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Cuban Protests in 2021: An Opportunity to Implement Alternatives to Sanctions

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Cuban Protests in 2021: An Opportunity to Implement Alternatives to Sanctions

Barbara Jimenez*

The relationship between the United States and Cuba can be described as anything but simple. In fact, it is the intricacy of the relationship that inspired this Note. A key point in the complex relationship between the United States and Cuba was the United States' decision to impose the embargo in 1962. Since 1962, Cuba's relationship with the United States, and its allies, changed entirely. While the embargo poses an economic sanction, the United States, throughout the years, has placed sanctions on Cuban officials as a result of human rights violations in Cuba. Broadly, sanctions target the officials and freeze their assets in the United States. This Note uses Cuba's protests for freedom on July 11, 2021, and the due process violations that ensued, as proof that these sanctions have not achieved their goal because they have failed to stop the human rights violations on the island.

The focus of this paper is to explore alternatives to sanctions. The proposed alternatives are meant to provide an avenue that will lead to the desired change – namely, to stop legal and human rights violations in Cuba. This Note proposes a myriad of alternatives, which include the

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participation by international legal bodies, and the imposition of targeted sanctions, but at the core of the alternatives is the concept of engagement. Up until this point, sanctions have done nothing to change the behavior of the Cuban regime. Engaging in a dialogue with the Cuban regime and negotiating a series of exchanges could prove to be one of the only means to achieve the freedom and equality the Cuban people yearn for.

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I. INTRODUCTION

While sanctions are a known method to try and hold another government accountable, the power that allows the impositions of sanctions¹ and potential alternatives to sanctions are not well-known.² The United States has maintained a comprehensive embargo with Cuba since 1962.³ This embargo was executed under the Foreign Assistance Act of 1961.⁴ In 1992, The Cuban Democracy Act reinforced the United States’ power to impose sanctions “directed at the Castro government and support for the Cuban people.”⁵ The Cuban Liberty and Democratic Solidarity Act of 1996 then aimed at imposing “international sanctions against the Castro Government.”⁶ In 2000, the Trade Sanctions Reforms and Export Enhancement further limited exports to Cuba and other states that support acts of international terrorism.⁷ What do all these acts have to

¹ Brent Radcliffe, *How Economic Sanctions Work*, INVESTOPEDIA (July 6, 2022), <https://www.investopedia.com/articles/economics/10/economic-sanctions.asp>. (Defining sanctions as “a penalty levied on another country, or an individual citizen of another country.”).

² Daniel Funke, *Fact Check: U.S. Embargo Doesn’t Prevent Cuba from Trading with Other Countries*, USA TODAY (July 15, 2021, 8:29 PM), <https://www.usatoday.com/story/news/factcheck/2021/07/15/fact-check-us-cuba-embargo-doesnt-apply-all-countries-companies/7954883002/>.

³ *Cuba Sanctions*, U.S. DEP’T OF STATE, <https://www.state.gov/cuba-sanctions/>.

⁴ 22 U.S.C. § 2370 (1961).

⁵ 22 U.S.C. § 6001 (1992).

⁶ Cuban Liberty and Democratic Solidarity (Libertad) Act, 22 U.S.C. §§ 6021-6091 (1996).

⁷ 22 U.S.C. § 7205 (2000).

do with the current sanctions arising from the July 11, 2021 protests in Cuba? These acts exemplify the history, the duration of the sanctions against Cuba, and the sanctions' failures, as the acts build on one another, but do not create different alternatives.⁸

During his presidency, former President Trump “issued Executive Order (E.O.) 13818, finding that the prevalence and severity of human rights abuse and corruption . . . have reached such scope and gravity that they threaten the stability of international political and economic systems, invoking the Global Magnitsky Act.”⁹ These sanctions are administered by the Office of Foreign Assets Control—Sanctions Program which “administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes.”¹⁰

These powers are in place today and continue to support the imposition of sanctions.¹¹ As a result of the violence during the July 11, 2021 protests in Cuba, the United States imposed sanctions on “Alvaro López Miera and the *Brigada Especial Nacional del Ministerio del Interior* (SNB) of the Cuban Ministry of the Interior (MININT),” due to the repression of peaceful protests in Cuba on July 22, 2021.¹² On August 19, 2021, the United States government imposed additional sanctions on Cuban military and security leaders.¹³ They sanctioned, among others, Abelardo Jiménez González, Chief of the Directorate of Penitentiary Establishment of the Cuban Ministry Interior (MININT), who held protestors without due process, not even disclosing the whereabouts of the prisoners to the

⁸ See *id.*; see also 22 U.S.C. §§ 6021–6091.

⁹ *The Global Magnitsky Human Rights Accountability Act*, CONG. RSCH. SERV. (Oct. 28, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF10576>.

¹⁰ *Office of Foreign Assets Control-Sanctions Programs and Information*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

¹¹ See *id.*

¹² *Treasury Sanctions Cuban Minister of Defense and Special Forces Brigade for Abuses Against Protestors*, U.S. DEP'T OF THE TREASURY (July 22, 2021), <https://home.treasury.gov/news/press-releases/jy0288>.

¹³ Anthony J. Blinken, *Sanctioning Cuban Officials in Response to Violence Against Peaceful Protestors*, U.S. DEP'T OF STATE (Aug. 19, 2021), <https://www.state.gov/sanctioning-cuban-officials-in-response-to-violence-against-peaceful-protestors-2/>.

family members.¹⁴ While the acts supporting the imposition of sanctions have been in place since 1962, Cuban people are still asking for basic human rights, such as the right to freedom of speech and adequate medicine and food.¹⁵ These sanctions merely placed a band-aid in the issues, rather than protect the basic human rights of those in Cuba.¹⁶

As a member of the United Nations (“UN”), the United States belongs to the community of nations that “coordinate relief of emergencies due to natural and man-made disasters in areas beyond the relief capacity of national authorities alone.”¹⁷ The United States has a legal obligation “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character.”¹⁸ But to what extent are sanctioning Cuban officials and maintaining an embargo fulfilling this legal obligation, rather than drifting from it? The consequences of these sanctions are the following:

[A]ll property and interests in property of the persons above that are in the United States or in the possession or control of U.S. persons are blocked, and all transactions by U.S. persons or within (or transiting) the United States that involve any property or interests in property of designated or otherwise blocked persons are prohibited unless authorized by a general or specific license issued by OFAC, or otherwise exempt.¹⁹

Thus, the sanctions limit the usage of property, but they do not promote the advancement of human rights under International

¹⁴ *Id.*

¹⁵ Carmen Sesin, *It's About 'Freedom': Cuban Americans Say Shortages Don't Explain Protests*, NBC NEWS (July 17, 2021, 10:01AM), <https://www.nbcnews.com/news/latino/freedom-cuban-americans-say-shortages-dont-explain-protest-s-rcna1437>.

¹⁶ *See id.*

¹⁷ *Deliver Humanitarian Aid*, UNITED NATIONS, <https://www.un.org/en/our-work/deliver-humanitarian-aid>. (Last visited Mar. 5, 2023).

¹⁸ *Id.*

¹⁹ *Treasury Sanctions Cuban Minister of Defense and Special Forces Brigade for Abuses Against Protestors*, *supra* note 12.

Law.²⁰ The embargo and the practice of sanctions have been in place since the 1960s, yet they do not seem to stop human rights violations in Cuba.²¹ It is time to search for an alternative to sanctions.²² Narrow and targeted sanctions, as those imposed on Venezuela,²³ might help to further the legal, socio-economic and political rights of Cubans in the island, but a complete deviation from sanctions could prove even more effective.²⁴ Alternatives to the current sanctions will also further the United States' legal obligation under the UN, rather than limits its role in constraining human rights' abuses.²⁵

Part I of this Note explored the acts that have supported the imposition of sanctions against Cuba throughout the years and provided a brief background on the events of July 11, 2021. It briefly touched on the embargo, as it is a form of a sanction. Part II will explore the protests on July 11, 2021, which sparked the United States' government's decision to impose sanctions on Cuban officials during July and August of 2021. Part II will also expand on the legality of the sanctions and introduce the sanctions imposed on Venezuela, which will serve as a comparison to those imposed on Cuba. Part III will analyze the International Human Rights Law which both Cuba and the United States are bound by. Part IV poses arguments regarding the human rights violations in Cuba, the actors, and the implications. This analysis will lead into Part V which will explore, evaluate, and propose alternatives to the current sanctions in place. Part VI will conclude this Note by reiterating a stance as to the effectiveness of the sanctions and an alternate avenue for moving forward.

²⁰ *See id.*

²¹ *See Cuba Sanctions supra* note 3; *see Blinken, supra* note 13.

²² *The Treasury 2021 Sanctions Review*, DEP'T OF THE TREASURY (Oct. 2021), <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>.

²³ *Venezuela-Related Sanctions*, U.S. DEP'T OF STATE, <https://www.state.gov/venezuela-related-sanctions/>.

²⁴ *See* Richard N. Hass & Meghan L. O'Sullivan, *Terms of Engagement: Alternatives to Punitive Policies*, 42 INT'L INST. FOR STRATEGIC STUD. 1, 1 (2000).

²⁵ *See Deliver Humanitarian Aid, supra* note 17.

II. BACKGROUND

A. *Events Leading up to the Social Setting of the Recent Sanctions*

On July 11, 2021, thousands of Cubans took to the streets, chanting “*Libertad*” (freedom), and asking for President Díaz Canel to step down.²⁶ Although the protests were peaceful, the state sent in “special force jeeps, with machine guns mounted on the back,” not just when the protesters were in the streets, but “the police presence was heavy even long after most protesters had gone home.”²⁷ As a result of the protests, the Cuban government placed hundreds of protestors under arrest, and, as of September 2021, there were still more than 500 Cubans under detention in connection with the protests on July 11.²⁸ Unfortunately, the prisoners included people who were under 18 years old.²⁹ There are certainly due process violations amidst the government response; some of the detainees were being held solely on the opinion of police officers, proving a lack of evidence against detainees who could face years in jail for protesting peacefully.³⁰

Additionally, in the cases where the prisoners were awarded a defense attorney, the attorney was not even given access to their files so the attorney was not aware of the charges against the prisoners.³¹ The charges were inconsistent and ranged from “illicit manifestations” to “propagation of an epidemic,” and there had been, at a minimum, seventeen different charges.³² In some instances, even individuals who were just watching the protests were arrested.³³ As a response to these protests, the government repeatedly tried to change

²⁶ Marc Frank & Sarah Marsh, *Cuba Sees Biggest Protests for Decades as Pandemic Adds to Woes*, REUTERS (July 12, 2021), <https://www.reuters.com/world/americas/street-protests-break-out-cuba-2021-07-11/>.

