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CUBA IN THE INTERNATIONAL ARENA

TERESA M. MIGUEL-STEARNS

A. INTRODUCTION

The following brief history of Cuba is written to focus on Cuba's foreign relations and international involvement, including the development and implementation of public international law.

Cuba, the successor state of Spain, was the last of the Spanish colonies to gain independence and did so with the assistance of the United States in the Spanish-American War (1898). Discussed in greater detail below, Cuba became an independent state with the Treaty of Paris at the end of the War. Although the United States remained in Cuba after the War ended in 1898 to oversee the transition to democracy, the United States withdrew from Cuba in 1902. Nonetheless, the Platt Amendment to the Cuban Constitution of 1901, and subsequent Agreements of 1903 and 1934, ensured that the United States would remain involved in Cuban politics for many decades and on Cuban soil indefinitely.

B. BRIEF HISTORY

1. Spanish Colonial Cuba (1492–1898)

When Christopher Columbus landed in Cuba on October 28, 1492, he believed the island was part of Asia, and he described the island's incredible beauty.³⁶¹ The island, however, was not explored by the Spanish until 1511.³⁶² The first established Spanish village, Baracoa, served as the seat of colonial government until it was moved to Santiago in 1515, and finally to *La Habana* (Havana) in 1538. Havana became the official capital of Cuba in 1607.³⁶³

During early Spanish colonial rule, Cuba was viewed by Spain as a purely economic holding of low importance.³⁶⁴ Minerals, sugarcane, tobacco and cattle were its primary economic resources.³⁶⁵ Because Spain limited trade among its colonies, and only sailed two convoyed fleets between Cuba and Seville annually, Cubans engaged in illicit, frequent and profitable trading.³⁶⁶ During this time, the Spanish Christianized the three native

³⁶¹ GRAHAM H. STUART, CUBA AND ITS INTERNATIONAL RELATIONS 7 (1923).

³⁶² *Id.* at 8.

³⁶³ Hudson ed., *supra* note 195, at 11.

³⁶⁴ STUART, *supra* note 361, at 9.

³⁶⁵ Hudson ed., *supra* note 195, at 13–14.

³⁶⁶ STUART, *supra* note 361, at 9.

populations of the island who, like native peoples throughout the Americas, died from disease and were enslaved to work in the mines or agricultural fields. Their numbers quickly diminished to the point of virtual extinction. Those who survived were absorbed into the Cuban identity.³⁶⁷

The island was difficult to protect. In the 16th century, the French burned Havana twice (1538 and 1555), and Englishman Sir Francis Drake threatened to do the same (1588). In response to marauding pirates, Philip II of Spain built two fortresses, *Castillo de la Real Fuerza* (1577) and *Castillo de los Tres Reyes Magos del Morro* (1589), at Havana to protect the island.³⁶⁸

The island did not begin to prosper until the 17th century. In the early 18th century, Cuba added shipbuilding to its short list of industries when over 100 vessels were constructed in Havana harbor.³⁶⁹ The British captured Havana and occupied Cuba from 1762 to 1763. During that brief time, the British dramatically improved Cuba's basic infrastructure, opened Cuba's ports to trade with the world and abolished the tobacco monopoly. In February 1763, Great Britain and Spain signed the Treaty of Paris returning Cuba to Spain in exchange for Florida. Despite resistance from the Cubans, Spain tried to rein in some of the openness allowed by the British. Spain eventually lowered export taxes, and in its famous 1778 Decree of Free Trade, opened all ports of Spanish America to trade freely with all 13 ports of the Iberian Peninsula.³⁷⁰

Spain's power and presence began to decline in the Americas at the end of the 18th century. In 1795, Spain ceded Santo Domingo to France and many refugees fled to Cuba. During the Napoleonic Wars, despite a wave of French nationalism resulting from recent emigration, Cuba did not waver in its allegiance to Spain, thus earning it the name, "Ever-Faithful Isle." The liberal Constitution of Cádiz (1812), which empowered Spaniards in the Americas, strengthened Cuba's allegiance to Spain. However, the crown repudiated the Constitution in 1814 and attempted to reduce Spain's holdings in the Americas once again to merely economic interests.³⁷¹ Spain monopolized Cuba's exports and imports and imposed hefty duties. The Constitution of Cádiz was re-implemented twice more,³⁷² but with its final reinstatement in 1836 to 1837, Cuba was denied representation in the Spanish *Cortes* (legislative assembly), causing much resentment in Cuba.³⁷³

Up until the Mexican War of Independence (1821) and the Monroe Doctrine (1823), the United States believed in a "no transfer" policy for Cuba and other colonies in the Americas (not even to the United States) for fear of European expansionism. However, at the same time, the United States began to realize that Cuba was a strategically and commercially important island. Prior to Cuba's first unsuccessful revolt (1848), the United States had offered to purchase Cuba from Spain for \$100 million. Spain replied that it would sooner see it sunk into the ocean than transfer the island. This repudiation provided the impetus for some Americans to join Cuban forces in their attempts to overthrow Spanish rule.³⁷⁴

Cubans began agitating for independence in the middle of the 19th century. Narciso López led unsuccessful insurrections in 1848 and 1851.³⁷⁵ Several incidents at that time, including the Spanish confiscation of cargo of a

³⁶⁷ Hudson ed., *supra* note 195, at 8. The Spanish Dominican friar, Bartolomé de las Casas, was a firm defender of the indigenous population and was horrified by the massacre of natives in the Americas. He was appointed the official "Protector of the Indians" by the Spanish crown and became an outspoken critic of their treatment in Cuba. *See, e.g.*, *BREVÍSIMA RELACIÓN DE LA DESTRUCCIÓN DE LAS INDIAS* (1542), and *HISTORIA DE LAS INDIAS* (1561). *See also* *THE ONLY WAY* (Helen Rand Parish ed. & Francis R. Sullivan trans., 1992).

