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RAPPROCHEMENT CUBA/USA: OPPORTUNITIES AND OBSTACLES

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Since its historic announcement on 17 December 2014, Washington has taken several steps designed to ease the effects of the economic siege that still weighs heavily on Cuba. But the road remains long. Many obstacles are still to be overcome in the negotiation process between Cuba and the US.

On 16 January 2015, certain easements to the US embargo of Cuba were announced and have become effective. They fall within the framework of the process of normalisation of bilateral relations initiated by Presidents Barack Obama and Raúl Castro. While they fail to put an end to US economic sanctions, they are nonetheless a positive step, confirming Washington's willingness to end an anachronistic policy that is both cruel and ineffective. This policy is in fact the main obstacle to the development of the island, negatively affecting the most vulnerable sectors of the Cuban population. It has aroused the unanimous condemnation of the international community.¹

The first measure concerns opportunities for travel to Cuba. While US citizens are still not allowed to visit the island as ordinary tourists – although they are allowed to travel freely to China, Vietnam and North Korea – Washington has decided to facilitate travel for those who fit within twelve specific categories authorised by law. The twelve categories are (1) family visits; (2) official business of the US government, foreign governments, and certain intergovernmental organisations; (3) journalistic activity; (4) professional research and professional meetings; (5) educational activities; (6) religious activities; (7) public performances, clinics, workshops, athletic and other competitions, and exhibitions; (8) support for the Cuban people; (9) humanitarian projects; (10) activities of private foundations or research or educational institutes; (11) exportation, importation, or transmission of information or information

materials; and (12) certain export transactions that may be considered for authorization under existing regulations and guidelines. Thus, within the new framework, US travel and airline offices can now offer their services without being required to first obtain a specific licence from the Office of Foreign Assets Control (OFAC, Treasury Department). Furthermore, citizens allowed to travel to Cuba can now use their credit cards on the island without a limit on the amount that can be charged. They are also allowed to carry up to \$10,000 and can purchase up to \$400 in merchandise, including 100 in tobacco and alcohol.²

At the level of remittances to Cuba, it is now possible to send \$2000 per quarter, against 500 before. However, according to US law, senior government officials and members of the Communist Party may still not receive family assistance from the US. Max Lesnik, director of the Miami-based magazine *La Nueva Réplica*, has criticised this restriction:

For a long time we have accused the Havana government of having divided the Cuban family for political and ideological reasons. However, it now appears that it is U.S. policy that arbitrarily separates families, for example, preventing a Miami Cuban from supporting her mother in Havana on the grounds that she is a Communist Party militant or a member of the government.³

In addition, US citizens may also now provide unlimited financial assistance to Cubans for humanitarian projects and the development of private businesses.⁴

In the field of telecommunications, US companies, under licences granted by the Department of Commerce, may now export their technology to Cuba. Thus, Cubans can purchase computers, software, cell phones, televisions, etc. The Cuban private sector will also be able to purchase construction and agricultural equipment. Domestic companies, however, are excluded. At the same time, it will now be possible to export certain goods produced by the Cuban private sector to the US.⁵ However, given that the vast majority of the island's goods and services is in fact produced by State enterprises, the impact of these measures remains quite limited.⁶

In the financial arena, US companies with commercial links to Cuba may now open a bank account in a financial institution on the island. Washington also announced the suspension of one aspect of the Torricelli Act of 1992 that prohibited any foreign ship docking in Cuban ports to travel to the US during the following six months.⁷

In addition to these measures, on 21 January 2015, Washington sent a large delegation to Cuba led by Roberta Jacobson, assistant secretary of state for inter-American affairs, to begin early discussions aimed at restoring diplomatic relations between the two nations. This is the most important official US visit to Cuba in 30 years.⁸

The Flexibility of Barack Obama

In his speech to Congress, President Obama urged Congress to lift economic sanctions against Cuba. ‘In Cuba, we are ending a policy that was long past its expiration date. When what you’re doing doesn’t work for fifty years, it’s time to try something new’, he said. ‘Our shift in Cuba policy has the potential to end a legacy of mistrust in our hemisphere ... and this year, Congress should begin the work of ending the embargo’, said Obama.⁹

It is true that since the adoption of the Helms-Burton Act in 1996, only Congress has the authority to repeal the various laws that touch on economic sanctions and allow the restoration of normal diplomatic and trade relations with Cuba. However, as president of the US, Barack Obama has many executive privileges that allow him to ease significantly the economic siege imposed upon the Cuban people through the creation of specific licences.

