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Out in Left Field: Cuba's Post-Cold War Strikeout

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Berta Esperanza Hernández Truyol

Abstract

This Article studies the Cuban situation in four parts. First, it reviews whether Cuba actually fits basic expectations of "Third World country" status. As discussed in Part I, the figures of social and human development indicators, as well as economic development figures, reveal that Cuba does not match the definition neatly. Its health, education, and welfare figures rival those of industrial states. Economic development figures, however, paint a completely different picture. Economic considerations certainly permit labelling the island as a "developing country," particularly since the onset of the 1986 recession, as exacerbated by the demise of communism and Cuba's consequent loss of Soviet-bloc aid and subsidies. In Part II, this Article explores whether the Cold War has ended with respect to Cuba. Looking generally at political, military, and economic developments since the mid-1980's, and specifically at the Cuban Democracy Act of 1992 ("CDA" or "Torricelli Law"), and the Russia-Cuba Trade Agreement of November 3, 1992, it appears fair to conclude that for Cuba the Cold War is far from over. Notwithstanding a "new world order," Cuba's static political situation preserves the bi-polarity that was present during the former dealings between the superpower foes. Finally, this Article evaluates and details the impact of the so-called post-Cold War environment on Cuba economically, in Part III, and socially and politically, in Part IV.

ARTICLES

OUT IN LEFT FIELD: CUBA'S POST-COLD WAR STRIKEOUT

*Berta Esperanza Hernández Truyol**

Socialismo o Muerte.¹

Sociolismo o Muerte.²

CONTENTS

Introduction.....	16
I. Cuba: A Third World Country?.....	21
A. Health, Education, and Welfare	24
1. General Population	24
2. Women in Cuba	30

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I would like to give very special thanks and dedicate this Article to my parents, Edelmiro and Eduvigis Truyol Hernández, who encouraged this research project and provided invaluable moral support. In addition, my father, an accountant and an economist, and my mother, a Cuban lawyer, provided invaluable substantive and research assistance for this project. To that extent, it is theirs as much as it is mine. The Faculty Research Program of St. John's University School of Law provided support for this Article.

1. Translated as "Socialism or Death," this is Fidel Castro's revolutionary slogan. See JUAN CLARK, *MITO Y REALIDAD, TESTIMONIOS DE UN PUEBLO* 539 (2d ed. 1992) [hereinafter *MITO*].

2. Translated as "Cronyism/Buddy-system or Death," this play on Castro's slogan derives from the word "socio," meaning "buddy" or "friend." It is commonly used by the Cuban people to describe the informal system in place in time of shortages to *resolver*, or make do. It refers to a "you scratch my back and I'll scratch yours" system. For example, a shopkeeper might "trade" some food that is scarce but in high demand, such as meat, to someone to fix an appliance on his or her own time. In their eyes, both parties win. The technician gets food by doing "private" work which is illegal in Cuba. The shopkeeper gets the appliance fixed without having to wait for several months until the government worker appears. Of course, this gives an advantage to those who work in tradeable commodities. People with nothing to trade, therefore, lose access to the illegal trade in food and services. See *MITO*, *supra* note 1, at 284-85, 288, 293, 295-96, 452, 452 n.25, 478.

B.	The Economic Picture in Cuba	32
II.	Has the Cold War Ended? The Case of Cuba.....	35
A.	Rhetoric.....	37
B.	Regulations.....	39
1.	The Torricelli Law.....	39
2.	The Cuba-Russia Trade Pacts	44
C.	Radios: Lines of Communication	47
III.	Cuba: The Economic Impact of the End of the Cold War	50
A.	General Overview of the Post-Cold War Global Economic Climate.....	50
B.	Cuba's Economic Crisis	52
IV.	The Crisis of Legitimacy	70
A.	Failure to Follow the Rule of Law	71
B.	Denial of Internationally-Recognized Individual Rights	77
1.	Political Participation	77
2.	Personal Security; Freedoms of Expression, Association and Assembly; Right of Privacy ..	80
C.	Lack of Equality of Opportunity.....	94
1.	The General Population	94
2.	Women in Cuba: A Myth of Equality.....	98
Conclusion	107

INTRODUCTION

The status of Cuba, the sole Soviet-sphere socialist survivor in the so-called post-Cold War era, has generated great interest.³

3. Throughout this work, the Author refers to the present climate as the "so-called" post-Cold War period for two reasons. First, as the second part of this Article posits, the Cold War is far from over with respect to Cuba. Second, recent events raise questions over whether one may conclusively state that the Cold War has ended and the Cold War-mentality has been shed. For example, North Korea recently withdrew from the Nuclear Nonproliferation Treaty. *See, e.g.,* David E. Sanger, *Citing Caution, South Korea Puts Troops on Alert*, N.Y. TIMES, Mar. 14, 1993, § 1, at 6. *But see* Alan Riding, *U.S. and North Korea Agree to Build on Nuclear Accord*, N.Y. TIMES, Oct. 18, 1994, at A1 (discussing U.S.-North Korea accord, in which North Korea pledged to rejoin Nuclear Nonproliferation Treaty). In Russia, there has been a revival of communist opposition to democratic rule. *See, e.g.,* Serle Schmemmann, *Yeltsin, Asking Aid, Talks of Communist Revival*, N.Y. TIMES, Mar. 17, 1993, at A6; Serle Schmemmann, *Crisis in Moscow; Hard-Liners Plan a Court Challenge to Yeltsin's Move*, N.Y. TIMES, Mar. 22, 1993, at A1; Reed et al., *Now, the Hardliners Are Zeroing in on Yeltsin's Foreign Policy*, BUS. WK., Jan. 18, 1993, at 48 ("hardliners are [calling for] anti-American policies, including barriers on American investment and a return to Cold War military policies"); Michael R. Gordon, *U.S. and*

Depending on political leanings, the Cuban situation is characterized either as a magnificently successful or a completely failed experiment. Economists, human rights activists, and sociologists alike, often using unsubstantiated data, take sides and sing the praises and foibles of the system.

Task forces have been formed to create a "Blueprint for Reconstruction"⁴ in anticipation of the imminent fall of Fidel Castro, who came to power in 1959,⁵ and whose fall has been seen as "imminent" for over thirty years. Articles about Cuba and its economic and human rights conditions appear daily in the major papers. These conditions range from a portrait of a thriving tourist industry to a landscape of epidemics caused by malnutrition and ox-driven plowing due to lack of fuel; from cutting-edge medical treatment centers to a country where persons are not free to speak, travel, or vote.

While all agree that the global recession has hit Cuba forcefully, a major debate now flourishes with respect to the U.S. embargo waged against its neighboring Caribbean island.⁶ Propo-

Russian Subs in Collision In Arctic Ocean Near Murmansk, N.Y. TIMES, Mar. 23, 1993, at A13 (U.S. attack submarine collides with Russian missile-carrying submarine in Arctic Ocean as U.S. sub was shadowing Russian sub). Finally, China raised military spending despite a budget deficit. See Nicholas D. Kristof, *China Raises Military Budget Despite Deficit*, N.Y. TIMES, Mar. 17, 1993, at A9.

4. See THE CUBAN ECONOMY: BLUEPRINT FOR RECONSTRUCTION (Manuel Cereijo ed., 1992); ANTONIO JORGE, A RECONSTRUCTION STRATEGY FOR POST-CASTRO CUBA (1991).

5. MARIFELI PÉREZ-STABLE, THE CUBAN REVOLUTION 3-5 (1993) [hereinafter PÉREZ-STABLE, CUBAN REVOLUTION].

6. In 1962, President Kennedy pronounced Cuba to be a hostile nation and, during peacetime, instituted a complete embargo on the island. This was possible under the Trading With the Enemy Act of 1917 ("TWEA"), 50 U.S.C. app. § 5 (1988), which allowed the President to act during peacetime and wartime emergencies. In 1977, the act was narrowed to apply only in wartime. Act of December 28, 1977, Pub. L. No. 95-223, tit. I, §§ 101(a), 102, 103(b), 91 Stat. 1625, 1626 (codified at 50 U.S.C. app. § 5(b)). However, the amendment acted prospectively, and provided that any emergency declared prior to the enactment of the amendment could be extended year by year, thus permitting the grandparenting of the Cuban embargo. *Id.*; see *Tagle v. Regan*, 643 F.2d 1058, 1059-60 (5th Cir. 1981). Every year since the passing of the amendment, Presidents Carter, Reagan, Bush, and Clinton have extended the embargo in the national interest. Presidential Determinations No. 88-22, Sept. 8, 1988, 53 Fed. Reg. 35,289; No. 89-25, Aug. 28, 1989, 54 Fed. Reg. 37,089; No. 90-38, Sept. 5, 1990, 55 Fed. Reg. 37, 309; No. 91-52, Sept. 13, 1991, 56 Fed. Reg. 48,415; No. 92-45, Aug. 28, 1992, 57 Fed. Reg. 43,125; No. 93-38, Sept. 13, 1993, 58 Fed. Reg. 51,209; Memoranda of the President, Sept. 8, 1978, 43 Fed. Reg. 40,449 (1978); Sept. 12, 1979, 44 Fed. Reg. 53,153 (1979); Sept. 8, 1980, 45 Fed. Reg. 59,549 (1980); Sept. 10, 1981, 46 Fed. Reg. 45,321 (1981); Sept. 8, 1982, 47 Fed. Reg. 39,797 (1982); Sept. 7, 1983, 48 Fed. Reg. 40,695

nents of sustaining the embargo argue that it has nearly achieved its purpose by strangling Cuba's asthmatic economy. Conversely, opponents of the embargo point to the critical economic condition of the island, which has rendered Cuba unable to feed its hungry or treat its sick. The opponents further argue that the embargo is a Cold War relic that has outlived its usefulness to the Western world, while providing Castro with an excuse to blame the "yankee imperialists" for the economic ills of Cuba. Significantly, the Cuban exile community, whose tendency it has been to be politically united regarding assisting friends and family who are in Cuba, is sharply divided on the embargo issue with acrimonious exchanges taking place between the two sides.

Given Cuba's new prominence as the sole Soviet/Eastern bloc socialist state to outlive *perestroika* and *glasnost*, this Article explores the so-called post-Cold War environment in Cuba. Some unanticipated and challenging aspects of this project are noteworthy. First, there is no easy linear way to learn about the Cuban situation; the theme of a post-Cold War Cuba is multifaceted and complex. Second, doing research on Cuba has been most challenging: the lack of empirical data is astounding. Finally, the data that exists is largely unreliable.⁷ A researcher quickly discovers that the accuracy of the existing data, particularly on the post-Castro revolution, is easily contestable. Moreover, available analysis of the information is inevitably imbued with political spin reflecting the bipolar bias of the authors. For example, history books openly condemn the regime for its alleged failures without a balanced counter-story pertaining to its possible successes. Similarly, economic analyses praise the progresses without giving consideration to possible shortcomings. To maintain the author's commitment to fair, even-handed analysis and lack of predispositions in evaluating the present situation in Cuba, reliance is placed whenever possible on what can be deemed "neutral," i.e., non-ideologically-based data that is gathered by and available from the United Nations.⁸

This Article studies the Cuban situation in four parts. First,

(1983); Sept. 11, 1984, 49 Fed. Reg. 35,927 (1984); Sept. 5, 1985, 50 Fed. Reg. 36,563 (1985); Aug. 20, 1986, 51 Fed. Reg. 30,201 (1986); Aug. 27, 1987, 52 Fed. Reg. 33,397 (1987).

7. See, e.g., Mirro, *supra* note 1, at 263, 275.

8. The Author realizes that the neutrality of such data is subject to challenge because the source of this data is the country itself, which can hardly be labelled an ideo-

it reviews whether Cuba actually fits basic expectations of "Third World country" status. As discussed in Part I, the figures of social and human development indicators, as well as economic development figures, reveal that Cuba does not match the definition neatly. Its health, education, and welfare figures rival those of industrial states. Economic development figures, however, paint a completely different picture. Economic considerations certainly permit labelling the island as a "developing country," particularly since the onset of the 1986 recession, as exacerbated by the demise of communism and Cuba's consequent loss of Soviet-bloc aid and subsidies.⁹

In Part II, this Article explores whether the Cold War has ended with respect to Cuba. Looking generally at political, military, and economic developments since the mid-1980's, and specifically at the Cuban Democracy Act of 1992¹⁰ ("CDA" or "Torricelli Law"), and the Russia-Cuba Trade Agreement of November 3, 1992,¹¹ it appears fair to conclude that for Cuba the Cold War is far from over. Notwithstanding a "new world order," Cuba's static political situation preserves the bi-polarity that was present during the former dealings between the superpower foes. Finally, this Article evaluates and details the impact of the so-called post-Cold War environment on Cuba economically, in Part III, and socially and politically, in Part IV.

In evaluating Cuba's post-Cold War status, this Article necessarily reviews the island's stance with respect to human rights. Cuba is a signatory to the Universal Declaration of Human Rights ("Universal Declaration"),¹² a document that is globally accepted as the articulation of the basic rights of human beings.¹³ Not surprisingly, similar to the evaluation of Cuba's

logically neutral source. However, in using the raw data, at least the political spin is avoided.

9. MRO, *supra* note 1, at 123 n.21 (citations omitted). In 1979 Soviet subsidies were estimated at US\$7 million per day, and in 1988, at US\$16.5 million per day. *Id.*

10. Cuban Democracy Act, Pub. L. No. 102-484, 106 Stat. 2575 (1992) (to be codified in 22 U.S.C. §§ 6001-6010).

11. See *Havana, Moscow Initial Trade Accord*, FIN. TIMES, Nov. 4, 1992, at 7 [hereinafter *Havana-Moscow Trade Accord*].

12. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., pt. 1, at 71, U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*].

13. The principles contained in the *Universal Declaration*, while originally deemed merely aspirational, have come to be accepted as binding customary norms of international law. See *Filatiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980). Custom is a primary

achievements, the human rights situation is both laudable and contemptible, depending on the perspective taken when reviewing the data.

If one considers only civil and political rights, also known as first generation human rights,¹⁴ which are sacrosanct at least in Western ideology, Cuba's record is deplorable, as is detailed in Part IV. In essence, the Cuban government denies its citizens the exercise of basic rights and freedoms deemed fundamental by a large number of nations, such as freedoms of expression and assembly, the right to political participation, including the right to vote, the right to privacy, and even freedom of thought.

However, such a limited inquiry would be at best incomplete, at worst disingenuous. Rather, an evaluation of a country's compliance with human rights standards must also include a review of the country's compliance with social and economic rights, the second generation of human rights.¹⁵ In fact, surveys of human rights increasingly recognize the indivisibility of these different generations of human rights.¹⁶ Part II details that, insofar as the rights to health, education, welfare, and work are concerned, Cuba has achieved magnificent and praiseworthy successes. These successes must be recognized, but unfortunately have been largely ignored in the planning of an effective "Blueprint for Reconstruction."

In concluding, a "wide-angle" perspective suggests that

source of international law. Statute of the International Court of Justice, June 26, 1945, art. 38(1)(b), 59 Stat. 1055, T.S. No. 933, 3 Bevens 1179.

14. In addition to the *Universal Declaration*, these rights are contained in the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR], as well as myriad regional instruments. Cuba has not ratified the ICCPR, but is bound to obey the civil and political rights enumerated in the *Universal Declaration*, which it has signed.

15. These human rights are enumerated and recognized in the *Universal Declaration*, *supra* note 12, and the International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (entered into force on January 3, 1976). Cuba has not ratified the ICESCR, which was adopted by the U.N. General Assembly. However, as a signatory to the *Universal Declaration*, Cuba is bound by the economic, social, and cultural rights articulated therein.

16. For a discussion on the concept of indivisibility of rights, a concept with which this author agrees, see Rhonda Copelon, Integrating the Three Generations in an Indivisible Framework for the Protection of Reproductive and Sexual Health as Human Rights (available from Author). Professor Copelon, of the City University of New York School of Law, identifies the third generation of rights as involving "solidarity rights: the right to equitable and sustainable development, respect for self-determination, the protection of the environment, security, and peace."

these post-Cold War global changes are a call to focus on the legitimacy of the existing totalitarian regime. On the one hand, the human rights successes achieved with respect to social, health, education, and welfare, must be zealously guarded. On the other hand, the government's deplorable record with regard to civil and political rights must be corrected. Cuba's failings, such as its failure to follow the "rule of law," as evidenced by the absence of an independent judiciary and the lack of independent legal representation, and to secure and ensure individual rights, such as personal security, freedom of expression, public participation in government, and equality of opportunity, are regressive relics eschewed by the aspirational new world model. Changes that will bring Cuba in accord with the democratization of the world community are imperative. In effecting these changes, however, the will of the Cuban people, with respect to what reforms are needed, as well as the methodology for their implementation, must be of primary concern.

I. CUBA: A THIRD WORLD COUNTRY?

Existing literature does not render the task of ascertaining whether Cuba is an underdeveloped country an easy one. The debate as to Cuba's "Third World" status dates to the beginning of the Castro revolution. For example, noted Cuban historians Carlos and Manuel Márquez Sterling cite 1959 statistics to show that Cuba was not, even then, a Third World state. These figures placed Cuba second or third in the Americas in terms of numbers of radios, television sets, cars, telephones, refrigerators, daily newspapers and magazines, and doctors and dentists per capita, as well as ranking it high in industrial salaries, fiscal stability, meat consumption, and literacy rates.¹⁷ In addition, Cuba

17. CARLOS MÁRQUEZ STERLING & MANUEL MÁRQUEZ STERLING, *HISTORIA DE LA ISLA DE CUBA* (1975) [hereinafter *MÁRQUEZ STERLING*]. Specifically, the authors provide the following figures:

- one radio per 5 inhabitants (2nd place in America)
- one television per 18 inhabitants (2nd place in America)
- one refrigerator for every 19 inhabitants (3rd place in America)
- one automobile for every 27 inhabitants (3rd place in America)
- one telephone for every 28 inhabitants (3rd place in America)
- one doctor for every 980 inhabitants (2nd place in America)
- one dentist for every 2,978 inhabitants (3rd place in America)
- one student for every 273 inhabitants (4th place in America)
- 23 radio stations (3rd place in America)

had increasingly high percentages of domestic ownership of important industries.¹⁸ It was widely believed that Cuba's post-World War II socio-economic picture was promising.¹⁹

-
- 600 movie houses (2nd place in America)
 - 58 daily newspapers and 126 magazines (2nd place in America)
 - 42 first class hotels (4th place in America)
 - 732,413 subscribers to electric power; using 1,462,782 kilowatts per hour
 - Second place in America in consumption of meat per capita
 - Average agricultural salaries of US\$3 a day (7th place in the world and 2nd place in America)
 - Average industrial salaries of US\$6 per day (2nd place in America)
 - Fiscal stability (Gold reserves, dollars, commodities) (3rd place in America)
 - More prison employee compensation (4th place in the world)
 - 82% literacy rate (3rd place in America)

Id. at 312.

18. *Id.* at 314. For a discussion of Cuba's socioeconomic indicators in the decade of 1950, just prior to Castro's revolution, see MITRO, *supra* note 1, at 24-29. Professor Clark, of Miami-Dade Community College, recognizes that this period reflects both positive and negative conditions, but praises Cuba's development and diversification, even in light of the prevailing single-product economy. He notes the increased domestic ownership of industry and consequent control of production, increased capitalization, a strong infrastructure, high socioeconomic indicators for the population, progress in education and culture, and progress in health. Professor Clark recognizes as negatives the rural-urban imbalances in health, education, and welfare, which are the very items that showed progress overall. *Id.*; see Raúl Moncarz, *Cuban Dynamics*, in RESEARCH INSTITUTE FOR CUBAN STUDIES, *CUBA IN CHANGING WORLD* 53 (Antonio Jorge et al. eds., 1991) [hereinafter *CHANGING WORLD*].

[U]ntil 1958 every Cuban president since World War II could boast a national average annual growth rate of 4 percent or better, along with a number of innovations to diversify the economy, such as rice, tourism and minerals. Since 1961 . . . the economy has actually contracted; industrial growth has stopped, and the average wage earner's purchasing power has fallen.

Id. While others give different figures, the projection trend is consistent. See, e.g., Antonio Jorge, *Cuba's Economic Model(s) and Economic Rationality* [hereinafter *Jorge, Cuba's Economic Model*], in *THE CUBAN ECONOMY: DEPENDENCY AND DEVELOPMENT* 1, 22-27 (Antonio Jorge & Jaime Suchlicki eds., 1989) [hereinafter *CUBAN ECONOMY*]. Professor Jorge, of Florida International University, provides that from 1945 to 1951 the average annual increase in Cuba's per capita national income was 9%, and the annual average growth of income for the period 1951 to 1958 was about 4.6%. *Id.* at 25. On the other hand, the growth rate between 1960 and 1978 was less than 1% per year. *Id.* at 27.

19. Jorge, *Cuba's Economic Model*, *supra* note 18, at 22-27. Professor Jorge notes that:

Cuba had many considerable advantages in [its] quest for development . . . among them were . . . the island population's modernizing attitudes towards economic activity and life; the people's familiarity and historical involvement with international trade, greatly facilitated by the country's geographical location; the degree of political participation and social awareness of a large majority of the country's inhabitants; the prevalence and diffusion of mass communication media; the remarkably favorable indicators of longevity, infant

For the same period, however, the time at the outset of his revolution, Castro labelled Cuba as an underdeveloped country.²⁰ In support of this evaluation, he cited the following figures: 1960 unemployment rates rivaling those existing in the United States during the great depression, lack of electricity and housing with sanitary facilities by almost 50% of the population, 37.5% illiteracy rate, high infant mortality and low life expectancy, and large foreign ownership of public services and industry.²¹ Castro claims that his revolution is responsible for the socio-economic progress enjoyed by Cubans over the last thirty years.

Such disparate, ideologically-bound interpretations concerning the status of Cuba as a Third World state simply reveal the underlying truth: Cuba defies standard definitions. Cuba's health, education, and welfare figures rival those of industrial states,²² while its economic profile, however, corresponds to that of a Third World nation.

mortality and literacy, compared to Third World countries and even to other Latin American ones; the firmly entrenched tradition of small entrepreneurship and petty trading; the large middle sectors and their degree of urbanization; the participation in society at large, as well as in the civil service, of an extensive professional and technical population segment; the unobtrusive topography of the country, and the fairly high geographical mobility and distributive capabilities afforded by the transportation network and services; and, last but not least, the long and many-sided relations between the United States and Cuba, and the pervasive influence of the former's ethos and life-style on the latter's ambience and social atmosphere.

Id. at 23.

20. Fidel Castro, *The Case of Cuba is the Case of All Underdeveloped Countries*, Address to U.N. General Assembly 31, 39 (Sept. 26, 1960) [hereinafter *Case of Cuba*], in *TO SPEAK THE TRUTH: WHY WASHINGTON'S 'COLD WAR' AGAINST CUBA DOESN'T END* (Mary-Alice Waters ed., 1992) [hereinafter *TO SPEAK THE TRUTH*]. *But see* MÁRQUEZ STERLING, *supra* note 17, at 314 (indicating that in 1952 only 48 sugar refineries were foreign-owned, with 41 of these in hands of U.S. nationals, and 113 Cuban-owned, contrasted with 1939 figures, when 118 sugar refineries were foreign owned, with 66 of these in hands of U.S. nationals, and only 56 Cuban-owned).

21. *Case of Cuba*, *supra* note 20, at 39.

22. *TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990's* (Sandor Halebsky & John M. Kirk eds., 1990) [hereinafter *STRUGGLE*]. Some commentators have suggested that "Cuba is a developed nation yet Cuba is an underdeveloped nation." *Id.* at xxiv. Pointing to its developed nation status are its accomplishments in health, education, and sports. *Id.* at xxv. Some of its problems, such as racism, sexism, and underemployment, also are typical of first world states. *Id.*

A. Health, Education, and Welfare

1. General Population

In light of the varied evaluations of Cuba's socio-economic status, a review of raw data is germane. As is detailed below, the health, education, and welfare figures reveal praiseworthy achievements in compliance with second generation human rights. The present economic crisis, however, is presenting a grave threat to these impressive accomplishments.

The 1994 United Nations Human Development Report, a study of social and human development indicators, classifies Cuba, a state with an estimated 1992 population of 10.7 million,²³ as a developing country²⁴ with middle income²⁵ and medium human development indicators.²⁶ These figures are based in large part upon health, welfare, and education factors discussed below.

Cuban residents have a life expectancy at birth of 75.6 years,²⁷ slightly higher than the 74.5 average for industrial countries, the same as the United States, and almost thirteen years

23. UNITED NATIONS HUMAN DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 174 (1994) [hereinafter 1994 UNHDR].

24. 1994 UNHDR, *supra* note 23, at 225. Countries in this category include Argentina, Mexico, and Venezuela. This shows no change from the 1993, 1992 or the 1990 reports. See UNITED NATIONS HUMAN DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 229 (1993) [hereinafter 1993 UNHDR]; UNITED NATIONS HUMAN DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 213 (1992) [hereinafter 1992 UNHDR]; UNITED NATIONS HUMAN DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 188 (1990) [hereinafter 1990 UNHDR].

25. 1994 UNHDR, *supra* note 23, at 224-25. Middle income is defined as GNP per capita of US\$651 to US\$6000. Other states in this category at this time included Argentina, Czechoslovakia (classified as industrial state), Hungary (classified as industrial state), Mexico, Poland (classified as industrial state), Romania (classified as industrial state), Russian Federation (classified as industrial state), Thailand, and Venezuela. This shows no change from the 1993 UNHDR, *supra* note 24, at 228; 1992 UNHDR, *supra* note 24, at 212; or the 1990 UNHDR, *supra* note 24, at 187. See THE WORLD BANK SOCIAL INDICATORS OF DEVELOPMENT 1993, 390-91 [hereinafter WORLD BANK REPORT] (classifying Cuba as lower middle-income state, meaning US\$693 to US\$2555 in 1991 GNP per capita figures).

26. 1994 UNHDR, *supra* note 23, at 223. Other countries in this medium development category include China, Iran, Iraq, and Romania. This reflects no change from the 1993 UNHDR, *supra* note 24, at 227; or 1992 UNHDR, *supra* note 24, at 211. However, it is noteworthy that these later figures reflect a downward change from the 1990 UNHDR, *supra* note 24, at 185, where Cuba was categorized as a high development state. Other countries included in the high development category are Argentina, France, Hong Kong, Japan, Mexico, Switzerland, and the United States.

27. 1994 UNHDR, *supra* note 23, at 130, 136.

higher than the average of 63.0 years in all developing countries.²⁸ Similarly, the infant mortality rate per 1000 live births is 14,²⁹ far superior to the average of 69 for all developing countries, and almost identical to the figure of 13 for industrialized countries.³⁰ Nevertheless, this figure shows an increase in infant mortality from 1990, when the rate in Cuba was 11, lower than the rate of 13 for industrialized states at that time.³¹

In Cuba, 95% of all one-year-olds are immunized,³² as compared to 80% of one-year-olds in developing countries.³³ Polio, malaria, and diphtheria have been eradicated as causes of death and other diseases prevalent in underdeveloped countries have disappeared.³⁴ One hundred percent of the population has access to health services.³⁵ This compares favorably to the figure for developing countries, in which 81% of the population, on average, has access to health services.³⁶

Public health expenditures in Cuba for the 1988-90 period were 3.4% of Gross National Product ("GNP"), an increase over the 1960 figure of 3.0% of GNP.³⁷ This figure is similar to,

28. *Id.*, *supra* note 23, at 184. The figures are for 1992. The figures for Cuba reflect an improved trend. In 1960, the life expectancy was 63.8, while in the United States it was 69.9, and the average in all developing countries was 46.2. *Id.* at 136-37, 187. In 1975, the figure for Cuba was 72, the same as the United States and much better than the average for the developing countries, which was 57. 1990 UNHDR, *supra* note 24, at 134.

29. 1994 UNHDR, *supra* note 23, at 150. The infant mortality figures are for 1992.

30. *Id.* at 207; 1990 UNHDR, *supra* note 24, at 147 (setting 1987 figure for United States at 10).

31. 1992 UNHDR, *supra* note 24, at 148.

32. 1994 UNHDR, *supra* note 23, at 150. The immunization figures are for 1992.

33. *Id.* at 151. This shows improvement from the figure for the period 1988-90, which was 79%. 1992 UNHDR, *supra* note 24, at 177. The figures for industrial countries are not given. However, in 1988 the figure for industrial countries was 76%, and for the United States it was 48%. 1990 UNHDR, *supra* note 24, at 147.

34. Eugenio R. Balari, *The Supply of Consumer Goods in Cuba*, in STRUGGLE, *supra* note 22, at 157, 160.

35. *Id.* at 132. The figures are for 1985-91.

36. 1994 UNHDR, *supra* note 23, at 133. The figures are for 1987-90.

37. 1993 UNHDR, *supra* note 24, at 158. Gross national product ("GNP") is defined as "[t]he total domestic and foreign value added claimed by residents, calculated without making deductions for depreciation." 1994 UNHDR, *supra* note 23, at 220. GNP comprises gross domestic product, which is defined as "[t]he total output of goods and services for final use produced by an economy, by both residents and non-residents, regardless of the allocation to domestic and foreign claims," plus "net factor income from abroad, which is the income residents receive from abroad for factor services (labor and capital), less similar payments made to non-residents who contribute to the domestic economy." *Id.* Cuba's health expenditures for 1987 were reported as 3%

although slightly lower than, the 3.7% figure for all developing countries³⁸ and to the 6% figure for industrialized countries (4.5% for the United States).³⁹

The personnel employed for delivery of medical services in Cuba is impressive. The small island boasts that in the 1989-1991 period its population, both urban and rural, had 100% access to health services. The health practitioners who deliver services comprise one doctor for every 270 persons, one nurse per 160 persons, and 1.7 nurses per doctor.⁴⁰ On the other hand, in developing states there are 6,670 persons per doctor, more than twenty times the figure for Cuba, 3,390 persons per nurse, and 2.0 nurses per doctor; while in the industrial states the figure is 390 persons per doctor.⁴¹

Although such health statistics are certainly impressive, the recent economic crisis threatens these advances. For example, an unidentified epidemic threatening eyesight, which some

of GNP. 1992 UNHDR, *supra* note 24, at 160. The 1994 UNHDR reports the 1990 public health expenditures as 3.4% of GDP. 1994 UNHDR, *supra* note 23, at 152.

38. 1993 UNHDR, *supra* note 24, at 159. This figure for the 1988-90 period shows a large increase from the 1.4% figure reported for 1987, 1992 UNHDR, *supra* note 24, at 151, 178, and from the 1960 figure of 1%. 1993 UNHDR, *supra* note 24, at 159, 215. The 1994 Report provides 1990 figures for health expenditures for all developing countries as 2.2% of GDP, placing Cuba above the average. 1994 UNHDR, *supra* note 23, at 152-53.

39. 1990 UNHDR, *supra* note 24, at 149. These figures are for 1986. The 1992, 1993 and 1994 Reports do not provide comparable GNP figures for industrial states. Rather, these states' data is given as a factor of gross domestic product ("GDP"). Industrialized states' health expenditures, on the average, were 9.4% of GDP in 1991 as compared to 4.3% in 1960. 1994 UNHDR, *supra* note 23, at 191. The figures for the United States were 13.3% and 5.3%, respectively. *Id.* Significantly, in the 1989-1991 period the U.S. private health expenditure was 56.1% of the total health expenditure. *Id.* The real GDP per capita in industrial states is US\$14,440, while in all developing countries it is US\$2170. 1993 UNHDR, *supra* note 24, at 213. The U.N. estimated Cuba's GDP per capita to be US\$2000. 1994 UNHDR, *supra* note 23, at 130.

40. 1994 UNHDR, *supra* note 23, at 148, 152. The figures are for 1990 for doctors and nurses and for the 1985-91 period for access to health services. These figures are a dramatic improvement over the ones provided by the 1993 UNHDR for the 1987-90 period, which provided that 100% of the population had access to health services, 1993 UNHDR, *supra* note 24, at 154, but these services were delivered by practitioners who comprised one doctor for every 530 persons and one nurse per 290 persons. *Id.* at 158. Another source reports that in Cuba, there are "over 25.1 doctors, 5.6 dentists, and 47.4 nurses and paramedics for each 10,000 inhabitants." Balari, *supra* note 34, at 160.

41. 1994 UNHDR, *supra* note 23, at 153. These figures are for the 1990 period. The 1994 UNHDR does not provide figures for persons per nurse or nurse per doctor for industrial states, but the 1993 UNHDR gave those figures for the 1984-89 period as 150 persons per nurse and 3.1 nurses per doctor. 1993 UNHDR, *supra* note 24, at 159.

blame on poor nutrition, has stricken over 43,000 Cuban citizens.⁴² There is general agreement that the economic ills threaten the system of universal health care⁴³ that is one of the indisputable successes of the revolution.⁴⁴ Some reports note that lack of sanitation together with malnutrition are resulting in outbreaks of illnesses that had been virtually abolished, such as

42. Lawrence K. Altman, *Mystery Illness Slows in Cuba, but Cause Still Eludes Experts*, N.Y. TIMES, July 4, 1993, § 1, at 12; Howard W. French, *43,412 Stricken Cubans, and Not a Single Answer*, N.Y. TIMES, June 15, 1993, at A4; Lawrence K. Altman, *U.S. Scientists Baffled by a Cuban Epidemic*, N.Y. TIMES, May 30, 1993, § 1, at 17; Lawrence K. Altman, *Experts Ponder Cuban Epidemic*, N.Y. TIMES, May 25, 1993, at C3; Alfredo Semprum, *Cuarenta Mil Víctimas de la 'Colza' de Castro*, ABC (Madrid), June 20, 1993, at 76-79 (noting that epidemic is evidence of crisis of Castro's regime). Most recently, Cuba is being threatened by an epidemic affecting rabbits. *Epidemia en Conejos Alarma a Cuba*, NUEVO HERALD, Sept. 2, 1993, at 4A. There is also an epidemic insect that affects the citrus crop. *Científicos de FL Estudian Peligroso Insecto en Cuba*, NUEVO HERALD, Sept. 2, 1993, at 4B.

