



Cuba Should Not Be on the Terrorist List

By Wayne S. Smith, Robert Muse and Glenn Baker

Background

This report follows a conference hosted by the Center for International Policy (CIP) and the Center for Defense Information (CDI) on October 21, 2004, to weigh the evidence for keeping Cuba on the list of state sponsors of terrorism. The conference in turn was a follow-on to a visit to Cuba organized by the two centers in early October to look at evidence and discuss the issue with the Cubans. In addition, CIP has examined the issue of Cuba's inclusion on the list a number of times over the years and published several previous reports on the subject, including an International Policy Report (IPR) in November of 2002. CDI has also carried out a number of trips to Cuba over the past two years looking specifically into charges that Cuba has a developmental effort to produce biological weapons. It published a report on Cuban biotechnology in May of 2003. These reports are available at the CIP and CDI websites (www.ciponline.org; www.cdi.org).

Summary

Cuba was placed on the list of terrorist nations in March of 1982 on bogus grounds (see below). Twenty-two years later, the State Department's reasons for keeping it there do not withstand the most elementary scrutiny. Cuba does not, for example, endorse terrorism as a policy. On the contrary, it has condemned it in all its manifestations, has signed all twelve UN anti-terrorist resolutions and offered to sign agreements with the United States to cooperate in combating terrorism, an offer the Bush administration ignores. Nor is it harboring Basque and Colom-

bian terrorists. Members of ETA are in Cuba, yes, but with the full knowledge of the Spanish government. And as for the Colombian government, far from accusing Cuba of harboring Colombian guerrillas, it stresses that the Cuban government is playing a helpful role in efforts to bring peace to Colombia and that "there is no information... that Cuba is in any way linked to terrorist activities in Colombia today."¹

It is also true that there are American fugitives from justice in Cuba. But even under our own legislation, that does not constitute grounds for declaring Cuba to be a terrorist state. And if Cuba does not regularly extradite those fleeing American justice, the United States has not in more than 45 years extradited a single Cuban, including known terrorists guilty of multiple murders. Indeed, the United States has not even answered Cuba's extradition requests.

In March of 2004, Under Secretary of State John Bolton accused Cuba of moving ahead with a developmental effort



Conference panelists Glenn Baker, Cynthia McClintock and Jonathan Tucker.

2 to produce biological weapons. Cuba heatedly denies the charge and has invited anyone who wishes to come and see for themselves. Various U.S. delegations to Cuba led by CDI have seen no evidence at all to suggest that Cuba is in fact developing biological weapons. The charge that it is doing so appears to be a politically motivated statement by Mr. Bolton based on fragmentary intelligence that is ambiguous at best.

The central question we should ask here is how can U.S. interests possibly be served by putting forward these spurious allegations against Cuba, by insisting that it is a terrorist state when it obviously is not, and by rebuffing its offers to cooperate in the struggle against terrorism? Does this not undermine our own credibility and cast doubt on our seriousness of purpose?

Conference organizers invited Under Secretary of State John Bolton and representatives of the State Department to participate in the conference so as to have the opportunity to defend their positions. They declined to do so.

Alleged Reasons for Placing Cuba on the List in the First Place

As reported in CIP's IPR of November 2002, the State Department placed Cuba on the list of terrorist nations in March of 1982. A Congressional Research Service (CRS) memorandum dated November 7, 2003, a copy of which CIP has obtained, indicates that no explanation was given at the time for Cuba's placement on the list. According to the CRS memo, however, a State Department paper in February of 1982, a month before Cuba was placed on the list, asserted that Cuba was encouraging terrorism and was especially active in El Salvador and Guatemala. Clearly, this must have been part of the rationale for Cuba's placement on the list. And yet, if Cuba's support for guerrillas trying to overthrow an established government in El Salvador – or Guatemala – was enough to label it “a terrorist country,” then the U.S. would have qualified as a terrorist state also because it was in the midst of supporting the *contras* in their efforts to overthrow the established government of Nicaragua.

Further, as Wayne Smith reports in his book, *The Closest of Enemies*, on April 19, a month after Cuba was placed on the terrorist list, the Reagan Administration re-imposed restrictions on travel to Cuba (in the form of currency controls) and imposed various other sanctions against Cuba. The reasons it gave for these actions were 1) because “Cuba... is increasing its support for violence in the hemisphere” and 2) because Cuba refused to negotiate our foreign policy disagreements.²

But as Smith relates in his book, in December of 1981,

he had been informed by a high-ranking Cuban official that Cuba had suspended all arms shipments to Central America and that it hoped this major concession on its part would improve the atmosphere for negotiations, not only in Central America but between our two countries. This was almost certainly meant to be a response to a statement by Secretary of State Al Haig, who in a conversation with Cuban Vice President Carlos Rafael Rodriguez in Mexico the month before, had stated, in response to the Cuban's indications of an interest in dialogue, that the United States wanted not words, but changes in Cuban policies. Here was a major change.

Smith reported his December conversation to the Department of State, asking if the U.S. had any hard evidence to the contrary, i.e., that Cuba was continuing to ship arms to Central America. If not, he recommended, perhaps the U.S. should indeed begin a dialogue.