For example, in 2000, under his executive powers, Bill Clinton authorised the sale of food commodities to Cuba, even if the conditions imposed are drastic (advance payment in a currency other than the dollar, with no possibility of obtaining credit, etc.). Similarly, in September 2009, President Obama ended restrictions on family visits imposed by George W. Bush in 2004 on the Cuban community in the US (one 14-day trip allowed every three years and then only to visit direct family members) and encouraged travel for US citizens as part of a clearly defined mission (cf. 12 categories).

It was also in this context that the White House announced an easing of restrictions in December 2014, which became effective in January 2015. According to Josefina Vidal, director general for North American affairs of the Cuban Ministry of Foreign Affairs, responsible for bilateral negotiations with Washington, ‘President Obama has unlimited powers that could well rid the blockade of its basic content’.¹⁰

Thus, under the powers conferred on him, Barack Obama could perfectly well allow bilateral trade between Cuba and the US as well as permit companies on both sides of the Florida Straits to establish normal relations. There is no need for Congressional agreement. Indeed, due to the existence of the Torricelli Act of 1992, only the subsidiaries of US companies based abroad are not permitted to trade with the Caribbean island without prior Congressional approval.

Obama could also allow Cuba to purchase products containing more than 10% of US component parts on the global market. Indeed, today, any product produced in France, Japan, Brazil or China containing more than 10% of US components may not be sold in Cuba. Havana, for example, is significantly impeded in the renewal of its aircraft fleet because the vast majority of the aircraft sold on the world market contain component parts made in the US.

The president could also authorise the importation of products manufactured in the world containing Cuban raw materials. At the moment, this is impossible. Thus, if the company that manufactures Mercedes wishes to sell its automobiles in the US, it must first demonstrate to the Treasury Department that the cars do not contain a single gram of Cuban nickel. Similarly, if Danone wants to sell its dairy products on the premiere world market, it must first prove to Washington that they do not contain a single gram of Cuban sugar. These limitations are a serious obstacle to the development of trade between Cuba and the rest of the world. Furthermore, the White House could consent to the sale on credit of non-food products to Cuba. Indeed, if the 2000 Trade Sanction Reform Act makes possible the sale of food commodities to Cuba, it nonetheless prohibits the granting of credit to facilitate this type of transaction. Obama could well approve the use of deferred payment for non-food sectors.

Moreover, Obama could also accept that the Caribbean island use the US dollar in its trade and financial transactions with the rest of the world. At present, Cuba is forced into delicate monetary gymnastics in the field of international trade and must bear the substantial cost of foreign exchange transactions in its relations with other nations of the world. This has a significant financial impact on a small third world country with limited resources.

Thus, as one can easily see, President Obama already has all of the necessary powers needed to gut the law on economic sanctions against Cuba and encourage Congress to finally end a policy that dates from another time.

Obstacles

In addition to economic sanctions, other obstacles remain on the way to achieving the restoration of normal and peaceful diplomatic relations between the two nations. First, the US must remove Cuba from its list of countries supporting international terrorism. Indeed, Cuba was first placed on this list by the Reagan administration in 1982 because of the support the island nation gave to revolutionary and independence movements in Latin America and around the world. Today, Washington justifies maintaining Cuba on the list because of the presence of a few members of the Basque separatist organisation ETA and Colombian FARC guerrillas in Cuba, all of whom are nonetheless on the island at the express request of both the Spanish and the Colombian governments.

