
The Guantánamo Bay Naval Base: The United States and Cuba—Dealing with A Historic Anomaly

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This paper is based on a pipe dream. It deals with a political (international) reality that nobody in a position of responsibility has seriously addressed. It raises a matter in which the *status quo* is locked, seemingly permanently but certainly for the time being, in rigid U.S. Congressional legislation. It takes up a relationship between two countries—the United States and Cuba—that at this point can hardly be said to exist at all. One can legitimately ask the question: Why discuss the matter at all?

The answer is simple: Guantánamo Bay is back in the news. As a result of a hunger strike by as many as one hundred of the 166 detainees from the anti-terrorist efforts of the last decade who are—held in the various camps scattered around the naval base, hardly a day goes by without an article in the *New York Times* or another major media outlet reporting or commenting on the detainees, their jailers, or the judicial processes that for now have kept the 166 on Cuban soil.¹

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The breadth of the movement focusing on the detainees at Guantánamo Bay has included UN High Commissioner for Human Rights Navi Pillay and International Committee of the Red Cross (ICRC) President Peter Maurer, as well as almost every major human rights NGO in the world. Maurer, newly elected this year to head the ICRC, made one of his first trips to Washington. There, Maurer met with, among others, President Obama, Secretary of Defense Hagel, and, in a first for an ICRC head, Congressional leaders, all with the purpose of discussing the detainees at Guantánamo.²

And whether or not the renewed world attention was the reason, Obama himself took up the cause again in the spring of 2013, returning to a subject which had marked the beginning of his presidency in January 2009. In an April 30, 2013 press conference devoted almost entirely to the Syrian conflict, the President went out of his way to comment—“emotionally,” as per one journalist; almost certainly extemporaneously in any case—on the status of the detainees. The President stated, “It is critical for us to understand that Guantánamo is not necessary to keep America safe. It is expensive. It is inefficient. It hurts us in terms of our international standing. It lessens cooperation with our allies on counterterrorism efforts. It is a recruitment tool for extremists. It needs to be closed.”³

More extensively, President Obama dedicated a major portion of a May 23 speech at The National Defense University (NDU) to the subject. Indeed, the *New York Times* editorial commenting on Obama’s remarks called it “the most important statement on counterterrorism policy since the 9/11 attacks,” and “a turning point in post-9/11 America.”⁴ In his May 23 speech, Obama returned to previous themes, but in stronger terms, saying that, “[Guantánamo] has become a symbol around the world that America flouts the rule of law.”⁵ Obama lamented the fact that, “During a time of budget cuts, we spend \$150 million each year to imprison 166 people—almost \$1 million per prisoner. And the Department of Defense estimates that we must spend another \$200 million to keep GTMO (Guantánamo) open.”⁶ Specifically addressing the status of the detainees, Obama outlined six specific steps:

1. “. . .call on Congress to lift the restrictions on detainee transfers from GTMO. . .I have asked the Department of Defense to designate a site where we can hold military commissions;”
2. “. . .appointing a new senior envoy at (Departments of State and Defense) whose sole responsibility will be to achieve the transfer of detainees to third countries;

3. “. . .lifting the moratorium on detainee transfers to Yemen, so that we can review them on a case-by-case basis;
4. “. . .to the extent possible, we will transfer detainees who have been cleared to go to other countries;
5. “where appropriate, we will bring terrorists to justice in our courts and military justice system;
6. “And we will insist that judicial review be available for every detainee.”⁷

The problem is that in one public setting or another, President Obama has voiced those sentiments in the past—perhaps never in such an environment, perhaps never as comprehensively, perhaps never with as much determination. Clearly the fate of the hunger strikers was a factor weighing on Obama’s mind and conscience, impelling him to action, but he was also conscious of the fact that he has been stymied to date by partisan squabbling in the United States. I know the politics are hard,” the President said in his NDU speech. “But history will cast a harsh judgment on this aspect of our fight against terrorism, and those of us who fail to end it.”⁸

Yet in all the recent discussion and commentary, only rarely is the discrete factoid—that the detainees are being held on soil that is ultimately subject to Cuban sovereignty—ever even brought up. President Obama alluded to the fact in his May 23 remarks, but he was paying attention to Guantánamo primarily because of the detainees. The renewed attention to their fate at Guantánamo Bay, especially in light of the widespread hunger strike, is understandable: people’s lives may be at stake. That attention is also a distraction, and President Obama may be missing a key point. At its core, the question is not how the United States is treating the 166 detainees. The central issue is why the U.S. government feels it can behave exactly as it wishes, on soil that has repeatedly—by legislative as well as judicial branches of the United States—been affirmed as Cuban territory.⁹ Supreme Court decisions over the past decade have emphasized that the U.S. government cannot treat individuals differently just because they are located in Guantánamo. Nonetheless, U.S. administrations—both Republican and Democratic—continue to behave as if Guantánamo were in a separate universe.

To review the basic facts on the status of Guantánamo: on its surface, the issue appears fairly cut and dry. The United States has been installed at Guantánamo Bay since 1898, and has had so-called treaty rights to the soil since 1903, under an accord signed with the then-Cuban government of President Tomás Estrada Palma.¹⁰ That accord, reached under dubious circumstances in the early years of the twentieth century, was then revised in

the early years of the presidency of Franklin D. Roosevelt.¹¹ With the arrival of Fidel Castro to power in 1959, the new Cuban regime made clear its total disagreement with the American presence in Guantánamo.¹² However, Cuban leaders from Fidel on down have emphasized, from 1959 to the present day, that they would not seek to recuperate the forty-five-square mile territory by force. The United States is there until it decides to leave.

The fact is that the United States should not be in Guantánamo Bay—at least not in its current profile. Even leaving aside the uneven circumstances of the genesis of the base relationship, the current treaty, dating from 1934, leaves practically all initiative to stay or to go with the United States. The treaty has no termination clause. It stands as is until the two sides—but really just the United States—agree(s) to modify its terms. There is no other agreement governing a U.S. military presence on such lopsided terms anywhere else in the world. At the same time, the United States lacks even normal diplomatic relations with Cuba, and the bilateral relationship is among the most acrimonious that Washington maintains with any country anywhere. So why, one might legitimately ask, would any U.S. government want to modify such favorable terms? More recently, in late July 2013, Cuba again popped up in the news, seeking to ship missiles for repair and upkeep . . . to North Korea! One may fairly ask why the United States should make a deal with Cuba, especially when it doesn't have to. And back to the proposed revision of the base's status, is it at all possible to make such a modification while still protecting what are perceived as vital national interests? This paper deals with those two questions.

