

INTERNATIONAL LAW IN A TIME OF CHANGE

Panel Title: Cuba and its reintegration in the inter-American System

Thank you, Lorena Perez, for inviting me to be on this distinguished panel. I am honored to be here with my colleagues, and with all of you.

Before getting to the core of my presentation, I would like to start with three brief disclaimers.

First, while I will come at our topic a little differently, the issues of human rights and democracy have been central to the work I have done for most of my professional life.

Second, while I shouldn't say that "some of my best friends work at the OAS," some actually do, and nothing I say should be heard as dismissive of the institution or the people who work there.

Finally, I am not an expert in international law, so my comments will focus on the political context in which this discussion is taking place.

I have to confess that when I first heard the subject of this panel, "reinserting Cuba," I scratched my head. While the question of Cuba's membership in the OAS was hotly debated last year, the Cubans quickly disposed of this issue. They didn't want in, and their position hasn't changed.

But the framing of the question speaks to how complex relations with Latin America have become.

The region is not really debating how Cuba could be reinserted in the system. It is already there. It is *there* in the Rio Group. It is *there* in ALBA. It is *there* in Cuba's normal diplomatic relationship with every other nation in the Hemisphere.

And should it come to pass, Cuba will also be in the new Community of Latin American and Caribbean States, proposed as an alternative to the OAS, unlike the U.S. and Canada who aren't being invited to join.

Whether that organization even exists one year from now or is viable thereafter, we can't know now. But the fact that this new institution is under active discussion is indicative of just how far apart our view of the Inter-American System has become from the Region's.

I think there are a number of things the U.S. should do to reconcile our interests with the region, but the most effective step we could take would be to change U.S. policy toward Cuba. That would convey real benefits to average Cubans and advance the interests that lie at the heart of our goals for the Inter-American system.

I think Bill Berenson's presentation got us started in exactly the right place. You cannot understand Cuba's antipathy toward the system without revisiting 1962.

The decision to suspend Cuba from the OAS was part of a larger U.S. approach toward Latin America during the height of the Cold War. The OAS roots its decision in the broader fear of what we once called the threat of “Sino-Soviet” subversion in the Hemisphere.

But Phil Brenner and Saroya Castro argue, in their article “David and Gulliver, that the diplomatic isolation of Cuba was part of a larger strategy with the specific intent of overthrowing the Castro government.

Many of those policies remain in place today. While the Obama administration has taken some steps – resuming Cuban-American family travel, restarting migration talks with the Cubans – the essence of what President Bush bequeathed Obama remains the same.

We are still, for example, using “regime change” funds authorized under Helms-Burton to pay for activities illegal under Cuban law whose goal is to force political change on the island.

The President has said on multiple occasions, he will not loosen restrictions on Cuba further, unless his actions are met by political changes in Cuba, starting with the release of all political prisoners. He made such a linkage in a statement condemning human rights abuses in Cuba last night.

This policy, “conditionality,” requiring Cuban concessions in exchange for loosening restrictions we place on them is, for Cuba, a non-starter.

As I have heard diplomats at Cuba’s Foreign Ministry like Josefina Vidal tell Members of Congress countless times, “This is non-negotiable. We are going to decide for ourselves what kind of system we have. In no case, we would sit down with the U.S. to make changes in our political system.”

If a policy produces this kind of deadlock, it is not an expression of principle. It is evidence of failure. Whether you propose making changes in U.S. policy conditional on Cuban concessions, or making Cuba’s role in the Inter-American System conditional on political reforms, you are in fact undermining the values you are trying to protect.

There is broad agreement about that.

Cuba’s leading dissident blogger, Yoani Sanchez, calls U.S. policy a blunder. Defenders of human rights in this country – the Catholic Church, the AFL-CIO, Human Rights Watch, Freedom House, and the CATO Institute – all think engagement with Cuba would better reflect our interests in democracy and human rights.

And Amnesty International has said that the embargo undermines civil and political rights in Cuba by fueling a climate in which those rights are denied.

Our allies feel the same way. Every other nation in the Hemisphere has diplomatic relations with Cuba and embraces Cuba's call on us to drop the embargo. Brazil, the most powerful nation in the region, is one of Cuba's most outspoken supporters.

Last fall, when President Obama renewed sanctions against Cuba, Lula's top foreign policy advisor said "it's caused a great disappointment. All expectations of change regarding the foreign policy of President Obama's administration have been frustrated."

Those frustrations have only grown with decisions by Obama to: increase our military footprint in Colombia without consulting our allies, to back down from our stand against the coup in Honduras, to order our friends to "stop flirting" with Iran.

And they will likely grow further still, once the debate in our country on the future of the OAS unfolds.

Senators Menendez and Kerry have introduced legislation whose purpose is to refocus the activities of the OAS primarily on consolidating democracy and monitoring elections.

Echoing this direction, Arturo Valenzuela recently talked about the need for the OAS to become a sharper tool in the collective defense of democracy, to take preventive actions to stop crises in democracies before they become full blown.

Against the backdrop of the Honduras crisis, governments in Venezuela, Bolivia, Ecuador, along with those considering other forms of political reform someone in Washington may deem as controversial, undoubtedly took note.

Are we seriously entertaining these changes in the OAS mission without consulting the region? Are we going to take our litmus test on Cuba and apply it to other nations in the region? Are we planning to intervene when democracies decide to rewrite their charters?

Where is this heading? If this our tact, I think we will hasten the decline of the OAS, speed the creation of the CLACS – the community of Latin American and Caribbean states, and possibly start a debate about whether the U.S. should be inserted or un-inserted in the new architecture of the region.

These are serious issues. The goals of the Inter-American system are the right ones. The question is how to realize them. As a scholar wrote in Newsweek earlier this year, "What the world seeks from America is more engagement, not less, but based on partnership, not U.S. primacy." My view is that our approach toward the Inter-American system needs to reflect these realities. We can start with a new policy toward Cuba. But much more needs to be done.