43. Howard W. French, *Cuba's Ills Encroach On Health*, N.Y. TIMES, July 16, 1993, at A3.

44. See, e.g., Raúl Moncarz, *The Economics of Labor in Cuba: Factors Affecting Labor Productivity*, in CUBAN ECONOMY, *supra* note 18, at 47, 48 [hereinafter *Labor in Cuba*] (recognizing Cuba's "notable social progress, especially in area of public health and education" since 1959). The claims of progress under Castro are not disputed. *But see* IRVING LOUIS HOROWITZ, *THE CONSCIENCE OF WORMS AND THE COWARDICE OF LIONS* 68-70 (1992) [hereinafter *CONSCIENCE*]. Professor Horowitz, of Rutgers University, notes that even "hardened opponents to the regime" have accepted Castro's successes in health, welfare and education. *Id.* at 68. However, he challenges the true success in these areas, suggesting that if "one examines the actual content of medicine and education in present-day Cuba, one finds a near-calamitous condition." *Id.* at 69. He reports that:

Recent data on the quality of medical services indicate a near-crisis: Necessary drugs are absent; equipment is poor; training of surgeons for serious health emergencies is inadequate. Indeed, if there is one area in which the myth of the Castro regime has been punctured, it is certainly in the area of medicine and health. Castro responds with claims that the U.S. embargo has put a crimp in Cuban medicine. But even were that so, which is hard to sustain since Cuba manages to buy around in many other areas of strategic importance, the growing charges of stratification of services for political elites as opposed to the rest of the country cannot be blamed on external embargoes. In the educational sphere, the issues are slightly different. They do not pertain to universal education or the absence of illiteracy, since pre-revolutionary Cuba scored well in these areas. Rather the issue is content of the educational process. From the outset, Castro recognized the importance of propaganda, and hence, educational curricula were filled with paeans of praise to the regime, its leadership, and its purposes. . . . From the outset, the higher culture was harnessed to the regime's needs: Novels, films, television, even science and criticism were harnessed to the requirements of the State.

Id. (citations omitted). In the course of a week, two friends of the Author told of relatives in Cuba who had to bring their own lightbulb to the operating room so that surgical procedures could be performed.

beriberi, plague, tuberculosis, and leptospirosis.⁴⁵ Not unexpectedly, these conditions have taken a heavy toll on the elderly, whose death rates are reportedly climbing.⁴⁶

Moreover, Cuba's method of dealing with some health issues is under attack because, although they might comport with Castro's totalitarian government, they appear to contravene other human rights concerns, such as the first generation right to personal liberty. For example, to combat the AIDS epidemic, Cuba subjects its citizens to mandatory testing, and then isolates those found to be carrying the HIV virus.⁴⁷ In response to the international condemnation of such encroachment on human rights, Cuba has begun to change its policy.⁴⁸

Another great claim of the Castro revolution is in the field of education. In 1992, the adult literacy rate was 95%, only slightly lower than the estimated 99% rate for the United States,⁴⁹ which compared favorably to the 69% average figure for all developing countries.⁵⁰

Cuba's educational profile shows a net primary enrollment ratio of 94 for the total population, compared to 86 for all developing countries,⁵¹ gross secondary enrollment ratio of 90, com-

45. Pablo Alfonso, *Se agudiza crisis de higiene y desnutrición*, NUESTRO HERALDO, June 22, 1993, at 3A.

46. See Tim Johnson, *Cuba's Safety Net in Tatters*, MIAMI HERALD, July 12, 1993, at 1A (describing how food and medicine shortages have reportedly increased mortality rates among elderly).

47. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993: REPORT SUBMITTED TO THE HOUSE COMM. ON FOREIGN AFFAIRS AND THE SENATE COMM. ON FOREIGN RELATIONS, 103D CONG., 2D SESS. 408, 413 (Jt. Comm. Print 1994) [hereinafter 1993 COUNTRY REPORTS] (noting that HIV positive persons in Cuba are restricted to sanatorium communities); Ronald Bayer, *Cuba's H.I.V. Quarantine Takes Toll in Liberty*, N.Y. TIMES, July 30, 1993, at A26.

48. See Laurie Garrett, *Cuba Institutes a Freer AIDS Policy*, N.Y. NEWSDAY, Aug. 3, 1993, at 53, 59 (reporting on Cuba's newly-announced policy of releasing AIDS patients deemed trustworthy by government officials after six months of quarantine, combined with political education).

49. 1994 UNHDR, *supra* note 23 at 134-35. The figures are for 1992. The 1990 UNHDR, *supra* note 24 at 131, using 1985 figures, placed the U.S. literacy rate at 94%, the same as Cuba's today. In 1953 the literacy rate was 76.4%. JOSÉ R. ÁLVAREZ DÍAZ, UN ESTUDIO SOBRE CUBA 803 (1963) (citing Censo de la República de 1953). Significantly, all education is free. See 1993 COUNTRY REPORTS, *supra* note 47, at 415.

50. 1994 UNHDR, *supra* note 23, at 133.

51. *Id.* at 156-57. The figures are for 1990. The net enrollment ratio is "the number of students enrolled in a level of education who belong in the relevant age group, as a percentage of the population in that age group." *Id.* at 219. The gross enrollment ratio is defined as "the number of students enrolled in a level of education,

pared to 41 for all developing countries;⁵² and a gross tertiary enrollment ratio of 20.8, compared to 6.8 for all developing countries.⁵³ Cuba's total expenditure on education is 6.6% of its GNP, up from 5.0% in 1960.⁵⁴ 12.8% of the country's total public expenditures is on education.⁵⁵ These figures on health, education, and welfare show accomplishments that far surpass those of Third World states and are basically on par with the achievements of industrialized states. Given the overall excellence of these statistics, it is not surprising that sub-groups in Cuba, whose profiles are less favorable than the general population, often do well.

whether or not they belong in the relevant age group for that level, as a percentage of the population in the relevant age group for that level." *Id.* Primary education is defined as "[e]ducation at the first level (International Standard Classification of Education [ISCED] Level 1), the main function of which is to provide the basic elements of education, such as elementary schools and primary schools." *Id.* at 221. The available figures for industrial countries are gross primary enrollment figures of 103 for males and 103 for females, while the U.S. figures are 101 and 100, respectively. 1990 UNHDR, *supra* note 24, at 154.

52. 1994 UNHDR, *supra* note 23, at 156-57. The figures are for 1990. The net secondary enrollment rates for Cuba in 1990 was 70. *Id.* at 156. These figures compare unfavorably to those for net secondary enrollment for 1988-89 in the United States (88 for total population, 90 for females), and in industrial countries (85 total, 96 for females). 1992 UNHDR, *supra* note 24, at 193. Secondary education is defined as "[e]ducation at the, second level (ISCED levels 2 and 3), based upon at least four years previous instruction at the first level, and providing general or specialized instruction or both, such as middle schools, secondary schools, high schools, teacher training schools at this level and vocational or technical schools." 1994 UNHDR, *supra* note 23, at 222.

53. 1994 UNHDR, *supra* note 23, at 156-57. These figures are for 1990. The figures in the 1988-89 period for the United States are 63 for the total population and 64 for females, while for industrial countries the figures are 37 total and 35 for females. 1992 UNHDR, *supra* note 24, at 193. It is noteworthy that for developing countries the figure dropped in the 1988-90 period to 7 for the total population, and remained at 5 for females. 1993 UNHDR, *supra* note 24, at 151, 163. Tertiary education is defined as "[e]ducation at the third level (ISCED levels 5, 6 and 7), such as universities, teachers colleges and higher professional schools - requiring as a minimum condition of admission the successful completion of education at the second level or evidence of the attainment of an equivalent level of knowledge." 1994 UNHDR, *supra* note 23, at 222.

54. 1994 UNHDR, *supra* note 23, at 158. The 6.6% figure is for 1990. The average for developing countries is 3.9% of GNP, up from 2.2% in 1960. *Id.* at 159. For industrial states, the figure in 1986 was 5.9% of GDP (including private expenditure). 1992 UNHDR, *supra* note 24, at 193. In 1988 the U.S. figure was 5.7% of GDP. 1993 UNHDR, *supra* note 24, at 198.

55. 1994 UNHDR, *supra* note 23, at 158. This 1990 figure is slightly lower than the 14.2% figure for all developing countries. *Id.* at 159.

2. Women in Cuba

A view of a sub-group within a society may be instructive in providing a different perspective on the nation's development. Health and education figures for Cuban women reflect the general view that Cuba, as a society, defies exact categorization. Such analysis shows how programs instituted during Castro's rule have benefitted this segment of the population.

The 1993 United Nations Human Development Report labeled women as a "non-participating majority" because while they are "a majority of the world's population [they] receive only a small share of developmental opportunities. They are often excluded from the education or from the better jobs, from political systems or from adequate health care."⁵⁶ The 1994 Report concedes that "[m]en generally fare better than women on almost every socio-economic indicator."⁵⁷ In fact, in adjusting the human development indicators ("HDI") for gender disparity the United Nations calculated a "female-male income ratio [that while] paint[ing] only a partial picture . . . reveal[s] a remarkable pattern of discrimination."⁵⁸ Moreover, the report notes that in all countries, women fare worse than men.⁵⁹

Further, this U.N. report found that in developing countries gender discrimination is broadly based, occurring in employment, nutritional support, health care, and in education where "women are likely to lose out" in educational achievement, with "literacy levels and years of schooling much lower than men's."⁶⁰ In industrial countries, on the other hand, "gender discrimination shows up in the HDI mainly in employment and wages, with women often getting less than two-thirds of the employment opportunities and about half the earnings of men."⁶¹

Such male-female gaps are not the case for women in Cuba. First, the education figures show that females are on par with, if not ahead of, males. For the period from 1980 to 1989, the literacy rate for women in the 15 to 24 year-old age group was 99%.⁶²

56. 1993 UNHDR, *supra* note 24, at 25.

57. 1994 UNHDR, *supra* note 23, at 96.

58. *Id.* at 97.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 138.

This compares favorably with the 67% figure for females in all developing countries, the 81% average for medium human development states,⁶³ and even the 93% figure for high human development countries.⁶⁴

In 1991, Cuba's net primary enrollment ratio for females was 94,⁶⁵ essentially the same as the total Cuban population, whose net and gross primary enrollment ratios were 94 and 100, respectively.⁶⁶ These figures were superior to the 81 and 90 figures, respectively, for females in all developing countries.⁶⁷ The secondary level gross enrollment ratio for females in Cuba was 97,⁶⁸ better than the 90 ratio for the total Cuban population,⁶⁹ and far above the average ratio of 34 for females in all developing countries.⁷⁰ Similarly, at the tertiary level, Cuban females continue to compare favorably: the female gross enrollment ratio in 1990 was 24.5,⁷¹ as opposed to 20.8 for the total Cuban population,⁷² and only 4.3 for females in all developing countries.⁷³

Women's health figures are just as impressive as these education figures. For example, according to 1992 data, while the life expectancy of women at birth in all developing countries was 64.5 years, the figure for Cuba was 77.4 years, which was nearly identical to 78 years for industrial states and only slightly lower than the U.S. figure of 79.1 years.⁷⁴ In 1988, the maternal mor-

63. *Id.* at 144-45. If China is excluded, the medium human development countries' average becomes 80%.

64. *Id.* at 144-45.

65. *Id.* at 144.

66. *Id.* at 156.

67. *Id.* at 145. The available figures for industrial countries are gross primary enrollment figures of 103 for females, the same as males, while the U.S. figures are 100 for females and 101 for males. 1990 UNHDR, *supra* note 24, at 154.

68. 1994 UNHDR, *supra* note 23, at 144.

69. *Id.* at 162.

70. *Id.* at 145. This figure compares favorably to the figure for net secondary enrollment for the United States, which in 1988-89 figures is 90 for females, and to the figure for industrial countries, which is 96 for females. 1992 UNHDR, *supra* note 24, at 193.

71. 1994 UNHDR, *supra* note 23, at 144.

72. *Id.* at 156.

73. *Id.* at 144. The figure in the 1988-89 period for the United States is 64 for females. 1992 UNHDR, *supra* note 24, at 193. For industrial countries, the figure for females is 35. *Id.*

74. 1994 UNHDR, *supra* note 23, at 144, 145, 189.

tality rate per 100,000 live births in Cuba was 54,⁷⁵ compared to 24 for the industrial countries and 420 for developing countries.⁷⁶

In the 1990 to 1992 period, women comprised 32% of the labor force, slightly below the 35% average for all developing countries, and below the 43% figure for industrial states.⁷⁷ In 1992, however, the percentage of parliamentary seats occupied by women in Cuba was 23%, almost twice the 11% figure for all developing countries, the 10% figure for industrial states, and the 10% figure for the United States.⁷⁸

These health, education, and welfare figures, both for the general population and for women, place Cuba virtually on par with the data accumulated for the industrial states. From this isolated perspective, it is impossible to typecast Cuba as a Third World country. However, as will be briefly described below, the Cuban economic picture reflects a radically different situation.

B. *The Economic Picture in Cuba*⁷⁹

Cuba's economy is a single-product economy, largely depen-

75. *Id.* at 150.

76. *Id.* at 151. The figure for the United States was 13. *Id.* at 189.

77. *Id.* at 162, 163. See *Women in the Workforce*, CUBANEWS, Jan. 1994, at 10 (reporting that "[w]omen comprise 38 percent of Cuba's work force, up substantially from 17.1 percent at the time of the revolution").

78. 1994 UNHDR, *supra* note 23, at 144, 145, 189. This figure does not necessarily represent the attainment by women of powerful positions in government. Leadership positions in the government always have been dominated by white men, with only three women on the 25-member Politburo, and with the first female provincial party secretary not being chosen until 1993. 1993 COUNTRY REPORTS, *supra* note 47, at 414. Moreover, after Castro's April 1994 restructuring of the Cuban government, only one woman, Rosa Elena Simeón Negrín, who was named Minister of Science, Technology and Environment, held a significant official post. *Cuba's New Lineup*, CUBANEWS, June 1994, at 12. It is worth noting that even before the restructuring women were not the government's movers and shakers; only 14.6% of the Central Committee were women and only three of the 25 members of the Politburo were women. *Women in the Workforce*, *supra* note 77, at 10. Thus, the 22.7% who are women are present only at the National Assembly level. *Id.*

79. This section provides only a brief glimpse of Cuba's economy. It is significant, however, that pursuant to the Cuban Constitution the economy is wholly controlled by the state. See CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CONSTITUTION OF THE REPUBLIC OF CUBA], arts. 14, 16-18, in *Gaceta Oficial de la República de Cuba*, Feb. 24, 1976, translated in 11 GRANMA [Official Organ of the Central Committee of the Communist Party of Cuba], Mar. 7, 1976, No. 10, at 2-11, amended by Law on Constitutional Reform, June 28, 1978, revised translation in THE CONSTITUTIONS OF THE COMMUNIST WORLD 100, 105-06 (William B. Simons ed., 1980) [hereinafter CUBAN CONST.]. The Cuban

dent on the production and exportation of sugar,⁸⁰ which represents 80% of the value of Cuban exports.⁸¹ Cuba's agriculture and industry lack diversification, using equipment that is technologically obsolete and economically inefficient.⁸²

Throughout its history, Cuba has been dependent upon a "superpower" for economic assistance, as well as for subsidization of sugar and other products. Cuba, since its independence from Spain and up until 1959, was dependent upon the United States for protection. Subsequently, until the recent global changes, the former Soviet Union occupied the protective role.⁸³

In the 1990 to 1991 post-Cold War period, Cuba's military expenditure was 12.5% of GDP,⁸⁴ up from the 1989 figure of 11.3% of GDP⁸⁵ and more than double the 1960 level of 5.1%.⁸⁶ This 12.5% figure is more than three-fold the 3.5% figure (which was *down* from 4.2% in 1960) for all developing countries,⁸⁷ and is more than triple the 3.4% spent by the industrial countries, whose military expenditures went down from 6.3% in

Constitution provides that the State defines, organizes, manages, and regulates all economic activity. *Id.* art. 16, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra*, at 105-06. The various activities are carried out by state enterprises specifically created to carry out defined functions, *id.* art. 17, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra*, at 106, including foreign trade, *id.* art. 18, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra*, at 106. For a concise discussion of Cuban laws respecting trade, see *Foreign Investment Legislation in Cuba and Mexico*, BAKER & MCKENZIE LATIN AM. LEGAL DEV. BULL., Vol. 2, No. 3 (July 1994) [hereinafter *Foreign Investment Legislation in Cuba*].

80. Rolando H. Castañeda, *Cuba: An Option for Liberty, Development, and Social Peace*, in *CUBA IN TRANSITION: PAPERS AND PROCEEDINGS OF THE FIRST ANNUAL MEETING OF THE ASSOCIATION FOR THE STUDY OF THE CUBAN ECONOMY* 257, 264 (1991) [hereinafter *CUBA IN TRANSITION*]; see 1993 COUNTRY REPORTS, *supra* note 47, at 409 (noting economy remains highly centralized).

81. Alvarez & Alvarez, *Commodity-linked Transactions And Recapitalization Needs For Privatizing The Economy In A Democratic Cuba: The Case Of Sugar*, in *CUBA IN TRANSITION*, *supra* note 80, at 143, 144. About 85% of the seven million metric tons exported annually go to Eastern Europe, the Soviet Union, and China. *Id.* at 147.

82. Castañeda, *supra* note 80, at 271.

83. Jaime Suchlicki, *Myths and Realities in U.S.-Cuban Relations*, 35 J. INTERAMERICAN STUDIES & WORLD AFF. 103 (1993); Sergio G. Roca, *Cuba's International Economic Relations in the 1980s* [hereinafter *Economic Relations*], in *CUBAN ECONOMY*, *supra* note 18, at 73; *Fact Sheet: Cuba*, 4 DEP'T OF STATE DISPATCH 102, 103 (1993); 1993 COUNTRY REPORTS, *supra* note 47, at 409 (noting high levels of Soviet aid).

84. 1994 UNHDR, *supra* note 23, at 170.

85. 1992 UNHDR, *supra* note 24, at 166.

86. 1994 UNHDR, *supra* note 23, at 170.

87. *Id.* at 171.

1960.⁸⁸ In fact, Cuba's military expenditures are 125% of the combined health and education expenditures, up from 41% in 1977.⁸⁹ This contrasts with the military expenditure figure for the United States, 46% for the same period, and only 32% in 1990, both down from 54% in 1977.⁹⁰

Cuba's "communications profile" reveals the economic situation of the island. Prior to Castro's revolution, Cuba's communication profile placed it second or third in the Americas.⁹¹ This position has suffered under Castro's rule. In 1990, there were 35 radios and 20.7 televisions per 100 persons in Cuba,⁹² compared to 18 radios and 5.5 televisions per 100 persons in the developing countries, and 113 radios and 54.4 televisions per 100 persons in the industrial countries.⁹³ Cuba's daily newspaper circulation per 100 persons was 12.4,⁹⁴ which was higher than the world-wide average of 9.2 newspapers per 100 persons, and much higher than the 4.4 figure for all developing countries, although below the 30.3 figure for industrial states.⁹⁵ Cuba, however, only has 5.7 telephones per 100 persons, or one per 17.5 persons.⁹⁶ This figure, though better than the raw figure of one phone per 28 persons in 1959,⁹⁷ reflects a decline in ranking. In 1959, Cuba ranked third in the Americas in number of telephones.⁹⁸ The 1990 figures place it behind Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, and Venezuela.⁹⁹

The motor vehicle trend parallels the telephone pattern. In the 1986 to 1988 period, there were 22 motor vehicles per 1000

88. *Id.* at 199. The figure for the United States is 5.1%, down from the 1960 figure of 8.8%. As a percentage of combined education and health expenditures, these figures are as follows: 125% in Cuba, 60% in all developing countries, 33% in all industrial states, and 46% in the United States. *Id.* at 170, 171, 199.

89. 1994 UNHDR, *supra* note 23, at 170; 1993 UNHDR, *supra* note 24, at 176.

90. 1994 UNHDR, *supra* note 23, at 199; 1993 UNHDR, *supra* note 24, at 205.

91. *See* Marquez Sterling, *supra* note 17, at 312 (ratio of radio and television receivers to population).

92. 1994 UNHDR, *supra* note 23, at 160.

93. *Id.* at 167.

94. *Id.* at 166. These are 1988-90 figures.

95. *Id.* at 161.

96. *Id.* at 160. Compare these 1990-92 figures to 3.1 telephones per 100 persons in developing countries and 47 per 100 persons in industrial countries. *Id.* at 161.

97. *See* MARQUEZ STERLING, *supra* note 17, at 312.

98. *Id.*

99. 1994 UNHDR, *supra* note 23, at 160.

persons in Cuba, or one motor vehicle for every 45 persons.¹⁰⁰ This placed Cuba behind the above-listed countries and below the average for all developing countries.¹⁰¹ Perhaps more alarming, however, is that this figure is worse than the 1959 figure, which ranked Cuba third in the Americas with one car per 27 persons.¹⁰²

The juxtaposition of this economic profile to Cuba's high human development indicators¹⁰³ confirms that Cuba defies exact classification. Moreover, as Part IV will detail, political freedoms, which generally run in tandem with human development, are sorely lacking on the island. This conflation of relatively high, although declining, human development indicators, a single-product economy, and lack of individual liberties results in the ultimate classification of Cuba as a developing or Third World state. Considering Cuba's diverse profile, it is not surprising to learn that its posture *vis à vis* the Cold War is also unique.

II. HAS THE COLD WAR ENDED? THE CASE OF CUBA

Historians date the declaration of a Cold War to two 1946 speeches.¹⁰⁴ In the first speech, Stalin told the Soviet people that war was unavoidable as long as capitalism existed.¹⁰⁵ In the other, Winston Churchill proclaimed that Soviet ideological and military expansionism resulted in an iron curtain being drawn across Europe.¹⁰⁶ Since the onset of the Cold War, Cuba has

100. 1993 UNHDR, *supra* note 24, at 166.

101. *Id.*

102. See MÁRQUEZ STERLING, *supra* note 17, at 312. More current figures might reflect an even worse reality because, with the fuel shortages, cars are simply not functioning and bicycles have taken over as the primary method of transportation.

103. See, e.g., 1994 UNHDR, *supra* note 23, at 164, 168. Economic figures for Cuba are essentially unavailable.

104. Stanley Meisler, *Soviet Union's End Deprives Americans of a Top Attraction; Attitudes: The Kremlin's Empire Was Variousy a Bugaboo, a Utopia, an Ally and a Terrifying Enemy*, L.A. TIMES, Jan. 4, 1992, at A6.

105. Joseph Stalin, *New Five-Year Plan for Russia, Election Address* (Feb. 9, 1946), in 12 VITAL SPEECHES 300, 300 (1946).

Perhaps the catastrophe of war could have been avoided if the possibility of periodic redistribution of raw materials and markets between the countries existed in accordance with their economic needs, in the way of coordinated and peaceful decisions. But this is impossible under the present capitalist development of world economy.

Id.

106. Winston Churchill, *Alliance of English-Speaking People, A Shadow Has Fallen on Europe and Asia* (Mar. 5, 1946), in 12 VITAL SPEECHES 329, 331 (1946)

been in both the U.S. and Russian spheres of influence.

Cuba's single-product sugar economy, always subsidized by favorable trade terms, resulted in Cuba's dependence on the major powers. In fact, sugar itself has held center stage in the animosities between the superpowers. For example, on February 13, 1960, Cuba signed its first five-year trade agreement for the sale of sugar to the Soviet Union.¹⁰⁷ Shortly thereafter, the United States responded by amending the Sugar Act to permit the President to reduce Cuba's sugar quota.¹⁰⁸ The same day the amendment was passed, U.S. President Eisenhower reduced the quota by 700,000 tons.¹⁰⁹ Cuba, in turn, responded by nationalizing U.S.-owned property and enterprises valued between US\$1.5 to US\$2 billion.¹¹⁰ These events signaled that, with respect to Cuba, the Cold War was under way. Significantly, one of the most remembered and frightening events of the Cold War, which brought the bipolar powers to the brink of a hot war, involved Cuba: the 1962 Cuban Missile Crisis.¹¹¹

In this context, it is instructive to explore the relationships of the United States and Cuba and of Russia and Cuba in this so-called post-Cold War era. Interestingly, the relationships still reflect much of the old bipolar perspectives.

Theoretically, the end of the Cold War arrived with the tear-

("From Stettin in the Baltic to Triest in the Adriatic, an iron curtain has descended across the Continent.").

107. See *Case of Cuba*, *supra* note 20, at 53 n.24. This agreement was for the sale of one million tons of sugar per year for the five-year term. *Id.* The agreement was signed with Castro by the Vice Prime Minister of the Soviet Union, Anasta Mikoyan, in Havana. Pursuant to the agreement, the Soviets conceded Cuba a credit of US\$100,000,000 and agreed to buy a million tons of sugar a year for a five-year term, paying in cash for 200,000 tons at market price and receiving the rest in barter for agricultural equipment and other industrial products. MARQUEZ STERLING, *supra* note 17, at 275; see MITO, *supra* note 1, at 89. Interestingly, this first agreement provided that the Soviet Union would pay 2.78 cents per pound of sugar at a time when the market price was 2.9 cents per pound and the United States was paying 5.11 cents per pound. *Id.* at 89 n.13.

108. Sugar Act of 1948, 7 U.S.C. § 1100 et seq. (amended July 2, 1960), 1 U.S.C.C.A.N. 385, 86 Cong., 2d Sess. (expired Dec. 31, 1974). "The President shall determine . . . the [sugar] quota for Cuba for the balance of calendar year 1960 and for the three-month period ending March 31, 1961." *Id.*

109. *Case of Cuba*, *supra* note 20, at 55 n.24; see MITO, *supra* note 1, at 89.

110. See Edward D. Re, *The Foreign Claims Settlement Commission and The Cuban Claims Program*, 1 INT'L LAW. 81 (1966); see also *Fact Sheet: Cuba*, *supra* note 83, at 106 (estimating uncompensated expropriation at approximately US\$1.8 billion).

111. For a brief description of the Cuban Missile Crisis, see MITO, *supra* note 1, at 109-10; MARQUEZ STERLING, *supra* note 17, at 286-87.

ing down of the Berlin Wall, the dismantling of the Soviet Union and the emergence of its former republics as independent sovereigns, the unification of Germany with the unified state being a member of NATO, and the end of Soviet domination of Eastern Europe with the concomitant departure of Soviet troops from its former satellite states. Indisputably, these events marked not only a great moment in history, but also a dramatic change in the dynamics of international relations. The focus has shifted from national security, i.e., military force; bipolar ideology, i.e., democracy vs. communism; and geopolitical balance of power, i.e., U.S. and Soviet spheres of influence/domination, to issues of economics. Economic interest no longer cedes to military or ideological conflict. One need only consider the U.S. renewal of China's "most favored nation" trading status, now fully divorced from human rights considerations, the end of the Vietnam embargo, and the talks with North Korea to see this ideological shift. Nevertheless, this change in focus has not taken place with respect to Cuba. Rather, the rhetoric, regulations, and radios indicate that for this Caribbean island, 90 miles from the U.S. mainland, the Cold War continues.

A. *Rhetoric*

While one of the clear markers of the end of the Cold War was the change in the jargon used to refer to relationships between and among nations, the exchanges between Cuba and the United States remain permeated with Cold War rhetoric. The U.S. condemnation of the Cuban government in January 1992, after Cubans fired at a family trying to defect to the U.S. Naval Base at Guantanamo Bay, is one example. The U.S. government stated that "[w]e deplore . . . shooting people as a way of stopping [citizens] from fleeing their country. *It's reminiscent of ugly activities that took place at the Berlin Wall.*"¹¹² "Body language," i.e., U.S.

112. *U.S. Deplores Cuban Shooting of Fleeing Family*, Reuters, Jan. 30, 1992, available in LEXIS, World Library, ALLWLD File (emphasis added). The report also notes that spokesperson, Joe Snyder, "reminded reporters that two former East German border guards were convicted of manslaughter earlier this month for shooting dead a defector at the Berlin Wall, which separated East and West Berlin and became a symbol of Cold War hostility." *Id.* The problem of repression, however, is all too real. See 1993 COUNTRY REPORTS, *supra* note 47, at 413-14 (noting that "government continues to use aggressive, often violent, means to prevent citizens from emigrating without permission" and giving examples including one where "border guards used hand grenades and rifle

actions, are also stuck in the Cold War mode. Evidence exists that the U.S. Navy continues to carry out maneuvers off the Cuban coast and U.S. Air Force planes continue to fly patterns that violate Cuba's airspace.¹¹³ Some reports contend that the United States increased intelligence collection activities after the Cold War had supposedly ended.¹¹⁴ Most recently, in the midst of unrest in Cuba, which precipitated an undesirable exodus from the U.S. perspective, the United States reacted by threatening a military blockade.¹¹⁵ Leon Panetta, the current White House Chief of Staff, said that "[w]e've got to continue to put pressure on Castro because the problem here is not the problem with refugees. . . . It's the problem with the Castro regime."¹¹⁶

Cuba's jargon is analogous to that used by the United States. In January 1992, Jorge Risquet, a member of the Communist Party and one of Cuba's representatives to a conference on the 1962 missile crisis, criticized the continuation and strengthening of the U.S. economic blockade of Cuba in light of the supposed end of the Cold War. In addition, Risquet, using stale language, raised the ongoing threat of direct aggression: "[S]everal of the excuses [used in Washington] to maintain a permanent hostility against Cuba have ceased to exist [but] new obstacles may arise."¹¹⁷

Moreover, Cuba's "body language" also continues an aggressive stance. U.S. intelligence has allegedly discovered missiles in Cuba that were banned by the 1988 INF Treaty.¹¹⁸ Reports also indicate that Cubans have simulated war exercises in order to prepare for any aggression.¹¹⁹ Most recently, in the midst of the

fire against unarmed swimmers trying to escape to the U.S. Naval Base at Guantanamo").

113. Nelson Valdés, *Commentary: On Escalating Tensions Between U.S. & Cuba*, NotiSur—South American and Caribbean Political Affairs, Jan. 22, 1992, available in LEXIS, World Library, ALLWLD File.

114. *Cuba Granma Commentary Criticizes 'Provocative' US 'Build-up' At Guantanamo*, BBC Summary of World Broadcasts, May 7, 1992, available in LEXIS, World Library, ALLWLD File.

115. F. Robles et al., *U.S. Hints at Blockade: Goal is to Keep Heat on Castro*, MIAMI HERALD, Aug. 22, 1994, at 1A.

116. *Id.*

117. *Cuba Conference On 1962 Missile Crisis Ends In Havana*, BBC Summary of World Broadcasts, Jan. 15, 1992, available in LEXIS, World Library, ALLWLD File.

118. Rowland Evans & Robert Novak, *U.S. Satellites Discover Banned Missile in Cuba*, S.F. CHRONICLE, May 21, 1991, at A15.

119. *Simulacro de Guerra en Cuba*, NUEVO HERALD, June 28, 1993, at 3A.

threatened Cuban exodus, Castro blamed the Cuban unrest on " 'the disgraceful campaign of slander' carried out from abroad over the July 13 sinking of a tugboat" during an attempt to flee the island.¹²⁰ Similarly, Castro has labeled the U.S. accommodations for the *balseros*, or rafters, at Guantanamo Bay "a concentration camp," and the Miami Cubans who oppose his dictatorship, the "fascist Mafia."¹²¹ Thus, a look at the rhetoric provides no basis to declare that the Cold War has ended with respect to Cuba. A review of recent laws provides additional support for this conclusion.

B. Regulations

This section examines two recently enacted sets of rules to show that the Cold War climate persists for Cuba. First, this section reviews the enactment of the Cuban Democracy Act of 1992 ("Torricelli Law" or "CDA") by the U.S. Congress.¹²² Second, it examines the Russia-Cuba trade pact concluded approximately one week after former President George Bush signed the Torricelli Law.¹²³

1. The Torricelli Law

The Cold War has existed between Cuba and the United States for over thirty years. In 1960, U.S. President Eisenhower broke relations with Cuba when the enterprises and property of U.S. citizens were nationalized by the Cuban government.¹²⁴ Desiring to destabilize the Castro regime, the United States, in

120. *Exiles Lash Out at Havana 'Blackmail'*, MIAMI HERALD, Aug. 6, 1994, at A1.

121. Mimi Whitefield & Martin Merzer, *Castro Raises Stakes: Cubans are Free to Go*, MIAMI HERALD, Aug. 25, 1994, at A1.

122. Cuban Democracy Act, Pub. L. No. 102-484, 106 Stat. 2575 (1992) (to be codified at 22 U.S.C. §§ 6001-10).

123. *Havana-Moscow Trade Accord*, *supra* note 11, at 7. As the text of the Russia-Cuba agreement has not been made available, this analysis is based upon available public reports.

124. These nationalizations were a reaction by Castro to a July 6, 1960 amendment to the Sugar Act of 1948 that permitted the U.S. President to reduce unilaterally the quota of sugar imported from Cuba. The same day Congress granted President Eisenhower the power, he exercised it. Also on that day the Cuban Council of Ministers adopted Law No. 851, which characterized the U.S. action as "acts of aggression" and gave the Cuban President and Prime Minister power to nationalize by forced expropriation property or enterprises in which American nationals had an interest. The Cuban government immediately took such action. *See Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964); *see also supra* notes 107-11 and accompanying text.

1960, imposed an economic embargo on exports to Cuba, including exports from foreign subsidiaries, and in 1962, imposed an embargo on imports.¹²⁵ Now, more than thirty years later, the passage of the Torricelli Law marks a heightening of the Cold War embargo policy. Sections 6001 ("Findings") and 6002 ("Statement of Policy") express the U.S. anti-Castro sentiments.¹²⁶ These sections also articulate the purpose of the CDA: to end Castro's regime in order to have a democratically elected, human-rights-abiding, non-military-dominated government. The fall of communism in the former Soviet Union and Eastern Europe has strengthened the zeal of the United States to achieve this end. Interestingly, thirty-three years into Castro's rule, the United States still used the 1961 nationalizations as justification for its desire to topple the Cuban dictatorship.¹²⁷ Thus, the CDA aims at promoting democracy in Cuba by forcing the collapse of the Castro regime via economic strangulation.