²⁷ *Id.*

²⁸ *Cuban Artist Freed from Jail, Forced Into Exile. Other Protesters Face Harsh Sentences*, MIAMI HERALD (Sept. 27, 2021, 4:34 PM), <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article254556737.html>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Cuban Artist Freed from Jail, Forced Into Exile. Other Protesters Face Harsh Sentences*, *supra* note 28.

the accusations against the prisoners to keep them behind bars.³⁴ Certain individuals waited up to ninety-six hours to know what they were charged for.³⁵ For instance, Iris Mariño, spent fifty hours alone in a cell where she could not even see her hands, and this is treatment that amounts to solitary confinement.³⁶

In late September 2021, Cubans from five different provinces made a petition to the government to be able to do a peaceful protest in November 2021.³⁷ Individuals were asking for the release of political prisoners and for the government to allow pacifistic and democratic solutions.³⁸ Yet, the petition was denied because the government did not see any legitimacy in these reasons.³⁹ Instead, the government stated that it would release the military on the dates that the protests were meant to happen.⁴⁰ A Cuban playwright said that on the day before the protests were supposed to take place, November 14, he would have “walk[ed] alone, in silence and holding a white rose . . . to show the non-violent nature of the movement.”⁴¹ This initiative came after Cuba’s Foreign Minister Bruno Rodríguez tried to shift the attention of those inside and outside of Cuba by saying that United States based social media platform “Facebook” was helping to promote the protest.⁴² He claimed that individuals outside

³⁴ *Id.*

³⁵ *Cuba: Amnesty International Names Prisoners of Conscience Amidst Crack-down on Protesters*, AMNESTY INT’L (Aug. 19, 2021, 7:00 PM), <https://www.amnesty.org/en/latest/news/2021/08/cuba-amnesty-international-names-prisoners-of-conscience/>.

³⁶ *Id.*

³⁷ Agencia Efe, *Cubanos piden al gobierno autorización para marcha pacífica en La Habana*, EL NUEVO HERALD (Sept. 22, 2021, 10:12PM), <https://www.elnuevoherald.com/noticias/america-latina/cuba-es/article254455088.html>.

³⁸ Mauricio Vicent, *El Gobierno de Cuba prohíbe una marcha pacífica por el cambio y sostiene que el socialismo en la isla es irrevocable*, EL PAÍS (Oct. 12, 2021, 7:23PM), <https://elpais.com/internacional/2021-10-12/el-gobierno-de-cuba-prohibe-una-marcha-pacifica-por-el-cambio-y-sostiene-que-el-socialismo-en-la-isla-es-irrevocable.html>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Dave Sherwood, *Cuban Protest Leader to March Alone, White Rose in Hand, Ahead of Rallies*, REUTERS (Nov. 11, 2021, 1:33PM), <https://www.reuters.com/world/americas/cuban-protest-leader-march-alone-white-rose-hand-ahead-rallies-2021-11-11/>.

⁴² Dave Sherwood & Nelson Acosta, *Cuba Says United States, Facebook Helping to Foment Nov. 15 Protests*, REUTERS, (Nov. 10, 2021, 4:08PM), <https://www.re>

of Cuba altered geolocation and logarithms to simulate the massive presence in Cuba, thus violating both United States and International Law.⁴³ Foreign Minister Rodríguez further stated that the United States has helped to organize the protests in an effort to destabilize the Cuban government.⁴⁴ Thus, this demonstrates that the sanctions have not contributed to the furthering of human rights in Cuba, as they are still asking for basic rights such as the right to peacefully protest.⁴⁵

Exactly six months after the July 11 protests, those arrested during the protests went to trial on the week of January 11, 2022.⁴⁶ The government set up three collective trials to try at least fifty–seven protestors.⁴⁷ Even six months after the protests, officials did not give an official number of arrests.⁴⁸ Court officials said, however, that in August 2021, there had been quick trials of sixty–seven defendants facing charges such as “public disorder.”⁴⁹ Justice 11J, a group that was created after the July 11 protests in Cuba and abroad, tried to track the cases of those detained in the island.⁵⁰ This organization confirmed some 1,334 detentions, 223 convictions, and 231 others facing charges arising from the July 11 protests.⁵¹ The only witnesses in the cases still only appear to be “the same police who beat them.”⁵² The consequences the detainees could face vary depending on where they are in the county, as some detainees could face fifteen years in prison, while others in a different location could face thirty years for the same charge of sedition, although they were peacefully protesting.⁵³ During the week of February 14, 2022, Cuba handed

uters.com/world/americas/cuba-says-united-states-facebook-helping-foment-nov-15-protests-2021-11-10/.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Associated Press, *In Cuba, People Arrested During Protests Go on Trial; Some Face 30-year Sentences*, NBC NEWS (Jan. 11, 2022, 2:55 PM), <https://www.nbcnews.com/news/latino/cuba-people-arrested-protests-go-trial-face-30-yr-sentences-rcna11815>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Associated Press, *supra* note 46.

⁵³ *Id.*

down the first sedition sentences of up to twenty years in prison to twenty protestors, five of which were under the age of eighteen.⁵⁴

B. The Role of the Global Magnitsky Human Rights Accountability Act and Sanctions Against Venezuela

Throughout the years, the United States government has put in place acts establishing and reinforcing the sanctions against Cuba and its officials.⁵⁵ Recently, The Global Magnitsky Act was enacted, which takes the terms of a prior law which was focused on Russia, the Sergei Magnitsky Rule of Law Accountability Act of 2012, and expands it to the global stage.⁵⁶ To be exact:

[t]he Global Magnitsky Act effectively globalizes the authorities of the 2012 law by authorizing the President to deny entry into the United States, revoke any already-issued visa, and block property under U.S. jurisdiction of, and prohibit U.S. persons from entering into transactions with, any foreign person (individual or entity) that the President determines.⁵⁷

Former President Trump invoked this Act through Executive Order 13818, which broadens the scope of the law.⁵⁸ The law now includes as sanctionable not just targets individuals who are responsible for gross violations of internationally recognized human rights, but also those who have indirectly or directly engaged in serious human rights abuse.⁵⁹

The sanctions are imposed through the Office of Foreign Assets Control which enforces sanctions based on national security goals against those engaged in activities related to the proliferation of weapons of mass destruction and other threats to the national

⁵⁴ Nora Gámez Torres, *The U.S. and Canada Decry Harsh Sentencing of Cuban Protesters After Sedition Convictions*, MIAMI HERALD (Feb. 17, 2022, 6:01PM), <https://amp.miamiherald.com/news/nation-world/world/americas/cuba/article258453658.html>.

⁵⁵ See *Cuba Sanctions*, *supra* note 3.

⁵⁶ *The Global Magnitsky Human Rights Accountability Act*, *supra* note 9.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

security, foreign policy, or economy of the United States.⁶⁰ The United States has not enacted sanctions solely against Cuba.⁶¹ In fact, the United States has enacted sanctions against Venezuela.⁶² Yet, the sanctions against Venezuela are different because they target a specific sector.⁶³ Executive Order 13850 blocks all property and interests in property of Venezuelan officials that are in the United States, but also targets the gold sector specifically.⁶⁴

While sanctions have not been successful in deterring the Cuban government from violating basic human rights, effective sanctions have had the power to deter and prevent actions that undermine U.S. national security.⁶⁵ For instance, sanctions have been successful in addressing national security challenges when it protected tens of billions of dollars in Libyan assets from misappropriation by former government officials following civil unrest and the fall of the Qadhafi regime in 2011.⁶⁶ However, technological innovations such as digital currencies, new ways of hiding cross-border transactions, and the fact that adversaries and allies have reduced their use of the United States dollar could harm the efficacy of United States sanctions.⁶⁷ Some of the steps to modernize sanctions include “adopting a structured policy framework that links sanctions to a clear policy objective” and “incorporating multilateral coordination.”⁶⁸ These

⁶⁰ *Office of Foreign Assets Control – Sanctions Programs and Information*, *supra* note 10.

⁶¹ *See id.*

⁶² *Venezuela-Related Sanctions*, *supra* note 23.

⁶³ *See id.*

⁶⁴ Exec. Order No. 13850, 3 C.F.R. 55243 (2018), https://home.treasury.gov/system/files/126/venezuela_eo_13850.pdf (stating that 13850:

blocks all property and interest that in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (i) to operate in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.)

⁶⁵ *See Treasury 2021 Sanctions Review*, *supra* note 22, at 2.

⁶⁶ *Id.* at 1.

⁶⁷ *Id.* at 4.

