecting the changes in Cuba, and the post-Cold War international context.

So, let me discuss the first issue, why including Cuba on the terrorist list harms American efforts and leadership in the Global War against terrorism.

Cuba's inclusion on the list is based on bogus allegations that undermine its credibility. By lumping Cuba together with Iran, Syria, and Sudan, a potentially effective foreign policy tool for warning Americans and the international community against countries that "repeatedly provide support for international terrorism" becomes a list of governments that some South Floridians don't like. Foreign policy is not about therapy. If the goal is to provide right wing Cuban Americans a venue for catharsis, there are other ways less harmful to US national security for them to vent their frustrations.

The list of terrorism sponsoring nations should be a bargaining tool for dealing with, well, countries that engage in or sponsor terrorism. The misuse of a first level national security concern must give pause to responsible members of the Washington Foreign Policy community. **First**, it distracts efforts and resources in the wrong direction, taking eyes and dollars from where the real threats are. **Second,** it sends the wrong messages to other countries, diminishing the appeal of the list as a warning against countries such as Iran or Syria, in which the threat of cooperation with and sponsorship of terrorist groups such as Hamas and Hezbollah against the United States and our allies is really serious. **Third,** it weakens the capacity of US allies like Israel or India, who are real targets of terrorist threats, to make a case for sanctioning or monitoring of countries or entities such as Iran whose presence on the list is justified.

The three Cuba Reports (2008, 09, and 10) by the State Department Office of the Coordinator for Counterterrorism written under the Obama Administration are more an argument for removing rather than for keeping the island on the list. This is particularly evident in the discussion of Cuba's alleged links with three groups connected to international terrorist activities: The FARC and the ELN from Colombia, and the Spanish ETA. In addition to ETA's recent announcement of its demobilization, making this a non issue, the presence of members

of these groups in Cuba is positively recognized by the Spanish and Colombian governments as part of their respective peace processes.

The 2008 and 2009 reports also discussed the presence in Cuba of several US fugitives who engaged in violent events of a political character more than twenty years ago. The topic is not even mentioned in the 2010 report.

Cuba and the United States signed a 1904 Extradition treaty with exceptions for cases of a political character. In 1959, the United States suspended the application of the treaty, protecting criminals who were prosecuted in post-revolution Cuba for corruption and gross violations of human rights during Batista's dictatorship. For decades, the US government has not generally extradited terrorists and hijackers who arrived on US shores. This group included Orlando Bosch and Luis Posada Carriles, accused in Cuba and Venezuela of engineering the explosion of a civilian plane in 1976, killing 73 passengers. As a matter of reciprocity, Cuba has felt no obligation to extradite some US fugitives. This unusual situation does not justify listing Cuba as a terrorist country but rather demands the willingness to negotiate, in good faith, a renewal of the extradition treaty between the two countries.

All three reports failed to provide any substantive evidence of Cuban involvement in terrorist activities, or in their support. The State Department Reports still raised some issues about Cuba's attitude toward the US counterterrorism approach but this is another reason to have a dialogue with Cuba not to include it in the list of States sponsors of terrorism or to impose the most comprehensive sanctions against the island.

In terms of hard facts, the reports provided hard evidence that Cuba has been increasingly willing to cooperate with the United States in the struggle against terrorism. For instance, the 2010 Report recognized Cuba's efforts to investigate third-country migrant smuggling and other related criminal activities, thus contributing to US border integrity and helping to deal with transnational security concerns. The 2008 report recognizes former president Fidel Castro's call on the FARC "to release the hostages they are holding without pre-conditions" and his condemnation of "FARC's mistreatment of captives and of their abduction of civilian politicians who had no role in the armed conflict".

The political discussion around Bill Richardson's recent visit to Cuba and an alleged American proposal trying to link US counterterrorism strategy with unrelated issues revealed another inadequate approach. If Cuba were sponsoring terrorist activities, the State Department should keep the island on the list regardless of whether the Cuban government releases Mr. Gross. However, if the State Department has no evidence of terrorism-related activities or any type of Cuban support for terrorist groups in the last two decades, what is the point of keeping Cuba on the list at the cost of discrediting the whole anti-terrorism strategy?