The CDA contains broad-reaching provisions to achieve its stated goal. Pursuant to Section 6003, the U.S. President may impose sanctions against any country that provides assistance to Cuba, including rendering the governments of such countries ineligible for (i) assistance under the Foreign Assistance Act of

125. See *supra* note 6 (discussing President Kennedy's actions pursuant to TWEA).

126. Cuban Democracy Act, 22 U.S.C. §§ 6001-02.

127. Significantly, Castro has recently made overtures regarding a possible willingness to make reparations for these nationalizations. See *Castro: Desperate, or . . . ?*, *MIAMI HERALD*, June 17, 1993, at 20A (reporting magazine article authored by head of Cuban State Committee on Economic Cooperation indicating Cuba's willingness to discuss reparations). Many view such statements with skepticism, some are outright cynical and wonder what a government that has no hard currency and cannot even feed its people would use to make such reparations. See *id.* (noting desperate economic situation in Cuba, that embargo works, and that Castro's overture is ploy to have U.S. embargo lifted and US\$40 million in claimed losses from embargo paid by United States). One author suggests that the Cuban "government's conciliatory statements are in part due to the island's worsening economic crisis, and to its decision to focus its diplomatic energies on trying to end the U.S. trade embargo," and quotes a member of the U.S. House of Representatives, Robert Torricelli [D-NJ] as saying that "[c]ompensation from a man who has no money is a rather hollow offer"). Andres Oppenheimer, *Cuban Offer Seen as Sign of Crisis*, *MIAMI HERALD*, June 16, 1993, at 1A. Another House member, Ileana Ros-Lehtinen [R-FL] said "[t]his is a new indication that Fidel Castro is getting desperate [and] merely reacting to an internally desperate economic situation." *Id.* at 16A. Aminda Marques Gonzalez and Manny Garcia, *Exiles Call Cuba Offer 'A Sign of Weakness'*, *MIAMI HERALD*, June 16, 1993, at 24A (reporting that Cuban exiles have characterized Cuba's proposal to discuss reparations as desperate act of failing dictatorship); Pablo Alfonso and Ana Santiago, *EU Listo Para Oír Oferta Cubana*, *NUEVO HERALD*, June 16, 1993, at 1A.

1961 or assistance or sales under the Arms Export Control Act, and (ii) forgiveness or reduction of debt.¹²⁸ The CDA also prohibits vessels that enter a port in Cuba from loading or unloading any freight in U.S. ports within 180 days from the departure from a Cuban port.¹²⁹ Perhaps the most controversial of the Torricelli Law's features is the restoration of a provision of the 1962 embargo that had been repealed in 1975: the prohibition against foreign subsidiaries of U.S. corporations doing business with Cuba.¹³⁰ Such a provision, if enforced, could have a debilitating effect on Cuba's already strained economy. For example, the European Community ("EC"), which disapproves the extraterritorial application of U.S. laws, has statistics showing that U.S. companies account each year for US\$500 million of the US\$600 million EC-Cuba trade.¹³¹ Thus, strict enforcement of the extraterritorial provisions could further weaken the Cuban economy by depriving it of five-sixths (over 80%) of its EC trade. Significantly, the international community has reacted adversely to the embargo in general, and particularly to this provision, which effectively seeks to give U.S. law extraterritorial application.

On October 26, 1994, the U.N. General Assembly passed a resolution, entitled *Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America Against Cuba*, condemning the U.S. embargo and calling on states "to refrain from promulgating and applying laws and measures that

128. Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified as amended at scattered sections of 22 U.S.C., 7 U.S.C., and 42 U.S.C.); Arms Export Control Act, Pub. L. No. 87-195, 22 U.S.C. §§ 2341-43 (repealed Oct. 22, 1968, Pub. L. No. 90-629, 82 Stat. 1327).

129. Cuban Democracy Act, 22 U.S.C. § 6005.

130. *Id.* Interestingly, the "Findings" portion of the law notes that "[t]he United States cooperated with its European and other allies to assist the difficult transitions from Communist regimes in Eastern Europe. Therefore, it is appropriate for those allies to cooperate with United States policy to promote a peaceful transition in Cuba." 22 U.S.C. § 6001. A November 24, 1992 U.N. General Assembly resolution, introduced by Cuba, demanded that the United States rescind the CDA. G.A. Res. 47/19, U.N. GAOR, 47th Sess. (1992). Fifty-nine countries voted in favor of the resolution, including Canada and France, two states that historically vote with the United States. Only the United States, Israel, and Romania voted against the resolution, in which 71 states, including Russia, abstained. A similar 1993 resolution received increased support to condemn the embargo. G.A. Res. 48/16, U.N. GAOR, 48th Sess. (1993).

131. *Bush's Signing of Cuba Embargo Law May Trigger GATT Complaint, EC Warns*, Int'l Trade Daily (BNA), Oct. 28, 1992.

affect the sovereignty of other countries,"¹³² an indirect but not particularly well-veiled reference to the CDA. It is interesting that the U.S. explanation for its "no" vote is replete with Cold War rhetoric, noting the U.S. sovereign right to maintain "the embargo in order to keep pressure on the Castro regime to establish freedom and democracy, because Americans oppose the repression of their Cuban friends by a dictatorial regime - the last in the hemisphere," where the human rights situation "remains grim."¹³³

Based on the Trading With the Enemy Act of 1917 ("TWEA"), the CDA's enforcement authority lies with the Secretary of the Treasury.¹³⁴ The penalties for violating the CDA's terms include a civil penalty of not more than US\$50,000. The imposition of such a penalty effectively constitutes an amendment to the TWEA, which previously did not provide for civil penalties.

Thus, notwithstanding the changed post-Cold War geopolitical world, the CDA echoes the bipolar pugilism of the past. Significantly, the CDA has given rise to heated disputes within the usually-cohesive Cuban exile community, and even among Cuban human rights activists, some of whom question the efficacy of these measures for terminating the oppressive regime and, indeed, fear that they will hurt the already-aching Cuban people.¹³⁵ The law is also inconsistent with the post-Cold War

132. G.A. Res. 49/9, U.N. GAOR, 49th Sess., 45th mtg., U.N. Doc. A/49/L.9 (1994).

133. U.S. Mission to the U.N., Press Release No. 151-(94), Oct. 26, 1994, at 1.

134. The TWEA gives the President power to act in emergencies. Although originally applicable to wartime and peacetime emergencies, it was amended in 1977 to apply only during the time of war. 50 U.S.C. app. § 5(b)(1). However, its application with respect to Cuba is grand-parented. *See id.* § 5; *see also* Cuban Democracy Act, 22 U.S.C. § 6009.

135. *See Consideration of the Cuban Democracy Act of 1992: Hearings and Markup Before the House Comm. on Foreign Affairs*, 102d Cong., 2d Sess. 86-95 (1993). Ramón Cernuda, Chair of the Anti-Castro Coordinated Groups of Human Rights Organizations, testified in Congress on March 25, 1992 against the law because it would starve the Cuban people. *Id.* *But see Hearings on Cuba Before the Senate Select Comm. on Intelligence*, 103d Cong., 1st Sess. (July 29, 1993) [hereinafter *Cuba Hearings*] (on file with Author) (containing testimony of various witnesses on wisdom of continuing embargo). Some suggested that negotiations concerning the lifting of the embargo should be a *quid pro quo* for democratization because: a) the embargo was not the cause of Cuba's economic crisis; and b) lifting the embargo can not, and will not, solve the economic crisis. *Cuba Hearings, supra* (statement of Anthony P. Maingot, Professor of Sociology, Florida International University). On the other hand, Robert S. Gelbard, Deputy Assistant Secretary of

move away from ideology and geo-political balance-of-power focus towards an economic interest perspective. Nonetheless, after considerable debate over its desirability, the CDA still remains firmly in place despite the removal of a 19-year embargo on Vietnam¹³⁶ and the decision to grant China favorable trade status despite human rights violations.

Indeed, dire economic circumstances existed in Cuba when the U.S. Congress discussed the passage of the CDA. In this context, the tightened U.S. embargo provided great hopes for the final asphyxiation of the gasping Cuban economy. The recent threat of a massive exodus resulted not only in the reaffirmation by the Clinton administration of the CDA,¹³⁷ but also in the use

State for Inter-American Affairs, noted that the best way to deal with Cuba's dire economic situation and to "foster an environment for peaceful change in Cuba [is to] continu[e] to isolate the Cuban government diplomatically, politically and economically until basic human rights are respected and democratic reforms enacted Today, we believe the embargo plays a critical role in keeping pressure on the Cuban regime to dismantle its military machine . . . to reform its economy and refrain from the grossest human rights violations." *Cuba Hearings, supra* (statement of Robert S. Gelbard, at 3). Probably the most controversial testimony, which has generated much debate and deep divisions within the Cuban exile community, was that of Dr. Jorge Domínguez, Professor of Government at Harvard University. *Cuba Hearings, supra* (statement of Dr. Jorge Domínguez). Dr. Domínguez discussed U.S. interests in Cuba, which he posited would be better served by lifting the embargo, as it has not worked. *Id.* He suggests that the United States, instead, threaten Cuba with peace and at least remove the punitive measures from the CDA that interfere with Cuba's sovereignty. *Id.* For some of the debate over the lifting of the embargo, see William Ratliff & Roger Fontaine, *Let's Lift the Cuban Embargo*, MIAMI HERALD, July 19, 1993, at 13A (listing reasons for ending embargo); Octavio R. Costa, *Frente a un Punzante Dilema: La Familia o Cuba*, DIARIO LAS AMERICAS, Aug. 4, 1993, at 5A; Alfonso Chardy, *Castro's Tenacity Creates Split Among Exiles*, MIAMI HERALD, Aug. 14, 1993, at 2B (reporting new willingness among some Cuban exiles to engage in dialogue with Castro); Néstor Carbonell Cortina, *Resistir y Esperar II*, DIARIO LAS AMERICAS, Aug. 17, 1993, at 4A; Néstor Carbonell Cortina, *Resistir y Esperar*, DIARIO LAS AMERICAS, Aug. 15, 1993, at 5-A; Al Cardenas, *Cuban Exiles Need United Voice to Counter Expected Efforts to Lift Embargo*, MIAMI HERALD, Aug. 15, 1993, at 1C (listing proposals Cuban exiles should advocate in face of growing pressure to lift embargo); Al Cardenas, *No es Moral Comerciar con Fidel Castro*, NUEVO HERALD, Aug. 15, 1993, at 21A; Howard W. French, *Cuban Dissident, in the U.S., Says Embargo Is a Mistake*, N.Y. TIMES, Aug. 3, 1993, at A5; Larry Rohter, *In Miami, Talk of Talking With Cuba*, N.Y. TIMES, June 27, 1993, at 16 (discussing growing willingness among some Cuban exiles to engage in dialogue with Castro); *Aboga Wayne Smith Nuevamente por 'Abrirle Puertas' a Cuba*, DIARIO LAS AMERICAS, June 11, 1993, at 7-A; William Ratliff & Roger Fontaine, *Let's Drop Our Embargo of Cuba*, N.Y. NEWSDAY, July 9, 1993, at 51 (listing benefits of ending embargo); *Cracks in the Cuban Permafrost*, N.Y. TIMES, July 16, 1993, at A14 (urging United States to make offer to relax embargo in return for concessions by Cuba).

136. See *U.S. Embargo Unchanged*, CUBANEWS, Mar. 1994, at 8.

137. The White House, Office of Communications, Press Conference by the Presi-

of regulations revoking authorization for cash remittances, general authorizations for travel, and "significantly" restricting permissible contents of gift parcels for exportation to Cuba.¹³⁸ In addition, the established policy regarding Cubans illegally arriving at U.S. shores, who for decades were received with open arms, has been reversed by disallowing entry or by intercepting Cuban refugees at sea and taking them to safe havens.¹³⁹

The United States, however, is not alone in preserving the outdated Cold War mentality toward Cuba. As will be shown below, Russia's recent trade agreements with Cuba, although more attuned to a post-Cold War market approach, also preserve vestiges of the bipolar animosities of the past.

2. The Cuba-Russia Trade Pacts

The first Cuba-Soviet trade agreement was signed in 1960.¹⁴⁰ Heavy subsidies from the former Soviet Union and favorable trade relationships with other Soviet bloc states offset much of the impact of the U.S. embargo. Soviet-Cuban relations were close from 1960 until *perestroika*. Cuba received not only economic but also substantial military assistance.¹⁴¹ These economic supports, however, ended with the collapse of the Soviet bloc and the disintegration of the Soviet Union.¹⁴² In addition, with the end of the Cold War, the former Soviet Union undertook reduction of military forces globally.¹⁴³ Thus, the highly

dent, Aug. 19, 1994 (1994 WL 446481) (White House) [hereinafter Aug. 19 Press Conference].

138. 59 Fed. Reg. 44,884 (1994) (to be codified at 31 C.F.R. pt. 515) [hereinafter Treasury Regulations]; *U.S. Sanctions on Cuba*, CUBA REP., Aug. 1994, at 1, 2.

139. Aug. 19 Press Conference, *supra* note 137; The White House, Office of Communications, Reno Briefing on Cuban Immigration Policy, Aug. 19, 1994 (1994 WL 446482) (White House) [hereinafter Reno Briefing]. This change has been seriously criticized. Paul Anderson & Mimi Whitefield, *Move to Act Off Cash, Travel is Criticized*, MIAMI HERALD, Aug. 27, 1994, at 21A; M. Ojito, *Clinton Move Shatters Image of Refugees*, MIAMI HERALD, Aug. 20, 1994, at 21A.

140. *See supra* note 107 and accompanying text (describing Cuba's first five-year trade agreement with Soviet Union).

141. Apparently by the second half of 1960, Cuba had received over 22,000 tons of Soviet military equipment to arm the recently enlarged army that totalled over 250,000 persons. MITO, *supra* note 1, at 90. By April 1961 the military support had risen to 30,000 tons with an estimated value of US\$50 million. *Id.* Total Soviet aid was estimated by some at US\$4 to US\$5 billion annually. 1993 COUNTRY REPORTS, *supra* note 47, at 409.

142. *Fact Sheet: Cuba*, *supra* note 83, at 103.

143. *See Brigadistas Rusos se Despiden de Cuba*, NUEVO HERALD, June 16, 1993 (report-

subsidized Cuba-Soviet five-year plans fell into disuse.¹⁴⁴

These developments, together with the 1986 recession, placed Cuba in a perilous economic situation¹⁴⁵ on which, as noted above, the United States sought to capitalize by passing the CDA. Castro's regime, however, was not yet ready to capitulate. On November 3, 1992, Cuba and Russia concluded trade, science, and maritime relations agreements.¹⁴⁶ These new Russia-Cuba accords are based upon the post-Cold War model, i.e., economics, with all transactions to be based on world market prices¹⁴⁷ rather than political and ideological alliances.

The then-Vice-Minister of Economic Development for Cuba, Raul Talarid, noted that the new relationship was to be based on mutual interest.¹⁴⁸ The mutuality of interest, however, is broad-based. Cuba, identified by the World Bank as a severely indebted state,¹⁴⁹ owes large sums of money to Russia. For example, Cuba's debt to the former Socialist bloc is estimated to be US\$30 billion,¹⁵⁰ of which the estimated debt to Russia ranges from US\$20 billion¹⁵¹ to US\$28 billion.¹⁵² Because Cuba lacks

ing that last 300 Russian infantry soldiers left Cuba and that the only personnel left are civil and military personnel at Lourdes facility, whose numbers are not known); *see also Fact Sheet: Cuba*, *supra* note 83, at 103 (noting Soviet demilitarization of Cuba).

144. *Fact Sheet: Cuba*, *supra* note 83, at 105.

145. Castañeda, *supra* note 80, at 260. The economic crisis resulted from Cuba's increasing economic and political international isolation, the economic over-dependence on sugar, and the end of external commerce and assistance from the Council of Mutual Economic Cooperation [Comisión de Ayuda Mútua Económica] ("CMEA," "GAME," or "COMECON"), which was comprised of the former Soviet Union, East Germany, Bulgaria, Czechoslovakia, Hungary, Poland, and Romania. *Id.* at 261. The economic shrinkage that took place from 1986 to 1989 was, of course aggravated with the collapse of the external aid and commerce. The hardships that followed resulted in Castro's call for nationalistic resolve during what he called in 1990 "a special period in peace time." *Id.* at 264. The further tightening led to what Castro called in 1991 "option zero" in anticipation of no subsidies whatsoever from the former Soviet Union. *Id.*

146. *Havana-Moscow Trade Accord*, *supra* note 11, at 7.

147. *See Cuba Reviving Old Trade Ties With Moscow*, TORONTO STAR, Jan. 4, 1993, at C5 (referring to Soviet Union's 1989 termination of multi-billion dollar subsidies to Cuba).

148. *Id.*

149. WORLD BANK REPORT, *supra* note 25, at 393. "Severely indebted" means either of two key ratios is above critical levels: present value of debt service to GNP (80%) and present value of debt service to exports (220%). *Id.*

150. *Cuba Hearings*, *supra* note 135 (Maingot statement, at 14).

151. *Fact Sheet: Cuba*, *supra* note 83, at 106.

152. *Cuba Hearings*, *supra* note 135 (Maingot statement, at 14).

hard currency, trade and barter agreements such as these might be Russia's only hope to recover the debt.

To be sure, the agreements appear to be more in accord with the so-called post-Cold War climate. For example, at the end of December 1993, Russia and Cuba signed a trade protocol for 1994 that significantly increased the countries' bilateral trade.¹⁵³ The protocol is, in essence, a barter agreement to exchange one million tons of Cuban sugar for 2.9 million tons of Russian oil, an increase over the 1993 figure of 2.3 million tons of oil and 1.5 million tons of sugar.¹⁵⁴ At current prices, this exchange appears to be an even trade.¹⁵⁵ Some portions of the agreements, however, that contemplate supply of arms, as well as the retention by Russia of an intelligence facility in Cuba, are reminiscent of the Cold War days.

Two aspects of the earlier agreements appeared to be purely of commercial interest. First, the agreement increased sugar and nickel trade in exchange for petroleum.¹⁵⁶ The basic volumes have been stipulated at about two tons of sugar for 3.3 tons of oil and oil products.¹⁵⁷ Second, the agreements contemplated the resumption of construction of the nuclear electric power plant, provided that a third partner with hard cash could be found.¹⁵⁸

However, other provisions in the earlier agreements, as well as in the most recent protocol, bring to mind old animosities. For example, some provisos require Russia to supply Cuba with components and spare parts for weapons Cuba already has,

153. Yuri Pavlov & Nicolás Rivero, *A New Cuba-Russia Tie*, CUBANEWS, Feb. 1994, at 9 [hereinafter *Cuba-Russia Tie*].

154. *Id.* The protocol also covers other commodities. *Id.* One potentially explosive issue is whether the barter exchanges in the protocol represent subsidized trade. It has been reported that the U.S. government has warned Russia that any trade it undertakes with Cuba must be at world prices, or Russia will risk losing U.S. assistance. *Subsidized Trade?*, CUBANEWS, Feb. 1994, at 9. Significantly, other Cuba-Russia oil talks are ongoing. *More Triangle Oil Talk*, CUBANEWS, June 1994, at 3.

155. *Subsidized Trade?*, *supra* note 154, at 9; Mario Rodriguez, *Ahora Castro Tiene que Pagarle a Rusia los Suministros que Reciba*, DIARIO LAS AMERICAS, Jan. 8, 1994, at 8-A.

156. *Cuba-Russia Tie*, *supra* note 153, at 9.

157. *Russian and Cuban Ministers Satisfied with Military-Economic Cooperation Accords*, BBC Summary of World Broadcasts, Nov. 6, 1992, available in LEXIS, World Library, ALLWLD File [hereinafter *Military-Economic Cooperation Accords*].

158. Douglas Farah, *Improving Trade With Russia Bolsters Cuba's Economic Outlook*, WASH. POST, Dec. 26, 1992, at A25.

although Russia is not to provide new types of weapons.¹⁵⁹ Moreover, diplomats said that the agreement calls for the Russian military to pay rent for use of the Lourdes facility, Russia's largest electronic listening station in the Western Hemisphere during the Cold War.¹⁶⁰ Aleksandr Shokhin, Deputy Premier of the Russian government, described the agreement in tones still resonant of the Cold War climate, noting that although the Lourdes "[i]ntelligence functions will be minimized as far as possible . . . it is clear that our military's interest cannot be confined to relaying telephone conversations."¹⁶¹

Not surprisingly, the United States reacted to this agreement adversely, directly questioning the need for the Russians to maintain the facility and expressing hopes that military personnel be withdrawn immediately.¹⁶² Nevertheless, in 1994, Russia still retains the intelligence facility as well the submarine base, and both constitute sources of income, in rental payments, to Cuba.¹⁶³

These actions and reactions certainly reflect the bipolar world of the past. It appears that as far as the Russia-U.S.-Cuba triangle is concerned, the Cold War is far from over.

C. Radios: Lines of Communication

One last Cold War "icon" that survives with regard to Cuba is Radio and TV Martí, Spanish outlets broadcasting to Cuba in the vein of Radio Free Europe and Radio Liberty.¹⁶⁴ Significantly, President Clinton's plan to trim the U.S. budget deficit includes plans to eliminate both Radio Free Europe and Radio Liberty, two radio stations that were begun during the Cold War with U.S. funds for the purpose of broadcasting local news in twenty-four languages to the Eastern bloc and the former Soviet Union.¹⁶⁵ The budget cuts, however, leave Radio and TV Martí

159. *Cuba-Russia Tie*, *supra* note 153, at 9.

160. *Cuba Says Diplomat's Expulsion Is U.S. Propaganda Ploy*, Reuters, Nov. 11, 1992, available in LEXIS, News Library, CURNWS File [hereinafter *Propaganda Ploy*].

161. *Military-Economic Cooperation Accords*, *supra* note 157.

162. *Propaganda Ploy*, *supra* note 160.

163. See Ariel Remos, *Resulta Obsoleta la Base de Espionaje de Lourdes en Cuba*, DIARIO LAS AMERICAS, Jan. 27, 1994, at 1-A; *Subsidized Trade?*, *supra* note 154, at 2, 9.

164. The Radio Broadcasting to Cuba Act of 1983, 22 U.S.C. § 1465a (1988).

165. See Steven A. Holmes, *A Cold War Icon Comes Under Siege*, N.Y. TIMES, Feb. 21, 1993, § 1, at 13 (recounting history and imminent demise of Radio Free Europe and Radio Liberty). In 1951, Radio Free Europe began broadcasting to Eastern Europe

untouched, reflecting the persisting Cold War mentality.¹⁶⁶

The stated purpose of Radio Martí is to afford Cuban citizens the fundamental right to access to information, such as world events, news, and other activities, that is unavailable to them because of Cuba's official prohibition against the dissemination of "unauthorized information."¹⁶⁷ Radio Martí went on the air from Washington, D.C., in 1985. In fact, when the U.S. Congress was discussing the CDA's purpose to send to "Fidel Castro and his communist dictatorship a strong message" that "the United States stands firmly in support of the Cuban people in their intense desire for freedom," it specifically noted that Radio Martí "has played . . . an indispensable role in the fight for freedom and democracy in Cuba."¹⁶⁸ Indeed, Radio Martí has emphasized the need "to promote the cause of freedom in

with the exception of former Yugoslavia. *Id.* In 1953, Radio Liberty started broadcasting to the former Soviet Republics and Afghanistan. *Id.* Acting to carry out President Clinton's plan to merge the government's international operations, Radio Free Europe announced that it would terminate most of its foreign language transmissions, which were no longer necessary due to the fall of communism. *Id.* Broadcasts to Poland, Hungary, the Czech Republic, Slovakia, and the Baltic States will be ended, although broadcasts in Bulgarian and Romanian will continue. *Radio Free Europe Will Drop 7 Languages*, N.Y. TIMES, June 23, 1993, at A13.

166. Christopher Marquis, *TV/Radio Marti Funded; Review Mandated*, MIAMI HERALD, Oct. 14, 1993, at 18A (reporting U.S. Congressional decision to approve US\$21 million for Radio and TV Martí, but to withhold one-third of funds pending review of viability of broadcasts to Cuba); Christopher Marquis, *Merger Won't Affect U.S. Broadcasts to Cuba*, MIAMI HERALD, June 16, 1993, at 24A (discussing U.S. commitment to continued operation of Radio and TV Martí); *Aprueba Subcomité del Senado \$28 Millones para Radio y TV Martí*, DIARIO LAS AMERICAS, July 1, 1993, at 1A; Christopher Marquis, *Radio y TV Martí sin Cambios a la Vista*, NUEVO HERALD, June 16, 1993, at A1; Mimi Whitefield, *Cuba, U.S. Resume Battle for Airwaves*, MIAMI HERALD, Aug. 7, 1993, at 22A (reporting resumption of TV Martí's broadcast after six-month hiatus and renewed Cuban efforts to interfere with signal). Cubans in exile believe these means of bringing free-world information to Cuba is critical in the effort to oust Castro. See Frank Calzon, *El Potencial Político de TV Martí*, NUEVO HERALD, June 28, 1993, at 9A; *Aumenta Radio Martí Programas Noticiosos*, DIARIO LAS AMERICAS, July 7, 1993, at 10-A. However, given some recent disagreements over Cuban issues, such as the U.S. embargo, there have been escalating tensions within the Cuban community as to what approach these communications should take. See, e.g., Christopher Marquis, *Crecen Tensiones en Radio Martí Ante la Expectativa de Cambios*, NUEVO HERALD, June 22, 1993, at 1A.

167. *Radio Broadcasting to Cuba Part 1: Hearings Before the Senate Comm. on Foreign Relations*, 97th Cong., 2d Sess. 531, 537 (1982).

168. 138 Cong. Rec. E3118, (daily ed. Oct. 9, 1992) (statement of Rep. Burton). In a brief address to the House of Representatives, Mr. Burton of Indiana "share[d] with [his] colleagues an excellent article from the Miami Herald by Tony Navarro . . . about Radio Martí." Antonio Navarro, *Radio Martí: Vital, Revitalized*, MIAMI HERALD, Sept. 23, 1992, at 17A [hereinafter *Radio Martí*]. The article focused on the Cuban government's

Cuba." To achieve that end, it has targeted programming to key sectors of the population, including youth, women, laborers, and, most recently, the military.¹⁶⁹ Ironically, during the recent exodus, the United States increased radio broadcasts to Cuba to advise Cubans not to leave the island.¹⁷⁰

Castro has charged that the Radio Martí transmissions are violative of international law.¹⁷¹ Cuba's sovereignty is violated by invading radio waves and by U.S. attempts to incite internal unrest by disseminating subversive propaganda.¹⁷² On the other hand, backers of Radio Martí cite Article 19 of the Universal Declaration,¹⁷³ which guarantees the freedom of opinion and expression and the right to "seek, receive, and impart information and ideas through any media and regardless of frontier."¹⁷⁴

In any event, the importance of promoting this line of communication, when such lines are deemed unnecessary in the former Soviet sphere, shows that the Cold War mentality still exists with respect to Cuba. Radio Martí is a weapon to pierce the neighboring wall of communist repression, as Radio Free Europe and Radio Liberty were used to pierce the Iron Curtain.¹⁷⁵ In sum, as shown above, rhetoric, regulations, and radios show that Cuba is stuck in a Cold War time warp. The following section will detail the effect of this enduring Cold War on the island.

move to restrict communications between the United States and Cuba in order to silence voices of dissent and to block the free flow of information. *Id.*

169. *Radio Martí*, *supra* note 168, at 17A.

170. Paul Anderson et al., *A New Punch*, *MIAMI HERALD*, Aug. 21, 1994, at 1A (reporting President Clinton's announcement that United States would increase radio broadcasts to Cuba to advise Cubans not to risk crossing Straits of Florida).

171. *See, e.g.*, International Telecommunication Convention, Oct. 25, 1973, 28 U.S.T. 2495, 1209 U.N.T.S. 32, containing Agreement between the United Nations and the International Telecommunication Union, Apr. 26, 1949, 28 U.S.T. 2646, 63 Stat. 1441. These conventions were updated by the International Telecommunication Convention, Nov. 6, 1982, — U.S.T. —. *See also* International Telecommunication Convention, Dec. 21, 1959, 12 U.S.T. 1761, TIAS 4892; International Radio Regulations Convention, Dec. 21, 1959, 12 U.S.T. 2377, TIAS 4893.

172. *Radio Martí*, *supra* note 168, at 17A; 1993 COUNTRY REPORTS, *supra* note 47, at 412. A recent article reports that Castro blamed the radio transmissions for inspiring the recent rash of attempted departures from the island. *See Protesters Battle Police in Havana; Castro Warns U.S.*, *N.Y. TIMES*, Aug. 6, 1994, at 2 [hereinafter *Castro Warns U.S.*].

173. *Universal Declaration*, *supra* note 12, art. 19, at 74-75.

174. *Id.*

175. *See* Zbigniew Brzezinski, *The Cold War And Its Aftermath*, 71 *FOREIGN AFF.* 31, 31 (1992).

III. CUBA: THE ECONOMIC IMPACT OF THE END OF THE COLD WAR

A. General Overview of the Post-Cold War Global Economic Climate

Cuba, though impeded by the continuing attitudes and rhetoric of the Cold War, is still affected by global events. The milestones that have led to a proclamation of the termination of the Cold War have had, both directly and indirectly, a profound effect on Cuba economically, socially, and politically.

After his election in 1980, U.S. President Reagan described the Soviet Union as "an evil empire," which escalated the Cold War tension¹⁷⁶ and supported his US\$2.2 trillion military spending plans.¹⁷⁷ At the other end of the spectrum, Reagan's walk through the Kremlin grounds and around Red Square where, in front of Lenin's tomb, he put his arm around Soviet President Mikhail Gorbachev, signaled the beginning of the end of the Cold War.¹⁷⁸

In December of 1991, U.S. President Bush stated that "for over forty years, the United States led the West in the struggle against communism and the threat it posed to our more precious values. . . . That confrontation is over."¹⁷⁹ One month later, his language was bolder. He claimed that the United States had "won the Cold War."¹⁸⁰ Ten months after that, however, President Bush signed the Torricelli Law, continuing the war that he allegedly had won.

This so-called proclamation of the end of the Cold War signalled the shift from ideology and geopolitics driving economics (democracy versus communism) to economics driving policy (capitalism versus communism). Because the events of 1989 that signalled the end to the Cold War were unanticipated, the global blueprint for international relations in the wake of change was far from ready. In fact, many quickly expressed fears of the impact of these global changes on the Third World. As one writer noted, the "Cold War provided a security blanket which sup-

176. Meisler, *supra* note 104, at A6.

177. T.N. Naylor, *The Beginning of Cold War End Game; Reagan, Gorbachev in Red Square Signal Step Toward Coexistence*, *WORLD PAPER*, Apr. 1989, at 7.

178. *Id.*; Meisler, *supra* note 104, at A6.

179. MICHAEL R. BESCHLOSS & STROBE TALBOTT, *AT THE HIGHEST LEVELS* 464 (1993).

180. *Id.*

pressed potential conflicts and hostility on issues other than security, including the suppression of economic issues."¹⁸¹

Some labelled the fear about the effect of the end of the Cold War on the Third World the "neglect effect," the concern that limited amounts of western capital and attention would go to the newly open and attractive countries of Central and Eastern Europe and the Third World states would be ignored.¹⁸² This "neglect effect" would then exacerbate the economic hardship that Third World states suffered in the 80's, such as the mounting foreign debt.¹⁸³ With the end of the Cold War came the end of the false and artificial stability it created, as the *raison d'être* for the attention the superpowers paid to poor countries no longer existed.

This shift is certain to take a heavy toll on Third World countries that, without their Cold War era geopolitical value, might find themselves losing economic assistance. This is quite realistic, given the industrial world's preoccupation with the domestic financial crises and political instability in the former east-

181. C. Fred Bergsten, *The World Economy After the Cold War*, 34 CALIF. MGMT. REV. 51, 54 (1992).

182. Albert O. Hirschman, *Good News Is Not Bad News*, N.Y. REVIEW OF BOOKS, Oct. 11, 1990, at 20-21. Hirschman believes, however, that this view is myopic and is based upon the zero-sum model of the social world, which reasons that anything good must have a bad equivalent. He contends that the "neglect effect" might be like that of the imperial English power with respect to the American colonies, which contributed positively to the colonies' political, social, and economic development. He states:

During the forty-five years of the cold war, the United States has been intensely, almost obsessively, concerned that social and political policies and experiments in Latin America might cause this or that country to 'fall' into the expansionist Soviet orbit. The consequences of this fear were displayed in a variety of places With the end of the cold war, with the disintegration of the Soviet "bloc;" and the failure of whatever appeal it had, the North American propensity to intervene should be considerably reduced and Latin America should enjoy correspondingly more room for maneuver for social experiments.

Id. He further believes that the evaporation of the threat of a socialist alternative should permit political development as politics are no longer so polarized. *Id.*

183. *Id.* at 20. For example, it is well known that in the 1980's Brazil paid to its creditors an amount greater than the total principle of its external debt, yet at the end of that decade, Brazil owed its creditors almost twice what it originally owed. Furthermore, in the 1980's the Brazilian economy was marked by serious recessions. This is an example of how a state, by allocating more money to servicing its external debt, has less money to use for development.

ern bloc and the former Soviet Union.¹⁸⁴ The recourse for the smaller nations, then, is to appeal to companies with their cheap labor, consumer items, and transactions financed by high interest loans. However, as the price of their commodities have plummeted, these measures are likely to further the gap between the industrial and the developing states.¹⁸⁵ In addition, cheap labor is unlikely to help either the Third World states or their citizens to improve their standards of living.