³⁶⁸ STUART, *supra* note 361, at 9.

³⁶⁹ *Id.*

³⁷⁰ STUART, *supra* note 361, at 9–10. *See also* Hudson ed., *supra* note 195, at 17 (more than 700 merchant ships visited Havana during the 11-month occupation by the British—more than had visited Havana in the entire preceding decade). *See Definitive Treaty of Peace between France, Great Britain and Spain*, Feb. 10, 1763, 42 Consol. T.S. 279, 3, COLECCIÓN DE LOS TRATADOS DE PAZ 177; *Decree of Free Trade, Reglamento de Libre Comercio* (Madrid, Oct. 12, 1778).

³⁷¹ STUART, *supra* note 361, at 12.

³⁷² M.C. Mirow, *The Cádiz Constitution in Cuba and Florida*, in *THE RISE OF CONSTITUTIONAL GOVERNMENT IN THE IBERIAN ATLANTIC WORLD: THE IMPACT OF THE CÁDIZ CONSTITUTION OF 1812* 195 (Scott Eastment & Natalia Sobrevilla Perea eds., 2015).

³⁷³ STUART, *supra* note 361, at 13; *Id.* at 199.

³⁷⁴ STUART, *supra* note 361, at 19; *See also* 6 *DIGEST OF INTERNATIONAL LAW* Sec. 950–952 (John Basset Moore comp., 1906) for U.S. policy towards Cuba in relation to the Monroe Doctrine; includes extracts of presidential, congressional and diplomatic speeches and documents.

³⁷⁵ STUART, *supra* note 361, at 14.

U.S. cotton trade ship, led to the 1854 Ostend Manifesto. The Ostend Manifesto was a second offer to purchase Cuba from Spain for \$120 million, as well as a declaration that if Spain did not sell the island, the United States might be justified in taking it by force.³⁷⁶

On October 10, 1868, Carlos Manuel de Céspedes made the first Cuban cry for independence (*Grito de Yara*), accompanied by a list of grievances and demands. He immediately created a provisional government and the legislature promulgated a constitution the following year.³⁷⁷ Spain did not succumb, however, which resulted in the Ten Years' War (1868–1878).³⁷⁸

During the Ten Years' War, the United States sympathized with the insurgents, especially after the Spanish captured the merchant ship *Virginus* in 1873, which is now known to have been carrying weapons to the Cuban insurgents. Captain Joseph Fry and 52 crew members were tried, convicted and executed for piracy within days of their capture. The greatest punishment, according to the United States, should have been no more than the confiscation of cargo. The British successfully stopped the executions of the remaining crew, and the United States and Spain agreed to resolve the matter with reparations made to the families of the executed men, and the return of the remaining crew members to the United States.³⁷⁹

The Ten Years' War ended with the Treaty of Zanjón in February 1878. The Treaty of Zanjón granted amnesty to surviving rebels and abolished slavery. It provided for reciprocal observation of treaty obligations; peace, order and a liberal government in Cuba; and improvement of commercial facilities. The treaty gave Cubans representation in the Spanish *Cortes*, but still no independence.³⁸⁰

Other than the abolition of slavery, Cubans saw few improvements after the Ten Years' War ended. Spaniards controlled the island, and Cubans had no security or freedom of religion, press or speech. Cuba fell into an economic crisis following broken diplomatic relations with the United States, closing Cuba's principal market for sugar. Cubans revolted in 1895 and witnessed the death of one of the island's esteemed citizens, José Martí, during battle.³⁸¹ Leadership fell to the capable General Máximo Gómez and strategy focused on guerilla warfare.³⁸²

The United States initially did not intervene, but sympathies lay with the Cuban rebels. The United States eventually sent the USS *Maine* to Havana harbor in early 1898, where it exploded three weeks later killing 260 navy men. Although blame could never be affixed to the Spanish, the *Maine* was the excuse needed for the United States to intervene.³⁸³ The United States declared war on Spain in April 1898. The Spanish-American War ended in short order and Cuban independence was secured with the Treaty of Paris on December 10, 1898.³⁸⁴ The treaty mandated: (1) Spanish evacuation from Cuba, Puerto Rico and other Caribbean islands; (2) Spain's relinquishment of all sovereignty over Cuba; and (3) Spain's cession of Puerto Rico and another island to the United States. Cuba was thereafter placed into U.S. trusteeship on January 1, 1899.³⁸⁵

³⁷⁶ STUART, *supra* note 361, at 20; Hudson ed., *supra* note 195, at 20. The Ostend Manifesto (1854) was a confidential dispatch from three U.S. ambassadors in Europe to the U.S. Dept. of State suggesting that the United States would be justified in taking Cuba by force if Spain refused to sell. Northerners in the United States decried the Manifesto as an attempt to expand slavery, and it was eventually dismissed. Hudson ed., *supra* note 195, at 434.