Cuba's appearance on the list of terrorism sponsoring states is particularly hypocritical if one contrasts it with the absence of governments such as Lebanon, Pakistan and Saudi Arabia that do engage, tolerate or provide physical refuge and ideological support to terrorist organizations such as Hamas, the Haqqani Network and Hezbollah who are responsible for the deaths of hundreds of Americans. The presence of Cuba on the list is even more scandalous given that the Bush Administration removed Kaddafi's Libya and Kim Jong-IL's North Korea based on some mysterious criteria.

Why including Cuba on the terrorist list makes it difficult to have a realistic and rational policy towards Cuba?

Washington's persistent discourse that characterizes Cuba as a terrorist threat hinders the development of a strategic vision for addressing the challenges Cuba presents to US foreign policy today. Post-Cold War Cuba is not a military threat to American lives or US interests at home or abroad. A one party nationalist regime, centered in an economic transition to a mixed economy might not square well with Washington's preferences but it is compatible with a US led world or regional order. The island is a country in transition that is carrying out a market oriented economic reform without giving up its one party system. This situation calls for policies completely different from those required for dealing with a terrorist menace.

In the case of a country such as Iran or Syria, with links to terrorist groups such as Hezbollah and Hamas, there should be a policy of containment and limitations of some type of contacts. Copying with a Cuba in the middle of an economic transition to a mixed economy, American optimal policy is one of engagement. It is worth remembering that when Presidential Candidate Barack Obama in 2008 advocated for a policy of engagement and dialogue with adversaries, his proposal was predicated not on sympathy for those governments but on the mutual opportunities for gains and the promotion of the American national interests. Even within the twisted logic that guides the Helms Burton Act, it is perverse how Washington is treating Cuba's non state sector as an enemy of the United States, limiting its chances for trade and interaction with the American economy.

Moreover, in the context of the Americas, Cuba is located at a strategic place for American maritime borders. Bogus allegations should not be used to block a comprehensive cooperation between the American and Cuban governments to prevent any terrorism or organized crime related activities against either of the two countries. The United States has significant differences with the political systems of many countries but the primary goal of any government is the protection of its citizens, the homeland and its strategic and economic interests. It is irresponsible that the United States is declaring Cuba a terrorist country not following any security rationale but kowtowing to the pressures of partisan parochial interests.

Finally, the presence of Cuba on the States sponsors of terrorism list is harmful to United States soft power in Cuba and Latin America. It is a confirmation of the revolutionary narrative about American hostility and the use of double standards against Cuba. This gratuitous inclusion of Cuba on a list that it doesn't belong diminishes any other legitimate claim the United States can have about Cuba, its international behavior and its human rights record. It also blocks possibilities of a more comprehensive cooperation between Cuba and the hemispheric security mechanism, particularly the Inter-American Committee against Terrorism[i].

The ransacking of Cuban funds in the United States as result of unjust legal suits fits perfectly on the narrative in which several Cuban generations has been educated after the 1959 revolution. Cuba appears again as the object of American disrespect for its sovereignty, as a victim of double standards and aggression, as a David in resistance and defiance. The inclusion of Cuba on the list appears as a symbol of revengeful confrontation. This is the environment in which Cuban and Latin American radical nationalism flourishes and restrictions to civil rights are justified under emergency arguments. Cuba's presence in the list of terrorist countries definitely has negative effects in Cuban processes of economic reform, political liberalization and openness.

William F. Buckley wrote: "The principal responsibility of the thinking man is to make distinctions," "Physics primers remind us that 'all of the progress of mankind to date has resulted from the making of careful measurement'". The careful measures of Cuba's involvement in terrorist activities are clear. For more than twenty years, the US Government has not recorded a single case, one single case, of a terrorist action sponsored by the Cuban government. Secretary Clinton, who is well known for her methodic approach to politics, has the opportunity to leave a positive legacy in this area. It is time to adopt clear criteria for terrorist list designation. Cuba's presence on the list must end.

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[i] During the questions and answers period of the conference, following a question by professor Carlos Alzugaray about what Cuba could do to get off the list of States Sponsors of terrorism, I recommended that Cuba unilaterally sign the Inter-American Convention against terrorism and ask the Permanent Council of the OAS to join the Inter-American Committee against Terrorism, forcing a debate about the issue within the inter-American system about

Cuba's exclusion of it. This selective engagement with the OAS will expose the different views about Cuba's alleged terrorist activities between the United States and the rest of the hemisphere.