He had to follow up with a number of cables, insisting on an answer. He finally got one on March 10 of 1982, acknowledging that the U.S. did **not** have hard evidence of continuing Cuban arms shipments to Central America, but that it did not matter. In other words, the U.S. was not interested in dialogue. Note that it is in the same month that Cuba is placed on the terrorist list that the State Department acknowledges it has no hard evidence that Cuba is even continuing shipments of arms to Central America, let alone increasing them. And note also that it was Cuba that was seeking negotiations and the U.S. that was rebuffing those overtures, not the other way around, as suggested in the State Department's April 19 statement.

As Smith stated subsequently, this outright misrepresentation of the facts to the American people was one of the factors which caused him to leave the Foreign Service shortly thereafter.

Conflicting Patterns in the State Department's Accusations

Cuba continues to appear on the State Department's annual list of state sponsors of terrorism for reasons that continue to be highly questionable. Over the years, however, the professionals in the State Department who prepare the list have become more cautious in their accusations, perhaps because their wilder charges have been publicly pointed out over and over again. Some years back, for example, they alluded to “the strong possibility that in the mid-1990s, the Cuban government harbored...terrorists wanted for murder in Chile.”³

It was necessary only to walk across the street to the Chilean Embassy, however, to find that this was not true. As CIP reported in its IPR of November 2002, the Chilean

government had investigated the matter thoroughly, even sending a group of Chilean senators to Cuba. The latter had returned satisfied with Cuban explanations and convinced that Cuba had not harbored any of the Chilean terrorists.

The State Department had also alleged that Cuba was supporting terrorism in Colombia, only to have General Fernando Tapias, the commander of Colombia's armed forces, state before the House Committee on International Relations on April 24 of 2002 that: "There is no information... that Cuba is in any way linked to terrorist activities in Colombia today. Indeed Cuban authorities are buttressing the peace movement."⁴

Thus, formulations in the State Department's annual report have become more cautious, more carefully worded. Under Secretary of State John Bolton, however, has displayed no such caution in his remarks. In May of 2002, he alleged that: "The United States believes that Cuba has at least a limited offensive biological warfare research and development effort." And on March 30 of 2004, he asserted that: "The administration believes that Cuba remains a terrorist and BW threat to the United States."⁵

Bolton has insisted that the Department of State fully supports his position and that in testimony before the Senate Foreign Relations Committee in June of 2002, Assistant Secretary of State for Intelligence and Research Carl Ford, Jr. repeated his allegations word for word.

Well, not really. First of all, one must ask why Mr. Bolton did not go to the hearings in June of 2002 to testify in his own behalf, or was not allowed to go? The hearings, after all, had been called specifically to question what was behind his allegations. Rather than Bolton, Mr. Ford was sent to testify, but offered no evidence to back up the suggestion that Cuba was working to develop biological weapons. On the contrary, he admitted that "all our information is indirect... we never tried to suggest that we have the evidence, the smoking gun." He went on the state, "I certainly see no indications that there is a first strike capability or effort to attack the United States."

Rather, Ford hypothesized, if the Cubans were indeed interested in biological weapons, it could be in order to defend themselves against what they perceived – on the basis of questionable evidence – to be a U.S. offensive biowarfare threat.

Senator Lincoln Chafee (R-RI) asked if that was the case, what was the United States doing to reassure the Cubans that we had no offensive BW program and no first-strike intentions toward them? Surely, after all, we did not want any such misperception to encourage them to develop their own biological weapons.

Mr. Ford said he was the wrong person to ask because

the question dealt with policy rather than intelligence. 3 He did not say who the right person might be, nor, strangely, was there any follow-up to this line of questioning.⁶

In this and in a number of other ways, Mr. Bolton's charges raise more questions about the U.S. position than the Cuban one. Bolton demanded, for example, that Cuba comply fully with the Biological Weapons Convention (BWC), of which it is a member, yet he failed to present any evidence that Cuba is not currently in compliance. What Bolton left unsaid, however, is that in July 2001 the United States had rejected a draft protocol negotiated by member states of the BWC that would have established a system of declarations and on-site inspections to check compliance with the treaty. In fact, Bolton had personally led the opposition to the draft BWC protocol, on the grounds that it was not intrusive enough to detect violations yet was so intrusive that it would threaten valuable trade secrets of the U.S. pharmaceutical and biotechnology industries. Is there not something basically contradictory in expressing doubts about another nation's compliance while at the same time opposing the means of verifying that compliance?

This Year's Charges

Though not put forward as a reason for keeping Cuba on this year's list of state sponsors of state terrorism, the State Department complains that "Cuba remains opposed to the U.S.-led Coalition prosecuting the global war on terrorism."

This takes the matter out of context. Cuba is opposed to the U.S. war in Iraq, as are many of our closest allies and as are many Americans. It is not opposed to the war on terrorism. Again, as many Americans and friends of the United States abroad see it, the war on terrorism is one thing, the war in Iraq quite another. The first is right, the second a terrible mistake. That does not make them terrorists.

Strangely, the report's authors also complain that in discussing U.S. operations in Afghanistan and Iraq, Cuba "frequently and baselessly alleged US involvement in violations of human rights."

After Abu Ghraib, "baseless" is not a word that will find acceptance, except among the most myopic. And certainly criticizing the United States for violations of human rights in this area does not in any way suggest that the critics are "terrorists."

That aside, the State Department report and Under Secretary Bolton this year put forward two reasons to keep Cuba on the list, and Bolton added a third on his own. All will be discussed below.