The issue at hand is more than the status of 166 detainees. The fundamental matter is the U.S. Naval Base at Guantánamo Bay, Cuba, and that base's relationship with the government and the people of Cuba. What is the base used for? Guantánamo Bay was developed in the early years of the last century as a naval and a coaling station for U.S. warships and to protect access to the soon-to-be-built trans-isthmus canal. In the 110 years that the United States has occupied the forty-five square miles of base land, its mission has evolved significantly. Most Americans—and much of the world's population—primarily associate Guantánamo today with the holding of the detainees from the anti-terrorist effort. Most are probably unaware that the base does anything more than that, even though at least two other missions, assuring a U.S. naval presence in the Caribbean, and processing migrant refugees, arguably are at least as important—if not as politically topical—as the first.

It is important, however, to discuss Guantánamo Bay at this time because the *status quo* is a historical anomaly. The reason for the persistence of

the *status quo* is clear: U.S.-Cuban animosity prevents even conversation from taking place on the issue. The core issue, quite frankly, is political. However, those politics are evolving. Determined opposition to any rapprochement between the two countries is shifting in the United States. Cuba's leadership, while still under a Castro, is very different with Raul than when Fidel ran the country. Indeed, as this paper will demonstrate, Raul expressed sympathy, on the record, in January 2002 for the U.S. military's mission of guarding detainees accused of terrorism in Guantánamo.

The United States retains key interests in its ability to continue to operate out of Guantánamo Bay, and the presence of the GWOT detainees is the most prominent—or certainly most high profile—of them. That will likely remain the case even after the United States returns control over the base to Cuba. Because make no mistake about it: that return will happen, sooner or later. The aim of this paper is to explore whether and how U.S. interests can be reconciled with Cuban operational sovereignty and overall control of the base.

THE ISSUE OF THE STATUS AND POSSIBLE RETURN OF THE BASE

President Obama, in a January 2, 2013, statement attached to his signature of the 2013 Defense Authorization Act, reiterated his desire to close the detainee facilities at the Guantánamo Bay Naval Base.¹³ His earlier efforts to do so, so publicly proclaimed on his second day on the job in 2009, had over his first term run into overwhelming opposition, primarily in both houses of Congress, but also within his own White House staff.¹⁴

However, despite public perceptions to the contrary, and President Obama's most recent statements notwithstanding, the issue of Guantánamo Bay is about much more than detainee facilities and prisoners from the global effort to combat terrorism. The history of the Naval Base, with its complex relations with the Cuban state on the soil of which the base sits, goes far beyond the question of the detainees. Guantánamo Bay Naval Base is not U.S. territory. Cuba is the ultimate owner. That means that if we want to be truly democratic about the question, the owners are the Cuban people. Yet they have never been asked their opinion.

There is another, fairly recent chapter of U.S. legislative history, dating from the last decade of the twentieth century, which specifically addresses the status of the base. The Cuban Liberty and Democratic Solidarity Act of 1996, better known as the Helms-Burton Act,¹⁵ is regularly decried by the Cuban Government as blatant American interference in Cuban affairs. At the same time, that piece of legislation acknowledges that the United

States “should be prepared to enter into negotiations with a democratically elected government in Cuba either to return (the base) to Cuba or to renegotiate the agreement under mutually agreeable terms.”¹⁶

Although Fidel Castro and his brother Raul—who now governs the island—have declared that the U.S. possession of Guantánamo Bay is illegal, awareness of Cuba’s limited capacity to enforce a claim to the base has been repeatedly stated since Fidel Castro took power on January 1, 1959. Both Castros have affirmed that Cuba will not use force to recoup the territory. (There was at least one attempt to pressure the U.S. into leaving, during the Cuban Missile Crisis, when on October 28, 1962, an angry Fidel insisted—as one of his ‘conditions’ for ‘accepting’ the Kennedy-Khrushchev Agreement—that “U.S. troops must be withdrawn from the Guantánamo Naval Base, and that part of Cuban territory occupied by the United States must be returned.”¹⁷ The world’s relief at an agreement being reached on the missiles themselves caused the Cuban’s conditions to be overlooked, and the *status quo* has prevailed ever since.)

However, leaving aside the history and the politics of the Guantánamo issue aside for just a moment, it is useful to examine the logic of the U.S. presence at Guantánamo Bay.

THE MISSIONS FOR A NAVAL BASE AT GUANTÁNAMO

Beginning in the late nineteenth century, there were three fundamental reasons for the United States’ desire to establish a base at Guantánamo Bay.

1. The United States Navy sought coaling stations to service its rapidly expanding fleet, and Guantánamo Bay was a prime piece of real estate, sitting astride one of the main thoroughfares in the Caribbean.
2. Strategic American thinkers in the late nineteenth and first years of the twentieth century already were looking toward building a trans-isthmus canal in Central America, and were determined to have naval bases in the region to help protect such a vital facility.
3. The United States, in the post-Civil War era, showed increasing self-confidence in world affairs. As part of that evolving mindset, there grew a feeling, especially among naval strategists, that the United States needed a military presence in the Caribbean.

The United States, wrapping up with the Cuban freedom fighters in 1898, the war to expel the Spanish colonial forces, took charge of Guantánamo Bay, and the rest is history.

History, however, tends to move on. The U.S. Navy no longer runs

ships on coal, and the Panama Canal is no longer American, as it was returned to Panama in the late 1970's by then-President Carter. Of the three original strategic reasons for U.S. possession of the Guantánamo base, the only one that remains relevant today is the third—that of assuring a permanent presence in the region—and that rationale has evolved significantly. The main missions of a base in the middle of the Caribbean are now much more focused and task-oriented.

- 1. Detainees in the Anti-terrorist Effort:** Since late 2001, in the wake of the September 11 attacks and the U.S. military operations in Afghanistan which followed in October-December of that year, Guantánamo has been the chosen spot of the U.S. Department of Defense for housing and for attempting to conduct judicial procedures against (some of) the detainees held in the anti-terrorist effort. As of July 2013, there remain 166 detainees.
- 2. Attempted Migrants:** Since the migration crises in Cuba and then in Haiti starting in the early 1980s, Guantánamo Bay—and specifically the Migration Operation Center (MOC), established at the Naval Base in 2002—has served as the intermediate point for processing Cuban and Haitian refugees picked up on the high seas by the U.S. Coast Guard. While the refugee population on the base has risen as high as 45,000 (in 1994) and while the maximum capacity of refugee processing estimated by the U.S. military is 60,000, in recent years there have rarely been more than thirty to forty individuals awaiting U.S. government decision on eventual refugee re-settlement.
- 3. A Permanent Naval Presence:** Then-Combatant Commander for the U.S. Southern Command, General Douglas Fraser, stated on March 6, 2012, in Congressional testimony, “(E)ven absent a detention facility and even following the eventual demise of the Castro regime,” it is important that the U.S. maintain a physical presence in the region.¹⁸ *Inter alia*, the rapidly expanding Chinese presence—presently commercial, but also featuring a growing a diplomatic and strategic component—in the Caribbean region presents U.S. strategists with a particularly salient imperative with regards to the U.S. presence in Guantánamo.