³⁷⁷ STUART, *supra* note 361, at 14–15.

³⁷⁸ *Id.* at 15.

³⁷⁹ *Id.* at 21–22.

³⁸⁰ *Id.* at 15; Hudson ed., *supra* note 195, at 25–27. Slavery was abolished in Cuba by royal Spanish decree on Oct. 7, 1886. There were numerous slave uprisings during more than 450 years of slavery in Cuba. For more information on slavery in Cuba, see HUBERT H.S. AIMES, *A HISTORY OF SLAVERY IN CUBA, 1511 to 1868* (1907); LAIRD W. BERGAD, *THE COMPARATIVE HISTORIES OF SLAVERY IN BRAZIL, CUBA, AND THE UNITED STATES* (2007).

³⁸¹ Hudson ed., *supra* note 195, at 28–29. José Martí is often called the Apostle of the Cuban Revolution. He was a poet, lawyer, scholar and revolutionary. See, e.g., ALFRED J. LÓPEZ, *JOSÉ MARTÍ: A REVOLUTIONARY LIFE* (2014).

³⁸² STUART, *supra* note 361, at 24.

³⁸³ Hudson ed., *supra* note 195, at 32.

³⁸⁴ Treaty of Paris, Spain-U.S., Dec. 10, 1898, 30 Stat. 1754.

³⁸⁵ STUART, *supra* note 361, at 26.

During the time of Spanish rule, Spain entered into very few treaties specifically related to Cuba. The few Spanish treaties that did affect Cuba pertained to trade³⁸⁶ and immigration.³⁸⁷ After Cuban independence, Cuba's trade agreements with Spain were terminated and renegotiated.³⁸⁸

2. Cuban Independence to the Cuban Revolution (1899–1958)

Cuban independence began under U.S. protection and under the direction of U.S. military General Leonard Wood (1899–1902). During this three-year transition period, the United States oversaw the creation of a Cuban constitution and formations of a Cuban government, which looked remarkably like the government of the United States. On May 20, 1902, General Wood transferred all power to the democratically elected Cuban President, Tomás Estrada Palma, and the Cuban Congress.³⁸⁹

The Cuban economy was favorable at the time of independence. There was an infusion of foreign investment, an increase in trade (especially with the United States) and sugar prices were high. Cuba and the United States signed a treaty guaranteeing a 20 percent tariff preference for Cuban sugar exported to the United States and preferential treatment for U.S. products exported to Cuba.³⁹⁰

The Cuban Constitution of 1901 was approved simultaneously with the Platt Amendment.³⁹¹ The Platt Amendment (which remained in force until 1934, when abrogated) gave the United States power to “exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States and undertaken by the Government of Cuba.”³⁹² A related Agreement for Coaling and Naval Stations (1903, continued by treaty in 1934), gave the United States a coaling and naval base at Guantánamo Bay, Cuba.³⁹³

Twenty-first century criticism of the Platt Amendment includes blaming the United States for perpetuating a “Platt Amendment Mentality” whereby Cubans lacked political responsibility. That the United States would intervene on Cuba's behalf in international or domestic conflicts arguably “encouraged an indolent attitude toward their own affairs and was not conducive to responsible self-government...which led them to rely upon the United States for guidance in their political decisions.”³⁹⁴

The United States' first intervention after Cuban independence occurred in 1906. Secretary of War William Howard Taft was dispatched by President Roosevelt to Cuba when democratically elected Cuban President Palma threatened to resign over a leftist uprising that would have sent Cuba into disorder. The United States stayed until the next elections in 1909. Two elections later, in 1917, U.S. Marines returned to Cuba to quell a revolution and restore the President. That same year, Cuba, following the United States, declared war on Germany and committed 10,000 men to the disposal of the U.S. military in Europe.³⁹⁵

³⁸⁶ See, e.g., Protocol between Spain and the United States to regulate Commerce between the United States, Cuba and Porto Rico, June 19, 1891, 175 Consol. T.S. 231, 11 Bevans 581.

³⁸⁷ See, e.g., Convention between China and Spain for Regulating the Emigration of Chinese Subjects to Cuba, Nov. 17, 1877, 152 Consol. T.S. 127.

³⁸⁸ See, e.g., Commercial Relations with Respect to Cuba and Puerto Rico, Jan. 11, 1895, and terminated on April 14, 1903, by treaty of July 3, 1902, 11 Bevans 595.

³⁸⁹ STUART, *supra* note 361, at 26. Hudson ed., *supra* note 195, at 33–34. See also 1 DIGEST OF INTERNATIONAL LAW 148–149 (Green Haywood Hackworth comp., 1940). Reprints of messages and decrees from U.S. officials. Sec. of War Taft addresses the lack of government in Cuba in 1906 and the decision to send U.S. troops per the Platt Amendment to bring order and oversee elections until withdrawn in 1909.