4 1) Support for terrorism as a policy, or tactic. As Bolton put it in his statement on March 30, 2004: Castro “continues to view terror as a legitimate tactic to further revolutionary objectives.”

The State Department report states that “Cuba continued to provide support to designated Foreign Terrorist Organizations...”

Again, no evidence is put forward.

2) The State Department report also complains that “Cuba continued to host several terrorists and dozens of fugitives from U.S. justice.” It specifically mentions members of the Basque separatist movement ETA, and Colombian guerrillas of the ELN and FARC. It does at least acknowledge, however, that the Colombian government was aware of the presence in Cuba of ELN and FARC members and “apparently acquiesced.” It also acknowledged that the Spanish government maintains that the presence of ETA members in Cuba is a bilateral matter between Cuba and Spain.

3) For his part, Bolton insisted that the Bush administration remains “concerned that Cuba is developing a limited biological weapons effort...” and believes that Cuba remains a terrorist and BW threat to the United States.”

It is interesting to note that the State Department report does not support Bolton in this; it does not mention biological weapons at all.

Cuba a Safe Haven for Terrorists and Fugitives From American Justice?

At the October 21, 2004 conference, Bob Muse, a specialist in international law, opened his discussion by noting that the fact that there are American fugitives from justice in Cuba does not give the U.S. grounds for declaring Cuba to be a terrorist state. There are many countries that have not signed extradition treaties with the United States - Indonesia, The People’s Republic of China, Kuwait, Vietnam, and Cambodia, to name only a few. They do not normally extradite fugitives to the United States. Yet, none of those countries are on the State Department’s list of terrorist-sponsoring nations.

So there is obviously no *requirement* that countries that do not extradite fugitives to the United States be listed as terrorist sponsoring countries. But can it nevertheless be a



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valid reason for inclusion on the list? The answer, as a matter of U.S. law, is, no. Legal authority to designate a terrorist sponsoring country is found in section 6(j) of the 1979 Export Administration Act, which authorizes the Secretary of State to determine that a country has “repeatedly provided support for international terrorism.” Such a determination is prerequisite to inclusion on the State Department’s list of terrorist-supporting countries.

The fact that certain fugitives from U.S. justice are permitted to reside in Cuba does not *definitionally* constitute “repeated provision of support for international terrorism,” as required by section 6(j). Not unless two further elements could both be demonstrated: (i) that the fugitives in question had committed “terrorist” acts and, (ii) that those acts were “international” in character.⁷

Muse said he had been unable to identify a single U.S. fugitive in Cuba who meets the twofold criteria of having committed a terrorist act that was international in nature. Thus, Cuba’s inclusion on the State Department list of terrorist sponsoring nations is invalid insofar as it rests on the fact that there are American fugitives residing there.

Further, the problem has another dimension. Under a 1904 bilateral extradition treaty, non-political criminals are to be extradited on a reciprocal basis.⁸ However, U.S. breaches of the treaty have put it into a state of suspension - that is, Cuba has refused to extradite U.S. citizens as a direct response to the U.S. treatment of *its* requests for Cuban citizens to be returned to Cuba. And its position is fully consistent with international law.⁹

On January 7, 1959 Cuba sought, by diplomatic measures, the extradition of a number of Cubans who had fled to the U.S. following the collapse of the Batista government

one week before. The men sought included embezzlers from the Cuban national treasury, torturers and plain gangsters.

Over the next few months, and then over the years, Cuba made dozens of other extradition requests, always accompanied by supporting evidence. It has never received a response to a single one of those requests.

As a result, a senior Cuban foreign ministry official commented recently that the U.S. has no “moral right” to ask Cuba to extradite anyone, whether they are political fugitives or ordinary criminals.¹⁰

In fact, however, Cuba has extradited a number of non-political fugitives to the U.S. As the State Department’s most recent report says:

“Dozens of fugitives from U.S. justice have taken refuge on the island. In a few cases, the Cuban Government has rendered fugitives from U.S. justice to U.S. authorities.¹¹

The report goes on to make the odd comment that *The salient feature of Cuba’s behavior in this arena, however, is its refusal to render to U.S. justice any fugitive whose crime is judged by Cuba to be political.*”(Emphasis Added).

That comment calls into question whether the State Department has even read the old extradition treaty and is aware that it explicitly prohibits the extradition of persons whose crimes are of a “political character.”

How many “political” fugitives from U.S. justice are actually in Cuba? The number varies from source to source, but one of the most reliable is the Council on Foreign Relations, which says there are eight U.S. nationals residing there whose crimes may be deemed “political.” Joanne Chesimard is the one person in this category actually named in the State Department’s most recent annual report. For that reason, her case is worth examining in some detail.

Chesimard was a member of the Black Panther Party.¹² She was convicted in 1973 of killing a New Jersey state trooper. In 1979 she escaped prison and has been in Cuba since then.

Joanne Chesimard was described recently by a Cuban official as someone whose case was investigated and found to merit treatment as a political offense. As a result of that determination, Cuba’s position is that she is not extraditable.

Is Cuba legally justified in taking this position? As deplorable as the killing of Trooper Werner Foerster was, the answer is yes.

The 1904 Extradition Treaty between the U.S. and Cuba

states, at Article VI: “A fugitive criminal shall not be 5 surrendered if the offense in respect of which his surrender is demanded be of a political character. . . . If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made. . . . shall be final.”