⁶⁸ *Id.*

two goals are vital for the furthering of sanctions in Cuba as sanctions that are objective, rather than vague, and that are potentially imposed by other actors to magnify the political impact, could prove to be a better, although not a perfect alternative, to what is in place now.⁶⁹

C. *Type of Sanctions Imposed on Cuba*

The now famous Cuban Embargo is an economic sanction which is cited at times as an example of a United States unilateral economic sanctions program that has failed to achieve its stated claim.⁷⁰ This failure is due to the fact that the United States extends the reach of its control to cover actions of companies both based in the United States and also the actions of foreign companies that are owned or controlled by individuals in the United States.⁷¹ This in itself exhibits the dangers of unilateral sanctions as compared to multilateral sanctions.⁷² Economic sanctions have, time and time again been deemed ineffective as they “cause disproportionate stress on ordinary citizens, while allowing the targeted regimes to avoid the cost of coercion.”⁷³ Sanctions also do not benefit or promote respect for human rights; instead, the threat of coercion can be counterproductive.⁷⁴ This happens because foreign pressure permit the targeted leadership to enhance their coercive capacity and allows them to create more instances to violate the basic rights of average citizens.⁷⁵ Accordingly, “economic coercion will likely cause the unintended consequence of more human rights violations in target countries.”⁷⁶

When thinking about sanctions, it is particularly important to pay close attention to the difference between multilateral and unilateral sanctions.⁷⁷ Multilateral sanctions account for extensive sanctions imposed by the UN or major regionally intergovernmental

⁶⁹ *See id.*

⁷⁰ Peter Fitzgerald, *The Cuban Thistle Crisis: Rethinking U.S. Sanctions*, 82 FORENSIC SERV. J. 51, 51 (2005).

⁷¹ *Id.* at 52.

⁷² *See id.*

⁷³ Dursun Peksen, *Better or Worse? The Effect of Economic Sanctions on Human Rights*, 46 J. OF PEACE RSCH. 59, 59 (2009).

⁷⁴ *Id.* at 61.

⁷⁵ *Id.* at 62.

⁷⁶ *Id.* at 63.

⁷⁷ *See id.* at 67.

organizations, whereas unilateral sanctions include partial sanctions imposed by individual countries without involvement of international organizations.⁷⁸ Multilateral sanctions are likely to be more harmful because of the pressure they place on target countries, leading to more economic damage and isolation.⁷⁹ Given that the sanctions placed on Cuba are held in place by the United States, the embargo and sanctions on Cuban officials are unilateral sanctions.⁸⁰

In fact, sanctions can even remove attention from the human right's violations and place attention on the sanctions themselves.⁸¹ Sanctions imposed on Cuba allowed former Cuban President Fidel Castro to shift attention from the external threat to sovereignty that sanctions posed.⁸² Hence, when sanctions are portrayed as an external threat to national sovereignty, there is more repression against everyone, but especially anti-regime groups under the justification that the government is simply maintaining domestic cohesion to fight external factors.⁸³

D. The Effects of the Removal of Sanctions Using the Temporary Removal of the Embargo as a Model

In 2014, Former President Barack Obama and Former Cuban President Raul Castro announced that the United States and Cuba would restore full diplomatic ties.⁸⁴ The lifted sanctions allowed travelers to Cuba to use U.S. credit and debit cards, allowed commercial airlines to operate regular flights to Cuba and U.S. companies to invest in some small businesses, among other things.⁸⁵ This led to increased cooperation and business opportunities for both Cuba and the United States and led to more political and economic

⁷⁸ *Id.*

⁷⁹ See Peksen, *supra* note 73, at 67.

⁸⁰ *Id.* at 66.

⁸¹ See *id.* at 63.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Stephanie Amador, *Democratization: A Comparative Analysis of Lifted Economic Sanctions in Cuba and Burma*, 17 WASH. GLOB. STUD. L. REV. 503, 514 (2018).

⁸⁵ *Id.*

liberalization.⁸⁶ By May 2016, more than a dozen U.S. firms had commercial agreements with Cuba.⁸⁷

Again, however, the United States tightened its economic embargo on Cuba again during Trump's presidency.⁸⁸ The embargo is different from the sanctions imposed on Cuban officials as a result of the July 11 protests, as the embargo affects Cuba's economic growth with the United States and the world,⁸⁹ and the sanctions affects the assets of those officials.⁹⁰ Yet, there are similarities in its effects.⁹¹ The economic progress that came from lifting the embargo is an example of the realization that sanctions themselves are a failure and an obstacle to achieve progress, whether that be in the economic or human and legal rights' realm.⁹² The progress that came from changing relations with Cuba suggests that it is time to reconsider the measures which have failed for decades.

III. SUMMARY OF INTERNATIONAL LAW AFFECTING CUBA AND THE UNITED STATES

A. *International Human Rights Law Introduction*

It is useful to first understand the obligations of member states under International Human Rights Law to understand the responsibility of the United States and how its imposition of sanctions affects its role under International Law.⁹³ In fact, the obligation to protect under International Law requires States to protect individuals and groups against human rights abuses.⁹⁴ Further, where domestic measures are insufficient to protect human rights, mechanisms are

⁸⁶ *Id.* at 531.

⁸⁷ SORAYA M. CASTRO MARIÑO & MARGARET E. CRAHAN, CUBA-US RELATIONS: NORMALIZATION AND ITS CHALLENGES 195 (Margaret E. Crahan & Soraya M. Castro Mariño eds., 1st ed. 2016).

⁸⁸ Amador, *supra* note 84, at 515.

⁸⁹ *See id.*

⁹⁰ *See* Blinken, *supra* note 13.

⁹¹ *See id.*

⁹² *See* CASTRO MARIÑO & CRAHAN, *supra* note 87, at 197.

⁹³ *International Human Rights Law*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, (last accessed Jan. 29, 2023), <https://www.ohchr.org/en/professionalinterest/pages/internationalallaw.aspx>.

⁹⁴ *Id.*

available at an international level to ensure that international human rights standards are being respected and implemented locally.⁹⁵

International Human Rights Law in theory binds member states to a series of provisions: the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights.⁹⁶ The Universal Declaration of Human Rights states that all human beings “shall enjoy freedom of speech and belief and freedom from fear,” among other vital universal rights.⁹⁷

B. *United Nations*

Both the United States and Cuba became members of the United Nations on October 24, 1945.⁹⁸ The United Nation’s charter-based bodies, including the Human Rights Council and other bodies created under international human rights treaties and made up of independent experts, are mandated to monitor State’s parties compliance with their treaty obligations.⁹⁹ Being a member of the United Nations means the nation “accepts the obligations contained in the United Nations Charter and . . . are able to carry out these obligations.”¹⁰⁰ Cuba is a member of the Human Rights Council, which is a council in which the General Assembly takes into account the candidate State’s contribution to the promotion and protection of human rights, as well as their voluntary pledges and commitments.¹⁰¹ Yet, protestors in Cuban are being held without due process.¹⁰²

The United Nations and its Preamble set out the objective of establishing conditions under which justice and respect for obligations arising under International Law can be maintained.¹⁰³ The enforcement of International Law and the repercussions of not following

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ G.A. Res. 217 (III), Universal Declaration of Human Rights (Dec. 10, 1948).

⁹⁸ U.N. Member States (last accessed Jan. 29, 2023), <https://www.un.org/en/about-us/member-states#gotoC>.

⁹⁹ *Id.*

¹⁰⁰ *See id.*

¹⁰¹ U.N. Human Rights Council, Membership of the Human Rights Council (last accessed Jan. 29, 2023), <https://www.ohchr.org/en/hr-bodies/hrc/membership>.

¹⁰² Blinken, *supra* note 14.

¹⁰³ Uphold International Law (last accessed Jan. 29, 2023), <https://www.un.org/en/our-work/uphold-international-law>.

these laws are carried out in a variety of ways.¹⁰⁴ Courts, tribunals, multilateral treaties, and the Security Council can approve peace-keeping missions, impose sanctions, or even authorize the use of force when there is threat to international peace and security.¹⁰⁵ This power is an instrument of International Law and UN Member States are bound to it.¹⁰⁶

C. *International Covenant on Civil and Political Rights*

Under Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”), it is mandated that everyone “shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print.”¹⁰⁷ Additionally, “[e]veryone shall have the right to hold opinions without interference.”¹⁰⁸ Article 9 of the ICCPR asserts that “no one shall be subjected to arbitrary arrest or detention.”¹⁰⁹ The ICCPR also, notably states, that “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”¹¹⁰ Further, Cuba has signed the ICCPR, but has not ratified it.¹¹¹ This means that Cuba is not bound by the ICCPR, it merely qualifies the signatory state to proceed to ratification and creates an obligation upon Cuba to refrain from acts that would defeat the object and the purpose of the treaty.¹¹² The United States has signed the ICCPR and has ratified it.¹¹³

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ International Covenant on Civil and Political Rights, Mar. 23 1976, 999 U.N.T.S. 171.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at art. 9.

¹¹⁰ *Id.*

¹¹¹ *Status of Ratification*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R, (last accessed April 7, 2023), <https://indicators.ohchr.org>.

¹¹² *What is the Difference Between Signing, Ratification and Accession of UN Treaties?* (last accessed Jan. 31, 2023), <https://ask.un.org/faq/14594>.

¹¹³ *Status of Ratification*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R, (last accessed April 7, 2023), <https://indicators.ohchr.org>.

D. *Inter-American Commission on Human Rights (IACHR)*

The Inter-American Commission on Human Rights (“IACHR”) is an autonomous commission under the Organization of the American States (“OAS”) with the mission of promoting and protecting human rights in the American hemisphere.¹¹⁴ Both Cuba and the United States are members of the OAS.¹¹⁵ Along with the Inter-American Court of Human Rights, the IACHR is one of the institutions for the protection of human rights in the Americas.¹¹⁶ The American Convention on Human Rights (“Convention”) was adopted in 1969 and Cuba has not ratified it.¹¹⁷ The IACHR, however, can process cases involving countries which are still not parties to the Convention but are member states of the OAS and are considered to have violated the human rights contained in the American Declaration.¹¹⁸ Whoever brings a case to IACHR has to exhaust domestic judicial remedies unless they can satisfy the exceptions to the requirement to exhaust domestic remedies.¹¹⁹ The exceptions are: (a) domestic laws do not provide due process to protect the rights allegedly violated; (b) the alleged victim has not been allowed access to domestic remedies or has been kept from exhausting them; or (c) there is a delay in the issuance of a final decision on the case with no valid reason.¹²⁰ The IACHR may adopt precautionary measures in serious and urgent situations and request that a State adopt precautionary measures to prevent irreparable harm.¹²¹ Any person, group of persons, or organization on its own or in representation of another, may file a petition alleging a violation of human rights against one or more member states of the OAS.¹²²

¹¹⁴ *Inter-American Commission on Human Rights*, OAS (last accessed Jan. 31, 2023), <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp>.