³⁹⁰ Hudson ed., *supra* note 195, at 34; Commercial Convention, Cuba-U.S., Dec. 2, 1902, 33 Stat. 2136, 1 Malloy 353.

³⁹¹ Army Appropriations Bill, 31 Stat. 895, 897 (1901). (Written by Senator Orville Platt, (R) Conn.). Proclamation on July 2, 1904, 33 Stat. 2248.

³⁹² Stuart, *supra* note 361, at 27.

³⁹³ See Agreement for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations, Cuba-U.S., Feb. 23, 1903, 1 Malloy 358; Treaty of Relations, Cuba-U.S., May 29, 1934, 48 Stat. 1682.

³⁹⁴ Hudson ed., *supra* note 195, at 35.

³⁹⁵ STUART, *supra* note 361, at 33. Stuart concludes by positively assessing the Platt Amendment: “... as a practical working agreement, the Cubans concede that it has been fairly satisfactory.... The privilege of acquiring naval bases has not been abused

Although democratically elected in 1924, General Machado y Morales faced student resistance when he decided to re-elect himself to a second term. Machado used force to put down the student rebellion, which resulted in the death of a student leader, Rafael Trejo, and eventual U.S. intervention. Mediation efforts in 1933 led by the U.S. ambassador, between President Machado and opposition leaders, were not successful. Cuban military factions forced the resignation of President Machado, and U.S. Ambassador Sumner Welles and the Cuban Army appointed Carlos Manuel de Céspedes y Quesada, son of Carlos Manuel de Céspedes (Cuba's first president in the 1860s rebellion), to succeed President Machado.³⁹⁶

President Céspedes y Quesada refused to nullify the Constitution of 1901, which led to the feeling, especially among student and leftist groups, that he was too closely aligned with the United States. In September 1933, he was quietly and successfully removed from office by a *coup d'état* led by Sergeant-Stenographer Fulgencio Batista y Zaldívar. Student groups resisted self-proclaimed Colonel Batista's power, and the *Directorio* (Directorate) appointed university professor, Dr. Ramón Grau San Martín, President of Cuba. The United States did not recognize Grau's presidency.³⁹⁷

Grau, with the support of the students, abrogated the Constitution of 1901 and the Platt Amendment in 1934. But Grau had no political experience and his government soon collapsed. Ambassador Welles and the Cuban Army restored President Batista to power. He appointed Carlos Mendieta as Cuba's provisional president. The United States recognized the presidency within days.³⁹⁸

The next decade saw the rise and fall of a half-dozen presidents, including Grau and Batista. In 1941, during a Batista presidency, Cuba declared war on the Axis powers and gained favor from the United States resulting in increased aid and trade.³⁹⁹ Batista again came to power in 1952 after another quiet and successful *coup d'état*.⁴⁰⁰ A fraudulent re-election in 1954, followed by unsuccessful student and leftist insurrections that left many dead, caused many Cubans to view President Batista as a dictator.⁴⁰¹ In December 1956, Fidel Castro, his younger brother, Raúl, and Che Guevara started a revolution of guerrilla warfare⁴⁰² that eventually sent President Batista into exile on January 1, 1959.⁴⁰³

3. The Fidel Castro Years (1959–2006)

Fidel Castro initiated reforms throughout Cuban society and business. He was decisively anti-U.S. and refused to listen to U.S. protests or meet with the U.S. ambassador in 1959.⁴⁰⁴ In 1960, Cuba entered into a significant commercial treaty with the Soviet Union for the exchange of sugar for oil.⁴⁰⁵ The Cuban government also nationalized major foreign businesses, including the media, communications, transportation, banking and educational systems. This was followed by the expropriation of Cuban-owned businesses and foreign-owned land. In October 1960, the United States responded with an embargo on most exports to Cuba. In January 1961, the United States withdrew its ambassador and severed all diplomatic relations.⁴⁰⁶

Following the Bay of Pigs debacle (April 1961), the United States set about isolating Cuba. The United States backed the expulsion of Cuba from the Organization of American States (OAS) in January 1962, which

(Guantánamo is the only one now held)...and the United States has exercised its right to intervene only as a last resort...Cuba's future is before her and her success seems assured." *Id.* at 35.

³⁹⁶ Hudson ed., *supra* note 195, at 41–43.

³⁹⁷ *Id.* at 48.

³⁹⁸ *Id.* at 48–49. See Treaty of Relations, Cuba-U.S., May 29, 1934, 48 Stat. 1682.

³⁹⁹ *Id.* at 52.

⁴⁰⁰ *Id.* at 55.

⁴⁰¹ *Id.* at 58–60.

⁴⁰² *Id.* at 60.

⁴⁰³ *Id.* at 64.

⁴⁰⁴ *Id.* at 68.

⁴⁰⁵ *Id.* at 69.