THE PLATT AMENDMENT AND THE CUBAN CONSTITUTION

It is one thing for the United States to examine its own rationale(s) for maintaining Guantánamo Bay Naval Base. However, there is at least

one problem with that approach. As mentioned above, the soil on which the base sits is not American. At this point, a brief trip back through history is required.

The U.S. military helped Cuban insurgents defeat Spanish colonial forces in 1898, and as a result the twentieth century began with a significant American military presence remaining on the island. As conditions on the island stabilized, the McKinley and Roosevelt administrations proved willing to contemplate the removal of U.S. troops, but only with fulfillment of certain firm conditions. Those conditions included, principally, the insertion of the so-called Platt Amendment into the body of the Cuban Constitution, giving the United States oversight on Cuban government actions, especially but not exclusively in the foreign policy area, that affected U.S. national interests. Also included in the Platt Amendment, as Article VII, was the following provision:

“To enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations, at certain specific points, to be agreed upon with the President of the United States.”¹⁹

It would be hard to argue that Cuba arrived freely at acceptance of the presence of a U.S. military base on Cuban soil.²⁰ Cuba’s struggle for independence began in 1868, and led to three separate wars with Spain, each one bloody and destructive, before indigenous Cuban forces, with the help of U.S. forces in 1898, were able to throw out the Spanish colonialists. The United States only arrived in the final months of the third war.

The issue of the Platt Amendment and its related base agreement followed. In the end, it took three different votes of the Cuban Constituent Assembly in 1901 to obtain approval of the Platt Amendment and its Article VII, and, even then, the final vote was anything but overwhelming. The Platt Amendment passed in the Assembly by a vote of sixteen to eleven. According to one historian, nine of the eleven negative votes came from eastern Cuba, the region where the Guantánamo Bay Naval Base would be located.²¹ Cubans were never comfortable with the idea of an American base on their island.

For the first three decades of Cuban independence, there were repeated attempts by Cuban politicians and diplomats to re-open the question, not just of the Platt Amendment, but of the naval base specifically. In 1934, the newly-elected American President, Franklin D. Roosevelt, was willing to oversee the removal of the Platt Amendment from the Cuban

Constitution. The one provision which remained, and which still prevails, is that which entitles the United States to preserve its naval base on the island. The reasons for Cuba’s acceptance of the continued presence of the base are veiled in history, and it is even hard to find a record of concerted U.S. pressure to be allowed to stay. One explanation was the willingness of the then-Cuban leader, Fulgencio Batista, to let the United States keep its base, in exchange for major U.S. concessions regarding U.S. imports of sugar, Cuba’s export staple.

Why, the reader might ask, does this history matter? The answer is simple: the most common narrative in the United States today is that the United States cannot return Guantánamo to the Castros. Yet opposition among Cubans to the presence of the Guantánamo Bay Naval Base long predates the arrival of Fidel Castro to power in 1959. Indeed, opposition to the base is much stronger than his rhetoric or mere communist propaganda; it is intimately related to Cuban nationalism, to Cuban identity, to Cuban self-image, to the present-day Cuba and, most importantly, the Cuba of tomorrow.

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CUBAN NATIONALISM: A LONG-STANDING SAGA

Numerous writers and historians have written at length about the extent of Cuban nationalism across the decades and indeed, centuries. The most in-depth studies of this phenomenon are by Louis A. Perez of the University of North Carolina. Among Perez’ most extensive analyses of Cuban nationalism is his classic, *On Becoming Cuban. Identity, Nationality and Culture*.²² Other contemporary writers who have addressed the subject include Rafael Rojas²³ and Jorge Duany.²⁴

These and other scholars explain that Cuban nationalism—and the roots of Cuban identity—first formed in the nineteenth century, primarily in opposition to Spanish colonial rule, especially its ever-harsher manifestations. Duany writes, “The Cuban people had acquired a unique spirit or soul,

a code of moral virtues whose preservation required establishing a sovereign state.” However—and this is where the impact on the Guantánamo issue is most salient—Duany goes on to note that, “Cuban independence in 1902 began inauspiciously for many intellectuals who had fought for national sovereignty. One of Cuba’s foremost literary critics, Cintio Vitier, maintained: ‘We are victims of the most subtle corrupting (U.S.) influence in the Western world.’”²⁵ As the United States gradually replaced Spain and become omnipresent in life on the island—in history and politics; economics and finance; agriculture, commerce and industry; and society and culture—Cubans came to define themselves, positively and negatively, vis-à-vis the United States.

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Fidel’s attempts to monopolize Cuban political thought have instead given way to an incipient rebirth of a more widespread and popular-based pride of all Cubans in determining their own future. Pro-American attitudes on the island today are widespread; anti-Americanism has fairly limited currency. And yet curiously, it is the long-standing and overwhelming U.S. proximity, especially in the minds of Cubans, that incites a reaction, including among those opposed to the current regime.

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The resultant outcome was not always felicitous.

There are numerous Cuban figures, especially in the nineteenth century, who argued for a solid—and separate—Cuban identity, first vis-à-vis the Spanish colonial rulers, but also over time in relation to the United States. Felix Varela and Jose Marti are but two prominent Cubans who even before the idea of a U.S. base on Cuban soil was envisioned, argued for keeping a respectable distance from Cuba’s huge neighbor to the north.²⁶ Those two, often referred to as Founding Fathers of Cuba, would almost certainly have opposed the presence of a U.S. military base on Cuban soil.

More contemporaneously, Fidel’s attempts to monopolize Cuban political thought have instead given way to an incipient rebirth of a more widespread and popular-based pride of all Cubans in determining their own future. Pro-American attitudes on the

island today are widespread; anti-Americanism has fairly limited currency. And yet curiously, it is the long-standing and overwhelming U.S. proximity, especially in the minds of Cubans, that incites a reaction, including among those opposed to the current regime. Writing about an earlier era, but exercising analytical tools that remain relevant today, Perez writes in *On*

Becoming Cuban, “The power of U.S. hegemony was embedded in cultural forms that served as the principal means by which the North American presence was legitimized. It just happened that these forms also served as the means by which North American influences were contested. It was perhaps, in the end, a measure of the vitality of the North American structures and the creative power of adaptation that these were often the basis on which Cubans chose to challenge the United States.”²⁷

Admittedly, the efforts of Fidel Castro over the past five decades to capture the nationalist rhetoric in Cuba’s history have met with some success, especially outside of Cuba, but also on the island, and more powerfully in the early years of the Castro revolution than as time has moved on. However, as Fidel’s star has faded in recent years, the power of Cuban nationalism has persisted. Indeed, some would argue that the sentiment has even strengthened. Rafael Rojas’ recent work, *La Maquina del Olvido*,²⁸ argues against Fidel’s monopolization of the nationalist ideal, and recent evidence gives power to that narrative. Emblematic figures such as the recently-deceased activist Oswaldo Paya and former political prisoner Oscar Espinoza Chepe have not only written their critical analyses from the island, but they have also insisted that the perspective from the island—as opposed to from overseas—is the most truly Cuban, the most authentic. Renowned blogger Yoani Sanchez and her husband Reinaldo Escobar lived overseas but chose to return to Cuba, largely to engage in the effort to democratize Cuba. Of the 59 political prisoners released from jail in 2011 as a result of the intervention of Cardinal Jaime Ortega, a dozen, including the most prominent dissidents, eschewed the Cuban Government’s pressure to go into exile and instead insisted on remaining in Cuba. Whatever the view towards the current government, there remains a pride in being Cuban. And whosoever claims “Cuban pride” also makes a case for Guantánamo Bay returning to Cuba.