¹¹⁵ *Member States*, OAS (last accessed April 7, 2023), https://www.oas.org/en/member_states/authorities.asp.

¹¹⁶ *Petition and Case System*, OAS (2010), <https://www.oas.org/en/iachr/docs/pdf/howto.pdf>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Petition and Case System*, *supra* note 116.

¹²¹ *Id.*

¹²² *Id.*

In 1999, the IACHR heard a case against Cuba, *Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales v. Republic of Cuba*, where it evaluated the injustices the Cuban regime had committed.¹²³ The IACHR received several complaints against Cuba regarding the fact that a military aircraft belonging to the Cuban Air Force downed two unarmed civilian airplanes belonging to the organization “Brothers to the Rescue,” an organization based in the United States.¹²⁴ The IACHR determined its admissibility to hear the case by stating that “in the case of states not parties to the Convention, the rights in question are those established in the American Declaration, which is a source of international obligation.”¹²⁵ From the report, the IACHR concluded and recommended that the Cuban State conduct an exhaustive investigation into the incidents, persecute, and punish the individuals responsible for the violations and make amends to the victim’s relatives.¹²⁶

Thus, even those states that are not a party to the Convention are bound by the American Declaration on the Rights and Duties of Man (“American Declaration”).¹²⁷ Article IV of the American Declaration states that “every person has the right to freedom of investigation, of opinion, and of expression and dissemination of ideas, by any medium whatsoever.”¹²⁸ The American Declaration further states that the affirmation of human rights is found in the American States and the guarantees by the internal regimes of the states establish the initial system of protection.¹²⁹ Significantly, the Declaration states that every accused person has the right to due process of law and to be presumed innocent until proven guilty.¹³⁰

The American Declaration is significant because the IACHR can hear cases involving states, which are not a member to the

¹²³ *Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales v. Republic of Cuba*, Case 11. 589; Inter-Am. Comm’n H.R., Report No. 86/99, OEA/Ser.L/V/II.106, doc 3 rev. ¶ 1 (1999).

¹²⁴ *Id.*

¹²⁵ *Id.* ¶ 18.

¹²⁶ *Id.* ¶ 3.

¹²⁷ *See* American Declaration of the Rights and Duties of Man, Adopted by the Ninth International Conference of American States, Art. IV., Bogota, Colombia, 1948.

¹²⁸ *Id.*

¹²⁹ *See id.*

¹³⁰ *See id.*

Convention, based on their violation of the American Declaration.¹³¹ Taking into consideration the protests on July 11, 2021, and the sanctions that arose due to a lack of due process and freedom of expression,¹³² The American Declaration can provide an alternative route to hold the Cuban regime accountable.¹³³ The American Declaration not only holds that every accused person has the right of due process, but that “every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.”¹³⁴

The American Declaration is especially relevant because it protects against arbitrary arrest as no person “may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.”¹³⁵ These rights are significant because Cuban protesters faced charges which were inconsistent with previous charges, were sometimes not given a defense attorney, and when they were, the defense attorneys did not get to see the charges until trial.¹³⁶ If the IACHR determines that a State is responsible for having violated the human rights of an individual or a group of individuals, it will issue a report that will include recommendations to the State, which can include: (i) suspend the acts in violation of human rights; (ii) investigate and punish the persons responsible; (iii) make reparations for the damages caused; (iv) make changes to legislation; (v) require that the State adopt other measures or actions.¹³⁷

IV. THE CUBAN REGIME’S HUMAN RIGHTS VIOLATIONS AND THE UNITED STATES’ RESPONSE

The violations against the right to freedom of expression along with the violation of the right of due process violate Article 9 of the

¹³¹ See Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales v. Republic of Cuba, Inter-Am. Comm’n H.R., Report No. 86/99 ¶18 (1999).

¹³² Blinken, *supra* note 13.

¹³³ See American Declaration of the Rights and Duties of Man, *supra* note 127.

¹³⁴ *Id.* at Art. XXVI.

¹³⁵ *Id.*

¹³⁶ See *Cuban Artist Freed From Jail, Forced Into Exile. Other Protesters Face Harsh Sentences*, *supra* note 28.

¹³⁷ *Petition and Case System*, *supra* note 116.

ICCPR.¹³⁸ Considering that Cuba's behavior violate International Human Rights Law, it is precedent that the United States has tried to punish the injustices through the use of sanctions.¹³⁹ Given that the latest sanctions were imposed as a result of the government's actions after the July 11 protests, it is a fair assumption to say that at least one of the goals of the sanctions is to deter similar behavior in the future.¹⁴⁰ The behavior at play here is the Cuban government's effort to limit individuals freedom of expression, which it did so initially through the detention of those who protested, who were then incarcerated without knowing what they were being charged with.¹⁴¹

Nonetheless, the ineffectiveness of the sanctions is highlighted through the Cuban government's continuous efforts to limit the freedom of expression of individuals in Cuba, as was seen in Cuba's denial of the latest petition to protest on November 15.¹⁴² Because Cuba has not ratified the ICCPR and its optional protocol, it is not bound by it, which in turn limits what other organizations can do to ensure that Cuba is abiding by the rights guaranteed in the ICCPR.¹⁴³ Seeing the Cuban regime limit freedom of expression, even after the United States' imposition of sanctions on Cuban officials, demonstrates that sanctions and the embargo only give the Cuban government "an excuse for problems, pretext for abuses, and sympathy from government that might otherwise condemn repressive practices." D¹⁴⁴

Thus, in order to receive a different result, the United States should shift from the imposition of sanctions and search for alternative means that are not just punitive, but will enact change.¹⁴⁵ There are two different types of sanctions, one that is designed to compel

¹³⁸ See International Covenant on Civil and Political Rights, *supra* note 108.

¹³⁹ See *Office of Foreign Assets Control*, *supra* note 10.

¹⁴⁰ See Blinken, *supra* note 13.

¹⁴¹ See *Cuban Artist Freed From Jail, Forced Into Exile. Other Protesters Face Harsh Sentences*, *supra* note 28.

¹⁴² See Vicent, *supra* note 38.

¹⁴³ See *What is the Difference Between Signing, Ratification and Accession of UN Treaties?*, *supra* note 112.

¹⁴⁴ *Cuba Events of 2022*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2023/country-chapters/cuba> (last visited April 7, 2023).

¹⁴⁵ Irfan Nooruddin, *Modeling Selection Bias in Studies of Sanctions Efficacy*, 28 INT'L INTERACTIONS U. OF MICH. 59, 63 (2001).

the target to enact change in its policies, as was the case with South Africa to end apartheid, and the other is entirely punitive, as the United States sanctions against Cuba.¹⁴⁶ An alternative avenue could be to bring to the IACHR the cases of the individuals who were wrongfully accused and arrested, as this could prove to be successful as seen in the case *Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales*.¹⁴⁷ Repeating the practices that have been in place for years, such as punitive sanctions, is not an adequate remedy to address new events implicating international human rights law, as they do not drive change.¹⁴⁸

A. Sanctions Imposed on Venezuela Can Provide a Model for the United States on What to Do, and What not to Do When Addressing Human Rights Violations in Cuba

Like Cuba, Venezuela has faced and is facing severe forms of human rights violations.¹⁴⁹ The United Nations Human Rights Office of the High Commissioner (“OHCHR”), concluded that Venezuelan state actors have committed large-scale human violations, which amount to crimes against humanity.¹⁵⁰ Venezuelan President Maduro, the defense and interior minister officials, and some directors of intelligence, security, and police contributed to these abuses.¹⁵¹ The OHCHR reported that a main issue is that Venezuela’s law-enforcement institutions have become politicized in recent years, which raises doubts about the system’s impartiality.¹⁵² Further, there are no indications of credible investigations of torture.¹⁵³ Similar to the way the United States government has recognized the human rights violations arising from the July 11 protests

¹⁴⁶ *See id.*

¹⁴⁷ *See* Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales v. Republic of Cuba, Inter-Am. Comm’n H.R., Report No. 86/99 ¶ 52 (1999).

¹⁴⁸ Nooruddin, *supra* note 145, at 61.

¹⁴⁹ Marta Valiñas, et al., *Taking Venezuela’s Human-Rights Crisis Seriously*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/Op_ed_Venezuela_EN.pdf.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

in Cuba, the United States has recognized those in Venezuela.¹⁵⁴ In 2015, Former President Obama stated that Venezuela's erosion of human rights guarantees, use of violence against protestors, abusive response to antigovernment protests, arbitrary arrest of antigovernment protestors, and presence of public corruption constitute a threat to the national security and foreign policy of the United States.¹⁵⁵

Part of the sanctions imposed as a result of these violations in Venezuela include blocking "all property and interest in property that are in the United States,"¹⁵⁶ which is similar to the sanctions imposed on Cuba that block assets and property.¹⁵⁷ As opposed to the sanctions placed on Cuban officials, the sanctions imposed on Venezuela have become more expansive, yet more targeted.¹⁵⁸ While the Obama Administration imposed targeted sanctions against individuals for human rights abuses, the Trump Administration expanded economic sanctions.¹⁵⁹ The Trump Administration imposed sanctions on Venezuela's state oil company, central bank, and the government, in an effort to pressure Maduro to leave power.¹⁶⁰ These sanctions were not successful either, as Maduro remained firmly in power.¹⁶¹

As a result of the human rights violations in Venezuela, the United States passed the Venezuela Defense of Human Rights and Civil Society Act of 2014 to "impose targeted sanctions on persons responsible for violations of antigovernment protests in Venezuela."¹⁶² As of January 2021, the Treasury had imposed sanctions on 113 Venezuelans, including President Maduro, his wife, son, Executive Vice President, Delcy Rodríguez, and at least eight entities.¹⁶³ Former President Trump imposed additional sanctions due

¹⁵⁴ Exec. Order No. 13692, 80 Fed. Reg. 12747 (Mar. 8, 2015).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Treasury Sanctions Cuban Minister of Defense and Special Forces Brigade for Abuses Against Protestors*, *supra* note 12.