⁴⁰⁶ *Id.* at 69–70.

led to several countries breaking diplomatic ties with Cuba. In 1964, after Cuba increased involvement in subversive activities in Latin America, the OAS countries (except for Mexico) suspended all trade and diplomatic relations with Cuba.⁴⁰⁷

The Bay of Pigs fiasco also led to stronger Cuba-Soviet Union ties. The Soviets increased aid to Cuba, and in 1962, surreptitiously brought nuclear missiles to Cuba leading to the famous Cuban Missile Crisis of October 1962.⁴⁰⁸ Soviet Prime Minister Khrushchev and U.S. President Kennedy did not consult Fidel Castro in their negotiations, which resulted in the unilateral withdrawal of Soviet missiles and bombers from the island. With his pride wounded, and the realization that he was a “mere pawn on the chessboard of international politics,” Castro “defiantly rejected the U.S.-Soviet understanding and publicly questioned Soviet willingness and determination to defend the Revolution.”⁴⁰⁹ Castro joined the Chinese in refusing to sign the 1963 Nuclear Test Ban Treaty, but eventually Castro’s relationship with the Soviet Union improved.⁴¹⁰

In the name of revolution, Cuba attempted to overthrow the Venezuelan government and intervened in conflicts in Guatemala and Bolivia in the 1960s. All of these efforts ended in disaster, which increased Cuban dependence on Soviet aid and decreased Fidel Castro’s notion that he would be able to successfully inspire revolution throughout Latin America.⁴¹¹

Castro’s revolution was renewed in the 1970s with the overthrow of Chile’s Allende government. Castro thereafter increased support to Central American revolts and African revolutions in Ethiopia and Angola. After Cuban-Soviet victories in Africa, Castro focused on Nicaragua and helped the Sandinistas overthrow the Somoza regime. This success led to further opposition support in Guatemala, El Salvador and Colombia.⁴¹²

Cuba was a founding member of the Non-Aligned Movement (1961), which focused on neutrality, anti-colonialism and building political and military cooperation among countries not aligned with the world’s political East and West blocs.⁴¹³ However, Cuba drew closer to the Soviet Union on many fronts, including trade and military support. Cuba supported the Soviet Union in Czechoslovakia in 1968, and by the early 1970s, Soviet military and economic aid to Cuba had increased significantly.⁴¹⁴ In 1972, Cuba became a member of the Council for Mutual Economic Assistance (CMEA or Comecon).⁴¹⁵ Nonetheless, by the late 1970s, Cuba and Fidel Castro emerged as leaders of the Non-Aligned Movement.⁴¹⁶ By the end of the 20th century, however, Cuba’s close relationship with the Soviet Union diminished its legitimacy in the Movement.⁴¹⁷

In what might appear to be random acts of international involvement, Cuba was strategic and opportunistic. For example, Cuba supported Argentina in 1982 during the Falkland/Malvinas War.⁴¹⁸ By the 1990s, Cuba focused its international relations on seven goals: (1) the survival of the Castro revolution; (2) increased power and influence; (3) close alliance with the Soviet Union until the collapse of communism; (4) anti-U.S. sentiment and decreased U.S. influence; (5) an increase in allies in the developing world; (6) a new economic order in the world; and (7) continued support of national liberation movements around the world.⁴¹⁹

⁴⁰⁷ *Id.* at 71. See OAS, Ser. C/II.8, Eighth Meeting of Consultation of Ministers of Foreign Affairs (Jan. 22–31, 1962). Cuba is a founding member of the OAS, and therefore as a signatory remains a member even though it was excluded from participation from 1962 until 2009. Cuba has voluntarily chosen to refrain from participation since 2009. See also DINAH SHELTON AND PAOLO WRIGHT-CAROZZA, REGIONAL PROTECTION OF HUMAN RIGHTS 65–66 (2013).

⁴⁰⁸ Hudson ed., *supra* note 195, at 71.

⁴⁰⁹ *Id.* at 72

⁴¹⁰ *Id.* at 72. See Nuclear Test Ban Treaty, July 26, 1963, T.I.A.S. 5433.

⁴¹¹ Hudson ed., *supra* note 195, at 74.

⁴¹² *Id.* at 74–75.

⁴¹³ *Id.* at 76.

⁴¹⁴ *Id.* at 76.

⁴¹⁵ *Id.* at 77, 427. CMEA was an “intergovernmental council headquartered in Moscow...to promote the development of socialist countries and to further economic cooperation among member countries.” Members included Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the USSR, the Mongolian People’s Republic, Vietnam and Cuba. CMEA was abolished with the fall of the Soviet Union, on Jan. 1, 1991.

⁴¹⁶ Hudson ed., *supra* note 195, at 81.

⁴¹⁷ *Id.* at 84.

⁴¹⁸ *Id.* at 82.

⁴¹⁹ *Id.* at 84.