Moreover, in its report, Washington explicitly recognises that ‘The Government of Cuba supported and hosted negotiations between the FARC and the Colombian government with the aim of reaching a peace agreement between the two parties’. The US also recognises that ‘there is no information that the Cuban government had provided weapons or paramilitary training to terrorist groups’ and admits that ‘ETA members residing in Cuba are there with the

cooperation of the Spanish government'. Washington also justifies the inclusion of Cuba on the list of terrorist nations because of the presence on the island of political refugees sought by the US since the 1970s and 1980s. None of these refugees, however, have ever been accused of terrorism.¹¹

The 33-member countries of the Community of Latin American and Caribbean States (CELAC) unanimously rejected the inclusion of Cuba on the list of terrorist countries. In a statement issued on 7 May 2014, CELAC expressed 'total opposition to the establishment of unilateral lists accusing states of allegedly supporting and sponsoring terrorism' and urged the government of the US to end a practice 'that has garnered the disapproval of the international community and of public opinion in the United States'.¹²

Indeed, the establishment of such a list is based solely on political considerations. It should be recalled that Washington maintained Nelson Mandela, a hero of the struggle against apartheid, president of South Africa from 1994 to 1999 and recipient of the Nobel Peace Prize, on the list of those involved in international terrorism until 2008. Interestingly, the oil monarchies of the Middle East, deeply involved in financing international terrorism, including organisations such as Daesh, remain allies of the US and are not included on the State Department's list.

Cuba also demands the repeal of the Cuban Adjustment Act passed by the US Congress in 1966. This legislation, unique in the world, states that after 1 January 1959, any Cuban emigrant arriving in the US, either legally or illegally, through peaceful or violent means, automatically obtains permanent residency status after a year and a day. This is why there are no illegal Cubans in the US. This law is a powerful tool that incites illegal emigration and permits the US to plunder Cuba's human capital. At the same time, Washington caps off the number of visas granted to Cubans at 20,000 per year, a limitation that fuels a dangerous and lucrative criminal industry in illegal emigration.¹³

On migration issues, Havana also calls for the repeal of the US government's 'wet foot, dry foot' legislative policy adopted in the early 1990s. This legislation states that any prospective Cuban migrant intercepted at sea by US authorities will be automatically repatriated to Cuba. However, anyone who manages to set foot on US soil comes immediately under the protection of the Cuban Adjustment Act.

Guantanamo, occupied illegally by the US since 1902, is also a sticking point. Indeed, following the US involvement in the 1898 Cuban War of Independence, Washington, as a means of continuing indefinitely its military occupation of the island, imposed the Platt Amendment on the new Cuban Constitution. This legislative appendix made Cuba a protectorate without real sovereignty and stated, among other things, that Cuba was to rent to the US a part of its territory for a period of 99 years, renewable indefinitely from the moment either one of the two camps favoured so doing. Following the repeal of the Platt Amendment

in 1934, the naval base at Guantanamo has been rented by the US for a modest \$4000 a year. Since 1 January 1959, the Cuban government has refused to accept this annual fee and demands the return of the territory. To date, Washington refuses any idea of withdrawing from Guantanamo.

The financing of internal opposition is also a bone of contention between Washington and Havana. Illegal in the eyes of international law, Cuban legislation and any of the world's criminal codes, support for Cuban dissidents with the intent to overthrow the established order has been one of the main pillars of US foreign policy towards the island since 1959. This policy, conducted clandestinely from 1959 to 1991, has now become public. The US assumed responsibility with the adoption of the Torricelli Act of 1992. In fact, Article 1705 of the Act stipulates that a budget be allocated to finance internal opposition in Cuba. This provision was ratified in the Helms-Burton Act of 1996 (Section 109) and in the two reports of the Commission for Assistance to a Free Cuba in 2004 and 2006. Today, Washington, in flagrant violation of international law, allocates an average of \$20 million a year towards 'regime change' in Cuba. In addition, US diplomats stationed in Havana, blatantly ignoring the Vienna Convention, regularly provide material, logistical and financial support to dissident groups.¹⁴

Havana is also calling for an end to Radio and TV Martí broadcasts. Created by the US government in 1983 and 1990, respectively, they are designed to encourage the population to rise up against the government in power. Intended exclusively for Cuba, these programmes are broadcast in violation of international telecommunications law and interfere with Cuban airwaves.