The sentiment is perhaps best incarnated by Yoani Sanchez, who stated on at least one occasion on her recent world tour that “On Guantánamo, I am a ‘civilist’, and am a person who wants to see the law respected, thus I cannot be in agreement with (the existence of) a place that does not respect the law.”²⁹ Technically, Sanchez is wrong, since the 1934 agreement gives the base a legal cover. Her point, nonetheless, is well-taken.

GETTING PAST ZERO-SUM

The challenge going forward is to get past a zero-sum situation. That is where things stand at present. The U.S. government sees itself with

important stakes in maintaining a physical presence in Guantánamo Bay. There is an implicit acknowledgement—in the 1996 Helms-Burton legislation if nowhere else—that the land must be returned to Cuba sooner or later. Moreover and equally importantly, although diplomatic efforts from outside Cuba to pressure the United States to return the base have been sparse, Latin American nationalist sentiment demands its return.

Of the two stakeholders, Cuba has a simpler aim: it wants its land back. Given the virtually non-existent state of bilateral relations, at first glance it appears that the two sides are going nowhere, and thus the United States, as the one holding the cards, gets to keep what it has. Facing the current situation, the U.S. government has two options:

1. Maintain the *status quo*. After all, that tactic has worked since at least 1959, if not in fact since 1903. The philosophy of “if it ain’t broke, don’t fix it” could serve U.S. purposes for the indefinite future. Certainly the current fragile state of the Cuban economy is likely to restrain any adventurous engagement on the part of Havana to recuperate the base. The frigid state of U.S.-Cuban relations would make an initiative coming from Washington highly unusual. If nothing else, Cuba’s continued imprisonment of USAID contractor Alan Gross, serving a fifteen year sentence for crimes against the Cuban state and not due to be released until 2024, makes any such rapprochement between the two capitals a non-starter, at least for now.
2. Seek to accommodate the American presence in Guantánamo Bay to the evolving reality of the Cuban populace, and plan for the future. The current frozen state of U.S. relations with Cuba will not last indefinitely. At the beginning of President Obama’s second term, there have already been initiatives and proposals, admittedly from outside the Administration but from elements with close ties to the White House, pressing for improved relations. There have even been hints of a possible pardon by Raul Castro of Alan Gross, which could produce a break in the bilateral logjam. An initiative on Guantánamo Bay—one foreseen in the 1996 Helms-Burton legislation—would be one method to respond to such a hypothetical gesture by Raul.

THE PANAMA CANAL TREATIES AS A PRECEDENT FOR GUANTÁNAMO BAY

Lest the idea of a negotiated return of the Guantánamo Base be seen as a scarcely achievable scenario, it is important to recall that there is a firm precedent for this action in recent American history. In 1977, the United

States concluded with the Republic of Panama a treaty—actually a series of Accords—returning to Panama the entire Canal Zone, including the Canal itself.

There is much to recommend the Panama Canal Treaties as an example for dealing with Guantánamo Bay.

1. In the process of negotiating the Panama Canal Treaties, the United States first formally and explicitly recognized Panama as the “territorial sovereign.”
2. The United States then received back from Panama, “for the duration of this treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal.”
3. The core treaty states that “the Republic of Panama guarantees to (the United States) the peaceful use of land and water areas which it has been granted the right to use for such purposes” pursuant to the treaty.
4. The treaty foresees that Panama “shall participate increasingly in the management and protection and defense of the Canal.”
5. Finally, “In view of the special relationship established by this Treaty,” the United States and Panama “shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.”³⁰

A critical aspect of the 1977 Panama Canal Treaties was its neutrality provisions. Specifically, the Carter-Torrijos Agreements include an entirely separate treaty devoted exclusively to the issue of the neutrality of the waterway. In that adjunct Agreement, Article I declares that the Canal will be “permanently neutral.” Article II adds that the Canal’s neutrality would be maintained “both in time of peace and in time of war” and that the Canal “shall remain secure and open to peaceful transit by vessels of all nations on terms of entire equality.” Article III goes so far as to state that “1.(e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance.”³¹

The Panama Canal treaties were, however, made possible by the altogether stronger ties between the United States and Panama. These two countries, after all, have enjoyed long and stable diplomatic relations for over one hundred years—whereas the United States and Cuba have not had diplomatic relations since January 1961. Even at times of bilateral tension, the United States and Panama enjoyed full diplomatic ties.

The United States and Cuba are represented only by “Interest Sections” in the capital of the other, and that arrangement has only prevailed since 1977 when Jimmy Carter entered the White House, determined to try to improve bilateral ties. Panama was virtually created by the United States for the specific purpose of building a Canal across the isthmus of Panama. Cuba was also emerging into independence at that same time, but its citizens had a much more rich tradition, deeper and more extensive roots, and

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However, in both the Presidencies of Jimmy Carter and Barack Obama, respect for the sentiments of other countries and peoples has been a hallmark. It was a conscious decision of the U.S. government to hand back the Panama Canal, stretching across two Administrations, Republican and Democrat. The current partisan tensions on the Hill ensure that it would be an uphill climb, but it is the thesis of this paper that a similar bold step, akin to the Panama Canal, is called for regarding Guantánamo.

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a much clearer sense of themselves as a country and a people. Finally, lest one forget, whereas the Panama Canal is a truly international waterway through which pass the ships of many nations on earth, Guantánamo Bay is merely a port with two small adjoining airstrips. Panama has a vital interest in the Canal staying open, *inter alia*, to maximize its collection of toll income from ships passing through the waterway. Cuba has no such incentive with respect to Guantánamo Bay.

It thus stands to reason that in negotiating the 1977 Panama Canal Treaties, both sides showed considerable understanding of the constraints on the other side. The United States worked very hard to maintain the best possible relations with Panama, but the Government of Panama as well acted in recognition of the importance it attached to maintaining these ties. Panama was fully conscious of the importance of keeping the Canal, so vital to world commerce, open to all

nations and functioning. It thus had a concrete incentive to seek satisfactory solutions to problems which arose in the negotiations.

For all the above reasons, a comparable arrangement would be difficult to envision for Guantánamo Bay. If the United States were to give up its current control of the Bay, it should not be to have another country—be it China, Russia, Venezuela or any other nation—take its place. The base would be for Cuba, and Cuba alone, to control.