The political offense exception of the 1904 U.S./Cuba Extradition Treaty is found in most bilateral extradition treaties.¹³ For example, until 1987 when the U.S. and the United Kingdom amended their joint extradition treaty, members of the Irish Republican Army (IRA) were often determined by U.S. courts to be exempt from extradition under the political offenses exception of an earlier treaty.¹⁴

Would a U.S. court find Joanne Chesimard exempt from extradition under the political offense exception of the 1904 treaty? Federal case law suggests it would.

The historical development of the political offense exception is grounded in a belief that individuals have a “right to resort to political activism to foster political change.”¹⁵ Violent political action is especially covered by the exception.¹⁶

We can deplore Chesimard’s crime while at the same time conceding that Cuba’s treatment of Chesimard as a political fugitive has a sound legal basis in the international law of treaties in general and in U.S. jurisprudence in particular.

A troubling truth emerges from all this, Muse noted: Non-cooperation between the U.S. and Cuba in surrendering fugitives serves neither side’s interests. Efforts to resuscitate the 1904 Extradition Treaty should begin as soon as circumstances permit.

(Note: Muse’s remarks reported above are taken from an excellent paper prepared by him, *Is Cuba’s Refusal to Turn Over Fugitives From U.S. Justice a Valid Basis for that Country’s Designation as a ‘State Sponsor of Terrorism’?* which is available on the CIP website, <http://ciponline.org/cuba>.)

Wayne Smith at this point noted that this year’s State Department report complains not only of American fugitives in Cuba, but claims that Cuba is hosting several foreign terrorists. It only mentions, however, members of ETA, the Basque separatist organization, and members of the Colombian groups ELN and FARC. If it had information on others, we can be sure it would mention them; hence, we must assume that these few Basque and Colombians are the only so-called “foreign terrorists” involved in the State Department complaint. But that then turns the whole thing into

6 a non-issue, for, as noted above, Colombian government spokesmen as early as two years ago said they had no evidence whatever that Cuba was in any way linked to terrorist activities in Colombia.

CIP's conversations this year with the Colombian embassies in Washington and Havana indicate that still to be the case. Further, while there are ELN and FARC members in Havana, they are there with the acquiescence of the Colombian government, which continues to see Cuba's efforts to broker the peace process in Colombia as "helpful and constructive."

Much was made in the Cuban exile press a couple of years ago about the arrest in Colombia of Niall Connolly and three other members of the Irish Republican Army on suspicion of providing explosives to the FARC. This was seen as significant since Connolly had been the Sinn Fein representative in Cuba some years earlier. This must, said the exiles, point to a link between Cuba and guerrilla activities in Colombia. But no. Colombian authorities found no evidence that the three were providing explosives or training to the FARC or had committed any offense other than possession of false documents. They were therefore freed (having already been detained longer than would have been the sentence for having false documents).¹⁷

In conversations with the Spanish embassies in Washington and Havana this year, CIP found them not in the least concerned about the ETA members resident in Cuba. They are there, said the Spanish, as the result of an earlier agreement among Spain, Panama and Cuba. The Spanish have no information that any are involved in terrorist activities and regard the matter of their presence in Cuba as a matter between the Cuban and Spanish governments.

Thus, there would seem to be no real evidence that Cuba is in fact "harboring foreign terrorists." The same, however, cannot be said of the United States. It *is* harboring exile terrorists, the most notorious probably being Orlando Bosch. The Justice Department has evidence of his involvement in some thirty cases of violence and terrorist acts in the U.S. and Latin America. Imprisoned in Venezuela in 1976 for masterminding the downing of a Cubana airliner with the death of all its passengers, Bosch some years later was mysteriously released and returned, without a visa, to Miami. The Justice Department wanted to deport him – or failing that, to hold him in custody. But he was set free in 1990 by the administration of George H.W. Bush after intense lobbying by South Florida political leaders such as Ileana Ros-Lehtinen and Jeb Bush.

On July 20 of 1990, *The New York Times* editorialized, "The release from jail of Orlando Bosch is a startling example of political justice. The Justice Department, under no

legal compulsion but conspicuous political pressure, has let him out, winning cheers from local politicians—and squandering American credibility on issues of terrorism."

Bosch continues to live freely in Miami, having never renounced violence as a method. He is but one of many exile terrorists living freely there. And now there are three more. Last August, under strange and suspicious circumstances, outgoing Panamanian President Mireya Moscoso pardoned four Cuban exile terrorists then in Panamanian prisons: Luis Posada Carriles, Pedro Remon, Guillermo Novo and Gaspar Jimenez. All had long records of involvement in terrorist activities. Jimenez, for example, was convicted of killing a Cuban fishing technician in Mexico in 1976. He escaped from prison and still has an outstanding sentence of 12 years hanging over his head. Novo, Remon and Jimenez flew immediately to Miami, where they were given a heroes' welcome at the airport. U.S. authorities raised no objections of any kind.

Carriles, apparently fearing extradition efforts on the part of Venezuela, remained out of sight in Central America. Speculation, however, is that he also will soon be back in Miami – the established haven for exile terrorists.

Cuban Endorsement of Terrorism as a Tactic?