Three significant events involving Cuba and the United States occurred in the 1990s:

1. After the Cuban riots of 1994, Cuba permitted citizens to flee the island. Thousands left by boat for the treacherous journey across the Florida Straits to the United States. Many were rescued by the U.S. Coast Guard in Guantánamo Bay until an agreement was reached in 1995 when they were accepted into the United States.⁴²⁰
2. On February 24, 1996, the Cuban Air Force shot down planes flown by unarmed Cuban dissidents from the United States who had been dropping antigovernment literature over the island in Cuban airspace.⁴²¹
3. In November 1999, Elián González, a five-year-old Cuban boy, was rescued after the boat he was in capsized in the Florida Straits. He was found clinging to a raft; his mother had drowned. He was brought to the United States and reunited with relatives in Miami while his father fought for his return to Cuba. The boy was eventually returned to Cuba after a dramatic and protracted legal battle, sparking a wave of anti-Castro sentiment throughout the Cuban-American community.⁴²²

These incidents caused the United States to begin to reconsider its policies toward Cuba. The 1990s also saw increased communication and cooperation between Cuba and the United States in areas of migration, search and rescue, and drug interdiction.⁴²³

The first decade of the 21st century saw a coalition of new Latin American governments reach out and become allies with Cuba. By 2009, Cuba had restored ties with every country in the Americas except the United States.⁴²⁴ Cuba also established deep ties with Hugo Chávez and Venezuela during this time. Venezuela provided discounted oil to Cuba in exchange for Cuba sending doctors to Venezuela.⁴²⁵

Cuba took the opportunity of U.S. involvement in the Middle East to take a stand against U.S. foreign policy. Although it was one of only two countries opposing the United States entering Kuwait in the first Gulf War, Cuba had many counterparts opposing the U.S. unilateral invasion of Iraq in 2003. Cuba also highlighted for the international community the seemingly unjust detention of U.S. prisoners of war on Cuban soil at the U.S. naval base at Guantánamo Bay.⁴²⁶

4. Raúl Castro (2006–present)

In 2006, Fidel Castro turned over provisional power to his younger brother, Raúl, due to extended illness and surgery.⁴²⁷ In 2008, the younger Castro was officially elected President of Cuba.⁴²⁸ Cuba under Raúl Castro has signed several important international human rights treaties, and the government commuted most death sentences to life imprisonment; it stopped short of officially abolishing the death penalty.⁴²⁹

Also in 2008, U.S. Senator and presidential candidate Barack Obama pledged to close the detention center at Guantánamo Bay, should he be elected president. Seven years after taking office, on February 23, 2016, President Obama again announced his plan to close down the Guantánamo facility, transfer detainees who were still there and accelerate the review process for remaining detainees.⁴³⁰

In the last decade, Cuba and U.S. relations have improved significantly. Although the U.S. embargo still exists (Congressional approval is required to lift it), travel restrictions have eased, and restrictions on remittances

⁴²⁰ *Id.* at 278.

⁴²¹ *Id.* at 278. This incident led to the arrest and conviction of five Cuban spies in the United States. See FERNANDO MORAIS, *THE LAST SOLDIERS OF THE COLD WAR: THE STORY OF THE CUBAN FIVE* (Robert Ballantyne & Alex Olegnowicz trans., Verso 2015) (2011); MARTÍN KOPPEL AND MARY-ALICE WATERS, *THE CUBAN FIVE: WHO THEY ARE, WHY THEY WERE FRAMED, WHY THEY SHOULD BE FREE* (2012).

⁴²² Hudson ed., *supra* note 195, at 278–279.

⁴²³ *Id.* at 279.

⁴²⁴ JULIA E. SWEIG, *CUBA: WHAT EVERYONE NEEDS TO KNOW* 197 (2009).

⁴²⁵ *Id.* at 200.

⁴²⁶ *Id.* at 205–206.

⁴²⁷ *Id.* at 208.

⁴²⁸ *Id.* at 214.

⁴²⁹ *Id.* at 216–217.

⁴³⁰ Barack Obama, *Remarks by the President on Plan to Close the Prison at Guantánamo Bay* (Feb. 23, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/02/23/remarks-president-plan-close-prison-guantanamo-bay>.

have been removed.⁴³¹ On July 20, 2015, the United States and Cuba resumed diplomatic relations and re-established embassies in each country.⁴³² In March 2016, U.S. President Barack Obama visited Cuba and met with Cuban President Raúl Castro. This was the first visit to Cuba by a sitting U.S. President since 1928.

C. TREATIES

In 1960, shortly after the success of the Cuban Revolution, Cuba withdrew from the Inter-American Treaty of Reciprocal Assistance (Rio Treaty, 1947). That same year, Cuba terminated its agreement to the United States Mutual Defense Assistance Program. Cuba did not join the Nuclear Non-Proliferation Treaty (1968)—the only country in the Americas not to do so. It did, however, sign in 1975 the Treaty for the Prohibition of Nuclear Weapons in Latin America (1967). Cuba also agreed to inspections and safeguards under the International Atomic Energy Agency (IAEA) in 1980. Cuba has signed other selective multilateral treaties, including the Geneva Convention protecting war victims.⁴³³

Cuba's 1976 Constitution (as amended to June 26, 2002) abrogates, in Article 11, any treaties or agreements that were signed while in condition of inequality or that diminish its sovereignty and territorial integrity. Article 75(j) gives power to the National Assembly to approve peace treaties. Article 90(g) permits the Council of State to approve peace treaties while the National Assembly is in recess. Article 98(d) gives the Council of Ministers the power to approve international treaties and submit them for ratification by the Council of State. Article 90(o), charges the Council of State with ratifying or denouncing international treaties.⁴³⁴ Also relevant to the domestic legal framework for treaties is *Decreto-Ley No. 191, "De Los Tratados Internacionales"* (Decree-Law No. 191, "On International Treaties") (March 8, 1999).⁴³⁵