Nonetheless, there are important positive parallels between the two situations. From a strategic perspective, the Panama Canal was an important American asset—like Guantánamo Bay. In Panama as in Cuba, there was no necessary condition, such as a sunset clause in the treaty establishing United States possession of the Canal Zone, forcing the United States to leave. In both cases—the Panama Canal and Guantánamo—the President would have to muster considerable political courage, and no small amount of Congressional arm-twisting. However, in both the Presidencies of Jimmy Carter and Barack Obama, respect for the sentiments of other countries and peoples has been a hallmark. It was a conscious decision of the U.S. government to hand back the Panama Canal, stretching across two Administrations, Republican and Democrat. The current partisan tensions on the Hill ensure that it would be an uphill climb, but it is the thesis of this paper that a similar bold step, akin to the Panama Canal, is called for regarding Guantánamo.

WHAT AN APPROACH TO CUBA ON GUANTÁNAMO BAY WOULD LOOK LIKE

This article has identified three American strategic interests in Guantánamo Bay. In each case, there are ways the United States could defend its vital interests even while turning the base over to the Cuban Government.

I. Projecting a U.S. military and strategic presence in the Caribbean region: *Negotiate a base rights agreement for continued access of U.S. military assets.*

The aim would be to ensure that the Navy continues to have a facility out of which to conduct “presence” operations in the Caribbean and beyond. The Pentagon, and in particular, the Department of the Navy, would need to identify what it believes it requires in terms of military profile. The presence could be some permanently fixed assets, but keeping in mind budgetary considerations in the United States, it might be wiser to leave a limited core skeleton on a permanent basis, with a supplementary, rotating presence as circumstances dictate. Both the Navy and, in conjunction, the U.S. Coast Guard would be required to identify their manpower and hardware expectations. Data such as fuel storage capacity and hangar space, as well as expected average monthly flights and ship visits, should be developed.

What the U.S. government would need to do is to sit down and negotiate a standard base agreement³² with the Cuban authorities. The

United States has done so in situations all over the world. Each one of those situations was and is different, and yet there are commonalities to all of those arrangements. The same could be envisioned for Guantánamo Bay Naval Base.

II. Ensuring a location from which to conduct migrant recuperation and processing activities: *Work out a new agreement with the Cuban government, or failing that, find a different location for the Migrant Operations Center.*

While the detainee mission at Guantánamo Bay is clearly the most high profile at present, from a juridical perspective, the migrant processing task arguably remains at least as sensitive. In a non-crisis time such as currently prevails, the burden of taking care of an average of some thirty migrants at the base is manageable. However, the legal issues involved with refugee processing are such that even if there were only a handful of intended migrants awaiting reprocessing, that handful technically raises the same issues as if there were 45,000 individuals (the maximum number ever retained at the base) being held.

The key question is this: on a base where operational control had passed to the Government of Cuba, what guarantees could be put in place to ensure that the potential migrants—especially if they were intended Cuban migrants—would not be mistreated by the Cuban authorities while awaiting resettlement?

At the end of the day, for this proposal to work, the genuine cooperation of the two governments would be necessary, and while that is asking for a great deal, it is not beyond the realm of possibility. On the migration issue specifically, the United States already has such an arrangement with the Cuban government. Under the current Migration Accords, dating from 1994, Cuban authorities are committed to ensure humane treatment of Cubans who are picked up by U.S. Coast Guard vessels while attempting to flee the island and returned to the Cuban port of Mariel, to the west of Havana. At a minimum, the returnees are not supposed to suffer any retribution at the hands of Cuban authorities merely for the fact that they attempted to emigrate without Cuban government permission. That is under an agreement at which both sides freely arrived, and which has been in place for almost twenty years.

The United States and Cuba have regularly disagreed on the extent to which the Cuban side has respected the Migration Accords. However, the announcement by Havana in November 2012 of a major modification in the previous requirement for Cubans to obtain an exit visa in order to

travel abroad could represent a change in the Cuban government mindset. Taking effect on January 14, 2013, the new Cuban regulations require only that a citizen possess a valid passport and a visa for the country to which that citizen proposes to travel. The Cuban authorities cautioned before the new rules went into effect that there would be some restrictions, such as for certain categories of professions, and national security clauses. The Cuban authorities have still not been fully clear as to the specific provisions of the regulations. Withal, in the months since the new rules took effect, the Cuban government has indicated that even such sensitive professions as doctors would not necessarily be restricted from travel. Other categories, such as dissidents, have been able to travel abroad and then to return to their Cuban homeland. It is conceivable that the day may be coming when Cubans will no longer need to consider taking to the seas in rafts or “fast boats” to leave their country.

At the end of the day, for the purposes of Guantánamo Bay Naval Base and the Migrant Operations Center, it is the sentiments of the Cuban people themselves, not the attitude of the Cuban government that matter the most. If Cubans continue to feel themselves oppressed by their government, for whatever reason, they will continue to flee, and thus at least some will continue to be picked up on the high seas by the Coast Guard. At least some of them—those who are found to have a legitimate fear of persecution—will continue to be brought to Guantánamo Bay’s MOC.

There are two potential solutions to the dilemma. The United States could find another location in the Caribbean region to locate their migrant operating facilities. Alternatively, it could negotiate with Cuban authorities an even more airtight agreement ensuring the rights and wellbeing of Cubans brought back to the island. In the latter case, the new attitude of the Cuban authorities, should it persist, could augur well for an eventual solution to the migrant issue.

III. Dealing with the detainees in the worldwide anti-terrorist effort:

Transfer the bulk of the detainees to U.S.-based prisons for trial or release, while keeping—on the basis of an agreement with the Cuban government—in a U.S.-run facility at Guantánamo the forty-six determined to require continued detention to protect against a significant threat to the security of the United States.

As part of a Government Accountability Office (GAO) report issued on November 28, 2012, a complete review of the 166 Guantánamo detainees was undertaken.³³ Using authoritative Department of Defense data, the Report broke the detainees down into six categories.

- Thirty are detainees for whom the Department of State is in current or planned negotiations with the detainees' home country or a third country.
- Fifty-six are in conditional detention from Yemen, and require either a stabilization of conditions there or relocation to a third country.
- Twenty-four are still facing possible prosecution.
- Three have been convicted in military commissions.
- Seven are facing such prosecution in the foreseeable future.

In a sixth category are what one might call “the problem cases.” According to the GAO Report, the forty-six individuals in this category are defined as “Detainees who have been determined to require continued detention to protect against a significant threat to the security of the United States.” This category is not necessarily “the worst of the worst.” For example, Khalid Sheikh Mohamed, one of the supposed masterminds of the 9/11 attacks, is not in this group, and is already the subject of full-blown judicial proceedings. As noted above, three of the “worst of the worst” have already been tried and convicted by military commissions, while another seven (including five accused of planning the September 11 attacks) have formal charges pending and face potential trials by military commissions. No, this category of forty-six individuals will not, for the foreseeable and even distant future, see the light of day.³⁴ The question is where the forty-six would be detained, and if necessary, whether they could be kept in Guantánamo Bay.