¹⁵⁸ See Clare Ribando Seelke, *Venezuela: Overview of U.S. Sanctions*, 13 CURRENT POL. AND ECON. OF S. AND CENT. AM. 21, 21 (2021).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Venezuela Defense of Human Rights and Civil Society Act of 2014, Pub. Law 113-278 (2014).

¹⁶³ See Ribando Seelke, *supra* 158, at 23.

to the Venezuelan's government's numerous human rights abuses, prohibiting access to U.S. financial markets by the Venezuelan government, with expectations to minimize impact on the Venezuelan people, and prohibiting transactions involving the Venezuelan's government's issuance of digital currency.¹⁶⁴ President Trump also imposed sanctions that prohibited transactions related to purchasing Venezuelan debt, including accounts receivable and any debt owed to Venezuela.¹⁶⁵ These sanctions are different from the sanctions imposed on Cuban officials because the United States did not sanction President Díaz Canel—as the head of the violations in Cuba—or his family directly; rather, they sanctioned the Chief of the Central Army and Deputy Chief of the Directorate of Operations, among others.¹⁶⁶ While some of the sanctions imposed on Venezuela are targeted and narrow, in 2018, former President Trump issued sanctions to twenty-six individuals, blocking their assets and prohibiting certain transactions.¹⁶⁷

In 2019, the Treasury sanctioned a Moscow-based bank for helping PDVSA funnel revenue from oil sales.¹⁶⁸ The Treasury then sanctioned Venezuela's state owned gold sector company for using illicit gold operations to support Maduro.¹⁶⁹ It also sanctioned a state-affiliated development bank, the central bank, and Venezuela's counter intelligence agency.¹⁷⁰ These sanctions are directly targeting sectors of the Venezuelan economy and entities that contribute to Maduro's regime, which differs from sanctions imposed on Cuban officials.¹⁷¹ The sanctions imposed on Cuban officials are merely blocking property and interest in property of the designated individuals, they do not affect President Díaz Canel's regime.¹⁷² The effect of this type of sanction is unknown, but could be minimal due to its broadness.¹⁷³

¹⁶⁴ *Id.* at 24.

¹⁶⁵ *Id.*

¹⁶⁶ *See* Blinken, *supra* note 13.

¹⁶⁷ *See* Ribando Seelke, *supra* 158, at 24.

¹⁶⁸ *Id.* at 25.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *See id.*

¹⁷² *See Treasury Sanctions Cuban Minister of Defense and Special Forces Brigade for Abuses Against Protestors supra*, note 12.

¹⁷³ *Id.*

The prohibitions at play in the sanctions imposed on Cuban officials include: “the making of any contribution or provision of funds, goods or services by, to or for the benefit of any blocked person or the receipt of any contribution or provision of funds, good, or services from any such person.”¹⁷⁴ This language is vague and does not address what the sanction is actually meant to accomplish.¹⁷⁵ It does not explicitly state what sector of the Cuban government it is targeting.¹⁷⁶ These sanctions are merely stating a blockage of property and interests without any specificity, leaving room for interpretation.¹⁷⁷ These sanctions merely serve to give the illusion of protection against human rights violations, while their real purpose is to serve the interests of pressure groups within the United States.¹⁷⁸

The embargo placed on Cuba sanctions the country’s economy as a whole, and, therefore, is different from sanctions placed on Venezuela and individuals related to Venezuela.¹⁷⁹ The embargo the United States maintains on Cuba is a “comprehensive economic embargo,” which limits trade between the United States and Cuba.¹⁸⁰ The sanctions imposed on Cuba even go beyond the reach of the control of the United States as the sanctions cover the actions of foreign companies that are owned or controlled by those in the United States.¹⁸¹

Although the sanctions imposed on Venezuela are targeted and, hence, prone to affect the regime rather than the individuals, they are not harmless.¹⁸² Some individuals in Congress continue to support the sanctions on Venezuela, while others are concerned about the humanitarian effects, especially during Covid-19.¹⁸³ The sanctions imposed on Venezuela are an example of sanctions that promise to be purposeful, unlike the comprehensive Cuban embargo and latest sanctions to freeze the assets of certain Cuban officials.¹⁸⁴ Yet,

¹⁷⁴ *Id.*

¹⁷⁵ *See id.*

¹⁷⁶ *See id.*

¹⁷⁷ *See id.*

¹⁷⁸ Nooruddin, *supra* note 145, at 67.

¹⁷⁹ *See id.* at 68.

¹⁸⁰ *See Cuba Sanctions, supra* note 3.

¹⁸¹ *See* Fitzgerald, *supra* note 70, at 52.

¹⁸² *See* Ribando Seelke, *supra* note 158, at 27.

¹⁸³ *Id.*

¹⁸⁴ *See id.*

the sanctions imposed on Venezuela exemplify the broader problems which are inherent to sanctions—they do not provide a solution to humanitarian issues.¹⁸⁵ Regardless of the fact that Venezuela’s sanctions are targeted to certain sectors of the economy, they have not been proven to solve the issues that have led to the sanctions in the first place.¹⁸⁶

The Human Rights Watch World Report of 2021 explained that the government of Maduro is responsible for “extrajudicial executions and short-term forced disappearances and have jailed opponents, prosecuted civilians in military courts, tortured detainees, and cracked down on protestors. They used a state of emergency implemented in response to Covid-19 as an excuse to punish dissent and intensify their control over the population.”¹⁸⁷ These human rights violations are consistent with those occurring in Cuba, as the Cuban government shut off protestors with the excuse that they were propagating Covid-19.¹⁸⁸ The similarity between the human rights violations in Cuba and Venezuela even after the imposition of sanctions—targeted or not—exemplifies the fact that sanctions, although a direct consequence of human rights violations, do not eradicate these violations.¹⁸⁹

B. The Cuban Regime’s Limit on Freedom of Expression, and Incarceration of Individuals Who Protested on July 11 Violate International Human Rights Law

Taking away someone’s liberty to limit their freedom of expression is a violation of human rights law, under the ICCPR,¹⁹⁰ the Universal Declaration of Human Rights,¹⁹¹ and American Declaration on the Rights and Duties of Man.¹⁹² The means to ensure the Cuban regime acts in accordance with human rights law should not lend

¹⁸⁵ See *Venezuela Events of 2020*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2021/country-chapters/venezuela> (last visited Mar. 16, 2023).

¹⁸⁶ See *id.*

¹⁸⁷ *Id.*

¹⁸⁸ Torres, *supra* note 28.

¹⁸⁹ See *Venezuela Events of 2020*, *supra* note 185.

¹⁹⁰ See International Covenant on Civil and Political Rights, *supra* note 107, at art. 19.

¹⁹¹ See Universal Declaration of Human Rights, *supra* note 97, art. 19.

¹⁹² See American Declaration of the Rights and Duties of Man, *supra* note 127, at art. 4.

itself as a tool for the Cuban regime to utilize against its own citizen to continue the human rights violations.¹⁹³

The United States acknowledged Cuba's violations in a statement by National Security Advisor, Jake Sullivan.¹⁹⁴ In his statement, National Security Advisor Sullivan stated that the Cuban regime had failed to respect international human rights law by its use of intimidation tactics in advance of the peaceful demonstrations set for November 15.¹⁹⁵ The statement explained that:

[b]y its actions, the Cuban regime failed to respect the civil and political rights enumerated in the Universal Declaration of Human Rights and international human rights treaties ratified by Cuba, including the right to peaceful assembly and association, the right to freedom of opinion and expression, and freedom from arbitrary arrest, detention, or exile.¹⁹⁶

The United States, has not taken any action other than the last sanctions imposed in August of 2021.¹⁹⁷ In its Statement by National Security Advisory Jake Sullivan, the United States explained that it “is committed to supporting the agency of the Cuban people” and “urge[d] the Cuban regime to refrain from violence against peaceful protesters.”¹⁹⁸ While this statement demonstrates solidarity with Cuban people's search for change and for freedom of expression and acknowledges the international human rights violations, it does nothing to enact actual change and to hold the Cuban government

¹⁹³ See Carmen Sesin, *Cuba's president, while blasting U.S. embargo, takes some blame amid protests*, NBC NEWS (July 15, 2021, 10:21AM), <https://www.nbcnews.com/news/latino/cuba-president-blasting-us-embargo-takes-blame-protests-rcna1429>.

¹⁹⁴ *Statement by National Security Advisor Jake Sullivan on Cuba's November 15 Protests*, THE WHITE HOUSE (Nov. 15, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/15/statement-by-national-security-advisor-jake-sullivan-on-cubas-november-15-protests/>.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ See Blinken, *supra* note 13.

¹⁹⁸ See *Statement by National Security Advisor Jake Sullivan on Cuba's November 15 Protests*, *supra* note 194.

accountable.¹⁹⁹ The statement is merely an acknowledgement of wrongdoing, which continues to go unpunished.²⁰⁰

C. The Imposition of Sanctions on Cuban Officials as a Result of the July 11 Protests Diverts Attention from the Human Rights Violations to the United States' Influence in Cuba

As a result of the July 11 protests, Cuban president Miguel Díaz Canel blamed the United States for both organizing the protests and for indirectly inciting the protests through the economic sanctions placed on Cuba.²⁰¹ President Díaz Canel stated that some of those who participated in the protests are responding to “a foreign plan, [and] are irreconcilably against the Cuban revolution, and don’t think like Cubans.”²⁰² In doing so, President Díaz Canel blamed the protests on the dissatisfaction of individuals outside the country, which in turn negated the dissatisfaction of those in the country.²⁰³ By attributing the dissatisfaction largely to those outside of the country, President Díaz Canel reduced the Cuban regime’s fault and casted doubt on the United States’ involvement.²⁰⁴ Further, President Díaz Canel stated that the U.S. embargo limits what they can achieve, calling it cruel and genocidal.²⁰⁵ By shifting attention to the embargo and labeling with such severe language, President Díaz Canel shifted attention toward the United States and the sanctions imposed, opening up a conversation about the embargo and its effect on the island, while taking attention away from the human rights injustices committed by the Cuban regime itself.²⁰⁶

Thus, sanctions—whether broad, as the embargo, or narrower, such as the sanctions against Cuban officials—can act as a tool to maintain the Cuban regime’s injustices, rather than deter them.²⁰⁷ The most recent sanctions, based on the events of July 11, 2021, the lack of due process, and the limit on freedom of expression, were

¹⁹⁹ *See id.*

²⁰⁰ *See id.*

²⁰¹ Sesin, *supra* note 193.