Thus, the end result might well be the continuation of the old world order rather than the creation of a new world order. The Cold War terror will shift from nuclear holocaust to starvation, as free market economies' fiscal interests trump both first and second generation human rights concerns. The independence and rights of the smaller states will still be restricted by their larger neighbors in the latter's own interests. Rather than military force, the larger states will use economic means to further their interests.¹⁸⁶

B. *Cuba's Economic Crisis*

Cuba's economy is in shambles.¹⁸⁷ A recent article reviewing the Cuban economy reported that the current crisis could

184. W. Michael Reisman, *International Law After the Cold War*, 84 AM. J. INT. L. 859, 861 (1990).

185. See Hirschman, *supra* note 182, at 20.

186. See Louise Lief et al., *A Shrinking American Role in the World*, U.S. NEWS & WORLD REPORT, Nov. 13, 1989, at 24.

187. Antonio Jorge, *The Political Economy of the Cuban Revolution: Why the System Failed, Why Piecemeal Reform Will Not Succeed*, in CHANGING WORLD, *supra* note 18, at 69, 79. Professor Jorge, a renowned Cuban economist, has noted that "the Cuban economy is even more structurally fragile and unstable than that of the East European socialist countries. Monoculture, and a high degree of foreign trade orientation and dependence and, therefore, a weak production matrix, constitute its distinguishing traits." *Id.* at 79. He further notes that the "excessively open and dependent nature of the Cuban economy, its inherent instability and proneness to frequent external shocks and the absence of sufficient integration in its domestic productive structure preclude the effective application of the customary planning techniques of nonmarket economies." *Id.* at 80. Thus, the monoculture, the need for structural change and diversification, the planning needs for trading with the CMEA and the Soviet Union, and the reliance on subsidies and aid forced centralized planning. *Id.* at 81. This planning created the precariousness of the Cuban economy. Professor Jorge argues that the "Cuban socioeconomic model of the 1970s," what he calls a "de-marketization [model] . . . to denote the replacement of the market system by central planning," does not promote economic rationality or efficiency. Jorge, *Cuba's Economic Model*, *supra* note 18.

result in a total breakdown and general chaos.¹⁸⁸ Sadly, published reports view the economic future of the island to be "bleak," with change unlikely before the next century, regardless of Castro's attempt to reform.¹⁸⁹ In this context, the most recent restrictions, instituted in response to the threat of a massive exodus, will only aggravate the fiscal crisis of the island and its citizens.¹⁹⁰

During the Cold War era, Cuba's trade with the Soviet Union steadily grew, representing 75% of its trade in 1990, with almost 90% of its trade being with socialist countries.¹⁹¹ Soviet economic aid was estimated between US\$3 billion per year (Soviet estimates) and US\$6 billion per year (U.S. estimates); military aid was placed approximately at US\$1.2 billion annually.¹⁹² In fact, estimates of Soviet aid ranged from 16% to 29% of Cuba's GNP¹⁹³ to 26% to 37% of GNP.¹⁹⁴ These patterns have been dislocated with the changes in the Soviet Union and Eastern Europe.¹⁹⁵ It is estimated that by 1992, Cuba's trade with the former communist bloc had shrunk to 7% of its former value.¹⁹⁶ Foreign analysts approximate that with these post-Cold War

188. Alberto Miguel, *Informe Sobre la Economía Cubana*, DIARIO LAS AMERICAS, Jan. 12, 1994, at 1A (statement of Mr. Carlos Solchaga, Spain's former Minister of the Economy). For a broad report on Cuba's economy in crisis, see generally *id.*

189. See Mimi Whitefield, *Study: Cuba's Future Grim, Regardless of Leadership*, MIAMI HERALD, Nov. 16, 1993, at 1A (reporting conclusion of U.S. State Department-commissioned study that Cuba's immediate economic future is bleak, whether or not Castro remains in power).

190. *Mood Grows Gloomier With Cutoff of Dollars*, MIAMI HERALD, Sept. 7, 1994, at 15A.

191. See RESEARCH INSTITUTE FOR CUBAN STUDIES, POST-CASTRO CUBA AND ITS POTENTIAL IMPACT ON THE UNITED STATES 15 (1991) [hereinafter POST-CASTRO CUBA]. Different sources provide slightly varying figures. One source states that in 1988 trade with socialist states accounted for 87% of Cuban trade, 69% with the USSR and 83% with COMECON, which Cuba had joined in 1972. *Id.*

192. Susan K. Purcell, *Cuba's Cloudy Future*, 69 FOREIGN AFF. 113, 114 (1990). Further, in 1979, Cuba was receiving Soviet subsidies totalling US\$7 million daily. ALBERTO RECARTE, CUBA: ECONOMÍA Y PODER 153 (1980); MITO, *supra* note 1, at 123 n.21 (citing RECARTE, *supra*). By 1988, Soviet subsidies were estimated at US\$16.5 million daily. *Id.* The subsidies came in many forms, ranging from personnel assistance, MITO, *supra*, at 123, to above market prices for the purchases of sugar. See 1993 COUNTRY REPORTS, *supra* note 47, at 409 (noting US\$4 to US\$5 billion in annual Soviet aid).

193. Stryker McGuire, *The Revolution at 30*, NEWSWEEK, Jan. 9, 1989, at 37.

194. Castañeda, *supra* note 80, at 265.

195. POST-CASTRO CUBA, *supra* note 191, at 15.

196. Tim Golden, *Cuba's Economy, Cast Adrift, Grasps At Capitalist Solutions*, N.Y. TIMES, Jan. 12, 1993, at A1, A6 [hereinafter *Cast Adrift*].

changes the economy had shrunk by as much as 40% between 1989 and 1992,¹⁹⁷ and over 50% in the last two years.¹⁹⁸

Between 1990 and 1992, this new and diminished economic relationship with the former Soviet bloc resulted in Cuba's imports falling from US\$8.1 billion in 1989 to US\$4 billion in 1991, to US\$2.2 billion¹⁹⁹ in 1992, to a projected US\$1.7 billion in 1993.²⁰⁰ Oil imports plummeted from 13 million tons in 1989 to approximately 5 million tons in 1992,²⁰¹ mostly due to the collapse of and consequent fall in trade with the Soviet Union.²⁰² In 1993 it received still less oil: 2.3 million tons. This amount will increase slightly in 1994, to 2.5 million tons, based on the new 1994 Russia-Cuba trade protocol.²⁰³

This diminished Soviet oil supply has seriously hurt Cuba by cutting into Cuba's access to the hard currencies obtained from market-price resale of the excess supply of subsidized Soviet oil.²⁰⁴ Cuba had used the hard currencies so obtained to trade

197. *Fact Sheet: Cuba*, *supra* note 83, at 105; *Cast Adrift*, *supra* note 196, at A6; *Cuba Hearings*, *supra* note 135 (Statement of Brian Latell, National Intelligence Officer for Latin America, at 1).

198. *Cuba Hearings*, *supra* note 135 (statement of Robert S. Gelbard, Deputy Assistant Secretary of State for Inter-American Affairs, at 1); *id.* (statement of Brian Latell, National Intelligence Officer for Latin America, at 1).

199. *Cuba Hearings*, *supra* note 135 (testimony of José S. Sorzano, U.S. Deputy Permanent Representative to the United Nations, at 1). The estimates are that imports declined by approximately 75% between 1989 and 1992 and are projected to decline by another 20% to 25% in 1993. *Cuba Hearings*, *supra* (statement of Brian Latell, National Intelligence Officer for Latin America, at 2).

200. *Cuba Hearings*, *supra* note 135 (Sorzano statement, at 1).

201. *See Fact Sheet: Cuba*, *supra* note 83, at 106 ("Cuban oil imports from the former Soviet Union of an estimated 13 million tons in 1989 have fallen to about 5 million tons in 1992 from all sources.").

202. Mimi Whitefield, *Blackouts Increase Misery for Cubans*, *MIAMI HERALD*, Aug. 11, 1993, at 1A, 6A (noting that before collapse of Soviet Union, Cuba was importing over 13 million tons of Soviet oil annually and by 1992 it received less than half that amount, about six million tons).

203. *Russia Trade Accord*, *CUBANEWS*, Feb. 1994, at 1; Michael Lasaga, *The Benefits of Russian Trade*, *CUBANEWS*, Feb. 1994, at 2; *Cuba-Russia Tie*, *supra* note 153, at 9. Furthermore, in 1994 the oil shortage might be alleviated pursuant to an agreement with Columbia for 61,000 tons of oil per month beginning in June or July. *Oil Supply Deal*, *CUBANEWS*, Mar. 1994, at 1; *Colombian Oil Sales Agreement*, *CUBANEWS*, Mar. 1994, at 3.

204. Jorge F. Pérez-López, *Cuba's Transition To Market-Based Energy Crisis*, in *CUBA IN TRANSITION*, *supra* note 80, at 201, 232 [hereinafter Pérez-López, *Cuba's Transition*]; *see* Jorge F. Pérez-López, *Cuba: An Oil Exporter*, in *CUBAN ECONOMY*, *supra* note 18, at 85 (noting that, based on Cuban National Bank figures, for 1983-1985 period "reexports of oil and oil products were Cuba's most significant hard currency earners . . . accounting for 40 percent of such earnings . . . [while] sugar exports contributed 21 percent to

in international markets.²⁰⁵ With the decreased Soviet oil supply, however, proceeds from surplus oil sales declined from US\$621 million in 1985 to US\$189 million in 1988,²⁰⁶ thus virtually paralyzing Cuba's ability to engage in international trade.

The result of these events was that in 1993, the Caribbean island found itself trying to function on 70% less resources than it had in 1989.²⁰⁷ With the end of the bipolar world order, Cuba had lost its strategic importance and, consequently, generous Soviet and other socialist-bloc subsidies, as it was no longer either an ideological colleague or geographic trump card.²⁰⁸ Cuba's great dependence on its former allies, however, affected its ability to manage the post-Cold War shift in economic relations.²⁰⁹ Its integration with the Council of Mutual Economic Cooperation ("COMECON," "CMEA," or "CAME") economies did not allow for economic adjustment following these former socialist

hard currency export earnings [and] tobacco, fish and shellfish, nickel, manufactured goods, and all other exports taken together contributed about 39 percent").

205. Pérez-López, *Cuba's Transition*, *supra* note 204, at 201, 232; *Cast Adrift*, *supra* note 196, at A1, A6.

206. Purcell, *supra* note 192, at 121.

207. See *Cuba Hearings*, *supra* note 135 (Maingot statement, at 3) ("The nature of the challenge in 1993 is simply monumental: making the socialist system work with 70% less [sic] resources than they [sic] had in 1989.").

208. *Economic Relations*, *supra* note 83, at 73-74. After the revolution, Cuba shifted from having the U.S. as its primary trading partner to having the Soviet Union and to the CMEA socialist states as its primary trading partners. One economist notes that

[t]he socialist share in Cuban total trade has increased from about two-thirds in the 1959-1968 interval to over four-fifths in the most recent years (1981-1984). . . . The especially sharp increment in socialist imports (to 85 percent now from 68 percent in 1969-1980) is a reflection of Cuba's actual weakened self-sustenance, propped up by CAME's privileged treatment. In fact, within CAME, it is the Soviet Union which has accounted for the bulk (about 80 percent) of Cuba's total trade over the socialist years. . . . The Soviet share in Cuba total trade has increased steadily from about 50 percent in 1970 to 60 percent in 1980 and then to 70 percent in 1983-84. Despite concerted efforts, the share of Cuban total trade with non-socialist countries has remained rather constant since 1959. Trade with European market economies has absorbed on average about 15 percent of Cuban commercial exchange, while African and Asian markets have accounted for less than 10 percent of total trade (it was only 6.8 percent in 1983).

Id.; see *Fact Sheet: Cuba*, *supra* note 83, at 106 (reporting that during 1980's more than 80% of Cuba's trade was with Soviet bloc, with Soviet Union's share being approximately 70%, and Soviet Union alone importing 80% of Cuban sugar and 40% of Cuban citrus).

209. See Jorge, *Cuba's Economic Model*, *supra* note 18, at 6.

states' switch to market economies.²¹⁰

Aside from dramatic changes in the global order, however, Cuba had other serious problems. In 1986, even before the so-called end of the Cold War, but driven by the world-wide recession, Cuba was going in the opposite direction of *perestroika*. It called for "rectification" of errors (the errors being some limited experiments with free market concepts that Castro had allowed in the late 1970s and early 1980s) and a reinstatement of a Marxist economy.²¹¹ Rectification has been described as the "closing of what little space existed for Cubans to express their entrepreneurial tendencies."²¹² For example, farmers' markets, where home-grown produce was sold at uncontrolled prices, were terminated.²¹³

Rectification also called for Cubans to make more sacrifices for the common good. The additional sacrifices included going to rural areas to work on agricultural projects (which are suffering from fuel shortages) or participating in construction microbrigades for no pay, but simply the hope of governmental recognition and getting bonus points that might buy them a "reward," such as a vacation.²¹⁴ With the end of the Cold War, Cuba's situ-

210. *See id.* Professor Jorge notes that Cuba's dependency on CMEA countries for raw materials, as well as industrial goods and capital equipment, left it no choice but to plan in tandem with these economies. *Id.*

211. *See, e.g.,* Max Azicri, *The Cuban Rectification: Safeguarding the Revolution While Building the Future*, in *STRUGGLE*, *supra* note 22, at 3, 8-12; *see also* Carollee Bengelsdorf, *The Matter of Democracy in Cuba: Snapshots of Free Moments*, in *STRUGGLE*, *supra* note 22, at 35, 45-51 (noting that rectification campaign, introduced at approximately same time as *glasnost* and *perestroika*, is not clearly defined and is seen by some as readjustments within government's management of planning system and by some as political and economic measures required by decrease of foreign exchange earnings); Mirro, *supra* note 1, at 241; *Fact Sheet: Cuba*, *supra* note 83, at 106-07 (noting rectification policy "emphasizes centralized direction over market forces and moral and ideological as opposed to material, incentives to spur productivity [by] call[ing] upon Cubans to make greater sacrifices to further the collective good").

212. Jeane Kirkpatrick, Keynote Address Before the "Cuba in a Changing World" Conference 3 (Feb. 22-24, 1990) in *CHANGING WORLD*, *supra* note 18, at 1, 3 [hereinafter Kirkpatrick Address].

213. Mirro, *supra* note 1, at 304-05; *Fact Sheet: Cuba*, *supra* note 83, at 107. Castro, faced with severe food shortages, has again allowed for free farmers' markets, where farmers are allowed to sell any surplus they have, at whatever price obtainable, after meeting the state's quota. Tim Golden, *Cubans Get a Taste of Capitalism*, *N.Y. TIMES*, Sept. 26, 1994, at 8A.

214. Peter T. White, *Cuba At The Crossroads*, *NAT'L GEOGRAPHIC*, Aug. 1991, at 93, 105 [hereinafter *Crossroads*]. In 1991, Castro called for 120 hours of voluntary work from everyone. *Id.*; *see Fact Sheet: Cuba*, *supra* note 83, at 107 (noting Castro govern-

ation became more grave.

Further aggravating Cuba's post-Cold War economic woes is the fact that Cuba's tenuous relations with its former Soviet-bloc partners will be on market economy terms.²¹⁵ The Soviets no longer buy Cuban sugar at manifold the world rate,²¹⁶ while selling to Cuba commodities, such as oil and gas, at artificially low prices.²¹⁷

In the meantime, Cuba's debt situation is critical. Its indebtedness to the former Soviet Union is placed at approximately US\$25 billion.²¹⁸ Aside from the U.S. embargo, Cuba's Western trade is limited by its inability to service its US\$6.8 billion debt to Western governments since 1986. Thus Cuba is unable to get credit to purchase goods in Western markets.²¹⁹

ment's encouragement of voluntary labor); Bengelsdorf, *supra* note 211, at 49 (austerity measures are reinforced by Castro's "evocation of a renewed emphasis on moral incentives."); *Labor in Cuba*, *supra* note 44, at 52-53 (noting failure of moral incentives which date to the 1965-70 period when such were tested under Che Guevara); *see also* 1993 COUNTRY REPORTS, *supra* note 47, at 416 (explaining that the "ILO's Committee of Experts criticized Cuba for violating ILO Convention 29 (Forced Labor) based on allegations in report by International Confederation of Free Trade Unions (ICFTU) that 'voluntary labor is, in practice, forced labor under the terms of the Convention, since refusal to do such labor results in the loss of certain rights, benefits, and privileges' ")

215. *See supra* notes 145, 147, 154-55 and accompanying text (discussing new Cuba-Russia agreements on market terms).

216. Purcell, *supra* note 192, at 114 (noting that Soviets paid three to five times market price for Cuban sugar).

217. Pérez-López, *Cuba's Transition*, *supra* note 204, at 220, 221. When Cuba started buying Soviet oil, its price was below market by about 33%. This relationship with the Soviets protected Cuba (as well as other socialist countries) from the four-fold increase in world oil prices during the 1973 embargo on oil sales by OPEC. A 1975 Soviet pricing policy adjustment, aimed at closing the gap between world price and its export price to socialist countries, was tailored so that Cuba continued to enjoy below world-market prices until the sharp drop in oil prices in 1986. *Id.* at 226-27. This drop also affected Cuba's convertible currency earning from the resale of Soviet oil. *Id.* at 232; *see Economic Relations*, *supra* note 83, at 75-76 (stating that "substantial socialist, essentially Soviet, economic assistance has flowed to Cuba . . . by financing bilateral trade deficits, subsidizing sugar and nickel export prices and oil import prices, providing military grants, extending credits for economic development, and supplying convertible currency to finance trade with capitalist countries . . . with Soviet cumulative economic aid to the island probably amount[ing] to over 25 billion pesos during the period 1960-1985").

218. Purcell, *supra* note 192, at 116-17.

219. *Fact Sheet: Cuba*, *supra* note 83, at 106; *see* Jose Luis Rodriguez, *The Cuban Economy: A Current Assessment*, in STRUGGLE, *supra* note 22, at 85-99 (noting that Cuban economy has shrunk based on fall in oil prices, lack of currency from re-exporting of Soviet oil, devaluation of dollar, and adverse weather conditions, all of which resulted in rescheduling of Cuba's foreign debt).

Although limited to 15% of its total trade, trade with Western markets is of growing importance to Cuba, which must find raw materials and equipment that are not available elsewhere.²²⁰

Contemporaneous with the global changes, Cuba's sugar and nickel industries have suffered from drops in market prices due to the global recession. Sugar price reductions alone cost Cuba US\$2.5 billion in 1992.²²¹ The sugar crop had two additional problems, which exacerbated the economic situation. First, the sugar crop has become dependent on the use of fertilizers.²²² In 1989 Cuba imported 1.3 million tons of fertilizers and bought US\$80 million worth of herbicides but by 1992 those figures were down to 300,000 tons and US\$30 million, respectively.²²³ Second, Cuba's sugar milling equipment is fuel-driven, and consequently has been severely affected by the oil shortage.²²⁴ These factors resulted in a 1992-93 sugar harvest of a mere 4.2 million tons, the smallest in fifty years.²²⁵ The projections are that the 1994 harvest will be no larger than that.²²⁶ It is mainly due to this decline in sugar production that Cuba's export revenues were projected to fall to US\$1.6 billion in 1993.²²⁷

These developments required that in 1990 the "rectification" belt-tightening be increased. Castro declared "a special period in time of peace." with the economy in crisis, the state would operate as if in time of war.²²⁸ Goods, including food,

220. POST-CASTRO CUBA, *supra* note 191, at 15-16. Spain is first among western states trading with Cuba. *Id.* at 16.

221. John Paul Rathbone, Cuba: Current Economic Situations And Short Term Prospects, Abstract of Main Presentation of 1992 Annual Meeting of the Association for the Study of the Cuban Economy (1992), *reprinted in* Newsletter of the Association for the Study of the Cuban Economy, Dec. 19, 1992.

222. *Cuba Hearings*, *supra* note 135 (Maingot statement, at 7).

223. *Id.*

224. *Id.*

225. *Id.* This dramatic decline is due, in part, to a major storm that hurt the crop and forced Cuba to argue *force majeure* in suspending sales on some contracts with clients that would have given it some necessary hard currency. *Id.*; see *Cuba Hearings*, *supra* note 135 (Latell statement, at 1) (noting sugar harvest is smallest in thirty years); Howard W. French, *Harvest of Headaches: Cuba's Sugar Crop Woes*, N.Y. TIMES, Feb. 20, 1994, at 7 (noting that Cuba's 1993 harvest was only 4.28 million metric tons, worst in 30 years).

226. *Sugar: Harvest May Be Worst Yet*, CUBANEWS, June 1994, at 5.

227. *Cuba Hearings*, *supra* note 135 (Latell statement, at 1).

228. See *Fact Sheet: Cuba*, *supra* note 83, at 107 (noting that "total Cuban imports in 1992 are expected to be less than 60% of the 1989 total [and] economic production may have decreased by more than 40% from 1989 to 1992"); 1993 COUNTRY REPORTS, *supra*

consumer goods and energy, most of which came from the Soviet Union and other eastern European countries,²²⁹ are now greedily rationed.²³⁰

Moreover, the rest of Cuba's industrial sector has suffered from a lack of spare parts, components and, in some cases, raw materials.²³¹ Its oil refineries have been operating below capacity and the lack of fuel has brought public transport to a virtual standstill.²³² In August 1990, with the declaration of the "special period," the Cuban government imposed mandatory energy conservation that included reducing daily gasoline and fuel oil deliveries to the state sector by 50%, and to others by 30%; cutting back hours of operation of cement and construction material plants; shutting down of a nickel production plant; halting the start of a recently built oil refinery; cutting household electric consumption by 10%; and implementing a nationwide project to replace agricultural tractors and combines with draft animals.²³³ The second half of the year saw further austerity measures: bicycles imported from China replaced cars and public transport in urban areas, the horse and buggy replaced buses in urban areas, and the ministry of light and industry cut back operation of 321 plants from 40 to 24 hours a week.²³⁴

In 1991, the austerity measures were called zero option: no Soviet subsidies at all.²³⁵ This zero option forced "the populace to accept economic retreat and a variety of hardships in the name of communism."²³⁶ Such conditions effectively translate to

note 47, at 401 (stating that austerity measures called for "draconian efforts toward self-sufficiency").

229. ANDRES OPPENHEIMER, *CASTRO'S FINAL HOUR* 227 (1992). It is estimated that 40% of Cuba's food came from the Soviet bloc, including 63% of its powdered milk, with the same dependency being evidenced regarding raw materials, fertilizers, industrial equipment, and spare parts. *Id.* Consumer goods were mostly from the Soviet Union. *Id.*

230. Castañeda, *supra* note 83, at 263. In 1989, the ration quotas of meat, beans, rice, coffee, sugar, and milk were less than the quotas in 1962 when rationing was instituted. *Id.*; see *Fact Sheet: Cuba*, *supra* note 83, at 107 (noting that Castro announced rationing of certain goods in "special period in time of peace" in which economy would function as if in state of war).

231. *Fact Sheet: Cuba*, *supra* note 83, at 107; Castañeda, *supra* note 80, at 263.

232. *Fact Sheet: Cuba*, *supra* note 83, at 107; Castañeda, *supra* note 80, at 263.

233. Pérez-López, *Cuba's Transition*, *supra* note 204, at 238.

234. *Id.* at 238-39; *Fact sheet: Cuba*, *supra* note 83, at 106.

235. Castañeda, *supra* note 80, at 264.

236. CONSCIENCE, *supra* note 44, at 7. Professor Horowitz posits that this zero op-

a return to pre-industrial society that will further isolate Cuba from the rest of the world.²³⁷

On July 26, 1993, Castro marked the 40th anniversary of the revolution by telling Cubans that the economic crisis required continued belt-tightening.²³⁸ In his televised speech, he detailed that sugar earnings would be US\$450 million below what was expected, in part because energy shortages had reduced the capacity to refine sugar.²³⁹ Further, Castro revealed a dramatic decline in imports.²⁴⁰

With the global changes, Cuba can no longer depend on its former trading partners. Cuba has few internal resources with no means of production, a lack of supplies, no hard currency to pay its debts, and cannot rely on international actors to solve its shortage problems. In an attempt to deal with this severe crisis, Castro announced some changes, including permitting (indeed, encouraging) visits by Cuban exiles, allowing Cubans freedom to travel overseas, making Cuba more open to foreign investment, and encouraging tourism.²⁴¹ More recently, travel restrictions

tion is a "mechanism for Castro's survival [by] reduc[ing] Cuba's threat abroad and increas[ing] repression at home." *Id.*

237. Douglas W. Payne, *La Problemática de las Democracias del Caribe*, DIARIO LAS AMERICAS, June 11, 1993, at 4-A.

238. *Castro: It's Real Bad*, N.Y. NEWSDAY, July 27, 1993, at 16.

239. *Id.*; Andres Oppenheimer & Mimi Whitefield, *Castro Bids to Shore Up Revolution*, MIAMI HERALD, July 27, 1993, at 1A, 16A; José de Córdoba, *Survival Tactics*, WALL ST. J., July 19, 1993 at A1, A12.

240. *Castro: It's Real Bad*, *supra* note 238, at 16. Castro estimated imports for 1993 would be about US\$1.7 billion, down from US\$2.2 billion in 1992, and far below the US\$8.1 billion figure for 1989. *Id.*; see *supra* notes 223, 228-34 (discussing reduction in imports and impact on Cuban economy).

241. *Castro: It's Real Bad*, *supra* note 238, at 16; Jane Bussey, *Castro Opens Cuba's Door to Capitalism a Crack*, MIAMI HERALD, Aug. 1, 1993, at 1K, 3K (discussing Castro's tolerance of limited moves toward free-market economy); Howard W. French, *Even Castro Sees the Possibilities of Enterprise in Cuba*, N.Y. TIMES, Aug. 8, 1993, § 4, at 4 (discussing Castro's increasing encouragement of economic free enterprise); Larry Luxner, *Castro Seeks Foreign Investors to Make Havana Club Rum*, MIAMI HERALD, Aug. 4, 1993, at 6A (reporting Castro's efforts to revive sales of Havana Club rum in order to earn hard currency). Decree-Law No. 50 (February 15, 1982) is Cuba's foreign investment legislation. Cuban citizens do not enjoy the same rights as foreign investors. However, foreign investors are subject to significant regulation. *Foreign Investment Legislation in Cuba*, *supra* note 79, at 2-3. Significantly, even Cuban exiles, formerly derided by Castro as worms, could invest in Cuba, although the U.S. embargo would prohibit nationalized Cubans from making such investments. Ana Santiago, *Cuba Abre sus Puertas a Inversión de Exilados*, NUEVO HERALD, July 16, 1993, at 1A, 6A. It is noteworthy, however, that investments in Cuba, which are allowed up to a 49% ownership interest, are considered risky because the government's lack of liquidity may prevent it from keeping its end of

were further lifted, even allowing Cuban exiles to visit the island and stay with family.²⁴² Indeed, it appears that the implemented changes may have the desired result, and that 1994 might show some increase in Western trade and investment in Cuba²⁴³ that could help its economic situation.²⁴⁴ However, the recent exodus and the related revocation of cash remittances and travel authorizations will have an adverse impact.²⁴⁵ Additional assistance may come in the form of foreign aid. For example, Canada recently announced that, after 16 years, it was resuming aid to Cuba.²⁴⁶ Nevertheless, that the situation presently remains at crisis levels is reflected in Castro's recent concession that when his revolution triumphed Cuba owed nothing; but today its debt

the bargain. In addition, there is a lack of clear title in many properties that were nationalized, and the investor only receives a right to use property for a certain period or, in some cases, the usufruct. Ariel Remos, *Peligro Para Invertir en Cuba*, DIARIO LAS AMERICAS, July 3, 1993, at 1-A, 11-A.

242. Mimi Whitefield, *New Rules Are Expected to Boost Cuba Travel*, MIAMI HERALD, Apr. 27, 1994, at 14A. The new rules for travel include the creation of a special department, the Foreign Ministry, to deal with exiles; the elimination of a five-year waiting period for Cubans who have left the island legally and wish to visit; allowing a limited number of Cuban students who live abroad to study certain courses at Cuban universities; elimination of the requirement that exiles visiting family buy a hotel package; starting a government publication for informing Cubans of developments and laws that affect them; and permitting Cubans living abroad to invest in Cuba on the same terms as foreigners. *Id.* The exile community has had various reactions to these changes. See Frances Robles, *Exiles Lack Enthusiasm for Cuba's New Policy*, MIAMI HERALD, Apr. 25, 1994, at 1B.

243. *More Foreign Offices in Cuba*, CUBA REP., Feb. 1994, at 1. There were 291 Foreign Registered offices in Cuba in 1993. *Id.*; see *Cuba Report*, U.S. NEWS & WORLD REP., Oct. 1993, at 8 (reporting that number of foreign firms in Cuba has tripled in four years).

244. See *Cuban Bike Exports*, CUBANEWS, June 1994, at 4 (describing Jamaica's importing Cuban-made bicycles); *Trade & Commerce*, CUBANEWS, Mar. 1994, at 3 (describing airport expansion for tourist access; German hotel chain; Jamaica-Cuba accord); *Trade & Commerce*, CUBANEWS, Jan. 1994, at 3 (describing British investments); *Trade and Commerce*, CUBANEWS, Sept. 1993, at 3, 4 (describing agreements with Brazil, Spain, Chile, Canada, and France; discussion of Law-Decree No. 50, which permits foreign investment). For a discussion regarding recent foreign investments in Cuba, see Pablo Alfonso, *Banco Holandés Abrirá Sucursal en La Habana*, NUEVO HERALD, Apr. 13, 1994, at 1A; Susan Benesch, *Colombian Envoy: Oil Deal With Cuba is Simply Business*, MIAMI HERALD, Feb. 28, 1994, at 4-A; EFE, *Impulsarán el Comercio con Cuba importantes Empresas de Rusia*, DIARIO LAS AMERICAS, Jan. 30, 1994, at 1-A.

245. See *supra* note 138 and accompanying text (discussing Treasury Regulations).

246. *After 16 Years, Canada Resuming Aid to Cuba*, REC. (BERGEN, N.J.), June 21, 1994. Interestingly, the United States is down-playing this decision, although it runs counter to the U.S. efforts to maintain Cuba's isolation. *U.S. Quiet on Canada's Decision to Aid Cuba*, REC. (BERGEN, N.J.), June 22, 1994, at A-17.

is rising quickly, and at present is approximately US\$300 billion.²⁴⁷

In his 40th anniversary speech, Castro also announced the "dollarization" of the economy, decriminalizing the possession of foreign currency.²⁴⁸ Significantly, these measures and their implementation, like the easing of travel restrictions, have not been wholly embraced by the exile community. Indeed, some changes have caused deep divisions among those in the Cuban-American community who, on the one hand, want to help family and friends and, on the other hand, do not want to assist what is viewed as an ailing "evil" government, and who see this as its time to die.²⁴⁹

247. *Admite Castro que Cuba No Debía Nada en 1959 y que Ahora Debe \$300 Mil Millones*, DIARIO LAS AMERICAS, Feb. 1, 1994, at 1-A (noting also that Castro blamed debt situation on decline in value of export products due to world order and priorities imposed by imperialism).

248. Manuel Lasaga, *Dollarization: Scrambling for Foreign Exchange*, CUBANEWS, Sept. 1993, at 2. In his July 26, 1993 speech, Castro announced the dollarization of the economy and later, on August 14, formalized the announcement by publishing Law 140 in *Granma*, the official Communist Party newspaper, revoking the two clauses in the penal code that prohibited Cubans from possessing hard currency. *See id.* (noting change in law and explaining that under new policy Cubans may now hold and spend German marks, French francs, Spanish pesetas, British pounds, Canadian dollars, and U.S. dollars); *Ley Permite a Cubanos Tener Divisas y Abrir Cuentas en Moneda Convertible*, NUEVO HERALD, Aug. 15, 1993, at 2A; Pablo Alfonso and Cynthia Corzo, *Castro Confirma 'Dolarización'*, NUEVO HERALD, July 27, 1993, at 1A, 10A (reporting on Castro's speech, where he announced that Cubans could legally hold foreign currency, more exiled Cubans would be allowed to visit island, state would undertake more hard-currency generating activities and focus on maximizing tourist facilities, state would not confiscate foreign currency but would try to recapture currency in commercial activity, there was large amount of hard currency circulating clandestinely since tourism increased and foreign investment was allowed, and that government was studying yet further measures regarding economy); *see also* Castro: *It's Real Bad*, *supra* note 238, at 16. Significantly, this move would permit Cuban exiles to send money home, so long as they comply with the limitations of the CDA that limit money sent to Cuba to US\$300 every three months. *See* Ana Santiago, *'Dolarización' de Cuba Domina Cita Sobre Economía de la Isla*, NUEVO HERALD, July 16, 1993 at 6A (reporting that Cuban officials participating in conference on Cuban economy announced that holding dollars by Cubans would be legalized and noting embargo limitations on amounts families in the United States could send to Cuba); Alfonso Chardy, *Firms Set to Take Dollars to Cuba*, MIAMI HERALD, Aug. 12, 1993 at 1B, 4B (noting embargo limit).

249. *See, e.g.*, Ariel Remos, *Opuestos Dentro de Cuba a que les Envíen Dólares*, DIARIO LAS AMERICAS, Aug. 10, 1993, at 1-A, 11-A (reporting that Cubans in Cuba do not want to be sent dollars for fear that such move would help keep Castro in power); Cynthia Corzo, *Oferta de Cuba No Tienta a Exilados*, NUEVO HERALD, July 17, 1993, at 1B, 2B (reporting that many Cubans will refuse to invest in Cuba because they do not want to do something that will help Castro, noting that naturalized U.S. citizens cannot invest because of embargo).

These measures, although perhaps politically risky for Castro, are necessary for his survival.²⁵⁰ The food shortages are severe, with rumors that Cubans are eating cats²⁵¹ and that farmers are given traps to catch "jutias," rat-like rodents that grow up to two feet and weigh up to twenty pounds, and raise them for food.²⁵² One month's food ration now includes five pounds of rice, one pound of beans, four pounds of sugar, four eggs per week,²⁵³ thirty bread rolls, and one roll of toilet paper per person.²⁵⁴ Oil and lard, meat and vegetables in cans, frozen

250. See Marisol Marin, *Solución Castrista: Vengan los Dólares y Viva el Socialismo . . .*, DIARIO LAS AMERICAS, July 28, 1993, at 1-A, 11-A (reporting that Castro recognizes dollarization's political and social cost, as it will create privileges, but that measures are necessary to obtain hard currency, and concessions were necessary to save socialism); Andres Oppenheimer, *¿Embarcado Castro en Peligroso Camino Sin Retorno?*, NUEVO HERALD, July 28, 1993, at 1A, 18A; Andres Oppenheimer & Mimi Whitefield, *Cuba's Stopgap Steps May Open Capitalist Floodgates*, MIAMI HERALD, July 28, 1993, at 1A, 18A. Dollarization and other changes announced by Castro mark steps toward capitalism. *Id.* These steps could generate social, economic and political momentum that would loosen Castro's strangle-hold on Cuba, by creating a group of self-sufficient Cubans who might increase demands and pressure for reforms, and who might quit their US\$3 per month jobs. *Id.* These steps could also foster the emergence of independent sectors of society, which do not depend on the government for support, and thus result in Castro's inability to control people or force them to perform voluntary work. *Id.* Finally, these steps could create a privileged class, cause Castro to lose credibility, and allow "political contamination" with increasing numbers of exiles visiting the island and providing first-hand information from abroad. *Id.*; Teo A. Babun Jr., *Havana Takes a Big Risk in Legalizing the Dollar*, MIAMI HERALD, Aug. 1, 1993, at 4C (discussing dangers Castro faces in legalizing use of U.S. dollars). Babun suggests that dollarization may cause social and political changes such as

the creation of an economically affluent and independent social class with ties to their families living in exile instead of to the government [and] the mass exodus of workers from vital Cuban factories in search of dollar opportunities - or the next letter containing dollars from relatives abroad. . . . There is also a potential serious backlash from thrifty Cubans who will see their savings of 11 billion pesos held in Cuban banks dwindle in value and buying power. . . . Dollar rich Cuba may also experience an unexpected backlash from its favorite trading partners, who may suddenly end all future barter arrangements in favor of getting paid in hard currency.