First, what to do with the other 120 detainees in Guantánamo? In presenting the GAO Report on November 28, 2012, Senator Dianne Feinstein (D-CA), Chairperson of the Senate Intelligence Committee, excoriated the U.S. government for not making further progress in bringing the detainees to trial. She went further, listing the number of individuals—373, in ninety-eight prisons—who had been tried and sentenced, and are serving time for terrorist offenses in the United States. She cited at least six detention centers—in Virginia, South Carolina, California, Washington, and two in Kansas—with more than enough capacity to house all the Guantánamo detainees. Moreover, she noted, Guantánamo Bay detention facilities are costing the U.S. taxpayer \$114 million each year to maintain.³⁵ And since Feinstein’s 2012 report, the U.S. Department of Defense has requested from Congress approximately \$195.7 million to upgrade the detention facilities in Guantánamo.³⁶

President Obama, like President Bush before him, has emphasized the determination of the U.S. government to close the Guantánamo Bay

detention facilities. In his May 23 speech at the NDU, he reiterated that intention, with greater determination than ever. Obama laid out both a legal case and a moral argument for the United States to end its detainee-holding role on the base in Guantánamo.

Many could not be happier if all 166 detainees were to leave the island of Cuba, which clearly is President Obama's desire, judging from his words on May 23 at NDU. Regrettably, that outcome will prove difficult, the President's wishes notwithstanding. Obama foresees the bulk—at least 120—being moved to U.S. prisons, eventually put on trial, or transferred either to their home countries or to a third country. In June 2013, Obama announced the nomination of a new Coordinator at the State Department to oversee the effort to move the detainees off the island of Cuba and to third countries. Even more significantly, new legislation has been introduced in Congress that would ease the tight restrictions on the Obama administration's ability to move detainees off the island of Cuba.³⁷ However, the language in the draft bill currently in Congress does not differ significantly from that inserted into the 2013 Defense Authorization Act. In addition, the 120 detainees who are the new Coordinator's focus may or may not have committed acts of terrorism at the time they were detained. In any case, they are not the crux of the problem.

The U.S. government will have to decide what it wants to do with the 120. President Obama's May 23 speech lays out a desired path, but Congress' acceptance is anything but a foregone conclusion. There will continue to be a need for difficult decisions of the Executive Branch, including possibly acknowledging grave errors—e.g., awareness of other countries' behavior towards the detainees prior to their arrival in U.S. custody; acknowledgement of awareness on the part of U.S. personnel of mistreatment and even torture of those individuals; and U.S. involvement in secret detention centers around the world. The GAO report cited above foresees a variety of alternative courses of action for the bulk of the detainees. One can only hope that such an outcome is produced at the earliest possible time.

GUANTÁNAMO BAY AND THE FORTY-SIX

The problem, when it comes to Guantánamo Bay, remains the forty-six detainees. Whether or not it is those forty-six individuals who were identified by the U.S. Congress in 2011, in its authorization to “reaffirm the authority of the Department of Defense to maintain United States Naval Station, Guantánamo Bay, Cuba, as a location for the detention of

unprivileged enemy belligerents,”³⁸ it is obvious that forty-six individuals, or some variant of that number, would need to be kept for an indefinite period of time. Almost any civilized government anywhere would acknowledge that requirement. The question is where.

In mid-2012, there were already over eighty pieces of legislation introduced in Congress restricting one aspect or another of the Executive branch’s freedom of movement of the detainees on and, more importantly, off the base. By the end of the 112th Congress in late December 2012, the Administration was able to gain for itself considerable flexibility in terms of transfer of Guantánamo detainees to foreign countries or entities, which would obviously facilitate closing the detainee facilities. It was able to consolidate (and frankly dilute) a number of the provisions contained in the National Defense Authorization Act of 2013.³⁹

Nevertheless, the continued presence of multiple restrictions on the Administration’s ability to manage the detainee issue provoked President Obama to lay down a firm marker objecting strenuously to what the White House saw as a legislative overstepping of constitutional bounds and treading on executive prerogatives. Even before his May 23 NDU speech, and in fact in his January 2, 2013, signing statement, Obama stated his firm opposition to the provision blocking the transfer of detainees to the United States. “[Such a provision] substitutes the Congress’s blanket political determination for careful and fact-based determinations, made by counterterrorism and law-enforcement professionals of when and where to prosecute Guantánamo detainees.” President Obama’s statement concluded that “Congress designed these sections and has here renewed them once more, in order to foreclose my ability to shut down the Guantánamo Bay detention facility. I continue to believe that operating the facility weakens our national security by wasting resources, damaging our relationship with key allies, and strengthening our enemies. My Administration will interpret these provisions as consistent with existing and future determinations by agencies of the Executive responsible for detainee transfers.”⁴⁰

Would the Obama administration be able to close the detainee facilities in Guantánamo Bay and move all 166 detainees to the United States or elsewhere in the world? Such an effort would be an enormous undertaking, requiring the physical, and more importantly, the political decision-making and the moral capacity of the Administration and the Congress combined. Despite President Obama’s recently re-stated intention of closing the detention facilities, he may not be able to do that. Some of the detainees may simply remain at Guantánamo Bay for lack of a more conducive political option.

THE ESCAPE CLAUSE

Barring an ability to close Guantánamo Bay detention facilities, could the detainees be kept there? *New York Times* journalist Dan Klaidman, in his book *Kill or Capture*,⁴¹ wrote that, “At some level, it was widely accepted within the Administration that some form of long-term detention, at least for a subset of Guantánamo prisoners, would be necessary. It was even contemplated in the Guantánamo executive order . . . Some would be transferred to other countries, some would be prosecuted, and still others, like the Uighurs, would be released. But close readers of the document also noticed [then-White House Legal Adviser] Greg Craig’s artful use of the phrase ‘other dispositions,’ which signaled that some number of detainees would almost certainly have to be held indefinitely.”⁴²

One possibility would be to keep a portion, e.g., the forty-six detainees, at Guantánamo Bay. Even if Guantánamo Bay Naval Base were to be turned over to the Cuban Government, it is conceivable that Washington could negotiate with Havana an agreement giving the United States the ability to operate detention facilities on a Cuban base. The author of this paper believes it is worth a try to approach Raul Castro himself, on a discreet basis, to propose that the Cuban government allow the United States to maintain its detainee facilities, with the forty-six detainees, for the indefinite future on what is currently the Guantánamo Bay Naval Base.