At the conference, Wayne Smith pointed out that while Under Secretary Bolton states flatly that Castro "continues to view terror as a legitimate tactic to further revolutionary objectives," he cannot point to a single statement of Castro's endorsing terrorism. Incredibly, in his pronouncement on March 30 of 2004, Bolton again cites a statement supposedly made by Castro in Iran back in mid-2001, to the effect that: "Iran and Cuba, in cooperation with one another, can bring America to its knees."

Even if Castro had said that, it is not an endorsement of terrorism. But the fact is, and has been well known since Bolton first made the allegation back on May 6 of 2002, Castro never said it. As CIP reported in July of 2002 (see CIP Special Report on *Cuba and Bioweapons: Groundless Allegations Squander U.S. Credibility on Terrorism*, July 12, 2002), the statement does not appear in any of the transcripts of Castro's statements, nor, with one highly questionable exception, in any of the reports of wire services based in Iran. Nor can it be found in the files of the BBC or in the U.S. government's Foreign Broadcasts Information Service. The single exception was a mysterious Agence France Presse story dated May 10, 2001, i.e., just after Castro's visit to Iran. But AFP cannot produce the text on which the story was based nor explain where the quote came from. There is some suspicion that it was a CIA plant. But, however it got into the AFP story, the quote was a phony.

Bolton continues to cite it anyway.

On the other side of the ledger, there are myriad Cuban statements condemning terrorism. As reported in CIP's IPR of November 2002, within hours of the September 11 attacks, the Cuban government issued a statement condemning the attacks and ruing the loss of human lives. It went on to express solidarity with the American people.¹⁸

That weekend, thousands in Cuba marched "in solidarity with the American people during the national tragedy through with they are living."¹⁹

And in his speech on September 22, 2001, Castro categorically condemned all forms of terrorism as an "ethically indefensible phenomenon which must be eradicated." And he vowed that, "The territory of Cuba will never be used for terrorist actions against the American people..."²⁰

Subsequently, the Cuban government offered to sign an agreement with the United States to cooperate in efforts against terrorism. The Bush administration ignored the offer.

We should ask ourselves, Smith concluded, whether ignoring Cuba's offer really makes sense? We have no evidence that Cuba is supporting terrorism in any way. It publicly condemns terrorism and offers to cooperate with us, all other governments and the United Nations in the campaign against it. Might it not be sensible to explore that possibility?

Ambassador James Jones noted that the Cuba policy group he had chaired at the Center for National Policy had called for principled engagement with Cuba. Discussing the possibilities for cooperating in the fight against terrorism would certainly be included in that, along with discussion of the disagreements between us, if the recommendations were ever acted upon.

Jones said that while he personally had reservations about the Cuban government and whether its policies benefited the Cuban people, the report prepared for the Center for National Policy had called for dialogue with that government and full respect for Cuban sovereignty. We accomplish nothing positive by trying to ignore or threaten the Cuban government. And certainly, he said, the United States should not be putting forward false charges against Cuba or any other country. We only undermine our own credibility and seriousness of purpose by doing so.

Glenn Baker, of the Center for Defense Information, reported that since Under Secretary Bolton's statement in May of 2002 regarding a "limited offensive biological warfare research and development effort" in Cuba, CDI has traveled to the island three times to find out more about the Cuban biotechnology sector, including a trip in October 2004 in conjunction with the Center for International Policy. On these trips, scientists and bioweapons experts have found no evidence of a Cuban biowarfare (BW) effort. They did find a remarkable degree of openness on the part of the Cuban government to open up its scientific centers to external visits. They also found an advanced vaccine and pharmaceutical industry that makes sense in the context of Cuba's commitment to national health care, disease prevention, and earning hard currency in the international market.

Of course, it is extremely difficult to prove a negative, that Cuba does not have a BW effort. The CDI delegations did not go everywhere and look in every broom closet, nor were their visits "inspections" with the elements of surprise and confrontation which that word implies. Also, any country with a pharmaceutical industry has the capability to develop biowarfare agents. In addition, the ambiguous nature of bioweapons, which can be produced in dual-use facilities that also have legitimate functions, makes their existence extremely difficult to prove. But the Cuban government's general openness on this issue, and willingness to host repeated site visits, indicates Cuba's interest in addressing these allegations head on in an effort to put them to rest.

Baker noted that two days after Secretary Bolton's May 2002 statement, Baker met with a representative of the Cuban Interests Section in Washington as part of the regular



Conference panelists Wayne S Smith and Ambassador James R. Jones.

8 work of CDI's Cuba Project. He asked how Cuba would respond to a request to bring a group of experts down to learn more about these charges. Soon thereafter CDI was extended an open invitation: come down when you want, bring whomever you want, and go wherever you want.

CDI chose nine facilities of interest and spent more than 30 hours touring them, ranging from the flagship Center for Genetic Engineering and Biotechnology (CIGB) to "La Fabriquita," a low-tech processing center for nutritional supplements made from shark cartilage, run by the military. (The latter was the only place the visitors were prevented from videotaping, a decision that was reversed during the October 2004 visit.) The visitors were frequently asked if they wanted to look elsewhere, or if they wanted to break the seals on doors and look behind them (sometimes they did). They were asked if there was anywhere they'd like to go in addition to the nine facilities. They talked with mid-level staff members. They videotaped and photographed. What emerged was a picture of an advanced, state-funded biotechnology sector with an impressive array of products and a fairly deep pipeline of new ones in development. (California-based CancerVax recently received an exception to the U.S. trade embargo to license three experimental cancer vaccines developed in Cuba, based on their life-saving potential.) The Cuban pharmaceutical sector is oriented more toward public health, and less toward profit, than ours, although it aspires to make inroads on the global market. Every Cuban is immunized against 13 diseases, and millions of cheap doses of vaccines such as hepatitis-B are exported to the developing world. Some centers appeared to be well-funded, while others showed signs of the economic strains predominant in Cuba.