Id.

251. Tim Golden, *Castro's People Tried To Absorb 'Terrible Blows'*, N.Y. TIMES, Jan. 11, 1993, at A1 [hereinafter *Blows*]; see Rathbone, *supra* note 221, at 7.

252. *Crossroads*, *supra* note 214, at 108.

253. *Blows*, *supra* note 251, at A6. Other sources give somewhat varying ration figures. See, e.g., Cynthia A. Craft, *Changing Lifestyles; "We Have Nothing, Only Fidel, Fidel"; After Two Years of Deprivation, Cubans Now Hold a Much Harsher View of Castro*, L.A. TIMES, June 30, 1992, at 4 (monthly rations listed as four eggs, one ounce of coffee, 2-1/2 pounds of rice, 1/2 pound of beans, and 2-1/2 pounds of sugar).

254. Craft, *supra* note 253, at 4; see Rathbone, *supra* note 221, at 8 (citing Craft, *supra*). Another source gives the monthly ration figures of some products as 6 pounds

chicken, grains, cereal, cheese, and antibiotics such as penicillin are among the goods once obtained from Eastern Europe and now unavailable.²⁵⁵ "Grapefruit steaks," seasoned, breaded and fried grapefruit rinds, are recommended as a beef substitute.²⁵⁶ Milk, along with chalk and paper, are scarce in schools.²⁵⁷ This lack of food and supplies has affected the economic changes made by Castro, who once again has given cooperative farms an opportunity to exist and will also allow some private Cuban citizens to farm unused state land.²⁵⁸

Many items, particularly those imported from the Soviet Union or the eastern bloc, have disappeared. Medicines, necessary to maintain one of the crown jewels of the revolution, its health care system, are in short supply if available at all, and in some hospitals, medicines are being replaced by herbal remedies.²⁵⁹ Recent reports even disclose that household medical items, such as aspirin, are virtually impossible to find.²⁶⁰

Energy shortages cause regular blackout periods that affect both industry and home life.²⁶¹ In 1992, the monthly ration for most drivers for gasoline was five gallons, but none was distributed in December of that year.²⁶² In December 1992, electrical power blackouts in big cities were extended from four to eight hours a day.²⁶³ Presently, power shutoffs are reported to last be-

of rice per person, 6 pounds of sugar per person, 4 eggs per person, and one 750 ml bottle of rum per family. *Facts and Stats*, CUBANEWS, Jan. 1994, at 4.

255. Statement of the Honorable Robert G. Torricelli [D-NJ] before the Assembly of Members of the Cuban-American National Foundation (on file with Author). A woman interviewed for a New York Times article noted that monthly rations of cooking oil (2 cups), soap (half bar per person), coffee (4 oz.), and Chinese toothpaste, which is used as a detergent substitute rarely arrive on schedule. *Blows*, *supra* note 251, at A6.

256. *Id.* at A1.

257. *Id.* at A6.

258. *Farm Cooperatives*, CUBA REPORT, Nov. 1993, at 8. The cooperative production units will be able to manage their own bank accounts, their production, and contract with the government. *Id.*

259. *Blows*, *supra* note 251, at A6. Horror stories are starting to emerge from hospitals, such as reusing of surgical gloves, inability to replace soiled hospital-bed sheets for lack of detergent, lack of water, shortage of tranquilizers, pain-killers and antibiotics as well as disinfectants and thread for stitches in emergency rooms. OPPENHEIMER, *supra* note 229, at 256; *see supra* note 44 (patients scheduled to undergo surgery required to bring their own lightbulbs to hospital operating room).

260. Alfredo Muñoz-Unsain, *Drástica Reducción de Venta de Medicinas en Cuba*, DIARIO LAS AMERICAS, Apr. 15, 1994, at 1A.

261. *Crossroads*, *supra* note 214, at 94.

262. *Blows*, *supra* note 251, at A6.

263. *Id.*

tween ten and sixteen hours daily in the cities, and in the provinces the outages have been as long as twenty hours daily.²⁶⁴ Recent reports indicate that many areas in Havana have electricity only four hours per day, with regular blackouts that last from twelve to sixteen hours.²⁶⁵ The outages are mainly attributed to the unavailability, since 1990, of spare parts for the Soviet- and Czech-built power plants, as well as the shortage of fuel at generating plants.²⁶⁶ These circumstances have been exacerbated by the "disastrous" 1992-93 sugar harvest of just 4.2 million tons, one of the lowest ever, which has further affected Cuba's ability to obtain oil.²⁶⁷ Because of the dramatic shortages, priority is given to "essential services" like food production centers and hard currency export production, water distribution, hospitals, and refrigeration plants where perishable foods are stored. This priority results in regular work at offices and some government ministries being "virtually paralyzed."²⁶⁸

The idling of industry, in part due to the aforementioned oil shortages, has resulted in chronic underemployment and admitted unemployment for the first time in years,²⁶⁹ with approximately 40% of the work force holding only marginal jobs.²⁷⁰ Even the military has been affected. Cuba, with one of the largest and most modern military forces in the world, has had to

264. See *Privados de Electricidad los Cubanos Diez Horas Cada Día*, DIARIO LAS AMERICAS, July 11, 1993, at 1-A (reporting average power outages between six and ten hours); Mimi Whitefield, *Blackouts Increase Misery for Cubans*, MIAMI HERALD, Aug. 11, 1993 at 1A, 6A (reporting that outages stretched 12 to 16 hours daily in capital and up to 20 hours daily in provinces); *Businesses 'Virtually Paralyzed' by Cuba Outages*, MIAMI HERALD, July 10, 1993 at 18A [hereinafter *Virtually Paralyzed*] (reporting outages of up to sixteen hours in Havana).

265. Mimi Whitefield, *From Bad to Worse in Cuba as Outages Grow*, MIAMI HERALD, Apr. 14, 1994, at 1A (reporting blackouts and noting government blames these in part on island's Soviet- and Czech-built power plant on which no parts have been installed since 1990).

266. *Id.*; see *Cuba hit by fuel shortages*, MIAMI HERALD, Aug. 6, 1993, at 10A (reporting paralysis at offices and factories); *Virtually Paralyzed*, *supra* note 264, at 18A.

267. *Virtually Paralyzed*, *supra* note 264, at 18A.

268. *Cuba Hit by Fuel Shortages*, MIAMI HERALD, Aug. 6, 1993, at 10A; *Virtually Paralyzed*, *supra* note 264, at 18A.

269. Castañeda, *supra* note 80, at 260; *Blows*, *supra* note 251, at A6. The government says that of about 3.7 million state workers, approximately 100,000 stay at home and many have been sent to work in the fields. However, foreign economists estimate that the real unemployment figures are considerably higher and that there is a large number of persons who are underemployed. *Id.*; see OPPENHEIMER, *supra* note 229, at 262-63.

270. *Cast Adrift*, *supra* note 196, at A6.

reduce training and exercises due to the lack of fuel. Moreover, its equipment, tanks, and planes are short of parts and thus not functional.²⁷¹

These critical shortages are having palpable social consequences. Some report the mood of the country as "desperate" and "hopeless."²⁷² There are claims that the suicide rate has risen.²⁷³ Increased attempts to leave the country were met with brutal force by the government.²⁷⁴ However, perhaps realizing that allowing a massive exodus could alleviate his domestic plight, Castro completely reversed his policy of tightly controlling travel, and ordered authorities to allow *balseros* leave Cuba and head for Florida.²⁷⁵ Cubans took him up on his offer and took to the seas in massive numbers, throwing U.S. policymakers, who insisted that Castro would not be allowed to dictate U.S. immigration policies, into a tailspin that ended in the reversal by the United States of its longstanding practice of granting entry to any Cuban who reached U.S. territory.²⁷⁶

Moreover, it has been reported that Cubans who are angered by the shortages of food and other goods and services are taking advantage of the nightly power outages to stage unprecedented protests against Castro.²⁷⁷ The protests have included

271. *Fact Sheet: Cuba*, *supra* note 83, at 107.

272. Tim Johnson, *The Mood Gets Ugly in Cuba as Scarcity Spreads*, *MIAMI HERALD*, July 11, 1993, at 1A, 14A [hereinafter *Ugly Mood*].

273. *Id.*

274. *Id.* (reporting that border-guards shot at unarmed Cubans swimming towards speedboat in attempt to escape island); *Survival Tactics*, *supra* note 239 at A1; 1993 COUNTRY REPORTS, *supra* note 47, at 413-14 (reporting aggressive and violent means used to prevent citizens from leaving without state permission; giving examples of cases in which border guards use grenades and rifle fire against swimmers trying to escape); *Castro Warns U.S.*, *supra* note 172 (reporting on series of boat hijackings by persons trying to flee Cuba, and Castro's threat to let Cubans leave without restriction, which could result in massive exodus to United States).

275. Mimi Whitefield & Martin Merzer, *Castro Raises Stakes: Cubans are Free to Go*, *MIAMI HERALD*, Aug. 25, 1994, at A1.

276. Aug. 19 Press Conference, *supra* note 137; Reno Briefing, *supra* note 139. The crisis was resolved with a Cuba-U.S. agreement whereby the United States agreed to increase legal immigration and, ironically, Castro agreed to reinstitute tight control over Cuba's borders, a practice which the United States criticized in the past. See Grover Joseph Rees, *Clinton's Iron Curtain*, *WALL ST. J.*, Sept. 14, 1994, at A18 (discussing President Clinton's decision to stop accepting Cuban boat people); R. Suro, *U.S. Dangles Carrot to Cuba on Immigration, But Will Castro Bite?*, *WASH. POST*, Sept. 11, 1994, at 30A.

277. *Castro Warns U.S.*, *supra* note 172, at 2 (reporting that protesters clashed with police and government supporters when police officers tried to enforce security meas-

smashing and looting of government shops, throwing rocks at police cars, clanging pots and pans and painting anti-government graffiti on walls.²⁷⁸ Crime, particularly "theft, black marketeering and economic fraud," has reportedly increased.²⁷⁹ To protect premises that might be at risk, either because they serve food or because they carry scarce goods, the government has started to build walls around open food establishments, and install ironworks and gates on store windows.²⁸⁰ Another government response to these protests has been to increase repression.²⁸¹

These serious energy shortages have resulted in the flourishing of the black market, which is used by those with the money to supplement government-set rations or to obtain services that have become otherwise unavailable.²⁸² However, black market prices are greatly inflated, creating a hierarchy whereby those with less are unable to supplement their rations, while those with access to goods can supplement their rations and sell or trade

ures to stop people from stealing boats to flee island); Mimi Whitefield & Miriam Wasserman, *Cubans Vent Discontent in Dark of Night*, MIAMI HERALD, Aug. 18, 1993 at 1A, 5A (hereinafter *Discontent*) (reporting looting and rioting by anti-Castro demonstrators during electricity blackouts); Ariel Remos, *Levantam Muros Enrejados en Cuba Por Temor a los Saqueos*, DIARIO LAS AMERICAS, Aug. 15, 1993, at 1-A.

278. Mimi Whitefield, *From Bad to Worse in Cuba as Outages Grow*, MIAMI HERALD, Apr. 14, 1994, at 1A (noting that governing energy situation has resulted in protests); *Discontent*, *supra* note 277, at 1A (reporting that graffiti includes statements such as "Down with Fidel" and "We Want Food"; explaining that clanging pots and pans is typical sign of anti-government protests in Latin America; noting rise of reported anti-government protests, which numbered 20 incidents between July 5 and August 15); Remos, *supra* note 277, at 1-A (noting that power outages are resulting in protests that include painting walls, often with anti-government slogans); *Survival Tactics*, *supra* note 239, at A1, A12.

279. *Crime is Rising, Cuban Newspaper Concedes*, MIAMI HERALD, June 14, 1993, at 10A (reporting that theft of property, bicycles, and livestock has increased, for which persons are being sentenced from 10 to 20 years in prison; that crimes related to tourism, such as bag-snatching, have increased; and that diplomats link increase to Cuba's severe economic state).

280. Remos, *supra* note 277, at 1-A.

281. See, e.g., Ariel Remos, *Condena Castro a 15 Opositores Pacíficos en Santiago de Cuba*, DIARIO LAS AMERICAS, July 30, 1993 at 1A, 11A.

282. See, e.g., MITO, *supra* note 1, at 286-300 (describing black market in Cuba). Professor Clark explains that it is an institution absolutely necessary to meet personal needs, including food, because of the existing shortages and rationing system. *Id.* Further, he notes that Cuba's "clandestine economy" reaches beyond agricultural goods and illicit manufacture of products to the providing of services with goods illegally diverted from the government. *Id.* at 293-94.

those goods for other items or services they want or need.²⁸³ For example, the black market price for eggs is US\$5 each, compared with the official US\$.15 price.²⁸⁴ The black market price for malanga, a potato-like root that is a common Cuban food, rose to US\$40 from US\$10 one year ago.²⁸⁵ Pork, a Cuban staple, is only available in the black market, where one pound,²⁸⁶ or a US\$2.75 chicken, cost almost a week's average wage estimated between 108²⁸⁷ and 135 pesos.²⁸⁸ The black market exchange rate for a dollar in 1992 was about 40 pesos,²⁸⁹ compared to a low of 15 pesos in October 1991,²⁹⁰ and 120 pesos to the dollar since May 1, 1994. This devaluation partly results from the dollarization program, and partly from the National Assembly's approval, on May 1, 1994, of a package of measures that, among other things, introduces a new currency and adopts new foreign exchange regulations.²⁹¹

Significantly, economists tend to believe that Castro's recent move to legalize the possession of foreign currency,²⁹² intended to divert dollars from the black market to the government,²⁹³ will actually strengthen the black market.²⁹⁴ This

283. See MITO, *supra* note 1, at 295-300. In fact, a special black market exists for high government personnel who, if in charge of distribution, have access to goods which in turn give them access to goods and services for which they can be traded.

284. Craft, *supra* note 253, at 4; see Rathbone, *supra* note 221, at 8 (citing Craft, *supra* note 253, at 4).

285. Rathbone, *supra* note 221, at 8.

286. Blows, *supra* note 251, at A1.

287. *Id.* at A6.

288. Rathbone, *supra* note 221, at 8.

289. Blows, *supra* note 251, at A6.

290. Damian Fraser, *Cuban Revolutionary in an Army Green Business Suit: Castro is Courting Capital—Not Capitalism*, FIN. TIMES, July 14, 1992, at 4; see Rathbone, *supra* note 221, at 8 (citing Fraser, *supra*).

291. Manuel Lasaga, *New Measures, But the Same Old Story*, CUBANEWS, June 1994, at 2.

292. See *Castro Bids to Shore Up Revolution*, *supra* note 239, at 16A. On July 26, 1993, in his annual speech celebrating the anniversary of the revolution, Castro announced that Cubans would be allowed to hold and use hard currencies. *Id.* However, the U.S. embargo limits the currency that exiles can send to US\$300 per family every three months. *Id.*

293. Mimi Whitefield, *Government of Fidel Castro Trying to Wring U.S. Currency Out of Island's Black Market*, MIAMI HERALD, July 4, 1993, at 1K, 3K [hereinafter *Wring Currency*]; see *Castro Bids to Shore Up Revolution*, *supra* note 239, at 1A, 16A (reporting that Castro will allow Cubans to hold dollars and Cuban exiles to send cash to island); Howard W. French, *Dollar Libre*, N.Y. TIMES, Aug. 1, 1993, § 4, at 2 [hereinafter *Dollar Libre*] (noting that Castro announced he would allow Cuban citizens to hold dollars).

294. Mimi Whitefield, *Cuba's Black Market May Grow Under New Policy, Experts Say*,

move, which was intended to attract hard currency to Cuba, might nevertheless backfire.²⁹⁵ As noted above, the rush to buy dollars in the black market caused a devaluation of the peso.²⁹⁶ The move also resulted in price increases in hard-currency stores by 50% to achieve a larger profit margin.²⁹⁷ In addition, black market prices could end up being lower than government store prices, thus encouraging people to go to the underground economy and keeping the flow of hard currencies away from the government.²⁹⁸

Many predict that this dollarization of the economy also is risky, as it may lead to social strife.²⁹⁹ For example, racial divisions may arise when the largely white Cuban exile population sends dollars to their relatives who remained in Cuba, thereby giving white Cubans greater access to dollars than black Cubans, and consequently greater access to goods and services.³⁰⁰ Finally, with dollarization, the government might lose the tight

MIAMI HERALD, Aug. 19, 1993, at 2B (reporting on economists' meeting, where it was noted that dollar is medium of exchange in Cuba, that black market will continue to compete with official economy, and that black market, while it has served to meet demand, is potentially risky, because its use reduces government control over economy).

295. See Lasaga, *supra* note 248, at 2 (noting some negative ramifications of dollarization).

296. *Cuba Raises Prices for Dollar Items*, MIAMI HERALD, Aug. 10, 1993, at 1A [hereinafter *Dollar Items*]; *Wring Currency*, *supra* note 293, at 1K, 3K.

297. *Dollar Items*, *supra* note 296, at 1A.

298. *Id.*

299. See, e.g., Andres Oppenheimer, *Dissidents Skeptical of Reforms*, MIAMI HERALD, Aug. 2, 1993, at 6A [hereinafter *Dissidents Skeptical*] (noting that increase in dollar remittances from exiles will make large sectors of population give up their US\$3 per month jobs, thus undermining regime's political control, as persons will no longer depend on government for their livelihood; measures will reward those whose relatives left and can send them dollars, possession of which will define new privileged class above "military, Communist Party cadres and blacks, who either don't have relatives in America or repudiated them long ago, . . . [and who will] be the new pariahs of the revolution"); *Survival Tactics*, *supra* note 239, at A12; Howard W. French, *Cuba Will End Restrictions On exiles Wanting to Visit*, N.Y. TIMES, July 29, 1993, at A10 [hereinafter *End Restrictions*] (noting that as blacks have emigrated in small numbers, they would not benefit as would whites from remittances sent by relatives abroad; that party members, who are supposed to be better off, will have less money than taxi drivers; and that with receipt of dollars from abroad, few will continue to work at 500-pesos-per-month government jobs).

300. See *Survival Tactics*, *supra* note 239, at A12; *Dissidents Skeptical*, *supra* note 299, at 6A (noting that increase in dollar remittances from exiles will create new privileged class with blacks and others who do not have relatives in America falling behind economically); *End Restrictions*, *supra* note 299, at A10 (noting that as blacks have emigrated in small numbers, they would not benefit from remittances sent by relatives abroad and thus would not have access to dollars).

control it had over individuals' conduct when the citizenry depended on the government for goods and services. As persons obtain more money from remittances sent by relatives, rather than from working at their government jobs, the need to work for the government and to comply with government regulations disappears.³⁰¹

In tandem with Castro's recent announcements regarding the "liberalization" of the economy as described above, however, Castro has taken measures to ensure control of the economy. For example, the government counter-balanced liberalization programs with a crackdown against economic crimes, including black market activities.³⁰² The bottom line, however, is that despite the implemented economic changes, Cuban officials expect that the island's economy will continue its decline until 1994, at which point the recently announced measures should permit the start of a recovery.³⁰³ As noted above, economists are not so optimistic.

IV. THE CRISIS OF LEGITIMACY

Aside from economic shifts, the end of the Cold War has also signified the end of an ironically stabilizing force in the international arena. Without the external reasons for cohesion, *i.e.*, fear of a hot war, new tensions have arisen, as evidenced by political instability of democracy itself in Russia, secessionary forces in Georgia, the ethnic cleansing in the former Yugoslavia, the unilateral withdrawal from a nuclear containment treaty by North Korea, the brutal military regime that deposed Aristide in Haiti, the massacres in Rwanda, and the resurgence of national-

301. See *Survival Tactics*, *supra* note 239, at A12; *Dissidents Skeptical*, *supra* note 299, at 6A (noting that increase in dollar remittances from exiles will make large sectors of population give up their US\$3 per month jobs, undermining regime's political control as persons will no longer depend on government for their livelihood); *End Restrictions*, *supra* note 299, at A10 (noting that party members who are supposed to be better off will have less money than taxi drivers, and that with receipt of dollars from abroad few will see any point to working at 100-peso-per-month government jobs).

302. See Government Decree No. 149 (May 5, 1994) (retroactive decree providing that Cuban government will confiscate assets derived from "illegal sources," which confiscations are to be made in administrative proceedings and will not be subject to judicial review); *Cuba Crackdown Urged on Economic Crimes*, MIAMI HERALD, Aug. 2, 1993, at 6A.

303. Mimi Whitefield, *Cuban Officials Predicting Decline in Economy Will Last Until Early '94*, MIAMI HERALD, July 17, 1993, at 21A; *Recuperación Económica en Cuba Más Difícil que Nunca*, DIARIO LAS AMERICAS, Aug. 4, 1993, at 1-A.

ism in Germany, Italy and France. Even before the fall of the Berlin Wall, Castro had recognized and warned against the possible destabilizing consequences for the Third World of the fall of communism: cuts in aid, destruction of the balance of power by the reduced impact of the Soviet military, and national and ethnic strife stirred by the new freedom of expression.³⁰⁴ Cuba has experienced many of these undesirable side effects of the end of the Cold War, many exacerbated by its unique politically isolating posture. Above, this article presented the economic climate of Castro's revolution and the successes achieved with respect to second generation human rights, such as the right to work, to education, and to health, and explored Cuba's economic position at the end of the Cold War. This part focuses on the crisis of legitimacy of the Cuban government by focusing on the deplorable status of Cuba regarding first-generation human rights.

The political and ideological deterioration of the government threatens the legitimacy of Castro's regime, a regime wholly lacking the consent of the governed and respect for the opinion of the people.³⁰⁵ The challenge to the government's legitimacy is grounded on the absence of political freedoms as evidenced by its failure to follow the rule of law, the lack of personal security, and the absence of respect for and observance of internationally protected rights, such as freedom of expression, political participation, and equality of opportunity.

A. *Failure to Follow the Rule of Law*

The absence of the rule of law in Castro's regime can be traced to the early days of his rule.³⁰⁶ It has been reported that many persons accused of crimes against the revolution were exe-

304. OPPENHEIMER, *supra* note 229, at 101-02.

305. Thomas Franck, *The Emerging Right To Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

306. See, e.g., JORGE VALLS, *TWENTY YEARS & FORTY DAYS/ LIFE IN A CUBAN PRISON* (1986) [hereinafter *LIFE IN A CUBAN PRISON*]; see also *Tightening the Grip: Human Rights Abuses in Cuba*, AMERICAS WATCH, Feb. 24, 1992, at 15-16 (for examples of ongoing lack of concern for rule of law) [hereinafter *Tightening*]; 1993 COUNTRY REPORTS, *supra* note 47, at 408-09 (explaining that "Cuba is a totalitarian state dominated by President Fidel Castro, who is Chief of State, Head of Government, First Secretary of the Communist Party, and Commander in Chief of the armed forces"; that government restricts basic political and civil rights; that prisoners are frequently abused and subjected to physical and psychological intimidation; and that notwithstanding technical existence of certain

cuted, summarily or in hurried trials, without adequate proof of guilt.³⁰⁷ The first of these were the trials of military personnel, which reflected the "arbitrariness" of the process.³⁰⁸ For example, after being tried and acquitted, prisoners were retried and convicted without any new evidence or any new charges, but merely on Castro's orders, and without the prisoners even being present at their second trial.³⁰⁹

It appears that the word of Castro, rather than the written laws, is the true mandate. The above-described trials are one example; the modification of existing "rules" provides another. One illustrative instance occurred in 1985 when a housing law was "tolled" and subsequently amended after Castro, in a speech, questioned several of the law's provisions.³¹⁰ Similarly, at times when Castro has wanted to get rid of large numbers of citizens, such as during the Camarioca and Mariel exodus, he has unilaterally suspended or ignored the existing emigration laws.³¹¹

guaranteed rights to prisoners, such rights "are often and capriciously withdrawn especially from political prisoners").

307. See *MIRRO*, *supra* note 1, at 61. Professor Clark used anecdotal materials to discuss the occurrences. He tells the story of a priest, Father Chabebe, who was called late one night to attend the trial of four persons who were sentenced to death. At the end of the trial he accompanied the prisoners to a desolate area where they were immediately executed. A bulldozer had already dug a hole that would serve as a mass grave. When Father Chabebe objected to the irregularity of the process, in particular the lack of the right to appeal, he was informed that the proceedings would go on. *Id.* at 60-61. After this dozens more arrived and were summarily executed. Father Chabebe, as well as other priests, were there to administer last rites. *Id.*

308. See *id.* at 68. In particular, Professor Clark relates the trial of military pilots in February and March of 1959 before a revolutionary tribunal. Shortly after Castro rose to power, approximately 43 pilots, artillery personnel and mechanics were arbitrarily arrested and accused of genocide. The government requested the death penalty for the pilots. All of the accused were acquitted by the revolutionary tribunal, over which Commandant Félix Pena presided. Castro publicly rejected the verdict and ordered that they be retried. While bar groups objected, the people did not demonstrate against the order. At a second trial, a Castro loyalist presided. The government presented no new evidence, and made no new charges; the accused were not present. Over strong objections by attorneys, the trial proceeded and the accused were convicted. *Id.*; see *LIFE IN A CUBAN PRISON*, *supra* note 306, at 4-5 (recounting same trial). See generally *id.* (personal account of torture and inhumane treatment of prisoners by government and examples of lack of due process).

309. *LIFE IN A CUBAN PRISON*, *supra* note 306, at 4-5; see 1993 COUNTRY REPORTS, *supra* note 47, at 410 (stating that "[a]rbitrary arrest and detention are commonplace," that Cuban laws guaranteeing certain procedural protections "are routinely denied to those detained on state security grounds," and that "Cuban law and trial practices do not meet international standards for fair and impartial public trials").

310. *MIRRO*, *supra* note 1, at 120.

311. *Id.* Immigration and emigration have been strictly controlled, yet the con-

Moreover, as the above-described trials also show, there is no independent judiciary.³¹² When Castro seized power in 1959, he suspended the 1940 Constitution,³¹³ and in 1960 and 1961, Castro dismissed members of the judiciary.³¹⁴ Until 1973, charges of all political offenses, particularly those of counter-revolutionary offenses, were heard by revolutionary tribunals comprised of military members of the new government rather than independent judges.³¹⁵ At present, Article 122 of the Constitution provides that the courts are "subordinate only to the Na-

trols have been alleviated at Castro's urging and convenience. This was most recently evidenced by the threatened massive exodus when Castro unilaterally decided not to enforce laws forbidding illegal exit. *Exiles Lash Out at Havana "Blackmail"*, MIAMI HERALD, Aug. 6, 1994, at 1A. For a description of the Camarioca and Mariel emigrations, see MITO, *supra* note 1, at xxxii-xxxiii. Another example of Castro's unilateral action is his change in immigration policy to allow exiles to return to visit in much greater numbers, hoping to obtain much-needed cash. However, the impending massive exodus, driven by economic conditions, resulted in a Cuba-U.S. agreement in which the United States sought assurances from Castro that he would tightly control exit from the island. Aug. 19 Press Conference, *supra* note 137. Getting rid of large numbers of people would, of course, alleviate the shortages of foodstuffs. See *Castro Warns U.S.*, *supra* note 172, at 2 (recent report of Castro's threat to end all exit restrictions because of increased attempts at illegal exit). The Clinton administration responded to the threat by promising to prevent a mass exodus like the one experienced in 1980 during the Mariel boatlift. *Forget It, Fidel*, N.Y. NEWSDAY, Aug. 8, 1994, at A14. Interestingly, the administration failed to detail how it would prevent such an exodus, or how it would keep Cubans out of the United States. The latter seems to be legally impossible as existing law, an apparent remnant of the Cold War, permits Cubans to enter the United States as refugees without quotas. See Cuban Adjustment Act, 8 U.S.C. § 1255 (1988). However, the recent threatened exodus spurred reversal of the longstanding U.S. policy of welcoming Cubans who escape the island illegally. Now, any Cubans illegally seeking entry to the United States will not be allowed to enter, and any picked up at sea will be taken to safe havens. Aug. 19 Press Conference, *supra* note 137.

312. See JUAN CLARK ET AL., RESEARCH INSTITUTE FOR CUBAN STUDIES, HUMAN RIGHTS IN CUBA: AN EXPERIENTIAL PERSPECTIVE 30-34 (1991) [hereinafter HUMAN RIGHTS IN CUBA]; HUMAN RIGHTS IN CUBA: THE NEED TO SUSTAIN THE PRESSURE 69-72 (1989) [hereinafter SUSTAIN PRESSURE]; see also *Fact Sheet: Cuba*, *supra* note 83, at 105; 1993 COUNTRY REPORTS, *supra* note 47, at 410 ("Although the Constitution provides for independent courts, it explicitly subordinates them to the National Assembly and the Council of State, which is headed by Fidel Castro.")

313. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA DE 1940 ["1940 CONSTITUTION OF THE REPUBLIC OF CUBA"], in CONSTITUCIONES DE LA REPÚBLICA DE CUBA (Academia de la Historia de Cuba ed., 1952); MITO, *supra* note 1, at 213. Of course, as the suspension was by unilateral act rather than through constitutional procedure, the suspension itself can be challenged for failing to follow the requisite process.

314. MITO, *supra* note 1, at 213.

315. *Id.*; LIFE IN A CUBAN PRISON, *supra* note 306, at iv. Counter-revolutionary offenses include both violent crime, such as terrorism and armed insurrection, and political actions, such as distributing propaganda and attempting to flee the country. *Id.*; see 1993 COUNTRY REPORTS, *supra* note 47, at 410 (noting Penal Code's prohibition of

tional Assembly of People's Power and the Council of State of which Castro is President — hardly a neutral entity."³¹⁶ In addition, Article 123 of the Constitution expressly provides that one of the purposes of the judiciary is to educate citizens on socialism, a goal patently inconsistent with neutrality.³¹⁷ Finally, the laws pertaining to the organization of the judicial system plainly provide that to be either a professional or lay judge, a person must be "integrated" to the revolution.³¹⁸ These conditions are inconsistent with the right to an effective judicial remedy by competent, independent, and impartial tribunals that is expressly articulated in the Universal Declaration.³¹⁹

A gripping example of Cuba's lack of an independent judiciary is the questionable trial and consequent execution of two of Castro's top aides: Col. Antonio De La Guardia, one of Cuba's top spies, and Div. Gen. Arnaldo Ochoa Sanchez, one of the most decorated officers in Cuba, who had commanded Cuban military operations in Venezuela, Ethiopia, Angola, Yemen, and Nicaragua.³²⁰ Col. De La Guardia and Gen. Ochoa are believed to have taken the fall as part of the government's cover-up of corruption, including involvement in drug-trafficking. No one believes Castro's claimed lack of knowledge about drug-trafficking, and many maintain that he had for some time condoned

counter-revolutionary activity and the use of these sections against activists, even those who simply favor "peaceful democratic change").

316. CUBAN CONST. art. 122, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra* note 79, at 131; *SUSTAIN PRESSURE*, *supra* note 312, at 70. Articles 72 and 73 of the Cuban Constitution provide that the National Assembly elects the members of the Council, whose President, Castro, also is the Head of State. *See* 1993 COUNTRY REPORTS, *supra* note 47, at 408, 410.

317. CUBAN CONST. art. 123, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra* note 79, at 131; *MITO*, *supra* note 1, at 217; *HUMAN RIGHTS IN CUBA*, *supra* note 277, at 30; *SUSTAIN PRESSURE*, *supra* note 312, at 70.

318. *MITO*, *supra* note 1, at 217 (citing Articles 66 and 68 of Law of Organization of Cuban Judicial System, Dec. 13, 1978, which require candidate's integration to revolution to hold position of professional or lay judge, respectively); *HUMAN RIGHTS IN CUBA*, *supra* note 312, at 31; *Tightening*, *supra* note 306, at 3.

319. *See Universal Declaration*, *supra* note 12, arts. 8, 10, at 73; *see also HUMAN RIGHTS IN CUBA*, *supra* note 312, at 24.

320. *See* OPPENHEIMER, *supra* note 229, at 18, ch. 3 *passim*; *see also* Purcell, *supra* note 192; *Human Rights Activists Behind Bars in Cuba*, AMERICAS WATCH, July 1989, at 1 [hereinafter *Behind Bars*] ("condemn[ing] the executions in light of the gross denials of due process during the trial"); Robert Pear, *Cuba Discloses a Drug Network of Top Officials*, N.Y. TIMES, June 24, 1989 (reporting Cuba's acknowledgment that some of Castro's closest aides were involved in smuggling drugs to United States).

such activity. However, when it became apparent that the U.S. was getting close to obtaining evidence about such involvement, Castro preempted any accusation by staging the Ochoa and De La Guardia trials.³²¹ In addition, the trials sent a strong message to the Cuban people and military, as well as the outside world, that Castro "would not tolerate the 'new thinking'" that was leading to democratic changes in the Soviet bloc.³²²

These trials "served to reinforce the atmosphere of increased repression in Cuba."³²³ The state used Article 115 of the Penal Code, in which "disseminating false news against international peace" is considered a crime against state security punishable by imprisonment of one to four years, to punish several reporters with whose reporting of the Ochoa trial the State did not agree.³²⁴

In tandem with the lack of an independent judiciary is the lack of independent legal representation.³²⁵ Legal representatives are bound to the government's ideology. The interests of clients are subordinate to those of the state.³²⁶ In fact, in order to practice law, lawyers must belong to a state-controlled lawyers' collective.³²⁷ Moreover, the state attorney, pursuant to the Constitution, is subordinate to the National Assembly, and thus, the State Council.³²⁸ As Castro is the head of both of these bodies, the state attorney is subordinate to Castro.³²⁹ Indeed, in closing

321. OPPENHEIMER, *supra* note 229, at 128.

322. *Id.* at 129.

323. *Behind Bars*, *supra* note 320, at 1.