D. HUMAN RIGHTS

Cuba has a long history of human rights abuses as documented by various agencies, including:

- United Nations Commission on Human Rights⁴³⁶
- Inter-American Commission on Human Rights⁴³⁷
- U.S. Department of State⁴³⁸
- Amnesty International⁴³⁹
- Human Rights Watch⁴⁴⁰
- Freedom House⁴⁴¹

⁴³¹ Cuba, U.S. DEP'T OF STATE, (June 16, 2017), <http://travel.state.gov/content/passports/en/country/cuba.html>. See also *Frequently Asked Questions on President Trump's Cuba Announcement*, Dept. of the Treasury, Office of Foreign Assets Control (July 25, 2017), <https://cu.usembassy.gov/frequently-asked-questions-president-trumps-cuba-announcement-2/>.

⁴³² *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Cuba*, U.S. DEP'T OF STATE, <https://history.state.gov/countries/cuba> (last visited July 26, 2017).

⁴³³ Hudson ed., *supra* note 195, at 307.

⁴³⁴ See CONST., *supra* note 27.

⁴³⁵ Decree-Law No. 191, "De Los Tratados Internacionales" [DLTI] [Decree-Law No. 191, "On International Treaties"], March 8, 1999, *Gaceta Oficial* [GO], No. 12, March 12, 1999. For more on this law, and its complementary regulations, see Richards Martínez, *supra* note 225.

⁴³⁶ Cuba, OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Countries/LACRegion/Pages/CUIndex.aspx> (last visited July 26, 2017).

⁴³⁷ INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV.B, CUBA (2016), <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap.B.Cuba-en.pdf>.

⁴³⁸ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2016, <https://www.state.gov/documents/organization/265790.pdf>.

⁴³⁹ See, e.g., AMNESTY INTERNATIONAL, CUBA: THE HUMAN RIGHTS SITUATION (1990); AMNESTY INTERNATIONAL, ANNUAL REPORT: CUBA 2016/2017, <https://www.amnesty.org/en/countries/americas/cuba/report-cuba/>.

⁴⁴⁰ Cuba, HUMAN RIGHTS WATCH (2017), <https://www.hrw.org/americas/cuba>.

⁴⁴¹ Cuba, FREEDOM HOUSE (2017), <https://freedomhouse.org/country/cuba>.

Cuba, however, contends that its record of human rights is excellent when defined as providing its citizens with basic food, education and health care.⁴⁴²

The one-party, totalitarian model of Cuba's government is believed to be the source of Cuba's human rights abuses. Citizens who oppose the Cuban government risk loss of employment, harassment or imprisonment. There are hundreds of political prisoners in Cuban jails according to human rights observers, including the *Comisión Cubana de Derechos Humanos y Reconciliación Nacional* (Cuban Committee for Human Rights and National Reconciliation—CCDHRN), whose founder is a former political prisoner.⁴⁴³

Nonetheless, Cuba has signed many international human rights treaties including, most recently, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (2008).⁴⁴⁴ Cuba has also signed all eight fundamental conventions of the International Labour Organization.⁴⁴⁵

In 1962, the government of Cuba was excluded as a participating member in the OAS. The Inter-American Commission on Human Rights (IACHR) issued seven reports on the condition of human rights in Cuba between 1962 and 1983, even though the IACHR was not permitted to visit Cuba to investigate allegations and complaints.⁴⁴⁶

The 2011 *Annual Report of the IACHR* includes a Country Report on Cuba wherein the IACHR reaffirmed its 1997 conclusion that the Cuban government has violated its citizens' human rights because the Cuban people are not permitted to exercise fundamental rights as established in the American Declaration of the Rights and Duties of Man. The primary violations pertain to restrictions on political rights, freedom of association, expression, movement and thought, along with an absence of elections and an independent judiciary. The *Report* also finds "severe repression of women, restrictions on human rights defenders and laws and practices that violate the rights of children and adolescents."⁴⁴⁷ The *Report* provides specific examples of cases where human rights have been violated. The Cuban government was sent the *Report* in November 2011 with a request for comment; Cuba did not respond. The IACHR also found that the U.S. embargo was detrimental to the Cuban people and recommended it be lifted.⁴⁴⁸ Many of the human rights concerns are reiterated in the 2014 and 2015 annual reports of the IACHR although advances are noted as well.⁴⁴⁹

E. INTERGOVERNMENTAL ORGANIZATIONS

Cuba is a member of several intergovernmental organizations:

- League of Nations: Cuba was an original signer of the Treaty of Versailles, ending WWI and creating the League of Nations (January 10, 1920).⁴⁵⁰
- United Nations (U.N.): Cuba is a founding member of the United Nations. The U.N. Charter was signed on June 26, 1945.⁴⁵¹ Cuba has appeared before the U.N. on many occasions and has garnered support in the U.N. General

⁴⁴² Hudson ed., *supra* note 195, at 353.

⁴⁴³ *Id.* See also RADIO MARTÍ, *Son 93 Los Presos Políticos en Cuba, Según Comisión de DDHH*, April 25, 2016, <http://www.martinoticias.com/a/cuba-lista-parcial-presos-politicos-ccdhrn/120528.html>.