What makes such an option conceivable? A single person, Raul Castro. On January 19, 2002, Raul Castro, then-Cuban Defense Minister—and as such the second-ranking official in the Cuban hierarchy—convoked the Cuban and international press to the hillside overlooking the Guantánamo Bay base facilities. Unlike his older brother, who had already begun to grumble publicly about the U.S. detention facilities being set up, Raul evinced surprisingly mild acceptance and even understanding to the U.S. military plans. Raul first emphasized to the press an earlier offer from the Cuban government for help with “eliminating pests, (providing) medical aid . . . and other services” needed in tending to the detainees.⁴³ However, Raul Castro did not stop there. He went on in the press conference to recall the “minimum cooperation links to deal with problems that sprang up,” and described for the journalists the “atmosphere of cooperation, of mutual respect and collaboration” between the United States and Cuba on the operations surrounding Guantánamo.⁴⁴ Finally, Raul concluded, “According to U.S. authorities’ statements, (the U.S. military) will follow all the norms established by the International Red Cross [the ICRC] regarding the treatment of prisoners and have invited that organization to come to the base.

They have declared that the necessary reinforcements do not imply a danger or threat to the zone's stability. We believe them; we understand that it is logical, if a specific number of prisoners are to be brought to the base—over which, as we have already said here we have no jurisdiction—then they have to bring in more personnel.²⁴⁵

It is hard to conceive of Raul repeating those same assurances today. Certainly the repeated reports of abuse at U.S. facilities, in Guantánamo and elsewhere worldwide, would make the Cubans highly skeptical of U.S. pledges to respect human rights norms. At the same time, Cuba itself has a long record of human rights abuses, including being the subject of repeated condemnations at the highest levels of UN human rights bodies. It might be just the time for the United States to approach Cuba to explore the subject. Both sides would have an interest.

If in the end it should prove impossible to move all or even some of the forty-six detainees off the island, it is the hypothesis of this paper that Raul Castro, who has spoken out regularly on the topic of terrorism, might be amenable to an approach by U.S. authorities. The proposal would be that the United States would retain custody of a sub-set of the 166 detainees, e.g., the forty-six. The U.S. authorities would maintain the operational control of the detainees, in an American facility managed by Americans, but on fully Cuban soil, on a base that has been handed back to Cuba.

Even more than with the first two strategic missions mentioned heretofore, there would be the most stringent of requirements necessary in order to carry off the detainee mission. As mentioned above, Cuba is a country that has never had a decent human rights record. Certainly before the current regime came to power, but even more so since 1959, Cuba's human rights record has been lamentable. It is not just successive United States governments that have criticized Cuba's behavior. Independent sources such as Human Rights Watch, as well as official UN bodies, have repeatedly denounced Cuba's treatment of its own citizens. In one more demonstration of the heightened sensitivity of Cuban nationalism, the ICRC has no permanent presence in Cuba, primarily because of the absence of an agreement allowing ICRC access to Cuban jails. Ironically, the only permanent ICRC presence on the island is at the Guantánamo Bay Naval Base.

At the same time, the United States is hardly perceived as having a stellar record when it comes to its respect for human rights within the Guantánamo base. The United States, because of the way it is perceived to have behaved since 2001, has also left a lasting impression, one that will be

extremely difficult to overcome. Draft Senate legislation in the 112th session of Congress described the Guantánamo Bay detention facilities as “state of the art. . . as attested by human rights organizations, the International Committee of the Red Cross, Attorney General Holder, and an independent commission. . . .”⁴⁶ and all of that may be true. The vast majority of the people in the world, however, and even many in the United States, do not believe it to be the case. President Obama’s words on May 23, quoted at the beginning of this paper, are as damning an indictment as any.

What would help would be a presence at the facility—and better yet, two presences—that would advertise to the world that something significant had changed. That visibility could consist of a reinforced ICRC presence, teamed with the presence of a team from the Office of the United Nations High Commissioner for Human Rights (OHCHR). The latter is a highly political body. Its High Commissioner, Navi Pillay, has been harshly critical of the United States and of Cuba for the performance of each, especially (in the case of Guantánamo Bay) of the United States. The level of teaming up of the ICRC and OHCHR would tell the world that both countries—the United States and Cuba—have been put on their guard.

Because of the factor mentioned above, of the ICRC having no formal agreement with the Cuban Government, at least three preliminary steps would be necessary. First, the ICRC would need to conclude a bilateral agreement with the Government of Cuba normalizing the relations between those two parties. Second, the ICRC and OHCHR need to formalize their relations with Cuba on protocols regarding access to the Guantánamo Bay Detention Facilities. Third, both international bodies would then need to fortify their presences, in order to be able to credibly pass judgment on—and then to tell the world—how the U.S. is performing and to render its views on how Cuba itself is behaving. The ICRC in particular might initially be uncomfortable with such a public and highly political role. However, the benefit—in terms of removing what is perceived as one of the world’s biggest human rights eyesores—should be the positive incentive to the International Committee of the Red Cross.

How long would such a protocol be expected to last? Certainly at least until all the detainees had evacuated the Guantánamo Facilities. If the sources reporting on the current trials underway in Guantánamo Bay are any indication, it may be years, and in some cases possibly decades. That is the price one is obliged to pay.

PRACTICAL CONSIDERATIONS AND CONCLUSION

What this article proposes, then, is for the U.S. government to approach its Cuban counterpart to engage a negotiation on the future status of the base, of all forty-five square miles of it. This article does not take issue with any of the current three main missions of the base. All three of those missions—keeping detainees from the anti-terrorist efforts; preserving a migrant processing facility; and maintaining a base to ensure long-term U.S. Navy presence in the Caribbean—would remain intact, *ad ref.* The one thing that would change would be the treaty basis for the United States to conduct those same missions. The negotiations proposed would not be simple, easy or brief. Neither are they impossible.

Some have argued that such a bold step is likely only to follow a gradual improvement in bilateral U.S.-Cuban ties, whenever that may occur. Others certainly would make the case that Guantánamo is an important U.S. asset that should only be relinquished in exchange from some significant concession on the part of the Cuban government. Still others would posit that in the sharply divided political environment that defines Washington at the present time, it is simply unrealistic to envision such a step. Since it always “takes two to tango,” there will also be reluctance on the part of many in Cuba’s government to engage with the long-hostile U.S. government. Finally, there is no guarantee that the traditionally fractious Cuban opposition would unanimously welcome such a move, which can easily be portrayed as a gift to Raul Castro.

Those are all sound, logical arguments. They are also short-sighted. Most importantly, such arguments ignore the imperatives for the United

States to build a long-term relationship not just with a specific government, but with a people who have always been close to the United States, but who also want their own “space” to evolve on the world stage.

At the present time, to almost everyone around the world, evoking the name “Guantánamo” triggers an anti-American diatribe.