²⁰² *Id.*

²⁰³ *See id.*

²⁰⁴ *See id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *See Treasury Sanctions Cuban Minister of Defense and Special Forces Brigade for Abuses Against Protestors*, *supra* note 12.

just imposed in August of 2021.²⁰⁸ Secretary Janet L. Yellen stated that the “Treasury will continue to enforce its Cuba-related sanctions, including those imposed today, to support the people of Cuba in their quest for democracy and relief from the Cuban regime.”²⁰⁹ Secretary Yellen’s explanation suggests that the sanctions are an effort to help Cuban individuals, a tool to help them fight the injustices they face and to find democracy.²¹⁰ If these sanctions had proved to be an effective means to deter the Cuban regime from limiting the freedom of expression of its citizens, then there should have been some change. Unfortunately, this was not the case. When Cuban individuals requested to peacefully protest again on November 15, 2021 demanding an end to political violence, asking for change and the release of the protestor detained on July 11, 2021, the Cuban regime responded by implementing intimidation tactics.²¹¹ These tactics included both plain-clothed and uniformed police at gathering points throughout the cities and state security and groups of pro-government individuals stationed outside the home of high-profile dissents.²¹² Individuals themselves explained that there would be no protests because the people were “scared.”²¹³

The Cuban regime utilized sanctions as an excuse to ban the planned protests on November 15.²¹⁴ “Cuba’s communist government banned [November 15’s] planned demonstrations, saying they were part of a destabilization campaign by the United States, which maintains a Cold War-era embargo on Cuba. U.S. officials have denied that.”²¹⁵ This proves that the Cuban regime makes use of sanctions to not only take attention away from the human right’s violations in Cuba, but to create a different narrative where the

²⁰⁸ See Blinken, *supra* note 13.

²⁰⁹ *Treasury Sanctions Cuban Minister of Defense and Special Forces Brigade for Abuses Against Protestors*, *supra* note 12.

²¹⁰ *See id.*

²¹¹ *Statement by National Security Advisor Jake Sullivan on Cuba’s November 15 Protests*, *supra* note 194.

²¹² Marc Frank & Nelson Acosta, *With Cuban Dissents Wary or in Jails, Call for Fresh Protests Falls Flat*, U.S. NEWS (Nov. 15, 2021, 2:10 PM), <https://www.usnews.com/news/world/articles/2021-11-15/cuba-reopens-doors-to-tourism-as-threat-of-protests-looms>.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

perpetrator is the United States.²¹⁶ By stating that the demonstrations have to do with a U.S. campaign, the Cuban regime takes credibility away from the protestors and calls attention to the United States.²¹⁷ This opens up another conversation where the main component is no longer the injustices faced in Cuba, but a story surrounding the United States as the main actor.²¹⁸

Just two days after the July 11 protests, Cuba's President, Díaz Canel, accused the United States of imposing a "policy of economic suffocation to provoke social explosions" in Cuba.²¹⁹ In doing so, he took attention away from the fact that he issued a combat order on the day of the demonstrations and called protestors "criminals."²²⁰ Even when Cuban authorities do admit that the complaints of the protestors were justified, they still blame the United States as the real force behind the protests, which according to the Cuban authorities, mobilized the Cuban people through social media.²²¹ President Díaz Canel's behavior is a prime example of the ways in which leaders can use sanctions to place blame on others, while furthering human rights violations in their countries.²²²

Furthermore, the impositions of sanctions allow President Díaz Canel to focus on other world leaders, in this case, President Biden.²²³ As a result of President Biden's statement regarding the Cuban protests and the way the Cuban regime responded, President Díaz Canel stated that "if President Joseph Biden had sincere humanitarian concern for the Cuban people, he could eliminate the 243 measures applied by President Donald Trump, including the more

²¹⁶ *See id.*

²¹⁷ *See id.*

²¹⁸ *See Frank & Acosta, supra* note 212.

²¹⁹ Gerardo Lissardy, *Estados Unidos no va a Levantar el Embargo Sin Que Cuba Ceda o Venga a la Mesa a Negociar en Buena Fe* [*The United States is not Going to Lift the Embargo Without Cuba Giving in or Coming to the Table to Negotiate in Good Faith*], BBC NEWS (July 13, 2021), <https://www.bbc.com/mundo/noticias-america-latina-57815541>.

²²⁰ *Id.*

²²¹ *See Associated Press, supra* note 46.

²²² *See id.*

²²³ *Protestas en Cuba: Diaz-Canel Responde a Las Declaraciones de Biden y Participa Junto a Raul Castro en un Acto de Reafirmación Revolucionaria* [*Protests in Cuba: Diaz-Canel Responds to Biden's Statements and Participates with Raul Castro in an Act of Revolutionary Reaffirmation*], BBC NEWS WORLD (July 17, 2021), <https://www.bbc.com/mundo/noticias-america-latina-57872504>.

than fifty cruelly imposed during the pandemic, as a first step towards the end of the blockade.”²²⁴ President Díaz Canel again, in an event called “revolutionary reaffirmation,” accused the United States of being behind the protests and said that the images and videos circulating on the media about the use of violence against demonstrators by enforcement agencies were a lie.²²⁵ In doing so, President Díaz Canel raised doubts again about the United States’ involvement, making it easier for individuals to believe him when he attributes all of Cuba’s issues to another country.²²⁶ President Díaz Canel not only shifted attention towards the sanctions, but toward another president and his alleged hypocrisy.²²⁷

Importantly, events like this “revolutionary reaffirmation”²²⁸ are aligned with the previous actions the Cuban government took as a response to the July 11 protests, limiting freedom of expression and incarcerating individuals without due process.²²⁹ These actions to further the Cuban government’s power and silence protestors did in fact accomplish its goals, as Cuban protestors stayed home on November 15 in the face of the fear the government had instilled.²³⁰

D. Sanctions Give the Cuban Regime an Excuse to Negate Basic Legal and Human Rights to Cubans

At a basic level, Cubans cannot choose their leader.²³¹ President Díaz Canel himself was handpicked by former leader Raul Castro who was the successor to Fidel Castro.²³² In focusing on the embargo, he neglected to acknowledge the flaws of the Cuban regime, including the lack of freedom to vote; and instead, stated “we’re ready for anything and we will be in the streets fighting.”²³³ The lack of freedom to choose a leader and the silencing of Cuban individuals through internet shutdown and arbitrary detentions, however, have

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *See id.*

²²⁸ *Id.*

²²⁹ *See* Blinken, *supra* note 13.

²³⁰ Frank & Acosta, *supra* note 212.

²³¹ *Miguel Diaz-Canel: The Man Succeeding the Castros*, BBC (July 27, 2021), <https://www.bbc.com/news/world-latin-america-43795286>.

²³² *Id.*

²³³ *Id.*

nothing to do with the sanctions.²³⁴ Blaming the United States and the sanctions does nothing, but emphasize the Cuban regime's effort to negate its responsibility of the human rights violations happening in Cuba.

While the embargo does remain in place, United States law and regulations include exemptions relating to exports of food, medicine and other humanitarian goods to Cuba.²³⁵ While blaming the United States for the lack of resources in the island, President Díaz Canel failed to explain that Cuba's own restrictions, in part, limit the amount of food and medicine that can be brought into the country.²³⁶ So, as a result of protests, Cuba's prime minister stated that until the end of 2021, the government would lift the restrictions on the amount of food and medicine that travelers are allowed to bring into the country.²³⁷ Thus emphasizing Cuba's role and control in the lack of basic necessities that are allowed to go into the country.²³⁸

E. The United States is not Protecting the Rights Under International Human Rights Law When it Imposes Sanctions

Both the Cuba embargo and the sanctions imposed on Cuban officials were imposed as the United States' way to prevent any further human rights violations in the island.²³⁹ Yet, this behavior is not entirely consistent with the way in which the United States' responds to other communist regimes who also have poor human rights records.²⁴⁰ In fact, U.S. companies operate in three other communist countries with a similar record of human rights, including

²³⁴ See Patrick Oppmann & Eliza Mackintosh, *Cuba Lifts Customs Restrictions on Food and Medicine After Biggest Protests in Decades*, CNN (July 15, 2021, 9:37 AM), <https://www.cnn.com/2021/07/15/americas/cuba-lifts-food-medicine-customs-restrictions-intl/index.html>.

²³⁵ *Fact Sheet: Provision of Humanitarian Assistance to Cuba*, U.S. DEP'T OF STATE (July 23, 2021), <https://www.state.gov/fact-sheet-provision-of-humanitarian-assistance-to-cuba/>.

²³⁶ Sesin, *supra* note 193.

²³⁷ *Id.*

²³⁸ *See id.*

²³⁹ *See Treasury Sanctions Cuban Minister of Defense and Special Forces Brigade for Abuses Against*, *supra* note 12.

²⁴⁰ Marcia Narine Weldon, *The Cuba Conundrum: Corporate Governance and Compliance Challenges for U.S. Publicly Traded Companies*, 18 U. OF PENN. J. OF BUS. LAW 865, 882-3 (2016).

China, Laos, and Vietnam.²⁴¹ The United States and the way it protects human rights should be consistent and effective.