⁴⁴⁴ *Treaties Ratification Status for Cuba*, U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=44&Lang=EN (last visited July 26, 2017). Cuba has signed but not ratified the ICCPR and ICESCR.

⁴⁴⁵ *Ratifications for Cuba*, INT'L LABOUR ORG. (2016), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102603.

⁴⁴⁶ INTER-AM. COMM'N ON HUMAN RIGHTS, COUNTRY REPORTS (2016), <http://www.oas.org/en/iachr/reports/country.asp>.

⁴⁴⁷ INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV, CUBA 2 (2011), <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>.

⁴⁴⁸ *Id.*

⁴⁴⁹ INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV, CUBA (2014), <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-chap4Cuba.pdf>; INTER-AM. COMM'N ON HUMAN RIGHTS, ANNUAL REPORT, CHAPTER IV, CUBA (2015), <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-Cap4-Cuba-EN.pdf>.

⁴⁵⁰ League of Nations, 2 *Bevans* 43, 58 (1919). The League of Nations dissolved in 1946. It was the precursor to the United Nations.

⁴⁵¹ *Member States*, UNITED NATIONS, <http://www.un.org/en/member-states/index.html> (last visited July 26, 2017).

Assembly for its resolutions condemning the U.S. embargo.⁴⁵² In October 2016, the vote was 191 in favor of Cuba, demanding an end to the embargo, with the United States and Israel abstaining.⁴⁵³

- Organization of American States (OAS): On June 3, 2009, the Ministers of Foreign Affairs of the Americas adopted resolution AG/RES. 2438 (XXXIX-O/09), resolving that the 1962 resolution, which excluded the government of Cuba from its participation in the inter-American system, ceases to have effect in the OAS. The 2009 resolution states that the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Cuban government, and in accordance with the practices, purposes and principles of the OAS.⁴⁵⁴ Up to now, Cuba has not rejoined the OAS as an active member.
- Non-Aligned Movement (NAM): Cuba is a founding member (1961) and one of 115 member states of the NAM. The NAM is premised upon, although not formally defined by, principles of non-alignment with world super powers, independence and anti-colonialism, peace and equality.⁴⁵⁵ Cuba chaired the NAM in 1979–1983 and 2006–2009. Although Cuba hosted the Non-Aligned Movement leaders in 2006 when it assumed the chair, Fidel Castro was too ill to make an appearance.⁴⁵⁶
- Association of Caribbean States (ACS): Cuba is a member of the ACS, a “forum for political dialogue that allows Members the opportunity to identify areas of common interest and concern that may be addressed at the regional level...”⁴⁵⁷ Current areas of concern are: (1) preservation and conservation of the Caribbean Sea; (2) tourism; (3) trade; (4) natural disasters; and (5) transportation.⁴⁵⁸ Cuba assumed the rotating presidency of the ACS in January 2016, and was also elected Chair of the Ministerial Council for 2016. The Seventh ACS Summit was held in Havana in June 2016.⁴⁵⁹
- Caribbean Community (CARICOM): Cuba is not a member or Associate Member of CARICOM.⁴⁶⁰

F. RESOURCES

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⁴⁵² SWEIG, *supra* note 424, at 195.

⁴⁵³ This was a break in the “no” vote the United States has always cast pertaining to the embargo. See Somini Sengupta & Rick Gladstone, *U.S. Abstains in U.N. Vote Condemning Cuban Embargo*, N.Y. TIMES, Oct. 26, 2016, <https://www.nytimes.com/2016/10/27/world/americas/united-nations-cuba-embargo.html>. See also U.N. Secretary-General, *Report of the Secretary-General on the necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*, U.N. Doc. A/71/91 (July 21, 2016), http://www.un.org/ga/search/view_doc.asp?symbol=A/71/91.

⁴⁵⁴ ORGANIZATION OF AMERICAN STATES, MEMBERS (2016), http://www.oas.org/en/member_states/default.asp (last visited July 26, 2017). See also SHELTON and WRIGHT-CAROZZA, *supra* note 407, at 66–67.

⁴⁵⁵ See *What is the NAM?*, 17th SUMMIT OF THE NON-ALIGNED MOVEMENT, <http://namvenezuela.org/?us%20portfolio=project-slider> (last visited Sept. 15, 2017). See also *Non-Aligned Movement*, NUCLEAR THREAT INITIATIVE, <http://www.nti.org/learn/treaties-and-regimes/non-aligned-movement-nam/> (last visited July 26, 2017).

⁴⁵⁶ SWEIG, *supra* note 424, at 209.

⁴⁵⁷ *About the ACS*, ASSOCIATION OF CARIBBEAN STATES, <http://www.acs-aec.org/index.php?q=about-the-ac> (last visited July 26, 2017).

⁴⁵⁸ *Id.*

⁴⁵⁹ ASSOCIATION OF CARIBBEAN STATES, <http://www.acs-aec.org/index.php?q=press-center/releases/2016/seventh-ac> (last visited July 26, 2017).

⁴⁶⁰ CARICOM, <http://www.caricom.org/> (last visited July 26, 2017).

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