324. Ley No. 62 [Law No. 62], C.P. CUBA [CUBAN PENAL CODE] art. 115; *Cuba: Jailing the Human Rights Movement*, AMERICAS WATCH, Mar. 1990, at 3 [hereinafter *Jailing the Movement*].

325. 1993 COUNTRY REPORTS, *supra* note 47, at 411; see LIFE IN A CUBAN PRISON, *supra* note 306, at 32-34 (providing personal account of trial and role played by supposed defense counsel).

326. SUSTAIN PRESSURE, *supra* note 312, at 72-73.

327. *Id.* at 72; 1993 COUNTRY REPORTS, *supra* note 47, at 411 (noting that lawyer's "impartiality and independence are compromised by the absence of an independent bar association").

328. See MITO, *supra* note 1, at 217; HUMAN RIGHTS IN CUBA, *supra* note 312, at 30; *Fact Sheet: Cuba*, *supra* note 83, at 105.

329. MITO, *supra* note 1, at 121-30; *Fact Sheet: Cuba* *supra* note 83, at 105; 1993 COUNTRY REPORTS, *supra* note 20, at 408. Castro is the President of the Council of State and the Council of Ministers, First Secretary of the Communist Party and Commander-in-Chief of the Armed forces. The 1976 Constitution provides that the Partido Comunista de Cuba (PCC) (Cuban Communist Party) is the highest leading force of the society with the Politburo as the center. Executive and Administrative Power lies in

the National Assembly session in December 1979, Castro stated that the State was not going to provide defense attorneys so that they could then dedicate themselves to defend "delinquents."³³⁰ There are even reports of instances where attorneys who defended their clients in earnest wound up in jail themselves.³³¹

Some Cuban laws, on their face, appear to violate the internationally-recognized right to be free from arbitrary arrest, detention or exile.³³² For example, the 1971 anti-vagrancy law was aimed at those who did not want to work for the government and were self-employed.³³³ This law allows for sentences of up to four years against those who are unemployed, or are simply absent from their government jobs.³³⁴ Likewise, the law on pre-criminal dangerousness allows imprisonment if a person simply is deemed *capable* of committing a crime.³³⁵

The lack of process in legislating, the total denial of legal

the Council of Ministers, whose president is Castro. Legislative authority lies with the National Assembly, of which Castro is also president.

330. MITO, *supra* note 1, at 217. "Nosotros no vamos a estar formando abogados defensores para que después se dediquen a defender delincuentes." *Id.*; see HUMAN RIGHTS IN CUBA, *supra* note 312, at 31.

331. See MITO, *supra* note 1, at 217-18 (giving examples of attorneys going to jail for defending their clients); see also HUMAN RIGHTS IN CUBA, *supra* note 312, at 31-34; *Fact Sheet: Cuba*, *supra* note 83, at 105 (noting that defense attorneys face severe disadvantages under Cuban judicial system); SUSTAIN PRESSURE, *supra* note 312, at 72-74 (noting that lawyers are not expected to defend interests of their clients vigorously).

332. See *Universal Declaration*, *supra* note 12, art. 9, at 73 (for statement of right); 1993 COUNTRY REPORTS, *supra* note 47, at 410 (for statement and examples of Cuba's government's violations of such rights).

333. Ley No. 1231 [Law No. 1231], LEY CONTRA LA VAGANCIA [ANTI-VAGRANCY LAW], reprinted in Ian McColl Kennedy, *Cuba's Ley Contra la Vagancia — The Law on Loafing*, 20 UCLA L. REV. 1177 (1973).

334. HUMAN RIGHTS IN CUBA, *supra* note 312, at 27; MITO, *supra* note 1, at 208. It is claimed that the law was no longer given effect in the 1980's when unemployment levels became unmanageable. *Id.*

335. CUBAN PENAL CODE arts. 72-90. HUMAN RIGHTS IN CUBA, *supra* note 312, at 27 (emphasis added). This may include someone believed to be capable of attempting to leave the country illegally. *Id.*; see MITO, *supra* note 1, at 183, 267; SUSTAIN PRESSURE, *supra* note 312, at 63-64 (noting that articles 72-90 of the Penal Code define conduct considered dangerous, and provide for application of security measures to prevent crimes by persons who behave in manner not in accord with "socialist morality;" indications of dangerousness include "habitual drunkenness, alcoholism, drug-addiction and 'anti-social behavior' [which includes] habitual disturbance of social co-existence through violent or provocative acts, violation of the rights of others"); Cuba, AMERICAS WATCH, Feb. 25, 1991, at 12 n.20; *Cuba: Behind a Sporting Facade, Stepped-up Repression*, AMERICAS WATCH, Aug. 11, 1991, at 6 [hereinafter *Facade*]; 1993 COUNTRY REPORTS, *supra* note 47, at 410; Ariel Remos, *Mas Encarcelamientos en Cuba por 'Peligrosidad'*, DIARIO LAS AMERICAS, Nov. 11, 1993, at 1A (reporting continued arrests for "dangerousness").

representation of trials, and the non-existence of an independent judiciary all evidence the absence of the rule of law in Cuba. The following discussion presents the lack of respect for internationally-protected first-generation human rights that further underscores the illegitimacy of the Castro regime.

B. Denial of Internationally-Recognized Individual Rights

1. Political Participation

The lack of democracy or existence of the people's voice in governing is increasingly evident beyond the formal legal process. In Castro's now thirty-five years of rule, Cubans have yet to have the opportunity to vote for Castro. Such history shows a denial of the international right of the people to participate in the government of their country and freely express their will by way of a vote.³³⁶ The 1976 Constitution³³⁷ created a new structure called "People's Power," in which persons directly elect delegates for the municipal Assemblies (who in turn elect the delegates for the national and regional assemblies).³³⁸ However, until February 1994, direct elections were not permitted, and before nomination, every candidate had to be screened by a "candidacy commission" comprised of members of state mass organizations, thus ensuring that all candidates were party loyalists.³³⁹

In the early 1990's, Cubans had reason to hope that some changes towards democratization would be made. As part of Castro's March 1990 call to the Party Congress, he launched a one-year national poll on recommendations on economic and political proposals. These proposals were to be put before the Congress for possible adoption.³⁴⁰ During this one-year period,

336. *Universal Declaration*, *supra* note 12, art. 21, at 75; *see* 1993 COUNTRY REPORTS, *supra* note 47, at 414 ("Cubans have no legal right to change their government or to advocate a change. The Constitution states that the only political organization allowed is the Communist Party. A small group of leaders select members of its highest governing body - the Politburo and Central Committee.").

337. CUBAN CONST., *in* THE CONSTITUTIONS OF THE COMMUNIST WORLD, *supra* note 79, at 100.

338. *See* CUBAN CONST. chs. VIII (Supreme Organs of People's Power), IX (Local Organs of People's Power), XI (The Electoral System), *in* THE CONSTITUTIONS OF THE COMMUNIST WORLD, *supra* note 79, at 117-30, 133-34.

339. 1993 COUNTRY REPORTS, *supra* note 47, at 414 (also explaining that only one candidate per seat was allowed); MITO, *supra* note 1, at 126-28.

340. OPPENHEIMER, *supra* note 229, at 302.

about 3.5 million Cubans responded to the call and attended meetings to express support for economic reforms, such as legalizing small private businesses and permitting laborers to work on their own.³⁴¹ The opinions expressed in the polls were telling. Eighty-seven percent of those polled criticized the existing system as repressive. While many citizens focused on problems of day-to-day life, they also challenged the one-party system, the centrally planned economy, lack of democratic elections, and even Castro's one-person rule.³⁴²

However, Cubans' hope that the 1992 Fourth Congress would democratize the government were quickly dashed. The July 1992 meeting of the General Assembly amended the 1976 Constitution to eliminate references to the former Soviet Union, to outlaw religious discrimination, to permit foreign investment, and to allow direct elections to the National Assembly, although candidates must be approved by authorities.³⁴³ However, the adopted changes hardly moved Cuba towards true democratization.

A few human rights groups in Cuba, inspired by the changes in the Soviet bloc, called a press conference to make a seven-point proposal to the Fourth Congress requesting free national elections and recognition of human rights groups.³⁴⁴ The Communist Party's Central Committee, however, was divided as to what the Fourth Congress should accomplish. Some party members were optimistic that the Fourth Congress would result in political and economic reforms.³⁴⁵ Reformers wanted to democratize the party and elections; some even drafted a plan that included the creation of the position of Prime Minister that would have forced Castro to relinquish some of his power. Reformers

341. *Id.* at 302. The move to privatize reflected the government's own experiments with private enterprise in the tourism and biotechnology fields. *Id.* at 286, 294.

342. OPPENHEIMER, *supra* note 229, at 381. People demanded free farmers' markets, a multiparty system, and a full-fledged market economy. *Id.*

343. *Fact Sheet: Cuba*, *supra* note 83, at 105. Of course, the outlawing of religious discrimination is a positive step that comports with the concept of religious freedom embodied in Articles 2 and 18 of the *Universal Declaration*. *Universal Declaration*, *supra* note 12, arts. 2, 18, at 72, 74.

344. OPPENHEIMER, *supra* note 229, at 379.

345. *Id.* at 302-03. Significantly, these groups largely have to work "underground." Pedro Monreal, a communist party economist, believed that the government's involvement with private industry in tourism and biotechnology "had set an unstoppable trend toward greater economic freedoms." *Id.* at 303.

also proposed the adoption of some of the proposals for change made by the Cuban people including free elections, free farmers' markets, legalization of private labor (plumbers etc.), and greater openness in the media.³⁴⁶ Old-guard hardliners, however, eschewed change, citing Cuba's deep economic crisis.³⁴⁷ In the end, Castro rejected democratization, declared that the one-party system would continue, and established that the island would not adopt a market economy.³⁴⁸

Thus, notwithstanding the hopeful expectations of the reformers, and of the people of Cuba, change was not to be. Ultimately, the official draft resolutions for the Fourth Congress did not mention reform. Castro proclaimed that the revolution would never accept a multiparty system and that Cuba was already the most complete democracy in existence.³⁴⁹ The Fourth Congress was not a platform to adopt a democratic process, but a sham, a celebration of the "way we are."³⁵⁰ For example, there was no general discussion of a delegate's two-minute presentation raising the issue of free farmers' markets. Castro, however, welcomed the comment as a demonstration of the democratic nature of the process, and in a three-hour response simply dismissed the idea.³⁵¹

Significantly, the results of the Fourth Congress's vote for the party's top brass revealed that three delegates voted against Castro's re-election, and four delegates voted against his brother's re-election. This was the first time in over three decades of Castro's rule that anyone had cast a vote against him.³⁵²

The Congress also approved elections to the National Assembly by direct vote but left the details of the electoral laws to be decided later. However, it was clear that these would not be in the Western model.³⁵³ Ultimately, the electoral rules remain unchanged, and only party candidates run unopposed.

346. *Id.* at 383-85.

347. *Id.* at 379.

348. *Id.* at 380.

349. *Id.* at 387-400.

350. *Id.* at 393.

351. *Id.* at 395.

352. *Id.* at 396.

353. *Id.* at 396-97.

2. Personal Security; Freedoms of Expression, Association and Assembly; Right of Privacy

The examples of the lack of a rule of law, illustrated by the denial of the peoples' right to participate in the political process, are ample grounds to challenge the legitimacy of Castro's government. However, the end of the Cold War and, effectively, the end of most communist regimes, make it easier to question Cuba's internal policies, as it no longer has a protective, politically-sympathetic bloc. Although Cuba is a signatory to the Universal Declaration,³⁵⁴ its human rights practices violate internationally-accepted standards.³⁵⁵ Thus, Cubans do not enjoy basic human rights and freedoms³⁵⁶ but rather exist in an environment of fear and oppression.³⁵⁷ In fact, some Cuban laws directly contravene such rights as freedom of expression, association, assembly and movement, privacy, and due process.³⁵⁸

In early 1988, there were signs of improving conditions, with Castro allowing some activity by a small emerging human rights community and releasing some political prisoners.³⁵⁹

354. *Universal Declaration*, *supra* note 12.

355. *Jailing the Movement*, *supra* note 324, at 2; *Facade*, *supra* note 335, at 2.

Cuba's human rights record has long been sharply at odds with internationally accepted standards guaranteeing fundamental civil and political rights — freedom of expression and association, the right to privacy and to due process of law Cubans are punished legally or extra-judicially, and sometimes cruelly, for publicly expressing dissenting opinions and for organizing civic or political groups that are independent of the government and Communist Party Cubans' daily lives are closely monitored and controlled by vast surveillance networks of informants which operate in neighborhoods, work centers and schools [and] Cubans' recourse in the courts is stymied by a judicial system that is subordinate to the will of the government.

Id. at 2; see 1993 COUNTRY REPORTS, *supra* note 47, at 409-16 (noting that Cuba violates internationally-accepted standards of human rights).

356. See Castañeda, *supra* note 80, at 266 (noting that Cuba, while a signatory to *Universal Declaration of Human Rights*, fails to respect social, political and economic rights contained therein). For an extensive review of human rights violations in Cuba, see HUMAN RIGHTS IN CUBA, *supra* note 91. Former Ambassador Kirkpatrick noted that the 1989 State Department Report on Human Rights recounted that the human rights situation in Cuba had worsened in that year and that government repression had increased. Kirkpatrick Address, *supra* note 212, at 4. The 1993 Report shows ongoing repression. 1993 COUNTRY REPORTS, *supra* note 47, at 408-16.

357. See OPPENHEIMER, *supra* note 229, at 156, 235.

358. See, e.g., *Tightening*, *supra* note 306, at 3.

359. *Cuba*, *supra* note 335, at 2; 1993 COUNTRY REPORTS, *supra* note 47, at 413 (noting that some well known political prisoners have recently been allowed to leave; but that others are coerced to leave).

However, later the same year, during the visit of a delegation of investigators sent by the United Nations Commission on Human Rights (the "U.N. Commission"), a retrenchment of the tolerance shown a few months earlier surfaced.³⁶⁰ This regressionary trend intensified against human rights activists and political dissidents in 1991,³⁶¹ and reportedly continues today.³⁶² In light of such attitudes, the U.N. Commission has passed resolutions to investigate the alleged human rights abuses, which the U.N. viewed as unchanged from earlier years.³⁶³ Castro has refused to obey the resolutions, and has refused to allow any more delegations of investigators to visit.³⁶⁴ In addition, visits to Cuban prisons that started in 1988, pursuant to an agreement with the International Committee of the Red Cross, were suspended in 1990.³⁶⁵

In fact, the monitoring of human rights is illegal in Cuba.³⁶⁶ On March 6, 1990, the U.N. Commission voted to ask the Cuban government to comply with its pledge not to detain, repress or otherwise mistreat Cuban human rights activists.³⁶⁷ The resolution was co-sponsored by Czechoslovakia and Poland. Bulgaria and Hungary voted with the United States, an unusual event given that the Eastern bloc generally voted together and against the United States in the past.³⁶⁸ The resolution on Cuba,

360. *Cuba*, *supra* note 335, at 2.

361. *Tightening*, *supra* note 306, at 1.

362. Raul Verrier, *Cuba: Mas Terror*, DIARIOS LAS AMERICAS, Aug. 9, 1994, at 1A (reporting on punishment of dissidents after demonstration against Castro); Cynthia Corzo, *Régimen Cubano Obliga a los Disidentes a Abandonar El Pais*, NUEVO HERALD, Sept. 7, 1994, at 10A (reporting that dissidents picked up at sea informed Coast Guard rescuers that Castro was forcing dissidents to leave, and threatening incarceration of those who did not; one person reported that she was given three days to leave, or face imprisonment of seven to twenty years).

363. See 1993 COUNTRY REPORTS, *supra* note 47, at 409, 414.

364. *Cuba*, *supra* note 335, at 2-3; 1993 COUNTRY REPORTS, *supra* note 47, at 409, 414.

365. *Cuba*, *supra* note 335, at 5 (noting that 1988 agreement permitted periodic prison visits on ongoing basis, that visits took place in June 1988 and May 1989, but that no visits have taken place since then). The visits were intended to guard against mistreatment of political prisoners. *Id.* The prisoners are rumored to be badly treated and tortured. *Id.* See generally LIFE IN A CUBAN PRISON, *supra* note 306 (recounting one prisoner's stay in various Cuban prisons).

366. *Tightening*, *supra* note 306, at 3.

367. U.N. ESCOR, 46th Sess., 52nd mtg. at 109-110, U.N. Doc. E/CN.4/1990/94 (1990).

368. OPPENHEIMER, *supra* note 229, at 219. The UNCHR passed a similar resolu-

adopted in 1991, increased U.N. pressure on the island to respect human rights, and called for the appointment of a special representative for Cuba to pursue contacts with the people and government of Cuba.³⁶⁹ However, the Cuban representative immediately announced that the U.N. special representative would not be allowed into Cuba, and denounced the appointment as "part of the U.S.'s 'aggressive policy towards Cuba' for which 'there is no justification'."³⁷⁰

In February 1992, the U.N. Commission voted to approve a resolution expressing "alarm at continuing reports of human rights abuses [and concern about] numerous uncontradicted reports of continued [human rights] violations."³⁷¹ The U.N. Special Rapporteur on Human Rights in Cuba told the U.N. Commission that harassment, repression and imprisonment are the Cuban government's tools of choice against dissidents and human right activists, practices which did not diminish in the last year.³⁷² The U.N. Commission approved a resolution condemning Cuba's systematic violation of human rights, in particular individuals' freedoms of speech and association.³⁷³ Some prime examples of Cuba's denial of human rights follow.³⁷⁴

The Cuban government requires various identification and record-keeping practices that interfere with individuals' privacy rights in derogation of international norms.³⁷⁵ Since 1970, every

tion condemning human rights violations in Cuba in March 1994 by the "largest margin ever." 1993 COUNTRY REPORTS, *supra* note 47, at 414.

369. *Facade*, *supra* note 335, at 17; *Tightening*, *supra* note 306, at 19.

370. *Facade*, *supra* note 335, at 17 (quoting U.N. Names Rights Observer for Cuba; *It Rejects Him*, WASH. POST, July 3, 1991; *Tightening*, *supra* note 306, at 4. Similarly, after the 1994 resolution the Cuban Ambassador said the resolution was a "political vendetta" and insisted that "there are no large-scale and flagrant human rights violations in Cuba." 1993 COUNTRY REPORTS, *supra* note 47, at 414; *see supra* note 368 (discussing 1994 UNCHR resolution).

371. U.N. ESCOR, 48th Sess., at 2, U.N. Doc. E/CN.4 (1992).

372. 1993 COUNTRY REPORTS, *supra* note 47, at 409-10, 414; *Repression in Cuba Epidemic*, U.N. Observers Say, MIAMI HERALD, Mar. 3, 1994, at 20A; *see U.N. Scolds Cuba (Again)*, MIAMI HERALD, Feb. 21, 1994, at 18A; Mimi Whitefield, *U.N. report: About 6 Cubans Die Every Day Fleeing Island*, MIAMI HERALD, Feb. 17, 1994, at 24A.

373. *See* 1993 COUNTRY REPORTS, *supra* note 47, at 409; *see also Castro Culpable*, DIARIO LAS AMERICAS, Mar. 10, 1994, at 1A.

374. Not unexpectedly, the 1993 U.S. State Department Report on Human Rights condemned Cuba for rights violations. *See* 1993 COUNTRY REPORTS, *supra* note 47, at 408-16.

375. *Universal Declaration*, *supra* note 12, art. 12, at 73-74. "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor

person sixteen years of age and older has been required to carry a photo identification card which details not only work data for each job the person has had, but also general information, such as residential address and family information, the latter including information on every marriage and names, birth-dates, and I.D. number for each child.³⁷⁶ Moreover, the identification card has a section for "special notes" which often include comments of a political nature.³⁷⁷

Similarly, students have a "cumulative scholastic record."³⁷⁸ This record follows a student from the first year of education throughout his or her schooling, and includes far more than the student's academic performance.³⁷⁹ For example, two of the categories on which students are evaluated are "socioeconomic conditions,"³⁸⁰ and "ideological, political and moral education."³⁸¹ Finally, persons also have a "work record" which closely resembles the scholastic record,³⁸² in that it also tracks and evaluates the "ideological integration" of the worker.³⁸³

These requirements of a "work record," a scholastic record, and a photo I.D. are not the only intrusions into internationally-

to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." *Id.*

376. MITO, *supra* note 1, at 208, illus. 40, 41; HUMAN RIGHTS IN CUBA, *supra* note 312, at 37, 39-40.

377. MITO, *supra* note 1, at 208. Allegations exist about this section being used to show whether the individual was a political prisoner. *Id.*

378. See MITO, *supra* note 1, at 209 ("expediente acumulativo del escolar"); see also HUMAN RIGHTS IN CUBA, *supra* note 312, at 37-38, 41-42. Of course, the right to education is a positive achievement, in accord with the *Universal Declaration*, *supra* note 12, art. 26, at 76.

379. MITO, *supra* note 1, at 209.

380. See *id.* at illus. 42 ("condiciones socioeconomicas"). Such information is requested in Chapter V and includes information on the household composition (parents and siblings, including half-siblings), numbers of radios or television sets, condition of the house, and ideological integration. *Id.* at illus. 42, 43.

381. See *id.* ("educación ideológica, política y moral"). Such information is requested in Chapter V and includes information on ideological-political behavior (comportamiento ideológico-político), which details membership in political or mass organization and level of participation therein, and ideological-moral behavior (comportamiento ideológico-moral), which details the student's solidarity and cooperation as well as social communist practice. *Id.*

382. HUMAN RIGHTS IN CUBA, *supra* note 312, at 37. However, like the right to education, the Castro regime can take credit for enforcing the right to work, which is an internationally-recognized right. *Universal Declaration*, *supra* note 12, art. 23, at 75. However, the work record is an unacceptable intrusion, as is any forced labor practice. *Id.*

383. HUMAN RIGHTS IN CUBA, *supra* note 312, at 43.

recognized personal freedoms that challenge the government's legitimacy. In spite of Cuba's basic success at implementing the internationally-accepted right to employment³⁸⁴ and education,³⁸⁵ Cubans also lack some economic freedoms in derogation of these rights. The government, and not the individual, decides where and when people work, whether they get promotions, and even whether someone can buy appliances at the workplace credit union.³⁸⁶ Some professions, such as law, are reserved for persons who have the requisite ideological integration.³⁸⁷ Persons are expected to donate time to "voluntary work" for mass organizations,³⁸⁸ and to go to the country to do agricultural work.³⁸⁹ In fact, Article 228 of the Cuban Penal Code, which refers to "illicit economic activities," makes it a crime to engage in economic activities without a license. However, because of the present crisis in September 1993, Castro re-legalized self-employment, which had been abolished in 1968, by allowing people to apply for licenses to work in over 100 occupations.³⁹⁰

Likewise, the Cuban government controls whether a person

384. *Universal Declaration*, *supra* note 12, art. 23, at 75.

385. *Id.* art. 26, at 76.

386. OPPENHEIMER, *supra* note 229, at 143; HUMAN RIGHTS IN CUBA, *supra* note 312, at 12 (noting that government permission is needed to change jobs; also noting practice of government sending young workers to work in Eastern European countries and other Third World states).

387. HUMAN RIGHTS IN CUBA, *supra* note 312, at 77; Mimi Whitefield, *No Easing of the Ideological Line in Cuba*, MIAMI HERALD, Sept. 7, 1994, at 15A (reporting that only Cubans capable of defending revolutionary ideals are allowed to study at university level).

388. OPPENHEIMER, *supra* note 229, at 309; MITO, *supra* note 1, at 265. For analysis of "voluntary labor" viewed as "forced labor" in violation of international norms, see *supra* note 214.

389. OPPENHEIMER, *supra* note 229, at 269, 273-74; MITO, *supra* note 1, at 264-66.

390. 1993 COUNTRY REPORTS, *supra* note 47, at 416 (also noting, however, that self-employment regulations exclude university graduates, employees in sectors that constitute government priorities, and state employees whose work is "necessary"); *Behind Bars*, *supra* note 320, at 5-6 (explaining crime of illicit economic activities, describing application to person who was sentenced to one year in prison for working as photographer without license, and noting that "[t]housands of Cubans offer unlicensed services such as plumbing or electrical repair, sewing or manicures to neighbors who prefer not to seek those services through the often inefficient government bureaucracy"); see *supra* note 2 (regarding offering of unlicensed services). *But see Foreign Investment Legislation in Cuba*, *supra* note 79 (noting that in most recent changes government has proposed policy initiatives that will increase monthly registration fees established under Decree-Law No. 141 (Sept. 8, 1993) that are paid by self-employed Cubans for privilege of being self-employed).

may study, as well as what he or she may study.³⁹¹ Significantly, the state decides who goes to the university largely on political integration, rather than on merit.³⁹² High school graduates are asked to list four career choices, but the government makes the final employment decision based on the state's needs; this decision is not limited to an individual's listed options.³⁹³

In challenging the legitimacy of the Cuban government on the basis of its lack of economic freedoms, one must note that from the outset, Castro's revolution was presented as an ideological, moral one.³⁹⁴ In this vein, the revolution promoted "an ethic driven by self-sacrifice, social understanding of the laws of history, and total fusion of the public good with the private will."³⁹⁵ In theory, the goals were laudable; in practice, from a human rights perspective, the results are unacceptable. For example, the theory as translated into practice initially meant the requiring of

a sixth day of work without compensation. Later, certain nuances were added: willingness to perform shock troop work whenever needed, unquestioning willingness to serve the regime in whatever emergency military or paramilitary tasks were required, and placing state above citizen in confronting possible acts of sabotage. In short, through the Committees for the Defense of the Revolution, a political component of sacrifice was added to the earlier, less advanced, economic varieties.³⁹⁶

Those who fail to establish their ideological integration or who commit a counter-revolutionary act, which can range from self-employment to human rights advocacy, are literally "rejected."³⁹⁷ This rejection or repudiation may take the form of a public attack on the honor of the individual who has dissented,

391. HUMAN RIGHTS IN CUBA, *supra* note 312, at 89; *see supra* notes 384, 387 and accompanying text (discussing limits to freedom of employment and education).

392. HUMAN RIGHTS IN CUBA, *supra* note 312, at 89; *see supra* notes 384, 387 and accompanying text (discussing limits to freedom of employment and education).

393. OPPENHEIMER, *supra* note 229, at 143.

394. CONSCIENCE, *supra* note 44, at 70.

395. *Id.*

396. *Id.* at 70-71. Carried to an extreme, forced work could be deemed to constitute a violation of the international prohibition against the right of persons not to be held in servitude. *See Universal Declaration, supra* note 12, art. 4, at 73.

397. MITO, *supra* note 1, at 210-12 ("acto de repudio"); HUMAN RIGHTS IN CUBA, *supra* note 312, at 45; 1993 COUNTRY REPORTS, *supra* note 47, at 409, 410.

as well as other forms of harassment, both verbal and physical.³⁹⁸ The acts of repudiation, which have been used to harass and intimidate human rights activists, among others,³⁹⁹ violate the international rights to be free from attacks to one's honor or reputation⁴⁰⁰ and to freedom of thought⁴⁰¹ and expression.⁴⁰²

In addition, government surveillance effectively renders the internationally-protected right to privacy⁴⁰³ non-existent. Block committees for the defense of the revolution ("CDR") keep close track of the neighbors in their jurisdiction.⁴⁰⁴ The committees were originally created in 1960 to keep track of counter-revolutionaries,⁴⁰⁵ and still exist today as a local-level entity that spies on citizens and keeps track of their activities in order to stop counter-revolutionary activities. Such continuous, institutionalized surveillance of citizens obviates their right to privacy.⁴⁰⁶

398. MITO, *supra* note 1, at 210-12; HUMAN RIGHTS IN CUBA, *supra* note 312, at 45; 1993 COUNTRY REPORTS, *supra* note 47, at 409-10.

399. Cuba, *supra* note 335, at 3, 7-8 (describing acts of repudiation against human rights activists including assault by mobs who hurled insults and shouted slogans, vandalization of homes, surrounding of individuals who then are physically and verbally abused); *Tightening*, *supra* note 306, at 13-14.

400. *Universal Declaration*, *supra* note 12, art. 12, at 73-74. "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." *Id.*

401. *Id.* art. 18, at 74. "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." *Id.*

402. *Id.* art. 19, at 74-75. "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." *Id.*

403. *Id.* art. 12, at 73-74; *see supra* notes 375-83 and accompanying text (giving examples of other violations of individuals' privacy rights).

404. *See Fact Sheet: Cuba*, *supra* note 83, at 105 (noting that one way Ministry of Interior ensures political and social conformity as well as internal security is use of CDR and network of informers to maintain pervasive vigilance); 1993 COUNTRY REPORTS, *supra* note 47, at 408-09, 411; SUSTAIN PRESSURE, *supra* note 312, 59-63 (explaining that CDRs "are responsible for observing and reporting to a variety of government ministries and organizations the political and ideological conduct of residents of each block; Cubans must receive the approval of their CDRs to obtain day care for their children, to be admitted to university or to change jobs;" "through their vigilance, CDRs control the behavior of those they monitor"); *Tightening*, *supra* note 306, at 3.

405. MITO, *supra* note 1, at 96.

406. HUMAN RIGHTS IN CUBA, *supra* note 312, at 37; SUSTAIN PRESSURE, *supra* note 312, at 59-63 (noting that "the most systematically violated [right] in Cuba is the right of privacy [because a]lmost every aspect of the lives of Cubans is subject to a pervasive

More recently, in response to the public protests against the economic deprivations, the government has further tightened its hold over citizens' actions. The CDR now has organized "rapid response brigades" or "rapid action detachments" which are charged with stifling public shows of discontent.⁴⁰⁷ Rapid response brigades crack down on demonstrations and other human rights activities.⁴⁰⁸

However, it is not only recent economic conditions that have led to repressive government action. Indeed, personal freedoms have been curbed throughout Castro's rule. Law 54 and Resolution 53 of 1986 limit citizens' internationally-accepted right of free assembly and association.⁴⁰⁹ Cuban laws prohibit the assembly of more than three persons, even in a private home, which is punishable by imprisonment of up to three months.⁴¹⁰ Organizers of illicit or unrecognized groups can be imprisoned up to nine months, and members of such groups

system of political surveillance so that Cubans are monitored in their neighborhoods, at their places of work and their schools; [t]heir degree of 'ideological integration' is constantly being recorded and their lives are shaped by judgments about how their conduct and their views conform to officially prescribed doctrines"); 1993 COUNTRY REPORTS, *supra* note 47, at 408-09, 411 (noting that CDRs monitor daily lives of residents).

407. *Facade*, *supra* note 335, at 2 (noting that brigades are comprised of civilians from neighborhood); *Tightening*, *supra* note 306, at 1, 2.

408. See OPPENHEIMER, *supra* note 229, at 313; J. Goytisoló, *A Journey To Cuba: Shakened, Saddened*, MIAMI HERALD, Sept. 22, 1991, at 1C, 4C (describing brigades' response to human rights protest and brigades' response to attempt to film by non-Cuban journalist visiting Cuba on Cuban visa which, along with U.S. citizenship, "meant nothing"). After this encounter the journalist was followed everywhere by plain-clothes police. *Id.*; see Ana Santiago, *Arrestada Dirigente Opositora Cubana*, NUEVO HERALD, July 9, 1993, at 1A, 8A (reporting on activist history of Paula Valiente, including arrests and encounters with rapid response brigades).

409. See *Universal Declaration*, *supra* note 12, art. 20, at 75. "Everyone has the right to freedom of peaceful assembly and association. . . . No one may be compelled to belong to an association." *Id.*; see MRTO, *supra* note 1, at 215.

410. CUBAN PENAL CODE arts. 208, 209; OPPENHEIMER, *supra* note 229, at 314; SUSTAIN PRESSURE, *supra* note 312, at 25-26 (explaining that Articles 208 and 209 of current penal code, which prohibit "illicit associations, gatherings and demonstrations . . . provide[] no protection for the exercise of the internationally recognized right of freedom of peaceful assembly and association;" under these articles "for belonging to an unregistered association or participating in unauthorized gatherings or demonstrations one could serve one to three months in prison; for leading an unregistered association, or organizing unauthorized gatherings or demonstrations, three months to one year"); *Behind Bars*, *supra* note 320, at 4-5; 1993 COUNTRY REPORTS, *supra* note 47, at 412. These laws on their face violate the international right to peaceful assembly and association, *Universal Declaration*, *supra* note 12, art. 20, at 75, and to privacy, *Universal Declaration*, *supra* note 12, art.12, at 73-74.

can be imprisoned for up to three months.⁴¹¹ The government often uses these laws against human rights activists.⁴¹² In fact, a report by a respected human rights observer group states that the government uses the "brigades" against

individuals with political and ideological problems . . . [because the government] . . . cannot allow . . . people to go around shouting slogans against the Revolution or socialism. [The government has] to confront these manifestations and these people. . . . [And although the civilian groups] would not use violence to stop the dissent but would attempt to use persuasion . . . [i]f it comes to blows, we will not be the ones who start.⁴¹³

Like the rights to freedom of assembly and association, the internationally-recognized right to freedom of expression is non-existent in Cuba.⁴¹⁴ On its face, the Cuban Constitution violates these rights, as it provides that freedom of speech and the press are recognized only in accordance with the goals of a socialist society.⁴¹⁵ Other laws also serve to chill free speech. For example, Article 103 of the Penal Code creates the offense of enemy propaganda.⁴¹⁶ Pursuant to this article, it is illegal to produce, distribute or possess oral, written or other propaganda against the social order or the socialist state.⁴¹⁷ Thus, there can be no criticism of the revolution, the government, or its leaders. One found guilty of violating this article can be imprisoned for exten-

411. CUBAN PENAL CODE art. 239; OPPENHEIMER, *supra* note 229, at 314.

412. *Cuba*, *supra* note 335, at 9; 1993 COUNTRY REPORTS, *supra* note 47, at 412 (noting that authorities have never approved public meeting of human rights group).

413. Pascal Fletcher, *Cuba Creates 'Rapid Action Groups' To Stop Public Dissent*, Reuters N. Am. Wire, July 11, 1991, available in LEXIS, NEWS Library, ARCNWS File.

414. The right to this freedom exists in Article 19 of the *Universal Declaration*, *supra* note 12, at 74-75, but is formally denied in Cuba. See SUSTAIN PRESSURE, *supra* note 312, at 3, 7-21; *Fact Sheet: Cuba*, *supra* note 83, at 105 (noting lack of individual freedoms in Cuba); 1993 COUNTRY REPORTS, *supra* note 47, at 411.