The ICCPR recognizes that, “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural right.”²⁴² In maintaining an economic embargo on Cuba, the United States, to an extent, is itself contributing to Cubans inability to enjoy their full economic rights considering that at its core the embargo limiting trade with the United States.²⁴³ In this way the economic embargo, and the United States as its architect, has limited Cuban’s rights under the ICCPR.²⁴⁴ The sanctions imposed as a result of the July 11 protests do not have this same effect as they directly inhibit the economic freedom of the officials.²⁴⁵ These sanctions, however, do not further the political and economic rights of Cubans on the island who have been victims of arbitrary arrests and whose freedom of expression have been severely limited.²⁴⁶ In abiding by international human rights law, the United States should impose measures that truthfully further the economic and political rights posed by the ICCPR.²⁴⁷ In order to ensure that the measures are actually furthering human rights in Cuba, the United States should assess the direct result of said measure and change the behavior to best ensure the appropriate result.²⁴⁸

Even after the United States imposed sanctions on Cuban officials, Cubans still faced severe oppression considering that “Cuban authorities foiled a planned nationwide protest on Monday, [November 15, 2021], arresting some dissidents, trapping others inside their homes and flooding the streets with security forces to prevent

²⁴¹ *Id.*

²⁴² See International Covenant on Civil and Political Rights, *supra* note 107.

²⁴³ See *Cuba Sanctions*, *supra* note 3.

²⁴⁴ See *id.*

²⁴⁵ See Blinken, *supra* note 13.

²⁴⁶ International Covenant on Civil & Political Rights, *supra* note 107 at 11 (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”).

²⁴⁷ See generally *id.*

²⁴⁸ See Nooruddin, *supra* note 145, at 67.

a repeat of the spontaneous demonstrations that stunned the communist government last summer.”²⁴⁹ This of course is a violation of the freedom of speech of individuals in Cuba and the Cuban regime is to blame for such violation, considering that the no economic sanction has forced the Cuban regime to shut off Cuban voices.²⁵⁰ These sanctions do not place Cubans in a better position to enjoy the rights granted under the American Declaration or the ICCPR, as their freedom of expression is limited based on the Regime’s intimidation tactics.²⁵¹

V. ALTERNATIVES TO SANCTIONS

In light of the failure of the sanctions to ensure that the Cuban regime respects the human rights of every Cuban on the island, especially those whose rights were violated as a result of the July 11 protests,²⁵² it is time to search for alternatives that will, in fact, further the human rights of Cubans. In doing so, it would be helpful to provide both short term and long-term solutions that target the roots of the current human rights violations in Cuba.

A. *Short Term Alternatives*

Finding a way to provide access to the internet for Cubans in the island is a useful alternative considering that the Cuban regime shut down protestors and organizers by shutting down the internet itself.²⁵³ The United States has worked to ensure Cubans receive access to the internet independent of what the Cuban government can provide to them.²⁵⁴ President Biden stated that he would be “working with civil society groups and the private sector to provide

²⁴⁹ Mary Beth Sheridan & Alenandra Ibarra Chaoul, *Cuban Security Forces Throttle Planned Nationwide Protest*, WASH. POST (Nov. 15, 2021, 5:05 PM), <https://www.washingtonpost.com/world/2021/11/15/cuba-protests-crackdown/>.

²⁵⁰ See Blinken, *supra* note 13.

²⁵¹ See generally American Declaration of the Rights and Duties of Man, *supra* note 127.

²⁵² See Blinken, *supra* note 13.

²⁵³ Oppmann & Mackintosh, *supra* note 234.

²⁵⁴ Associated Press, *U.S. Imposes New Cuba Sanctions Over Human Rights Abuses*, NBC (July 22, 2021, 2:36 PM), <https://www.nbcnews.com/politics/politics-news/us-imposes-new-cuba-sanctions-over-human-rights-abuses-herenafter-u.s.-imposes-new-cuba-sanctions-over-human-rights-abuses-> [hereinafter *U.S. Imposes New Cuba Sanctions Over Human Rights Abuses*].

internet access that circumvents government censors.”²⁵⁵ After the July 11 protests, Cubans have not been able to protest because the Cuban regime has instilled intimidation tactics that severely limit Cubans on the island.²⁵⁶ Thus, there has been no need for the Cuban regime to shut down the internet again.²⁵⁷ The events of July 11 and the way the Cuban government took control of the situation through the internet shows that they could do so in the future and ensuring that Cubans can organize through an uncensored internet will be more effective and targeted than a sanction.²⁵⁸ If Cubans take the streets again, it is vital that they have a source of internet that the Cuban regime cannot hamper with and the United States should now be prepared to provide that source of internet in its aim to condemn the regime that intimidates and threatens the Cuban people into silence.²⁵⁹

In the short term, encouraging international pressure can also prove to be effective.²⁶⁰ The judgements of the twenty prisoners sentenced during February, 2022, were reduced due to international pressure.²⁶¹ Yet, even minors were sentenced to five years of “limitation of freedom” which is a condition that is similar to house arrest.²⁶² The sentencing of minors emphasizes the need for long-term solutions, as international pressure cannot, by itself, eradicate the violations in the island.²⁶³ Even Canada, which usually avoids condemning the Cuban authorities publicly, criticized the arrests of hundreds of protesters.²⁶⁴ Similarly, the OAS released a statement on December of 2021 demanding “once again the immediate release of all political prisoners who are arbitrarily imprisoned, while stressing that it is essential to remain attentive to the evolution of their health

²⁵⁵ *Id.*

²⁵⁶ *See* Frank & Acosta, *supra* note 212.

²⁵⁷ *See id.*

²⁵⁸ *See id.*

²⁵⁹ *See U.S. Imposes New Cuba Sanctions Over Human Rights Abuses*, *supra* note 254.

²⁶⁰ *See generally* Gámez Torres, *supra* note 54.

²⁶¹ *See id.*

²⁶² *Id.*

²⁶³ *See id.*

²⁶⁴ *Id.*

conditions and physical integrity.”²⁶⁵ The OAS statement and the international pressure from political actors, such as Canada and the United States has pressured the Cuban government to at least reduce the sentences of the prisoners.²⁶⁶ Encouraging other nations to partake in this pressure will help protect the rights of Cuban individuals while long-term solutions are in process.²⁶⁷

B. *Long Term Alternatives*

The Cuban regime’s use of force, mass detentions, and sham trials violate international human rights law.²⁶⁸ The IACHR can hear cases against countries that are members of the OAS, and Cuba is one of the thirty five Member States.²⁶⁹ Thus, as an alternative to a sanction, the United States should bring a complaint to the IACHR against Cuba, as Cuba is considered to have violated the rights of an accused to due process and freedom of expression.²⁷⁰ The United States, or more precisely, a group within the United States can bring a case against Cuba to the IACHR, as the complaint must be filed against one or more members states of the OAS.²⁷¹ This would allow for the IACHR to make recommendations to fix the problem at hand, including suspending the acts that violate human rights and making reparation for damages.²⁷² Unlike sanctions, a report from the IACHR would be addressing the issues and providing a solution to the issues specifically, as has been seen previously in *Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales v. Republic of Cuba*.²⁷³ This targeted effort, while not binding on Cuba, is an alternative worth exploring for its emphasis on the

²⁶⁵ *Statement from the OAS General Secretariat on Political Prisoners in Cuba*, OAS (Dec. 16, 2021), https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-117/21.

²⁶⁶ Gámez Torres, *supra* note 54.

²⁶⁷ *See id.*

²⁶⁸ *See Cuban Artist Freed from Jail, Forced into Exile. Other Protesters Face Harsh Sentences*, *supra* note 28.

²⁶⁹ *See Petition and Case System*, *supra* note 116.

²⁷⁰ *See American Declaration of the Rights and Duties of Man*, *supra* note 127.

²⁷¹ *See Petition and Case System*, *supra* note 116.

²⁷² *See id.*

²⁷³ *See Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales v. Republic of Cuba*, Case No. 115.589, Inter-Am. Comm’n H.R., Report No. 86/99, OEA/Ser.L./V/II.106, doc. 3. rev. ¶ 586 (1999).

eradication of human rights violations, rather than simply imposing blanket sanctions without a focus on the violation.²⁷⁴

Additionally, a report from the IACHR would bring attention to the human rights violations in Cuba and Cuban individuals would benefit from such report.²⁷⁵ Due to Cuban politics and the lack of information that has usually come off of the island due to internet shutdowns currently and due to a lack of internet in the past, many individuals do not have access to the human rights atrocities that occur in Cuba.²⁷⁶ A report from the IACHR—a reputable and neutral commission—would provide a clear, detailed, and fair study of the atrocities occurring in Cuba.²⁷⁷ Even if the regime does not follow the recommendations, which hopefully it will, the world would know the truth.²⁷⁸ A report from the IACHR, which does not affect Cuba as sanctions do, is also likely to disallow the Cuban government from shifting blame to the country imposing the sanctions as it has done in the past.²⁷⁹

The effectiveness of bringing a case in front of the IACHR is best seen by the results of a statement released by the IACHR regarding the human rights violations in Cuba.²⁸⁰ The IACHR released a report where it stated that as of February 7, 2022, more than 700 people remained imprisoned in Cuba due to the July, 2021 protests.²⁸¹ The report stated that most of the detainees are being held in pretrial detention, which runs counter to international principles.²⁸² The report made note of the due process issues, such as the

²⁷⁴ *See id.*

²⁷⁵ *Id.*

²⁷⁶ Sarah Marsh, *Fake News Muddies Online Waters During Cuba Protests*, REUTERS (July 16, 2021, 5:52 PM), <https://www.reuters.com/world/americas/fake-news-muddies-online-waters-during-cuba-protests-2021-07-16/>.

²⁷⁷ *See* Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales v. Republic of Cuba, Case No. 115.589, Inter-Am. Comm'n H.R., Report No. 86/99, OEA/Ser.L./V/II.106, doc. 3. rev. ¶ 586 (1999).

²⁷⁸ *See id.*

²⁷⁹ *See Protests in Cuba: Díaz-Canel Responds to Biden's Statements and Participates with Raúl Castro in an "Act of Revolutionary Reaffirmation," supra* note 224.

²⁸⁰ *See* Gámez Torres, *supra* note 54.