Following that trip, CDI published *Cuban Biotechnology: A First-Hand Report*,²¹ an illustrated 50-page assessment. Among its conclusions:

"Given the nature and range of international contacts and joint ventures, the relatively open system, and the attitude and approach of the staff to their work, it would be very unlikely that there is any work on biological weapons at any of the facilities visited," according to Terence Taylor, who served as a commissioner and chief inspector for the U.N.'s Special Commission to Iraq.

"While Cuba certainly has the capability to develop and produce chemical and biological weapons, nothing we saw or heard led us to the conclusion that they are proceeding on this path," wrote retired Gen. Charles Wilhelm, whose region of responsibility included Cuba when he was commander of U.S. Southern Command.

"I would personally consider it irresponsible to issue charges based on unrevealed evidence without also attempting to arrange for the direct, reassuring access that the Cubans are apparently offering," reported Dr. John Steinbruner of the National Academy of Sciences Bioweapons Working Group.

"Scientist-to-scientist interactions cut through to true purposes, and cut through allegations made by non-scientists for political purposes," wrote The Hon. Philip E. Coyle, former assistant secretary of defense and chief weapons tester for the Pentagon.

Scientific exchanges, on a regular and ongoing basis, would seem to be one of the best ways to create transparency and build confidence in the rapidly-evolving biotechnology field. Scientists can't "blow smoke" in each others' faces and get away with it, making a clandestine weapons program difficult to hide from a resident visiting scholar. CDI's next biotech-oriented trip, in November 2003, included key members of the National Academy of Sciences seeking to establish a framework for such regularized cooperation. Many believe that current U.S. policy, which blocks almost all Cuban scientists from entering the United States and has increasingly denied licenses to American scientists to travel to Cuba, works against our national interests.

The October 2004 trip sought to add to the knowledge database about Cuban biotech centers by visiting four new and two previously visited sites. The new sites visited:

- National Center for Biopreparations (BIOCEN)
- National Center for the Production of Laboratory Animals (CENPALAB)
- New vaccine facility of the Finlay Institute
- Luis Diaz Soto Military Hospital

They also asked for a return visit to the National Center for Agricultural and Livestock Health (CENSA), because of concerns by a member of the previous delegation that the layout of the labs was inconsistent with their stated purpose, and that the research work shown appeared to be staged. This second visit was again almost completely taken up with an oral presentation, and the vast center's empty hallways and labs still do not square with the broad array of activities and products depicted in the Power Point presentations. This does not imply malfeasance, and more likely represents diminished funding, but this center might warrant a more in-depth visit in the future.

The delegation was taken again to La Fabriquita, the shark cartilage processing plant run by the military across the street from the Luis Diaz Soto Hospital. (The Cuban military has

(Baker's remarks are based on a most informative paper he has written, entitled *Cuban Biotech: Open Doors Build Confidence*, which is available on the CIP website, www.ciponline.org/cuba.)

Participants: Cynthia McClintock – chairperson, Glenn Baker, Ambassador James R. Jones, Robert L. Muse, Wayne S. Smith and Jonathan B. Tucker

Glenn Baker

Glenn Baker established the U.S.-Cuba Cooperative Security Project in 2001, aimed at developing and expanding U.S.-Cuban dialogue on military and regional security issues. He is also a television producer, writing and producing more than 50 documentary episodes broadcast on PBS on global security issues, including three award-winning films on Cuba. He has traveled to Cuba eight times since 1996, visiting and videotaping numerous biotech facilities, a border guard command center, the mothballed Juragua nuclear power plant, a former Soviet nuclear submarine base, military tunnels, military-run factories, and the former Soviet intelligence center at Lourdes. In response to allegations from the U.S. government of a Cuban "biological warfare research and development effort," Baker organized a trip in October 2002 by leading scientists and former weapons inspectors to nine key biotech centers in Cuba. He edited the subsequent report, "Cuban Biotechnology; A First Hand Report," the most authoritative report on the topic published in the United States to date.

Ambassador James R. Jones

Ambassador Jones is the co-chairman of Manatt Jones Global Strategies and the senior counsel of Manatt, Phelps & Phillips, LLP. President Clinton appointed Jones ambassador to Mexico in 1993. From 1989 until 1993, he was chairman and CEO of the American Stock Exchange, and from 1943 until 1987 a member of Congress representing Oklahoma's first congressional district. Most recently, he was the chairman of the Center for National Policy's commission to review U.S.-Cuba policy.