415. CUBAN CONST. arts. 52, 61, in THE CONSTITUTIONS OF THE COMMUNIST WORLD, *supra* note 79, at 114-16. Article 52 of the Cuban Constitution protects only speech and press freedom that are in accord with the objectives of socialist society, and makes the print and electronic media property of the state. Article 61 states that the freedoms Cuban citizens have cannot be exercised against the goals of the socialist state. *Id.*; see SUSTAIN PRESSURE, *supra* note 312, at 7; *Fact Sheet: Cuba*, *supra* note 83, at 105 (noting government and communist party control all electronic and print media).

416. CUBAN PENAL CODE art. 103.

417. CUBAN PENAL CODE art. 103. See SUSTAIN PRESSURE, *supra* note 312, at 10; *id.* at 11-14 (providing examples of prosecutions on "enemy propaganda" grounds); 1993 COUNTRY REPORTS, *supra* note 20, at 412.

sive periods.⁴¹⁸ The government regularly uses this article against human rights activists.⁴¹⁹

Other means of suppressing expression, also often used to curb activities of human rights activists and others, are Articles 144 (contempt)⁴²⁰ and Articles 201 and 202 (public disorder).⁴²¹ Similarly, Article 210 forbids clandestine printing and, while the law is ostensibly aimed at protecting copyright, it is used to punish anyone who tries to publish materials that would not be published by government printing services.⁴²²

The lack of freedom of expression is broadly institutionalized. Article 52 of the Constitution provides that all media are state property.⁴²³ Thus, the government controls the press, radio, and television.⁴²⁴ In 1959, Cuba had 82 AM radio stations,

418. See HUMAN RIGHTS IN CUBA, *supra* note 312, at 65-66 (describing sentencing of human rights activist Ariel Hidalgo for writing essay); SUSTAIN PRESSURE, *supra* note 312, at 10-12 (describing trials of Ariel Hidalgo and Rafael Emilio Saumell Muñoz; explaining range of sentences for offenses under this article).

419. Cuba, *supra* note 335, at 11, 18 (noting increase in enemy propaganda cases reported in 1990 and giving examples of same); see 1993 COUNTRY REPORTS, *supra* note 47, at 412 (noting that dissidents are attacked and intimidated).

420. CUBAN PENAL CODE art. 144; see SUSTAIN PRESSURE, *supra* note 312, at 14-15 (noting that offense deals with "[a]nyone who 'threatens, slanders, defames, insults, injures, in any way outrages or offends, orally or in writing, the dignity or honor of an authority,'" and carries punishment of imprisonment from three months to one year but goes to one to three years if offense is against Castro or other heads and members of state government); see also Cuba, *supra* note 335, at 17, 18.

421. CUBAN PENAL CODE arts. 201-02; see SUSTAIN PRESSURE, *supra* note 312, at 15-16 (explaining that although on their face these provisions are not offensive as they are overtly aimed at provocation of panic in public place by verbal or physical threat, their application includes suppression of "peaceful independent or unofficial associations;" and giving examples of such troublesome applications).

422. CUBAN PENAL CODE art. 210; see SUSTAIN PRESSURE, *supra* note 312, at 16-18 (explaining that maximum sentence is one year and providing examples of use of law against Jehovah's Witnesses); *Behind Bars*, *supra* note 320, at 2-4 (describing application of the law to some human rights unofficial groups trying to promote independent activity); 1993 COUNTRY REPORTS, *supra* note 47, at 412.

423. CUBAN CONST. art. 52, in THE CONSTITUTIONS OF THE COMMUNIST WORLD, *supra* note 79, at 114; see 1993 COUNTRY REPORTS, *supra* note 47, at 412; SUSTAIN PRESSURE, *supra* note 312, at 18-24.

424. See 1993 COUNTRY REPORTS, *supra* note 47, at 412 (explaining that media "faithfully reflect government views and are used to indoctrinate the public"). The process of taking over the press took approximately one and one-half years. For a description of this process, see MITRO, *supra* note 1, at 78 n.22. It began with Castro confiscating newspapers formerly run by the ousted Batista regime and using them to disseminate the new revolutionary party line. Thereafter, the new regime withdrew official advertisements from independent papers, and there were fire-bombings of their offices. Later, freedom of the press was further limited by the requirement that newspapers

24 FM radio stations, and five television stations.⁴²⁵ By 1960, all of these had been confiscated by the government.⁴²⁶ It is interesting that this lack of freedom of the press was revisited at the end of the Cold War. For example, *perestroika* and *glasnost* aroused much interest in the Cuban people. To learn about these changes, the people started to read Soviet newspapers and magazines. However, in the summer of 1989, the government banned the sale of *Moscow News* and *Sputnik*, thus totally denying Cubans any access to publications from abroad. The Cuban government's official paper simply explained that the journals were banned because they were "justifying bourgeois democracy as the highest form of popular participation and with a fascination for the American way of life."⁴²⁷ Even Canek Guevara, one of Che's grandchildren, complains of the lack of such freedom, the inability to "open your mouth."⁴²⁸

This control of information reaches beyond the press, radio and television to other cultural matters, the control of which is similarly institutionalized. For example, the Constitution provides for free artistic expression, so long as it is not contrary to the revolution.⁴²⁹ These limitations patently fly in the face of the Universal Declaration's protection of everyone's right freely to participate in the cultural life of the community.⁴³⁰ Clearly, such rights cannot be enjoyed when the government controls what the people can read by strictly controlling what books and magazines can be sold or carried in libraries.⁴³¹ Interestingly, there are reports of a so-called "yellow section" in the National

print "clarifications" with respect to any stories that were critical of the government. Finally, as of May 1960, the government had confiscated and ultimately fully controlled all newspapers. *Id.* at 77-81; see *Fact Sheet: Cuba*, *supra* note 83, at 105 (noting government and communist party control all print and electronic media).

425. See MITO, *supra* note 1, at 82.

426. *Id.*

427. *Jailing the Movement*, *supra* note 324, at 9; see Azicri, *supra* note 211, at 17.

428. OPPENHEIMER, *supra* note 229, at 268. Canek believes that the revolution is in ruins, and calls his studies as a waste of time. *Id.* There are no paper or pens, and the teachers lack interest. Moreover, there is no work upon graduation other than agriculture. *Id.* at 268-69.

429. CUBAN CONST. art. 38(e), in THE CONSTITUTIONS OF THE COMMUNIST WORLD, *supra* note 79, at 110 ("there is a right to free artistic creation so long as its contents are not contrary to the revolution") (translation by Author).

430. *Universal Declaration*, *supra* note 12, art. 27, at 76.

431. MITO, *supra* note 1, at 221-24; 1993 COUNTRY REPORTS, *supra* note 47, at 411 (noting that Cubans do not have right to receive publications from abroad).

Library with approximately a 7,000 volume (and growing) collection that is accessible only to selectively designated persons with a "yellow card."⁴³²

Another right recognized by the Universal Declaration but denied by the Cuban government is the right to freedom of movement.⁴³³ Although there are no restrictions on domestic travel, the government determines whether persons get permission to travel abroad.⁴³⁴ In fact, Article 216 of the Penal Code makes it illegal to leave or attempt to leave the country without complying with the local requirements, a crime that is punishable by one to three years imprisonment.⁴³⁵ Moreover, Article 217 makes it illegal to organize, promote, or incite an illegal exit, an offense that is punishable by two to five years imprisonment.⁴³⁶

It is noteworthy, however, that this is one area in which the government has made some progress. In 1991, for example, the government eased travel restrictions that had been in place for years, which only permitted men over the age of 65 and women over the age of 60 to travel abroad.⁴³⁷ The government now allows persons over 20 years of age to apply for permission to travel abroad, and the vast majority of persons who qualify for visas or refugee status are allowed to leave, although the govern-

432. MITO, *supra* note 1, at 222.

433. *Universal Declaration*, *supra* note 12, art. 13, at 74.

434. 1993 COUNTRY REPORTS, *supra* note 47, at 413 (no legal restrictions on domestic travel except for restricted zone near U.S. Naval Base at Guantanamo); OPPENHEIMER, *supra* note 229, at 143.

435. CUBAN PENAL CODE art. 216; *see* SUSTAIN PRESSURE, *supra* note 312, at 41. Ironically, the recent threatened exodus resulted from Castro's unilateral decision *not* to impede illegal exit.

436. CUBAN PENAL CODE art. 217; SUSTAIN PRESSURE, *supra* note 312, at 41-42. For examples of government acts against those who seek to leave illegally, *see supra* note 274.

437. *See Tightening*, *supra* note 306, at 4. The restriction was gradually reduced and ultimately the age limit was lowered to twenty years for men and women. *Id.* It is interesting that many have interpreted this change as an attempt by the Cuban government to relieve its economic pressures by creating the setting for a massive exodus. *Id.* It appears that the United States might believe this to be the tactic, as it declared shortly after the reduction in age limit was announced that its interests section in Havana would stop accepting new tourist visa applications until the back-log of pending applications was cleared. *Id.* at 4 n.4. This move has been interpreted by some as a way of preventing a massive exodus. *Id.* *But see Castro Warns U.S.*, *supra* note 172 (noting that Castro blames United States for encouraging people to leave and has threatened to lift all restrictions on exiting island, which could result in massive, unmanageable exodus).

ment continues to deny permits when it wishes.⁴³⁸ In addition, there are reports that Castro is pressuring dissidents to leave, and offering them freedom if they agree to leave the country.⁴³⁹

In an apparent search for dollars to support the struggling economy, in his July 26, 1993 speech Castro announced the liberalization of the policy of granting visas to exiles wishing to visit the island.⁴⁴⁰ This move, like the embargo issue, has caused divi-

438. 1993 COUNTRY REPORTS, *supra* note 47, at 413 (also noting government's refusal to allow certain persons to leave, such as "professionals who have tried to leave and have since been banned from working in their occupational fields," or sensitive cases, including Castro's own daughter, who recently escaped island in disguise).

439. See Ana Santiago, *Activistas: Cuba Presiona a Disidentes Para Que Emigren*, NUEVO HERALD, July 24, 1993, at 4A (reporting on case of Sebastian Arcos Bergnes, convicted of distributing enemy propaganda and sentenced to five years imprisonment; Arcos' son in Miami stated that his father was visited constantly in prison, and is being offered freedom if he agrees to leave country via Spain; in recent days Cuba has released from prison and/or allowed to leave Cuba other dissenters and activists, including Mario Chanes de Armas, who went to Miami, Daniel Azpillaga, and Maria Elena Cruz Varela; and noting that some believe Castro is taking these measures to get approval from states that are insisting on political reform as condition of providing economic aid); see also *Maria Elena Cruz Varela es Premiada en Holanda por Persecución en Cuba*, DIARIO LAS AMERICAS, June 18, 1993, at 1-A (reporting on detention and imprisonment of poet because of her protest against regime; before her detention, her house was invaded and she was forced to eat anti-government pamphlets she had written); see Ana Santiago, *Cuba Pressures Dissident to Leave*, MIAMI HERALD, July 24, 1993, at 21A (reporting on pressure on Arcos to leave, and early release of Cruz Varela, who announced immediately after her release that "she was withdrawing from the human rights struggle and would concentrate on her poetry"); 1993 COUNTRY REPORTS, *supra* note 47, at 413.

440. Ana Santiago, *Cuba da Primeras Visas en Nuevo Plan de Viajes*, NUEVO HERALD, Aug. 15, 1993, at 1B, 3B. Since 1985 the Cuban government had limited such visas to 5,000 per year. *Id.* Experts have calculated that under the new policy up to 100,000 exiles could visit the island in the first year. *Id.* One of the points of criticism of the new policy is its requirement that visitors who travel to the island must pay for lodging whether or not they use it. *Id.* It must be noted, however, that visitors from the United States are subject to the terms of the U.S. embargo, which limits spending to US\$100 per day. *Id.* The price fixed by the government for lodging would result in violation of the embargo limit. *Id.* The numbers of the exiles who can visit vary. See *Castro Bids to Shore Up Revolution*, *supra* note 239, at 1A, 16A (noting that visits from United States could range from present 10,000 per year to 20,000 or 30,000 per year).

The changes include a five-fold increase in the numbers of visas to be granted to exiles; no limitation by Cuba on the amount of dollars that the travelers can take into Cuba (although the U.S. embargo limits spending to US\$100 per day); permission to visit for persons who left prior to 1970 and are using a U.S. passport; unlimited visas to Cubans who left in the Mariel boatlift; visits allowed from a weekend to 30 days; exiles to be treated in the same manner as other tourists, including having access to foreigners' stores and being able to stay at the hotel of their choice; exiles no longer required to exchange dollars for pesos; and no limit on the times an exile can visit Cuba. See Ana Santiago, *Exiles' Trips to Island are Likely to be Easier*, MIAMI HERALD, July 28, 1993, at 1A, 10A.

sions in the Cuban-American community, where some argue that they must help their families in the island, but others argue that any money spent there, regardless on what it is spent, is effectively assistance to the repressive regime.⁴⁴¹ Moreover, like the "dollarization" move, the lifting of travel restrictions is deemed to be risky with the potential for creating social and political turmoil.⁴⁴² For example, the last time exiles were allowed to travel to Cuba, the difference in relative wealth seen by their families in the island is believed to have resulted in a questioning of the revolution that in turn triggered a massive exodus.⁴⁴³ On the other hand, the liberalization has apparently been accompanied with a tightening of the crackdown on those who seek to leave without government permission.⁴⁴⁴

The lack of freedoms and resources has led to the creation of a black market, in which those with more means do better.⁴⁴⁵ The government tolerates this law-breaking. Under the law, one who wants a bigger house must exchange property, without money changing hands. In reality, to get the bigger house, one must offer money to a potential seller.⁴⁴⁶ As described above, there is also a black market for food and consumer goods.⁴⁴⁷

441. See, e.g., Ron Howell, *Castro's Travel Shift Splits Exiles*, N.Y. NEWSDAY, Aug. 22, 1993, at 15.

442. Horacio Ruiz Pavón, *Advierten Desde La Habana: 'Hay Orden de Tirar a Matar'* ["Warning from Havana: 'The orders are shoot to kill'"], DIARIO LAS AMERICAS, July 7, 1993, at 1B, 2B [hereinafter *Warning*] (reporting that as island's economic status deteriorates, Castro fears exodus). Many believe that easing of travel restrictions is risky, as it might spur anti-government sentiments and a desire to leave.

443. *Castro Bids to Shore Up Revolution*, *supra* note 239, at 16A; Pablo Alfonso, *Cuba Por Dentro*, NUEVO HERALD, June 20, 1993, at 3A; *Dollar Libre*, *supra* note 293, at 2.

444. See *Warning*, *supra* note 442 (reporting that government has given orders to shoot to kill anyone caught trying to leave country without government permission); *Survival Tactics*, *supra* note 239, at A1; Christopher Marquis & Andres Oppenheimer, *Cuba Seeking Immigration Negotiations*, MIAMI HERALD, July 9, 1993, at 1A, 16A; see also Dan Keating, *Contrabando de Cubanos Hacia los Cayos Trae a Pareja de Refugiados*, NUEVO HERALD, July 14, 1993, at 1B (reporting on persons paying money for being taken to United States); *3 Die as Cuba Intercepts Speedboat From the U.S.*, N.Y. TIMES, July 3, 1993; *Castro Warns U.S.*, *supra* note 172; 1993 COUNTRY REPORTS, *supra* note 47, at 413-14.

445. See MITO, *supra* note 1, at 287-88. The principal suppliers of good to the black market are independent farmers (food), workers in state farms (food), and high-level government employees with access to goods or employees in charge of distribution of state goods. *Id.*; see *supra* notes 282-98 and accompanying text (describing black market and how it works in Cuba).

446. OPPENHEIMER, *supra* note 229, at 140.

447. See *supra* notes 282-98 and accompanying text (discussing black market and problems it may cause); see also OPPENHEIMER, *supra* note 229, at 142.

Such lack of internationally guaranteed and recognized personal freedoms, such as civil, political, social, economic and cultural freedoms, certainly calls to question the legitimacy of the government under international standards. In the following section, a review of the lack of equality of opportunity and treatment challenges the government's legitimacy not only pursuant to internationally-accepted norms, but also under the revolutionary philosophy itself.

C. *Lack of Equality of Opportunity*

1. The General Population

Castro's revolution was founded upon the concept of egalitarianism, a view that the people are owners of their own destinies.⁴⁴⁸ In his address to the General Assembly on September 26, 1960, Castro clearly stated that one of the aims of the revolution was to eradicate inequality and discrimination.⁴⁴⁹ In the 1976 Cuban Constitution, equality was encoded into law.⁴⁵⁰ Chapter V provides that "[a]ll citizens have equal rights and are subject to equal obligations."⁴⁵¹ These aspirational statements concerning equality, later formally encoded in law, are noble and perhaps have been realized insofar as one considers improvements in health, education, and welfare. Regrettably, the reality is that the notion of equality is merely a myth.

448. See Mirro, *supra* note 1, at 434.

449. See Case of Cuba, *supra* note 20, at 91-92. Castro notes that one of the principles of the Cuban revolution is the condemnation of discrimination against blacks and Indians and inequality and exploitation of women. *Id.* at 91. He declared "the right of black and Indians to the 'full dignity of man;' the right of women to civil, social and political equality." *Id.* at 92. Significantly, his cadre of close consultants is made up of white men, while all women and black men whose destinies he supposedly liberated by his grant of equality remain second class, at least as political participation is concerned. Moreover, recent reports dealing with racism in the Cuban community, both in Cuba and in exile, reveal that racism is alive and well in both. See Omar L. Montenegro, *Castro is a Calculating Racist - Here's Why*, *MIAMI HERALD*, July 30, 1993, at 17A; Alfonso Chardy, *'Invisible Exiles: Black Cubans in Miami Torn Between Two Cultures*, *MIAMI HERALD*, Aug. 8, 1993, at 1A. For a report on black Cubans in Cuba, see Mimi Whitefield, *Blacks' Support for Castro Erodes Along with Economy*, *MIAMI HERALD*, Aug. 9, 1993, at 1A.

450. See CUBAN CONST. art. 40, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra* note 79, at 111.

451. See *id.* ch. V, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra* note 79, at 111-12. Significantly, the chapter provides for equal access to employment, services, military rank, salary for equal work, education (primary through university), medical assistance, housing, restaurants, transportation, beaches, and other public places. *Id.*

Surveys of Cubans in 1971 and 1986 show that there are "privileged groups" in Cuban society.⁴⁵² The privilege can be based on status, i.e., having high political or military rank⁴⁵³ or being a foreign diplomat⁴⁵⁴ or tourist,⁴⁵⁵ or having some connection, such as being a close family member,⁴⁵⁶ friend⁴⁵⁷ or lover⁴⁵⁸ of one who has the privileged status. Significantly, in a society founded on concepts of equality, it is noteworthy that the prevalence of the citizenry's perception is that high-level government functionaries enjoy privileged status.⁴⁵⁹ This privilege, in effect government corruption, also presents a challenge to the legitimacy of the government.

Particular items available to the privileged are housing,⁴⁶⁰ health services,⁴⁶¹ rationed goods,⁴⁶² education,⁴⁶³ national and international travel,⁴⁶⁴ and use of recreational facilities.⁴⁶⁵ The special privileges, such as gasoline for cars, access to stores where imported goods can be purchased, and trips abroad, exist for the elite when average citizens do not have enough to eat.⁴⁶⁶ This effects a crisis of legitimacy for the government, because such practices contravene expectations of equity, particularly when this two-tiered society exists in "a government whose origins are rooted in social revolution."⁴⁶⁷

452. The studies refer to those conducted by Professor Clark and reported in his book. MITO, *supra* note 1, app. A (1971 questionnaire), app. B (1986 questionnaire). Both questionnaires reflect a perception of privilege status by high-level government personnel. *See id.* at 438-42. Privilege is defined by Professor Clark as having use of goods or services to which citizens lack equal access or where citizen access is extremely difficult even if the citizen had the economic means to obtain it. *Id.*

453. *Id.* at 444-61; Goytisolo, *supra* note 408 (noting that special privileges, such as access to hotel tennis courts, coffee shops, and pools, as well as travel abroad and availability of cars, are reserved for Cuban officials and their families).

454. MITO, *supra* note 1, at 509-11.

455. *Id.* at 510-11; OPPENHEIMER, *supra* note 229, at 137, 418.

456. MITO, *supra* note 1, at 443, 470-78; Goytisolo, *supra* note 408, at C1, C4.

457. *See, e.g.*, MITO, *supra* note 1, at 483, 487.

458. *Id.* at 503-06. Significantly, this notion of the institutionalization of the *querida*, or mistress, of high-level officials flies in the face of notions of gender equality.

459. *Id.* at 439-42.

460. *Id.* at 461-68, 473.

461. *Id.* at 478-82.

462. *Id.* at 483-89.

463. *Id.* at 471-73.

464. *Id.* at 497-503.

465. *Id.* at 489-97; Goytisolo, *supra* note 408, at C1, C4.

466. *Blows*, *supra* note 251, at A6.

467. Marifelli Pérez-Stable, *Towards A Market Economy In Cuba? Social and Political*

A different class of privileged is that of foreigners residing in Cuba.⁴⁶⁸ Pursuant to their status, they are able to buy goods, not generally available to Cubans, in special stores.⁴⁶⁹ This access to goods also lets them participate in the black market economy where the goods in shortage are sold at many times their original prices.⁴⁷⁰ Such access places foreigners in a position of privilege *vis à vis* Cuban citizens, an irony in the context of a government that derided foreigners' advantages over citizens and by constitutional provision gave citizens equal access to, among other things, beaches and restaurants.⁴⁷¹

One of the biggest challenges to the government's legitimacy lies in the system of apartheid it has now created between tourists and Cuban citizens, a privilege that has effectively turned revolutionary philosophy on its head.⁴⁷² Thirty years ago, Castro rejected capitalism in part by closing down tourism. In this time of economic crisis, however, he has decided that the tourism industry is vital to the island's economic survival. Thus, he has reversed his prior policy and has commenced a campaign to revitalize Cuba as a tourist spot.⁴⁷³ Thus, the greatest irony of this move is that one of the first steps of the revolution had been to abolish the hotels and casinos that were deemed to represent privileges for foreigners that the Cuban people could not afford to enjoy. Indeed, the Cuban's right to free access to public service establishments was part of the communist regime's 1976 Constitution.

By 1991, however, in order to further the tourist industry, foreign entities were allowed to buy a 49% share of new hotels and to run them on their own for the first time since they were seized by Castro shortly after he took power.⁴⁷⁴ Significantly, this

Considerations, at 27, 32, in *CUBA IN TRANSITION*, *supra* note 80; see Goytisolo, *supra* note 408, at C1, C4.

468. See MITO, *supra* note 1, at 509-14.

469. See *id.* at 441.

470. See *id.* at 439, 441.

471. See CUBAN CONSTITUTION, art. V, in *THE CONSTITUTIONS OF THE COMMUNIST WORLD*, *supra* note 79, at 111-12 (providing for equal access to, *inter alia*, restaurants and other public service establishments as well as to beaches).

472. See MITO, *supra* note 1, at 510-11; OPPENHEIMER, *supra* note 229, at 137, 418.

473. *Cuba Hearings*, *supra* note 135 (Maingot statement, at 8-10).

474. Agustin de Goytisolo & Jose M. Hernandez, *Law-Decree No. 50 is Basis For Investment*, *CUBANEWS*, Sept. 1993, at 4; OPPENHEIMER, *supra* note 229, at 286. The amended laws give investors legal protection. They exempt foreign investors from payment of income taxes for their first ten years in Cuba, and foreign investors do not have

allowance of participation by foreigners in private enterprise is the diametric opposite of the direction in which Castro led the Cuban people. Castro's 1986 rectification campaign eradicated what little private enterprise had been allowed in the country.⁴⁷⁵ The tragedy is that these nice new hotels, restaurants, and cabarets are out of bounds for Cubans; they are exclusively for tourists, providing a nightmarish flashback to the pre-Castro days that Castro strenuously rejected. Effectively, these policies form a system of apartheid.⁴⁷⁶

This separate and unequal system is taken seriously. At a four-star hotel, management reportedly warns tourists, in writing, against allowing Cubans into the hotel.⁴⁷⁷ One cannot even enter the tourist-only restaurants unless one pays in dollars, a currency which until recently was illegal for Cubans to possess. Significantly, the new "dollarization" of the economy will not solve this apartheid situation, because Cubans with dollars were not even allowed into the foreign-only stores.⁴⁷⁸ In fact, the dollarization of the economy might result in another layer of apartheid: dollar-holding Cubans versus non-dollar-holding Cubans.⁴⁷⁹

One effect of this systemic inequality is the creation of a Cuban "workers' aristocracy,"⁴⁸⁰ in which the best and the brightest flock to work for the foreign entities because they pay higher salaries than anyone else. More important, these jobs give

to pay customs duties for imports of hotel construction materials, furniture, and food. *Id.* Labor laws that guaranteed job stability are not applicable, with foreign hotel managers being allowed to lay off workers at will. *Id.* at 287; see *Foreign Investment Legislation in Cuba*, *supra* note 79.

475. See *supra* notes 211-14 and accompanying text (describing "rectification"). The social consequences of rectification are quite interesting. Products previously unavailable are now imported exclusively for tourists, providing an interesting education to young hotel workers who, until tourism, did not even know what apples, pears, and grapes were. OPPENHEIMER, *supra* note 229, at 287.

476. OPPENHEIMER, *supra* note 229, at 137; *Puertas de Hoteles en La Habana Separan Dos Mundos Diferentes*, NUESTRO HERALD, May 15, 1993, at 1A.

477. OPPENHEIMER, *supra* note 229, at 418.

478. *Ni Con Dólares Pueden Comprar los Cubanos en Tiendas de Extranjeros*, DIARIO LAS AMERICAS, July 31, 1993, at 1-A, 11-A.

479. See *supra* notes 241, 242, 248-50, 299-301 and accompanying text (discussing dollarization and liberalized travel and explaining possible social and political consequences); Enrique Llaca, *El Dólar Creará Dos Clases de Cubanos en Cuba Te Queda Poco Fidel*, DIARIO LAS AMERICAS, Aug. 1, 1993, at 10-A. The apartheid of dollar-holding vs. non-dollar holding Cubans could end in a racial dichotomy.

480. OPPENHEIMER, *supra* note 229, at 293.

Cubans access to foreigners who can get goods in the foreign-only stores that are unavailable through the ration system. Finally, the dollar tips these workers receive cannot be undervalued, as they provide access to the coveted hard currency and that to which it gives access; the government looks the other way and lets them keep it.⁴⁸¹

Another consequence of the move to attract tourism is the resurgence of prostitution, another one of Cuba's evils that Castro claimed his rule had eliminated.⁴⁸² However, it appears that the sex trade is to gain access to clothes,⁴⁸³ a decent meal, shampoo, or even a house.⁴⁸⁴ Recent reports reveal that the government has recognized the reappearance of prostitution but judges it to be youth going morally astray rather than actions arising out of economic need.⁴⁸⁵ Sadly, the practice has attracted such young girls that Canada is reported to be considering criminalizing sex with minors outside of Canada.⁴⁸⁶

2. Women in Cuba: A Myth of Equality⁴⁸⁷

As it is possible to chart progress in health, education and welfare by looking at the status of women,⁴⁸⁸ so, too, the equal opportunity of citizens can be scrutinized by examining women's status in Cuban society. In this area, regrettably, Cuba does not fare as well as it did on the health, education, and welfare indicators.⁴⁸⁹

Castro's revolution was founded on the concept of egalitari-

481. *Id.* at 293-94.

482. *Id.* at 418.

483. See, e.g., Vernon Silver, *All Cash Is Not Created Equal*, N.Y. TIMES, Feb. 14, 1993, § 9, at 3 (reporting Benetton store in Cuba that will be open only to tourists and diplomats).

484. OPPENHEIMER, *supra* note 229, at 151-52.

485. *Cuban Paper Tackles Taboo: Prostitution*, MIAMI HERALD, Jan. 24, 1994, at 8A.

486. Ariel Remos, *Prostitución de Niñas en Cuba Alarma a Abogados Canadienses*, DIARIO LAS AMERICAS, Feb. 20, 1994, at 1A.

487. See Berta Esperanza Hernández Truyol, *Women in Castro's Cuba: A Myth of Equality*, in ENCYCLOPEDIA OF THIRD WORLD WOMEN ch. 73 (Nelly P. Stromquist ed., forthcoming) (discussing separate account of status of women in Cuba).

488. See *supra* notes 56-78 and accompanying text (noting women's advancements in health, education, and welfare).

489. It is noteworthy that the pre- and post-revolutionary Cuban society has been consistent with respect to women in one critical aspect: the laws and constitutional provisions affecting women and protecting women's rights always have been among the most progressively-worded in the world.

anism. In fact, in his address to the General Assembly on September 26, 1960, Castro clearly stated that one of the aims of the revolution was to eradicate inequality and discrimination, specifically noting that one of the principles of the Cuban revolution was the condemnation of discrimination against blacks and Indians, and inequality and exploitation of women.⁴⁹⁰ Castro designated this move toward equality for women as a revolution within a revolution. The 1976 Constitution encoded this right to equality into law, with Chapter Five expressly providing that "all citizens have equal rights and are subject to equal duties."⁴⁹¹ However, in reality, neither women nor blacks have achieved equality. Although both groups have made some gains, they both largely have been excluded from the power structure.⁴⁹² Indeed, at a 1974 Federation of Cuban Women ("FMC") Congress, Castro recognized that women's equality was not yet a reality;⁴⁹³ a reality that is still non-existent two decades later.

In addition to this constitutional requirement of equality, three noteworthy legal changes were effected to fully integrate women in the work force, and lift their "double burden" of working outside the home while also bearing housekeeping and childrearing obligations. While these changes did alleviate the condition of women, regrettably they did so by way of state-supported programs and policies that reinforce and perpetuate traditional gender roles. Indeed, although women benefitted from the family-related policies introduced in the 1970s, these policies have as their foundation the traditional roles women play in the family structure.

First, the 1974 Maternity Law⁴⁹⁴ offered women who were

490. Case of Cuba, *supra* note 20, at 90-91.

491. See CUBAN CONST. art. 40, in THE CONSTITUTIONS OF THE COMMUNIST WORLD, *supra* note 79, at 111.

492. See STRUGGLE, *supra* note 22, at xxi; 1993 COUNTRY REPORTS, *supra* note 47, at 414 (reporting that leadership positions in government are dominated by white men; that there are only three women in 25-member Politburo; and that although "blacks and mulattoes make up over half of the population, they comprise only 4 of the 25 Politburo members and only 15% of over 200 members of the Central Committee").

493. See Cuba: *Job Shortage Threatens Women's Advance*, Latin America Regional Reports: Caribbean, Mar. 28, 1990, available in LEXIS, NEWS Library, ARCNWS File (noting speech by Castro indicating that women stood to lose jobs as economy tightened); see also Cuba: *All Power to the People*, Latin America, Apr. 25, 1975, available in LEXIS, NEWS Library, ARCNWS File (noting 1974 FMC Congress' deliberations of new Cuban Family Code).

494. Ley No. 1263, de la Maternidad de la Trabajadora (1974), reprinted in MINIS-

part of the paid labor force 18 weeks paid maternity leave, six weeks prior to delivery and 12 weeks after delivery, paid days off for doctors' visits, an optional nine-month unpaid leave for new mothers, and a six-month unpaid leave for women with children under age 16 to attend to family matters.⁴⁹⁵ In addition, if a woman's child had special needs and required more care, the mother was guaranteed an additional non-paid leave of absence of up to one year, with her same position and pay waiting for her upon her return to work. Mothers who were part of the paid labor force also were granted one hour per day with pay to nurse and care for their infants. As noted in the discussion on health,⁴⁹⁶ there is guaranteed medical care during pregnancy, child birth, and the post-natal period for the mother and the newborn child. The FMC, a state-supported organization, assists in delivering health services by keeping track of pregnant women and newborns, organizing cervical cancer screening, organizing vaccination programs for home-makers, and holding sex education and reproductive freedom education sessions for women,⁴⁹⁷ all traditional gender-role related activities. Thus, beneficial as the 1974 Maternity Law may be for women and children, it is at the expense of entrenching existing gender roles.

The same pattern of different treatment based on gender exists in other family issues. The second example is the 1975 Family Code ("Family Code"), which was enacted to stipulate a new equality between men and women in marriage.⁴⁹⁸ The Family Code identified the right of each marital partner to pursue a career and required both to share household duties and child

TERIO DE JUSTICIA, LA MUJER EN CUBA SOCIALISTA [MINISTRY OF JUSTICE (CUBA), THE WOMAN IN SOCIALIST CUBA] (1977) [hereinafter 1974 Maternity Law].

495. *Id.*; Lois M. Smith & Alfred Padula, *The Cuban Family in the 1980s*, in STRUGGLE, *supra* note 22, at 179 (reporting on comments made by Isabel Larguya, Argentinian citizen, and John Dumolin, U.S. citizen, both residents of Cuba since early 1960's).

496. *See supra* notes 23-78 and accompanying text.

497. Sarah M. Santana, *Whither Cuban Medicine? Challenges for the Next Generation*, in STRUGGLE, *supra* note 22, at 251, 255. The Federation is a large organization that focuses on women. It works at the neighborhood level as well as the national level, and is represented in municipalities and provinces. Women are mobilized through the Federation for the performance of certain tasks. In 1977 the Federation was believed to have approximately 2,127,000 members representing about 80% of the female population over the age of 14. MITO, *supra* note 1, at 133, 133 n.8.

498. FAMILY CODE, Law No. 1289, *translated in* CENTER FOR CUBAN STUDIES, CUBAN FAMILY CODE (1975).

care.⁴⁹⁹ This right was even incorporated into the Cuban marriage ceremony and is read by judges performing civil marriages. Yet a study conducted three years after the adoption of the Family Code revealed that working women's share of domestic chores was eight times that of working men.⁵⁰⁰ Thus, legal changes notwithstanding, women's disproportionate share of the burden of family and household obligations has not been eased.