The United States in the past has not always shown appropriate sensitivity to Cuban popular attitudes. Now would be a good time to start to demonstrate that approach. Strategically a different arrangement is fully conceivable. Economics argues in favor of a more rational U.S. expenditure in defense of national interests. In Raul Castro, the United States would have an interlocutor who has both the authority and the credibility, who could drive through whatever agreement

were to be reached, and who has publicly stated an understanding of the rationale for the U.S. presence in Guantánamo.

At the present time, to almost everyone around the world, evoking the name “Guantánamo” triggers an anti-American diatribe. Following the path outlined in this paper could start to convert that negativity into an asset. It would underline U.S. respect for the identity of other countries and peoples.*f*

ENDNOTES

- 1 See Charlie Savage, “Despair Drives Guantánamo Detainees to Revolt,” *The New York Times*, April 25, 2013, A1. See also Samir Naji and Hasan Moqbel, “Gitmo Is Killing Me,” *The New York Times*, April 15, 2013, A19. For a sample of reporting, see *The New York Times*, April 22, 2013; April 28, 2013; May 2, 2013.
- 2 See Luis Lema, “Guantanamo, Le Boulet d’Obama,” *Le Temps*, April 17, 2013.
- 3 Barack Obama, Press Conference, April 30, 2013, <<http://www.whitehouse.gov/photos-and-video/video/2013/04/30/president-obama-holds-news-conference>> (accessed April 30, 2013).
- 4 Barack Obama, Remarks made at National Defense University, May 23, 2013, <www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-barack-obama> (accessed August 1, 2013).
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 Ibid.
- 9 See *The Cuban Liberty and Democratic Solidarity Act of 1996*, H.R. 927, Title II, Section 201 (12).
- 10 See “Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval stations,” February 23, 1903, TS no. 418, <http://avalon.law.yale.edu/20th_century/dip_cuba002.asp>. See also “Lease to the United States by the Government of Cuba of Certain Areas of Land and Water for Naval or Coaling Stations in Guantanamo and Bahia Honda,” July 2, 1903, <http://avalon.law.yale.edu/20th_century/dip_cuba003.asp>.
- 11 See U.S. Department of State, “Relations,” May 29, 1934, TS no. 866.
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- 14 See Dan Klaidman, *To Kill or Capture: The War on Terror and the Soul of the Obama Presidency*, (Boston/New York: Houghton Mifflin Harcourt, 2012).
- 15 *The Cuban Liberty and Democratic Solidarity Act of 1996*, H.R. 927, Title II, Section 201 (12).
- 16 Ibid.
- 17 Julio Garcia Luis, ed, *Cuban Revolutionary Reader: A Documentary History of Fidel Castro’s Revolution*, Garcia (Melbourne: Ocean Press, 2008), 164.
- 18 U.S. House of Representatives, Armed Services Committee, *Hearing on the National Defense Authorization Act for Fiscal Year 2013 before the Committee on Armed Services*, 112th Cong., 2nd sess., March 6, 2012, 105.

- 19 “The Platt Amendment,” Article VII, Available at <<https://www.mtholyoke.edu/acad/intrel/platt.htm>>.
- 20 For differing historical accounts of the period, see *Foreign Relations of the United States 1902*, No. 298, p. 361; Stephen Schwab, *Guantánamo, USA: The Untold History of America’s Cuban Outpost*, (Lawrence, KS: University Press of Kansas, 2009), 82-88; Hugh Thomas, *Cuba: The Pursuit of Freedom*, (New York, Harper and Row: 1971), 450-454.
- 21 Schwab, 88.
- 22 Louis A. Perez, *On Becoming Cuban: Identity, Nationality and Culture*, (Chapel Hill, NC: University of North Carolina Press, 2008).
- 23 Rafael Rojas, *La Maquina del Olvido: Mito, historia y poder en Cuba*, Santillana Ediciones Generales, Mexico DF, 2012
- 24 Jorge Duany, “Cuban Thought and Cultural Identity. Populism, Nationalism, and Cubania,” in *Encyclopedia of Cuba: People, History, Culture*, Luis Martínez Fernández, ed., (Greenwood Press, 2003).
- 25 *Ibid*, 109, 116.
- 26 Regarding Marti, see Jose Marti, “Obras Completas, Vol I”, pp. 271-273. See also Thomas, p. 298, 310, 317. Regarding Varela, the following quote is telling: “I am the first one who is against the union of (Cuba) to any foreign Government. I wish Cuba to be as much an island politically as it is by nature.” Cited by Rafael Abislaiman, Padre Felix Varela Foundation, Miami, leaflet, 2012, p. 3.
- 27 Perez, 13.
- 28 Rafael Rojas, “La Maquina del Olvido: Mito, Historia y Poder en Cuba,” Editorial Taurus, Mexico City, 2012.
- 29 Yoani Sanchez, quoted on “El Blog de Yohandry,” May 1, 2013, <www.yohandry.com>.
- 30 “Texts of the Panama Canal Treaties with United States Senate Modifications,” *Library of Congress*, Available at <http://lcweb2.loc.gov/frd/cs/panama/pa_appnb.html>.
- 31 “Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal,” *The American Journal of International Law*, Vol. 72, No. 1 (Jan., 1978), 238-241.
- 32 One need only look as far as the political difficulties of negotiating agreements regarding the presence of U.S. military forces with Japan, over Okinawa; or with Tajikistan, over the use of military facilities in Manas, to appreciate how complicated negotiating agreements -- even with allies and partners -- can be. While this would certainly be the case with Cuba, for military use accords, the Japanese and Tajikistan examples are probably the most useful. For more on Japan and Okinawa, see: Treaty of Mutual Co-operation Security, US-Japan, Jan. 19, 1960, 373 U.N.T.S. I-5320 <http://treaties.un.org/doc/Publication/UNTS/Volume%20373/v373.pdf> For more on Kyrgyzstan and Manas, see: “Agreement Between the United States of America and the Kyrgyz Republic: Defense Cooperation,” May 13, 2009, <<http://www.state.gov/documents/organization/184115.pdf>>.
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- 39 See Section 1022, *National Defense Authorization Act of 2013*, HR 4310, available at < <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4310enr/pdf/BILLS-112hr4310enr.pdf>>.
- 40 Barack Obama, “Statement by the President on H.R. 4310,” January 3, 2013, <<http://www.whitehouse.gov/the-press-office/2013/01/03/statement-president-hr-4310>>.
- 41 See Klaidman, 2012.
- 42 *Ibid.*, 127.
- 43 “Interview with Raul Castro,” *Granma* (English), January 19, 2002, <<http://www.granma.cu/documento/ingles02/002.html>>.
- 44 *Ibid.*
- 45 *Ibid.*
- 46 Senate draft bill 1046, “To require the detention at United States Naval Station, Guantánamo Bay, Cuba, of high value enemy combatants who will be detained long-term”, introduced in the U.S. Senate on May 23, 2011, sub-paragraph (7), Available at < <http://thomas.loc.gov/cgi-bin/query/z?c112:S.1046.IS:>>.