Cynthia McClintock

Cynthia McClintock is a professor of political science and international affairs at George Washington University,

become increasingly involved in economic pursuits as a result of budget and troop cuts of more than 50 percent since 1989.) This time, the officers invited the visitors to roll video, perhaps perceiving that the restriction on taping there during the previous trip created the appearance of trying to hide something. This facility has been described in exile-sourced articles as an ominous fortified germ warfare center where "military biotechnicians reportedly experiment on cadavers, hospital patients and live animals with anthrax, brucellosis, equine encephalitis, dengue fever, hepatitis, tetanus and a variety of other bacterial agents."²² But what the delegation saw, as in 2002, was a low-tech processing center, with a short mesh fence and minimal security, where workers removed cartilage from shark carcasses. It is dried on racks (along with aloe vera extract, another of La Fabriquita's products) and milled to a 63 micron powder (weaponized agents must be milled below 12 microns). The powder is then shipped out, put in capsules, and marketed under the name "Cartilade-C." This kind of discrepancy between what is written about Cuba and the reality on the ground is common, and argues for caution in intelligence assessments.

Two weeks before the October visit, evidence of such caution emerged. *The New York Times* reported that a new National Intelligence Estimate downgrading allegations on Cuban bioweapons had been conducted²³. Representing the consensus of the U.S. intelligence community, the report reflects more stringent standards adopted in the wake of intelligence failures associated with the misreporting of WMD in Iraq. It does say "the IC continues to believe that Cuba has the technical *capability* to pursue some aspects of an offensive biological weapons program." It also continues to express concern about Cuba's sharing of dual-use technology with countries such as Iran²⁴. But it does not claim Cuba has a biological weapons effort. This new assessment was welcome news on the eve of the CIP-CDI trip, and helped make the case that openness and transparency serve to build confidence.

Can we be certain Cuba is not pursuing biological weapons? Of course not, for all the reasons listed earlier. But the openness demonstrated by the Cubans has been encouraging, and the doors appear to be open to continue this process. Furthermore, it has the potential to lead to scientific exchanges and collaboration in efforts to combat the growing threat of infectious disease. During the recent spate of hurricanes, the United States and Cuba were quietly cooperating by sharing weather data from radars and aircraft to help each country better prepare for the devastation. This underscores the fact that the United States and Cuba can cooperate on issues of mutual concern even in a less than friendly political climate. Like hurricanes, infectious diseases

10 where she has been teaching since 1975.

McClintock's book *The United States and Peru: Cooperation at a Cost* (co-authored with Fabian Vallas) was published by Routledge in January 2003. Her previous books include *Revolutionary Movements in Latin America: El Salvador's FMLN and Peru's Shining Path* (U.S. Institute of Peace Press, 1998) and *Peasant Cooperatives and Political Change in Peru* (Princeton University Press, 1981). She is the author of numerous scholarly articles, which have appeared in *World Politics* and *Comparative Politics*, among other journals. During 1994-95, McClintock was president of the Latin American Studies Association, an international scholarly association with more than 4,000 members. She is the board chair for the Center for International Policy.

Robert L. Muse

Robert Muse is an attorney (District of Columbia Bar) whose practice is devoted exclusively to public and private international law. He has testified on international law issues before the Foreign Committee of the United States Senate; the Foreign Affairs and International Trade Standing Committee of the Canadian House of Commons; the Trade Subcommittee of the Ways and Means Committee of the U.S. House of Representatives and the External Economic Relations Committee of the European Parliament (Brussels) as well as the Parliament's interparty group on Cuba (Strasbourg). Mr. Muse is a member of the American Society of International Law and the American branch of the International Law Association. Before beginning legal studies and practice in Washington, D.C., in 1984 he qualified as a barrister (Middle Temple) in England.

Wayne S. Smith

Wayne Smith is a senior fellow at the Center for International Policy in Washington, D.C., and an adjunct professor at the Johns Hopkins University in Baltimore, where he directs the Cuba Exchange Program. Smith is the former chief of the U.S. Interests Section in Havana (1979-82). At the time he left the Foreign Service in 1982, he was considered the State Department's leading expert on Cuba. He is the author of *The Closest of Enemies: A Personal and Diplomatic Account of the Castro Years*, and has edited and written various other books.

Jonathan B. Tucker

Jonathan B. Tucker is a senior researcher in the Washington, D.C. office of the Center for Nonproliferation Studies (CNS). He previously directed the Chemical and Biological Weapons Nonproliferation Program at the center. Before joining the CNS staff in March 1996, he served with the Department of State, the congressional Office of Technology Assessment, and the U.S. Arms Control and Disarmament Agency. In February 1995, he was a United Nations biological weapons inspector in Iraq. In 1999-2000, he was a visiting scholar at Stanford's Hoover Institution and in 2002-03, he was a senior fellow at the U.S. Institute of Peace. He is the editor of *Toxic Terror: Assessing Terrorist Use of Chemical and Biological Weapons* (MIT Press, 2000) and the author of *Scourge: The Once and Future Threat of Smallpox* (Atlantic Monthly Press, 2001).

Photography

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Notes

1 General Fernando Tapias, the Commander of Columbia's armed forces, *International Policy Report: Cuba on the terrorist list*. The Center for International Policy, November 2002. Page 8.

2 Smith, Wayne. *The Closest of Enemies*. W.W. Norton & Company, New York. 1987. Pages 253-260.

3 *International Policy Report: Cuba on the terrorist list*. Op.cit. Page 8.