The third major legal reform aimed at facilitating women's equal participation in career and family matters, and one for which the FMC provided a major impetus, was the establishment of child care facilities or "children's circles."⁵⁰¹ These cooperatives accept children from forty-five days of age, an age corresponding to the end of the paid maternity leave, until six years of age, when the children are ready to begin school. The child can stay for the duration of the average workday, from approximately 6:30 A.M. to approximately 6:30 P.M., or for the entire week until Saturday afternoon. The children are given three meals a day, two snacks, a bath, a nap, and both learning and play time every day. Originally, there was a sliding-scale fee in accordance with the family income. In 1967, all child care facilities became free, but in 1977, the sliding-scale was reinstated. Like the Family Code and Maternity Law provisions, however, these facilities do little to achieve equality of the sexes or to break the sex role stereotyping molds. Thus, the equality notions promoted by the revolution, though partly realized in light of the improvements in health, education and welfare, as well as through some of the policies aimed at easing women's "double burden" discussed above, remain merely aspirational.

Beyond these three laws other family-related economic policies entrench gender inequality, as well as cultural and social perceptions of, and expectations from, parents and workers based on gender. For example, after a divorce, jointly owned assets are sold and evenly distributed.⁵⁰² Similarly, by law, primary custody is awarded to mothers, and child support payments

499. *Id.* arts. 24-28; Smith & Padula, *supra* note 495, at 179.

500. Smith & Padula, *supra* note 495, at 179.

501. Diana M. Riveira, *Women's Legal Advancements In Cuba 19-20* (1989) (unpublished M. thesis, University of Miami) [hereinafter Riveira Thesis]; DEBRA EVENSON, *REVOLUTION IN THE BALANCE* 116 n.23 (1994).

502. *Id.* at 181.

are based on need and the father's income.⁵⁰³

Moreover, there is no paternity leave; in fact, fathers, by law, are required to work.⁵⁰⁴ In Cuba, where work is not only a right, but also a duty,⁵⁰⁵ women with small children, but not similarly situated men, are excluded from this obligation to work.⁵⁰⁶ As these laws and state policies show, and as will be further shown below, the Cuban reality is that sex equality is a myth.

Non-Cuban nationals have commented, with respect to the status of women, that in the 1980's, "many theoretical aspects seem to have been left behind in the transformations brought about by the construction of [Cuban] Socialism."⁵⁰⁷ They note, among other things, that the collectivization of domestic labor has not been effected and that women still are raised with "feminine" traits. The revolutionary messages regarding equality often have been, at best, inconsistent. For example, the revolution shuns "housewives" who are seen as "unintegrated" persons who will raise unintegrated children.⁵⁰⁸ Similarly, it has provided that women, just like men, should work outside the home. Yet in other instances, the revolution has reinforced traditional domestic arrangements by paying for honeymoons.

In view of these contradictory messages, the Cuban government has failed to provide the means to relieve women of their double duty as wives and mothers.⁵⁰⁹ While the state emphasizes the need for men's equal participation in housework and child care, men are viewed by the state as inherently unreliable regarding family responsibilities.⁵¹⁰

Thus, on the one hand, Castro's regime has provided that women should work outside the home in order not to deprive the state of "productive" labor and to further women's emancipation.⁵¹¹ Indeed, Castro aimed at ending discrimination

503. Smith & Padula, *supra* note 495, at 181. The state support for enforcement of child support payments from delinquent fathers is to avoid "the denigration of the women and their children." *Id.* (citing GRANMA, Jan. 12, 1986, at 7).

504. Smith & Padula, *supra* note 495, at 179.

505. MIRRO, *supra* note 1, at 264 (noting that every citizen who is of age to work and able to do so must work).

506. *Id.*

507. Smith & Padula, *supra* note 495, at 177.

508. *Id.*

509. *Id.*

510. *Id.* at 177-78.

511. *Id.* at 177.

against women in the work force. Castro, throughout his rule, has successfully increased the number of women in the work force, while broadening the positions they may hold.⁵¹² Women now hold many jobs that had been performed exclusively by men: they are now cane cutters, citrus fruit packers, auto mechanics, dentists, doctors, engineers, and traffic police.⁵¹³

On the other hand, government policies consistently reinforce traditional gender roles and place primary family care burdens on women. In the midst of revolutionary changes, women have not been represented in many areas because women continue subject to the traditional role expectations, except that they now also work outside of the home all day. Studies show the onus this places on women: women working in the paid labor force had an average of only 2 hours and 59 minutes of free time a day, spending 6 hours and 29 minutes at their job, and then 4 hours and 4 minutes in domestic chores. This presents a great contrast to men's schedules that reflect that, on the average, they spent 7 hours and 48 minutes working at their jobs, and then only 32 minutes on housework.⁵¹⁴

To be sure, the state has attempted to promote women's "productive" employment. However, the state's facilitation has consisted of creating state surrogates for women's tasks connected to their roles as wives and mothers rather than reconstituting the gendered expectations or redistributing domestic obligations. For instance, the state made day care services, workers' cafeterias and low cost fast food restaurants and laundromats available.⁵¹⁵ In addition, the state has accommodated gender-role expectations in myriad ways. For example, the state gives women workers, but not their male counterparts, special shopping privileges to speed up purchase of groceries; only women are allowed to stay in hospitals to assist and provide company to sick relatives; when children become ill at state child-care facili-

512. PÉREZ-STABLE, *supra* note 5, at 139-42. In fact, in his first address to the nation Castro noted the need to end discrimination against women's participation in the labor force. Shortly thereafter, the Labor Ministry started to enforce labor legislation disfavoring women, and enacted new regulations regarding rights of pregnant women to retain their jobs. *Id.*

513. Susan Kaufman Purcell, *Modernizing Women for a Modern Society: The Cuban Case*, in *FEMALE AND MALE IN LATIN AMERICA* 266 (Ann Pescatello ed., 1975).

514. Riveira Thesis, *supra* note 501, at 34-35.

515. Smith & Padula, *supra* note 495, at 178.

ties mothers, not fathers, are called.⁵¹⁶ Thus, while the state has made changes in the work force to encourage women's participation, the reforms are grounded upon the acceptance of traditional women's roles. Interestingly, the state's justification for the differential treatment and expectations is that men are irresponsible, untrustworthy, and would abuse privileges.⁵¹⁷

Still other aspects of the labor situation for women in Cuba are telling. Cuba, as a socialist state, guarantees employment to every citizen who wants to work.⁵¹⁸ With this guarantee, the state controls the size of the labor force by policy proclamations.⁵¹⁹ Some of these proclamations are strong evidence that true sex equality is but an aspirational goal.

One of the ways that Cuba has manipulated the size of the labor force is "by granting or removing economic and other incentives for female labor force participation or by changing the regulations under which women are allowed to work."⁵²⁰ Women are considered a supply of labor when there are shortages.⁵²¹ However, when the state found it necessary, it took measures to discourage female employment, including classifying some jobs as male only.⁵²² Indeed, as late as 1984, the government even imposed quotas on education by limiting the number of women admitted to medical school.⁵²³

516. *Id.* at 179, 183, 186.

517. *Id.* at 179 (citing GRANMA, Mar. 7, 1985, at 1).

518. Sergio Diaz-Briquets, *The Cuban Labor Force in 1981 and Beyond*, in CUBAN ECONOMY, *supra* note 18, at 99 [hereinafter *Cuban Labor*].

519. *Cuban Labor*, *supra* note 518, at 102. Examples of state policies that affect the labor participation include "enforcement of existing school attendance laws and the expansion of the national education system, . . . relaxation of retirement requirement for older workers, . . . [and c]ontracting or expanding the size of the armed and paramilitary forces." *Id.*

520. *Id.* at 102.

521. *Id.* at 102. Diaz-Briquets relates that a good example in Cuba was during the "agricultural push of the late 1960s . . . [when w]omen were . . . called to replace male urban workers that had gone to labor in the fields, and also to directly contribute their input to the sugar harvest." *Id.*

522. *Id.* at 102-03. Thus, government regulations have limited women's access to certain jobs. Some of these restrictions are facially explained as aimed at protecting women's health. However, they are, in reality, pretextual and aimed at resolving employment problems.

523. PÉREZ-STABLE, *supra* note 5, at 137-38. The explanation for these quotas was two-fold and based on the critical role played by civilian medical assistance in Cuba's foreign policy, with both rationales grounded on sexist notions of the proper role of women in the family structure and in society as a whole. The government explained its quota as follows: first, because of women's greater family responsibilities, it would be

Interestingly, the FMC objected to the government-imposed work restrictions as violative of principles of equality. Nevertheless, today there are still some job categories that are off limits to women. However, the list of jobs from which women are excluded today includes only approximately 25 categories whereas in the 1970's it included about 300 categories.

Effectively, thus, as was true with the quota imposed on women entering medical school, the so-called rights women enjoy are no more than a state supported reinforcement and perpetuation of traditional gender roles. This stereotyping includes the notion that presumes work outside the home is more important for men, a notion that finds support in and is facilitated by state policies. In its 1990 Congress, the FMC still reported obstacles to achieving gender equality of the double burden of work and home.⁵²⁴ The FMC also recognized the continued discrimination in job promotions, the lack of women's progress regarding promotions to leadership positions, and the significantly lower earnings of women as compared to men, even when women were better educated.

Indeed, female participation in the labor force follows traditional patterns. For example, the most common occupational group for women is in the classification of "other intellectual activities," a classification that includes clerical and secretarial jobs.⁵²⁵ The percentage of women is also high in the garment and service industries,⁵²⁶ as well as in teaching and research, "suggesting that females continue to be concentrated in traditional women's occupations, such as primary school teaching and nursing."⁵²⁷ Women, however, also make up the majority in some "non-traditional female" fields such as medicine⁵²⁸ and in-

difficult for them to travel overseas for extended periods to deliver medical assistance; second, male doctors were needed to deliver medical assistance because the countries to which the assistance was given had not recognized, as Cuba had, the changing role of women in society. *Id.* Thus, the notion of gender equality ceded to other governmental policies. In carrying out its quota policy, the government did not even allow women to decide for themselves whether (a) to travel, and (b) to tolerate sexist attitudes. *Id.* The FMC, the state mass organization ostensibly charged with promoting and ensuring gender equality, did not challenge the quota. *Id.*

524. *Id.* at 168-69.

525. *Cuban Labor*, *supra* note 518, at 107.

526. *Id.* at 109.

527. *Id.* at 107.

528. Santana, *supra* note 497, at 253.

creasingly in law.⁵²⁹ In fact, women constitute 56% of all working professionals, and more women than men are doctors and lawyers.⁵³⁰ Significantly, one last indicia of gender difference is noteworthy in the labor force: retirement age is different for men (60) and women (55).⁵³¹

Women also lag far behind in the political power structure. Although their representation in parliament has increased substantially,⁵³² it was not until 1986 that a woman became a full member of the Politburo.⁵³³ Indeed, after Castro's April 1994 reorganization of the Cuban government, only one woman, Rosa Elena Simeón Negrín, who was appointed Minister of Science, Technology and Environment, held a significant official post.⁵³⁴ Women are virtually invisible in the

more powerful and prestigious occupational levels in revolutionary Cuba. Although one out of every three workers is a woman, less than one in five directors of state, political and economic organizations is female. This female under-representation in the pinnacles of political and economic power . . . remains puzzling if one is to accept the official rhetoric calling for equality between the sexes.⁵³⁵

Thus, as with employment and family issues, women are marginalized in politics. Certainly they are represented in the political structure, but only at the lower echelons, rendering even this increased representation less than "equal."

Similarly, women are treated differently under the criminal laws. For example, women and men charged with violating cer-

529. Debra Evenson, *The Changing Role of Law in Revolutionary Cuba*, in STRUGGLE, *supra* note 22, at 63.

530. Robert W. Benson, *An Island on the Way to Ectopia, on Human Rights, Cuba's Record Compares Well to Mexico and Others*, L.A. TIMES, Mar. 29, 1992, at 5.

531. *Cuban Labor*, *supra* note 518, at 103-04.

532. STRUGGLE, *supra* note 22, at xxi (noting that substantial increase has taken place since 1986, explaining that "whereas in 1975 [women] represented 13.2% of [Communist Party] membership, by 1986 this had increased to 21.5% . . . [and w]ithin the influential central committee women made up 18.8% of its membership").

533. Azicri, *supra* note 211, at 12. This was also the first time a black man became a full member of the Politburo. *Id.*

534. *Cuba's New Lineup*, *supra* note 78, at 12; *see supra* note 78 (citing figures before reorganization showing that women have never held any significant presence in high levels of government during Castro's rule).

535. *Cuban Labor*, *supra* note 518, at 109. Similarly, women are under-represented in industrial groupings, including agriculture and manufacturing, the leading activities for males, as well as construction and transportation. *Id.* at 109-10.

tain articles of the 1979 Penal Code receive different sentences.⁵³⁶ Women who are convicted receive sentences to twenty years; men who are convicted receive sentences to thirty years.⁵³⁷

These examples show that today's Cuban society is far from being one that views or treats men and women as true equals. Indeed, it is ironic that the way Castro in 1960 addressed the issue of discrimination could be seen as foretelling of things to come. He seemed to view racial discrimination against blacks and Indians, probably men, as different from gender discrimination. He implied as much when he said that one of the principles of the Cuban revolution is the condemnation of discrimination against blacks and Indians and inequality and exploitation of women.⁵³⁸ Castro declared "the right of blacks and indians to the 'full dignity of *man*;' the right of women to civil, social and political equality."⁵³⁹ It is noteworthy that whatever the desirable "dignity of man" is, women do not receive it. Rather, they appear to be worthy of some lesser level of equality. This sense of a less equal "equality" for women, for blacks, indeed for Cubans as opposed to non-Cuban tourists and diplomats, as well as for non-"privileged" Cuban masses as opposed to the "privileged" high ranking officials and their families and friends, challenges the egalitarian ideal upon which the revolution was founded.

CONCLUSION

An analysis of the status of Cuba, both *in se* and as a comparison of pre- and post-revolution successes and failures, is a daunting task virtually insulated from empirical quantification, let alone calm and honest political discussion. The mere mention of Cuba transforms even-tempered citizens to unbending ideologists. The data available is infused with ideology. This author's attempt at neutral analysis often was marred by the political credo of analysts. Nonetheless, this adventure in fact-finding revealed that both Castro's supporters and detractors are simulta-

536. CUBAN PENAL CODE arts. 119 (acts against heads and diplomatic representatives of foreign states), 132-36 (other acts against security of State), 249 (acts that affect right of extraterritoriality).

537. SUSTAIN PRESSURE, *supra* note 312, at 55.

538. Case of Cuba, *supra* note 20, at 91.

539. *Id.* at 92 (emphasis added).

neously right and wrong to praise/condemn what in their particular political perspectives are the successes/failures of the regime.

Laudable advances in attaining second-generation human rights, such as the rights to work, health, education, and welfare, undoubtedly have taken place in Cuba during the Castro regime. These, however, are often carried out in a fashion that ignores first-generation rights, such as the right to privacy, and currently are threatened by the recent economic crunch the island is suffering as the sole socialist survivor in this part of the world. This commitment to communism is isolating the island as the world has moved from an ideology/military-based model to an economic interest model. Without the doctrinal umbilical tie that provided economic support, the island finds itself out in left field and all alone while playing defense, and consistently striking out when in the offense.

Currently, Cuba lacks the necessary resources to obtain the hard cash it needs to buy the requisite supplies to run the country and feed its people. The economic situation is so severe that Castro has had to bite the bullet and effect some promising economic changes, albeit some that are direct reversals of policies he put in place as centerpieces of his revolution. Salient among these policy reversals that have resulted from the need for economic survival are the development of tourism, relaxation of travel restrictions for Cubans in the island to travel abroad, alleviation of prohibitions against Cuban exiles visiting the island, allowance of private foreign ownership, most recently including Cuban exiles, dollarization of the economy, and authorization to engage some private enterprise.

Shocking steps have been taken to raise hard currency. One is the selling of Cuban industries that had been seized by Castro's revolutionary government to free the state from depending on foreign trade.⁵⁴⁰ Another is the new regulations regarding prices, subsidies, and taxes.⁵⁴¹ For the first time since the revolution, Cuba will start charging for some goods and services such as sporting and cultural events, transportation, and

540. Raúl Verrier, *Castro Pone en Venta Casi Todas las Empresas de Cuba*, *DIARIO LAS AMERICAS*, Jan. 6, 1994, at 1-A; Pablo Alfonso, *Cuba Pone Industrias a la Venta*, *NUEVO HERALD*, Jan. 5, 1994, at 1A.

541. *Foreign Investment Legislation in Cuba*, *supra* note 79, at 16.

water.⁵⁴² Moreover, the Cuban government is eliminating price subsidies and will begin taxing Cuban residents for remittances of convertible currencies received from abroad.⁵⁴³ Finally, a new convertible peso will be issued that, some speculate, the government will require the Cuban people to exchange for freely convertible currencies they might hold.⁵⁴⁴ Most recently, Castro has undertaken a massive reorganization of the government to accommodate these necessary changes.⁵⁴⁵

There have also been favorable changes with respect to human rights. For example, the liberation of political prisoners is a move in the right direction. However, the continued persecution of gays and lesbians⁵⁴⁶ and the isolation of HIV-positive persons and AIDS patients is not.

Moreover, reports of other governmental actions that bring about greater repression cause grave concern. Myriad accounts suggest that Castro is taking a tough stance against the increasingly vocal anti-Castro movement, one that is mainly in direct response to and in protest of the dire conditions that exist in the island.⁵⁴⁷ There are accounts of laws being passed to restrict public protests against food and energy shortages.⁵⁴⁸ In any event, there is no palpable move to abide by the rule of law; to permit direct political participation; or to respect the internationally-protected freedoms of speech, assembly, or association, to list a few rights flagrantly ignored by the government.

In addition, while the liberalization of the economy to permit foreign investment may be deemed a positive move towards democratization, similar liberalization of the internal economy is called for. Thus, Castro's announcement of a crackdown on economic crimes, which include what simply can be defined as a

542. *Id.*

543. *Id.*

544. *Id.* at 15.

545. Raúl Verrier, *Importantes Cambios en la Estructura del Gobierno Cubano*, DIARIO LAS AMERICAS, Apr. 24, 1994, at 1-A.

546. See REINALDO ARENAS, *BEFORE NIGHT FALLS* (1993) (describing persecution of gays, lesbians, and HIV-positive persons in Cuba).

547. *Castro Warns U.S.*, *supra* note 172; Doralisa Pilarte, *Cubans Are Losing Their Fear, Awe of Once All-Powerful State*, MIAMI HERALD, Dec. 27, 1993, at 1A; Ariel Remos, *Desafia Una Multitud en Cuba a Policías en un Concierto Popular*, DIARIO LAS AMERICAS, Apr. 16, 1994 (relating group crashing concert that was by invitation only).

548. Mimi Whitefield, *Cuba to Consider Vandalism of State Property as Sabotage*, MIAMI HERALD, Sept. 14, 1993, at 8A.

private economy, is contraindicated. That farmers' markets have again been legalized is a positive step. Similarly, Castro's latest decree extending the range of materials and consumer goods that can be sold freely is another move in the right direction.⁵⁴⁹ The range of private enterprises that are permitted to exist should be completely opened, however, as these enterprises would provide necessary goods and services as well as employment to the Cuban people.

The easing of travel restrictions both into and out of the island also is a positive move. Significantly, this is not a move without possibly dangerous consequences to the regime. The influx of exiles, for example, carries with it an information flow that previously proved damaging to the government. The 1980 liberalization of travel triggered the Mariel exodus, when many isolated island Cubans heard about the good life on the other side from their exiled brothers and sisters, and concluded they wanted to go where the grass was (at least believed to be) greener. The present opening of doors could have the same effect, and result in a large exodus of discontented masses who are existing in a "zero option" economy, experiencing hunger from food shortages, possible epidemics from food shortages or perhaps from scarcity of medical supplies, and regular daily blackouts from lack of fuel and power to run industry and homes.

In August 1994, a great irony surfaced regarding Castro's tight control of the borders. Presumably because of mounting economic ills that have resulted in massive shortages of goods and food, Castro unilaterally changed Cuba's policy of closely monitoring the illegal exit of many who were willing to risk their lives in rickety, homemade, makeshift rafts for the possibility of landing in the United States. Once Cubans learned they could leave without interference from Castro, they took to the seas by the thousands, and headed for the Florida shores. President Clinton of the United States, fearing such a massive exodus would be a replay of Mariel, reversed the almost three-decade old policy of welcoming Cubans who reached U.S. shores with open arms.⁵⁵⁰ Instead, they were turned back to Cuban shores

549. Tim Golden, *Cuba Takes Another Step in Opening Up Its Economic System*, N.Y. TIMES, Oct. 27, 1994, at A7.

550. Steven Greenhouse, *U.S., in New Policy, Intends to Detain Cuban Immigrants*, N.Y. TIMES, Aug. 19, 1994, at A1 (noting that Clinton Administration announced it would

by a ship blockade or picked up and taken to "safe-havens," mostly Guantanamo Bay, and refused entry. The end result would have been funny if not so tragic; by a U.S.-Cuba agreement, Castro gets to reinstitute his repressive, oppressive policy of monitoring Cuba's shores. This irony has not been lost. The *Wall Street Journal* insightfully reported:

The unthinkable choice was that the U.S. should be on this occasion as George Washington described it in 1783, a land whose 'bosom is open to receive the persecuted and oppressed of all nations.' . . .

All trumpeting aside, we lost. The Castro regime won. It agreed only to prevent people from leaving Cuba, exactly as it was doing six weeks ago and for 30 years before that. This was done not as a favor to the U.S., but because such repression is an important ideological and practical component of a system that seeks to exert total control over the lives of its subjects.⁵⁵¹

In this context, it is imperative that the terms of the U.S.-Cuba agreement to allow 25,000-30,000 persons to immigrate legally needs to be put into effect with expediency.

Another recent event, the change in law to allow persons legally to possess convertible currency, is a positive step, although not one without possible repercussions. This favorable move, however, is clouded by Castro's prohibition against even dollar-holding Cubans from shopping at hard-currency foreigners-only stores.

It is impossible to conclude without mention of the embargo and the ongoing debate it has engendered.⁵⁵² First, this author views the ongoing embargo debate in the United States

detain for indefinite period Cubans arriving in United States, reversing policy of free entry for Cuban refugees).

551. Grover Joseph Rees, *Clinton's Iron Curtain*, WALL ST. J., Sept. 14, 1994, at A18.

552. See *supra* note 135 and accompanying text (discussing arguments in support of ending the embargo and of continuing the embargo); see also Steven Greenhouse, *New Calls to Lift Embargo On Cuba*, N.Y. TIMES, Feb. 20, 1994, at 4; Mimi Whitefield, *State Department Says Cuba Embargo Still the Best Policy*, MIAMI HERALD, Mar. 13, 1994, at 21A; *Key U.S. Allies at U.N. Vote Against Cuba Embargo*, MIAMI HERALD, Nov. 4, 1993, at 22A (noting that for second year in row, Cuban-sponsored resolution repudiating U.S. embargo was passed, and that support for resolution "increased dramatically" in 1993); see *supra* note 40 (referring to U.N. General Assembly resolutions). Some recent reports even suggest that the United States is not enforcing the embargo. See Christopher Marquis, *Some Say U.S. Ignoring Cuba Embargo Violators*, MIAMI HERALD, Apr. 8, 1994, at 18A [hereinafter *U.S. Ignoring Embargo*].

as a smoke-screen. The embargo is, in a word, irrelevant to the discourse. It has been in place for over thirty years and has achieved little. Certainly, during the Cold War pugilism, with the superpower aid Cuba received from the Soviet bloc, the embargo was like swatting an elephant with an eyelash. Today, with the economic crisis, it is more like swatting a fly with a Buick.

To be sure, lifting the embargo would permit U.S. investments that could help the Cuban economy by pouring in hard cash. But on the other hand, this country can, and increasingly has, used economics as a means to promote policy. At this juncture, it seems just as likely that trading with Cuba will accelerate its road toward democracy, as opposed to not trading with the island ensuring the same result. The former stance, at least, holds out the hope of a U.S. presence which can seek to educate and promote notions of free enterprise as well as personal rights and freedom. And while the extraterritorial aspects of the embargo have been universally condemned,⁵⁵³ this and other aspects of the embargo are the sovereign prerogative of the United States.

However, notwithstanding the sovereign policy prerogatives, the specific actions of the United States, in insisting on the embargo, contravene any consistent policy pronouncements. It is at least inconsistent to impose an economic embargo on Cuba for political, i.e., pre Cold-War demonization of Communism and condemnation of human rights abuses, when the U.S. just (a) declared that as a matter of policy it will sever economic issues from human rights concerns, at least with respect to trade with communist China, (b) renewed trade with Vietnam, and (c) commenced talks with North Korea.

Still, the U.S. embargo is, and should be, of no moment with respect to at least some economic recovery. Cuba is free to trade, and increasingly has traded, with other states. On the other hand, Cuba's lack of the cash to trade, even with willing partners, will continue to impede large levels of foreign trade. In this light, it is noteworthy that Cuba would not have the cash

553. See *supra* note 130 (discussing U.N. General Assembly resolution condemning the embargo). Some reports indicate that large multinational corporations are avoiding the embargo's restrictions by using foreign subsidiaries to trade. See also *Evaden el Embargo de EE.UU. a Cuba con Filiales Foráneas*, *DIARIO LAS AMERICAS*, Dec. 28, 1993, at 1A; *U.S. Ignoring Embargo*, *supra* note 552, at 18A.

to deal with the United States either. In this respect, the argument of some who favor the lifting of the embargo on the condition that Cuba remain unable to obtain financing from international sources, such as the International Monetary Fund, is unsettling.⁵⁵⁴ Lifting the embargo, but foreclosing access to money, i.e., financing sources, that would give Cuba the actual means to engage in trade is, at best, a position "full of sound and fury, signifying nothing."⁵⁵⁵

Cuba's need to trade is so great that notwithstanding its socialist credo, it has opened its borders to foreigners who are now permitted to own businesses. Thus any U.S. involvement with Cuba on the trade front would be an opportunity to impose conditions to promote a "democracy and human rights" agenda in a much more efficacious manner than a total absence ever could.

On the other hand, the "humanitarianism" argument, urging the lifting of the embargo so that humanitarian aid can be supplied, is misplaced. The embargo, as it stands, permits the humanitarian aid, food and medical supplies, that proponents use as an argument for ending the embargo. Even the recently tightened restrictions put in place in anticipation of a massive exodus still allow for humanitarian aid. In fact, the embargo also permits increased communications, with their attendant risks to the regime, and a means for the Cuban government to share in the revenues. Significantly, various U.S. communications companies have taken advantage of this change.⁵⁵⁶ To be sure, to enhance communications it will be necessary to modernize the technology, a single underwater cable, that presently provides access to the island's phone system.

Thus, it is the issues behind the embargo debate that are important, not the embargo itself. It is worth exploring these issues. First, with respect to humanitarian assistance, it should be offered freely and generously to the island. It is at best incomprehensible, and at worst disingenuous, to sit idly by when neighbors are starving and simple medical assistance is unavailable, and then condemn others' human rights abuses. However,

554. David Asman, *The Embargo Must Be Lifted*, Comments delivered at Fordham University School of Law, Panel on "The Cuban Crisis" (Oct. 18, 1994).

555. WILLIAM SHAKESPEARE, *MACBETH* act V, sc. V.

556. See *Foreign Investment Legislation in Cuba*, *supra* note 79, at 16. The U.S. administration has under review whether to license U.S. carriers to provide telecommunication services between the United States and Cuba.

in light of the established privilege hierarchy that exists in Cuba, and in order to ensure a fair distribution of goods, any such assistance should be based upon having a third party, such as the International Red Cross, the OAS or the U.N., oversee the distribution of aid.

Second, with respect to human rights, it is necessary to recognize the progress as well as the deficiencies in Cuba. Again, in order to evaluate the situation fairly, human rights observers should be allowed onto the island to evaluate and report on the current human rights situation, concerning prisoners, human rights activists, as well as general conditions regarding everyday existence. It is imperative that minimum international standards be met with respect to treatment of prisoners, and that guarantees of equality, free speech and association be implemented. In regard to equality, one must note that the egalitarian notions upon which the government was founded are still, at best, aspirational. As this Article has shown, all women, regardless of race, and black (and indian) men are far from the center of power in the government. In fact, these groups suffer from gross underrepresentation in the higher echelons of power. Moreover, in spite of the recent moves towards democratization, the status of all Cuban people is institutionalized as a second class citizenry *vis à vis* foreigners as well as *vis à vis* the privileged Cuban government dignitaries. Furthermore, the current trend toward liberalization threatens to create yet another underclass of Cubans, those who do not have access to dollars. Because the Cuban exiles have been predominantly white, there is a real fear that this new underclass will effect and further not only social but also racial stratification.

Similarly, the international guarantees of freedom of speech and association need to be instituted. The laws on the books prohibiting more than three persons to gather, even in a private home, must be changed. Human rights activists must be allowed to gather and speak freely. Watchdog brigades intended to curb such activities must be called off. Presses must be allowed to roll. Prisoners should enjoy internationally-accepted standards during their incarceration. Government restrictions on Cubans' travel outside the island should end or, at least, be less restrictive and government attacks against those seeking to flee should cease.

Third, the economic changes that have commenced should continue and be broadened. All workers with salable skills, not just those the government chooses, should be allowed to offer their services to the public, subject only, for example, to reasonable government regulation such as licensing regulations for medical doctors. Close attention must be paid to the manner in which further economic changes are implemented so that an economically deprived underclass does not become the by-product of attempted progress.

Fourth, regarding health, education and welfare, the magnificent progress achieved must be praised and zealously guarded. In fact, the United States can probably learn valuable lessons from the Cuban health system. Also, it should also be considered that there is some international responsibility to ensure that such progress be preserved and that individuals not suffer in this post-Cold War standoff. This is of particular importance, as there exists ample evidence that the current economic crisis has had a tragic effect on the health care system, which is unable to obtain necessary medicine, including household painkillers, or even offer antiseptic conditions in hospitals.

Finally, and perhaps as a conflation of the above factors, the legitimacy of the regime is a critical issue. The most blatant evidence of the government's illegitimacy is found in the three-tiered apartheid system (Cubans vs. foreigners; Cubans at high level of government vs. Cuban masses; dollar-holding Cubans vs. non-dollar-holding Cubans) and the lack of peoples' participation in the government. This structure, like the other human rights infractions, racial and gender inequities, imbalanced participation in the work force and in the government and, indeed, the lack of a democratic elective process, establish that the governmental powers are not derived from the consent of the governed, nor does the government enjoy the respect of the governed. The aim of any external international pressure should be focused upon these ills.

Some critical concepts, however, must be foremost in Cuba's process of transition to legitimacy. First, we should learn from global post-Cold War events. In designing the new model, and the changes to include in it, lessons learned in the former Soviet Union's, Eastern Europe's, and Latin America's change process must be applied in order to avoid imposition of solutions

that do not fit Cuba's particular circumstances. In restructuring a society, the society that is to undergo restructuring and its members must be kept in mind as the primary actors.

It does not work, as we have seen in Eastern Europe, for example, simply to superimpose a market economy on a former socialist state. The economic, socio-political, and cultural foundations of the society must be taken into account. Otherwise, any attempt at change simply results in trying to fit square pegs in round holes. Important, then, in a transition is to listen to the people, their experiences, their wishes and goals. Thus, the new system must include input not only from western societies and the newly democratic states, but also from other agricultural societies and, perhaps most importantly, from the Cuban people themselves. It is the Cuban people who live on the island who must be the prime architects of a reconstructed social/political/economic order. Only this will ensure a model that can work in light of their particular health, education, economic, social, cultural, and governance aspirations.

Indeed, in this respect, not only authors of change within the government and teachers of theory in the universities must be consulted but also the entrepreneurs, those who have been running the thriving underground economy from which Castro is seeking to divert dollars. It should not be ignored that for years, with the historic shortages and rationing of goods and services, a thriving black market economy has existed that has permitted Cubans to "resolver," or make do, in the face of scarcity. The participants in this underground economy are a wonderful, if "hidden," source of information in the privatization process; they have been successful entrepreneurs in the most restrictive of circumstances, a government-controlled society. They understand the culture in which private industry is to exist, so that they may help build the above-ground one.

Other assets should be utilized as well. For one, the OAS worked well in rejecting Cuba from the community of American states once. It appears to be willing to take a strong stance against the illegitimacy of the government, recently condemning the government for being antidemocratic, totalitarian, and lacking the rule of law.⁵⁵⁷ As such, it can now be critically important

557. Ariel Remos, *Ilegítima la 'Legalidad Socialista' en Cuba, Declara la Comisión de la OEA*, *DIARIO LAS AMERICAS*, Feb. 22, 1994, at 3-A; Gerardo Reyes, *Future OAS Leader*

in reincorporating the isolated island with its geographic neighbors. This could serve as a wonderful bridge not only in the political democratization process, where the recent experiences of Chile and Nicaragua can prove invaluable, but also to bridge the cultural and economic gaps. In exchange, Cuba can share its formulae for progress in health, welfare, and education with this hemisphere. Finally, it is important to point out that while the international community works hard to change what did not work in the Castro years, it must work equally as hard to keep what has worked.

In closing, a brief narrative related by Andres Oppenheimer, a Pulitzer Prize-winning journalist, about an experience he had in one of his visits to Cuba while researching his recent book about Castro, is quite telling. One of the privileges enjoyed by tourists is that they do not have to wait in line for anything, as opposed to the Cubans who must queue up for everything. Gas is scarce, gas lines are long, but tourists do not have to endure them. One hot day, Mr. Oppenheimer decided to test his tourist privilege and proceeded directly to the front of a long gas line. As he pulled up to the pump a Cuban woman, who obviously had been waiting for a long time, walked up to him, visibly upset. She asked out loud what had become of the country. She started telling the people standing around, those who had been patiently waiting their long-awaited turn at the gas pumps, that the country no longer belonged to Cubans but that it belonged to foreigners. Oppenheimer told her that he was informed that the law provided that, as a visitor, he could go to the front of the line. She responded, "That's not our law, sir, that's *their* law! . . . The law *de los que mandan* . . . Of those who rule . . . !" ⁵⁵⁸

This Article proposes that for any true change and progress *los que mandan* must be the Cuban people. This is what Castro set out to do in his revolution. By empowering the Cuban people, Cuba may fully participate as a member of the international community and enjoy the fruits of democratization that ended the Cold War and created a new world order.

Promises Not to Let Cuba Become a Member, Mas Canosa Says, MIAMI HERALD, Apr. 8, 1994, at 18A.

558. OPPENHEIMER, *supra* note 229, at 292.