The island's authorities finally demand that the violent groups in Miami involved in terrorism against Cuba be tried for their crimes. It should be recalled that the Cuban people, between 1959 and 1997, have suffered nearly 7000 terrorist attacks organised from the US. These attacks have killed 3,478 people and inflicted permanent injuries on 2,099 others, not to mention the significant material damage they have caused.

Luis Posada Carriles is an emblematic case. A former police officer under the dictatorship of Fulgencio Batista, a former CIA officer who participated in the Bay of Pigs invasion, Posada Carriles is the intellectual author of more than 100 murders. He is responsible for the attack against a Cubana de Aviación civil airliner on 6 October 1976, the first act of air terrorism to occur on the American continent. That attack claimed the lives of 73 civilians, including 24 members of the Cuban junior fencing team that had just won gold medals at the Pan American Games. Posada Carriles is also intellectually responsible for the wave of terrorism that hit the Cuban tourism industry in 1997 that resulted in dozens of casualties and the death of Fabio di Celmo, an Italian tourist.¹⁵

The guilt of Luis Posada Carriles is not in doubt. There is no need to limit oneself to the accusations emanating from Havana. Indeed, certain FBI and CIA

reports are quite explicit in this regard: ‘Posada and Bosch masterminded the bombing against the plane’.¹⁶ Similarly, in his autobiography, *Los caminos del guerrero*, Posada Carriles openly admits to his terrorist career. Finally, in a 12 July 1998 interview with the *New York Times*, he boasted of being the person who had committed the greatest number of terrorist acts against Cuba, claiming the intellectual authorship of 1997. The Italian tourist, he suggested, was simply ‘at the wrong place at the wrong time’. Today, Luis Posada Carriles lives quietly in Miami, and the US refuses to try him for his crimes.¹⁷

Until these issues are addressed, namely, the lifting of economic sanctions, the removal of Cuba from the list of countries supporting international terrorism, the repeal of the Cuban Adjustment Act, the return of the Guantanamo naval base, an end to the funding of the Cuban opposition and a trial that brings Luis Posada Carriles to justice, it will be difficult to envision the full normalisation of bilateral relations. Except for the lifting of economic sanctions, Washington seems unwilling, at least for now, to make substantial changes in these areas.

For its part, Cuba has expressed its willingness to discuss, in accordance with the requirements of international law, possible compensation for US properties nationalised in the 1960s. But Havana authorities have also made it clear that, in conjunction with these negotiations, a discussion should also be opened on the cost of the US economic sanctions and the policy of aggression levied against the island since 1959. The inevitable question of compensation should be included in these discussions.

In the historical dispute between Cuba and the US, a truism, often overlooked by the media, should be recalled. In this asymmetrical conflict, there is an aggressor, Washington, and a victim, the people of Cuba. Indeed, unlike the US, Cuba is not illegally and by force occupying any US territory, nor does it impose economic sanctions on its neighbour. Cuba has never invaded the US (Bay of Pigs) and has never threatened the American people with nuclear destruction (1962 missile crisis). Furthermore, Havana is not requiring regime change in the US. It does not emit illegal radio and television transmissions, nor does it finance an internal opposition in order to overthrow the established order.

A prerequisite is essential for the normalisation of bilateral relations between the two nations: the US must give up its strategic goal of ‘regime change’ and accept the reality of a sovereign and independent Cuba. Any attempt at interference in the internal affairs of the island is doomed to failure, because Havana is not willing to negotiate its political system and its model of society, both of which are under the exclusive jurisdiction of the Cuban people. The only viable relations possible between Cuba and the US are those founded on three fundamental principles: sovereign equality, reciprocity and non-interference.

Translated from the French by Larry R. Oberg

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