4 Ibid., Page 7.

5 Testimony before the House International Relations Committee by John Bolton, March 30, 2004.

6 Fully reported in CIP's IPR of November 2002. See page 10.

7 The U.S. defines "terrorism" as "premeditated, politically motivated violence perpetrated against noncombatant targets." See 22 U.S.C. 265 6f(d)(2). "International terrorism" is defined as "acts involving the citizens or the territory of more than one country." See 22 U.S.C. 2656f(d)(1). Therefore the criminal acts – even if terroristic - of an individual or group, if confined within a single country and aimed only at citizens of that country, would not qualify as "international terrorism." This point becomes relevant later when we discuss the case of the fugitive Black Panther, Joanne Chesimard.

8 See treaty of Extradition between the United States and Cuba, signed at Washington April 6, 1904. 33 Stat. 2265; TS 440; 6 Bevans 1128. The treaty is included in the most recent edition of State Department's annual publication, *Treaties in Force*. *Treaties in Force* describes itself as "a publication [that] lists treaties and other international agreements of the United States on record in the Department of State on January 1, 2003 which had not expired by their terms or which had not been denounced by the parties, replaced or superseded by other agreements, or otherwise definitely terminated."

9 See Article 60 of the *Vienna Convention on the Law of Treaties*: "A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as grounds for terminating the treaty or *suspending* its operation in whole or in part." (Emphasis added).

10 Remarks of Vice Minister of Foreign Relations Rafael Dausa, October, 2004.

11 Cuba periodically returns on an informal basis what it terms common criminals to the U.S. for prosecution. In recent years it has repatriated individuals wanted in the U.S. on drug and child molestation charges.

12 The Black Panthers were a militant political faction that emerged in Oakland, California in 1966. They advocated and practiced the principle that “oppressed peoples” should take up a revolutionary war against the U.S. government. As a result, the Black Panthers were involved in several violent confrontations with state and federal law enforcement officers. At times those confrontation resembled combat operations.

13 See *Quinn v. Robinson*, 783 F.2d 776 (9th Cir. 1986), “The political offense exception [is] now almost universally accepted in extradition law.” See also “Analysis of the U.S.-U.K. Supplementary Treaty on Extradition,” *The International Lawyer*, Summer 1987: “Virtually every extradition treaty contains a provision banning extradition for a “political offense.”

14 See for example, *In the Matter of the Requested Extradition of Joseph Patrick Thomas Doherty by the Government of the United Kingdom*, 599 F.Supp. 270 (1984) where extradition was refused by a New York court in the case of a member of the Provisional Irish Republican Army who killed a British Army officer in an ambush in Belfast and grievously assaulted prison guards while escaping from prison. Only a few months ago a court held that a Sikh militant’s murder of three men in India he considered “pro-police” was a political offense: see *Barapind v. Enomoto*, 360 F.3d 1061 (9th Cir. 2004). Barapind in the end was extradited to India to stand trial for crimes the court determined were non-political.

15 *American Courts and Modern Terrorism: The Political Extradition*, 13 N.Y.U.J. Int’l & Pol. 617, 622 (1981).

16 “A political offense... must involve an “uprising” or some other violent disturbance.” *Garcia-Guillern v. United States of America*, 450 F.2d 1189(5th Cir. 1971). During the 1986 debates in the U.S. Senate over amending the extradition treaty with the U.K. to exclude such crimes as murder, some opponents argued that the elimination of the political offense exception for certain crimes ran counter to the United States’ venerable tradition of providing a haven for political refugees and freedom fighters. Drawing an analogy to the American Revolution, Senator Jesse Helms (R-NC) argued for the existence of a “right to rebel” that must be respected in all circumstances. For example, he said, “If this [amended extradition] treaty had been in effect in 1776,...[its] language would have labeled the boys who fought at Lexington and Concord as terrorists. There is no question that the British authorities in 1776 would have considered the guerilla operations of the Americans to be murder and assault. Their offenses included the use of bombs, grenades, rockets, firearms, and incendiary devices, endangering persons, as may be demonstrated by reference to our National Anthem.” 132 *Congressional Record*, S9161 (daily ed. July 16,1986). See also the remarks of Senator Chris Dodd (D-CT) from the other side of the aisle: “The underlying proposition in this [extradition] agreement is that all acts of political violence are wanton crimes and acts of terrorism. It equates all political violence with terrorism, and that is a bogus proposition. It’s as bogus as equating political opposition to sedition or treason.” 132 *Congressional Record*, S9252 (daily ed. July 17, 1986).

17 As related to CIP by the Colombian Embassy in Washington, DC.

18 Associated Press, September 16, 2001.

19 Vanessa Bauza, “Cuba expresses its sympathy for U.S. 11 terror victims,” South Florida Sun-Sentinel, September 17, 2001.

20 Castro speech at San Antonio de los Baños, September 22, 2001.

21 Available online at www.uscubasecurity.org

22 Martin Arostegui, “Fidel Castro’s Deadly Secret: Castro’s Biological and Chemical Weapons Arsenal,” *Insight on the News*, July 20, 1998, published by the *Washington Times*.

23 Steven R. Weisman, “In Stricter Study, U.S. Scales Back Claim on Cuba Arms,” *New York Times*, Sept. 18, 2004

24 Cuba asserts that these transfers, with partners such as India, China, Iran, and Russia, are legitimate vaccine-related projects within the bounds of international law. Deputy Foreign Minister Rafael Dausa told our group, “All transfers have been made in the framework of South-South cooperation. The transfers are being made in a transparent way, with crystal-clear conditions and no secret agreements,” and “Cuba is developing its biotech industry for the well-being of the Cuban people and the world.”



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