²⁸¹ *IACHR Expresses Concern Over Ongoing Detention and Prosecution of People Who Took Part in Protests in Cuba*, OAS (Feb. 16, 2022), https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/031.asp.

²⁸² *Id.*

restriction of access to criminal records, and also noted the lack of access to drinking water, adequate food and substandard medical care.²⁸³ The report denounced the Cuba regime due to its lack of compliance with the law governing the juvenile criminal justice system.²⁸⁴ The IACHR received complaints about ongoing acts of intimidation, harassment, and violence by State security forces and government supporters targeting the relatives of the accused protestors, journalists and activist as a response to their demonstration against the trials.²⁸⁵

As a result, the IACHR, urged the Cuban state to release all people being deprived of their freedom for participating in the protests and to stop the practice of harassment and arrests in response to social protests or other related rights.²⁸⁶ Lastly, the IACHR noted that the state must guarantee due process for everyone detained or accused of criminal activity, following Inter-American standards.²⁸⁷ This report led, in part, to a sentence reduction for twenty prisoners, thus symbolizing the change and pressure the IACHR can assert on Cuba.²⁸⁸ In this report, the IACHR only addressed complaints about the way the government targets the relatives of the accused individuals.²⁸⁹ Complaints brought by the United States to the IACHR about the members of the Cuban regime who target those who are accused could prove even more useful in bringing justice and change to the island.

Although sanctions have proven to be ineffective both in the Cuban regime and in the Venezuelan regime, the sanctions imposed on Venezuela target sectors of the economy, rather than targeting the entire economy or officials, without more, as is the case with the Cuban sanctions.²⁹⁰ The United States should evaluate the possibility of targeted sanctions, including sanctioning prominent figures such as the President Díaz Canel, as was done in Venezuela with

²⁸³ *Id.*

²⁸⁴ *See id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *IACHR Expresses Concern Over Ongoing Detention and Prosecution of People Who Took Part in Protests in Cuba*, *supra* note 282.

²⁸⁸ *See id.*; *see also* Gámez Torres, *supra* note 54.

²⁸⁹ *See IACHR Expresses Concern Over Ongoing Detention and Prosecution of People Who Took Part in Protests in Cuba*, *supra* note 282.

²⁹⁰ *See* Ribando Seelke, *supra* note 158, at 25.

President Maduro.²⁹¹ This alternative would not be the most effective alternative as it is merely altering the way the United States sanctions the Cuban government, yet it is more promising than the current sanctions.²⁹² This reservation is due to the fact that even targeted sanctions have proven to be ineffective in Venezuela, which continues to be a country that violates basic human rights as Cuba does.²⁹³ Changing sanctions from being punitive, as an effort to destabilize the Cuban government, to sanctions that seek to enforce change in particular sectors, could prove effective.²⁹⁴ Enacting change requires a decision on the part of Cuba to alter its policies, which would be more difficult than destabilizing the country as the current sanctions do.²⁹⁵

Further, the United States should explore the opposite of punitive sanctions: engagement.²⁹⁶ “Engagement refers to a foreign-policy strategy which depends to a significant degree on positive incentives to achieve its objectives.”²⁹⁷ Engagement can be conditioned, involving a negotiated series of exchanges where the United States extends positive inducements for changes taken by the target country, or it can be unconditional, offering modifications in U.S. policy towards a country without the explicit expectation that the country will act.²⁹⁸ Conditional engagement is geared towards the government while unconditional engagement works with the country’s civil society.²⁹⁹ American encouragement and incentives have helped countries like South Korea, Argentina and Belarus to choose a path of de-nuclearization.³⁰⁰

To enact change, the United States should seek out President Díaz Canel’s willingness to engage in a conditional relationship.³⁰¹ The United States should ask President Díaz Canel to release political prisoners, those imprisoned due to the protests on July 11, and

²⁹¹ *Id.* at 23.

²⁹² *See id.* at 27.

²⁹³ *See id.*

²⁹⁴ Nooruddin, *supra* note 145, at 63.

²⁹⁵ *See id.*

²⁹⁶ Hass & Sullivan, *supra* note 24, at 1.

²⁹⁷ *Id.* at 2.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 7.

³⁰¹ *See id.* at 15.

any other political prisoner, in exchange for lifting certain sanctions against Cuban officials and against the Cuban economy as a whole.³⁰² There is the possibility that President Díaz Canel will not agree to this, but even then the rest of the world will see that the United States was willing to be flexible with the Cuban regime and the Cuban regime was not willing to engage in this dialogue.³⁰³ This way, other countries will be discouraged to stand behind the Cuban regime without doing something to prevent injustice. Incentives are often accompanied by credible penalties, which could include sanctions if the target country continues with the behavior.³⁰⁴ This is different from sanctions alone which are not a direct penalty for one thing in specific, but a general penalty.³⁰⁵ For engagement to make sense, there has to be adequate domestic political support.³⁰⁶ Cuban-Americans have opposed any policy change that would in a way legitimize the Cuban regime.³⁰⁷ While some Cuban-Americans still stand by the sanctions imposed on Cuba, others would like to see a change and an end to the sanctions, as such sanctions have not promoted democracy in Cuba.³⁰⁸ Accordingly, these changes in the political landscape have opened possibilities for engagement with Cuba.³⁰⁹

Once engagement has been established, the United States should work on promoting democracy in Cuba through the United States Agency for International Development (“USAID”), which leads international development and humanitarian efforts to save lives, reduce poverty, strengthen democratic governance and help people progress beyond assistance.³¹⁰ Although President Díaz Canel has deprived Cuban individuals of their basic human rights, the Cuban

³⁰² Hass & Sullivan, *supra* note 24, at 15–6.

³⁰³ *Id.* at 16.

³⁰⁴ *Id.* at 10.

³⁰⁵ *See id.*

³⁰⁶ *Id.* at 6.

³⁰⁷ *Id.* at 15.

³⁰⁸ Mitch Perry, *Cuban Americans Gather in Tampa to Call on Biden Administration to End U.S. Embargo on Cuba*, BAY 9 NEWS (Apr. 26, 2021, 3:34 PM), <https://www.baynews9.com/fl/tampa/politics/2021/04/26/citizens-call-on-biden-administration-to-end-u-s-embargo-on-cuba>.

³⁰⁹ Hass & Sullivan, *supra* note 24, at 16.

³¹⁰ *About Us*, USAID (2019), <https://www.usaid.gov/who-we-are> (last visited Mar. 19, 2023).

judicial system has done nothing to hold him accountable; instead, the judicial system is prosecuting hundreds of peaceful protestors.³¹¹ Such is also the case of Juan Orlando Hernandez, former president of Honduras, who has not been properly tried by the Honduran justice system, leading to Biden's requested extradition.³¹²

The extradition gives a sense of hope to the Honduran people, but a more powerful alternative would be to see a reformed justice system within Latin American countries that could bring its own leaders to justice.³¹³ Such reform can be done through USAID, which has helped El Salvador to improve security by bringing criminals to justice through the Justice Sector Strengthening Project.³¹⁴ In 2021, President Biden embarked on a variety of projects through USAID, such as life-saving humanitarian assistance to sixty-eight countries and advancing major initiatives to tackle the climate crisis, but nothing on reforming justice systems in other countries like Cuba.³¹⁵ Instead of imposing sanctions, President Biden should work to reform Cuba's justice system, as it has done in El Salvador, as an effort to bring justice within the island, not only to prosecute the culprits, but to bring adequate justice and rights to political prisoners.³¹⁶

VI. CONCLUSION

In essence, the events of July 11, 2021, shifted the world's attention to the atrocities occurring in Cuba, but such atrocities have

³¹¹ *Cuba Acknowledges Prosecuting Hundreds of Last Year's Protestors*, AL JAZEERA (Jan. 25, 2022), <https://www.aljazeera.com/news/2022/1/25/cuba-acknowledges-prosecuting-100s-over-last-years-protests>.

³¹² Tim Padgett, *From Haiti to Honduras, is it Good or Bad if U.S. Justice Replaces Latin American Justice?*, WLRN (Feb. 22, 2022, 6:00 AM), <https://www.wlrn.org/news/2022-02-22/from-haiti-to-honduras-is-it-good-or-bad-if-u-s-justice-replaces-latin-american-justice>.

³¹³ *See id.*

³¹⁴ *See Justice Sector Strengthening Activity*, USAID (Feb. 4, 2020), https://pdf.usaid.gov/pdf_docs/PA00WFF2.pdf.

³¹⁵ *One Year into Biden-Harris Administration, USAID Reflects on Life-Saving Work; Commits to a Bold New Vision for Inclusive Development*, USAID, <https://www.usaid.gov/news-information/fact-sheets/one-year-into-biden-harris-administration> (last visited Mar. 19, 2023).

³¹⁶ *See Cuba Acknowledges Prosecuting Hundreds of Last Year's Protestors*, *supra* note 312.

gone unpunished. The economic embargo and the latest sanctions imposed on Cuban officials appear to be the United States' way to address the human rights violations occurring in the island. These sanctions, however, are just a repetition of previous sanctions that do nothing more than state there is a sanction, with no real implications for the perpetrators of violations in Cuba.³¹⁷ The fact that the Cuban regime continued to crack down on Cuban protests on November 15, 2021, just months after the sanctions were imposed, is a vivid example of the sanctions' failures.³¹⁸

In conclusion, it is time to find alternatives to address the human rights violations in Cuba. Bringing these latest human rights violations to the IACHR allows for further investigation into the violations, bring attention to a respectable Commission's report, and remove the media's tainted influence over the real violations. Exploring engagement instead of punitive sanctions could open up a dialogue with Cuba focused on promoting individual's legal and human rights in the island, and working on reforming the judicial system can further this goal. Finding effective means to target the violations in Cuba will also provide an avenue to apply these new alternatives to future dictatorships which violate individual's legal rights without any repercussions.

³¹⁷ See Blinken, *supra* note 13.

³¹⁸ *Statement by National Security Advisor Jake Sullivan on Cuba's November 15 Protests*, *supra* note 195.