



The Gordian Knot

Financial Claims Between
Cuba and the United States

IcarusCuba LLC

www.icaruscuba.com
u.s. tel: 801.664.2829
havana: +53.5.470.8040

SUE ASHDOWN
President

DAVID URRA ARIAS
Chief Analyst

The Gordian Knot of Financial Claims Between Cuba and the United States

Introduction & Overview

The extensively negotiated decision by the governments of Cuba and the United States to re-establish relations despite the heavily mined history between them is, without a doubt, an event of not only bilateral and regional but global importance.

The long awaited announcement was accompanied by an immediate torrent of activity that included statements, gestures and all kinds of negotiations. Starting with the Vatican, followed by Russia, China, Europe and to a certain extent, even Latin America, everyone wants to have a seat at the table, even though no-one knows how long the rapprochement will last. Even the extremely cautious and measured Japanese decided to enter the fray. No-one wants to be sidelined from an event that for some, has strategic connotations, for others political resonance. Many see trade opportunities, while many more are simply anxious to taste the forbidden fruit.

Through their unexpected and intrepid action, Presidents Obama and Castro have opened a veritable Pandora's box, letting loose the demons, ghosts, grudges, unsettled debts and dormant issues jealously guarded over more than 50 years of misunderstandings and open clashes, some so dangerous that they once nearly triggered a nuclear war.

Now the focus is on how both sides will attempt to clear a path through the thorny undergrowth of difficulties sown between the two countries over more than half a century.

This implies sorting through a tangled web of legal, structural, political, military, and economic questions. While a thorough examination of all of these issues would be an extremely complicated and difficult task, it is also evident that certain questions – due to their weight and complexity – stand apart from all the rest.

The Cuban claims against the United States and those of the United States against Cuba are one of those.

The claims constitute a true Gordian knot, not only for the sums calculated by both sides, but also for their significance in practical, political, financial and social terms. As long as the issue remains unresolved, it constitutes a barrier to normal trade relations, functioning identically to an explosive mine – anchored beneath the surface but prone to explode and obliterate anything that passes overhead.

Nearly all of the recently published commentary on the subject to date suffers from oversimplification and superficiality, presenting only the arguments that buttress the position taken by their author.

The objective of this analysis is to examine the issue in all its facets and practical effects. Obviously we run the risk of omitting certain details, but our intention is to offer the clearest

possible explanation of the significance of the Cuban and U.S. claims to the “normalization” process underway between Cuba and the United States.

As we see it, the negotiation process for the mutual claims between the United States and Cuba is certain to be long and complicated, but it is no less certain that the negotiations will not produce positive results unless *all* of the following three categories of claims by parties affected in both countries are fully considered.

1. U.S. claims related to the process of Cuban nationalizations of assets owned by U.S. citizens and corporations.
2. Judgments from U.S. courts by U.S. citizens or residents claiming harm or damages provoked by Cuba.
3. Cuba’s claims against the United States for damages ensuing from the U.S. economic embargo.

This study, also divided in three parts, will examine each of these groups separately, contributing missing facts where possible, and weighing the arguments of both sides in relation to international law and national directives.

- **Part I** provides a historical summary of the actions that accompanied the expropriations of U.S. property in Cuba. This summary is followed by an analysis of the diferendum, to provide a fuller understanding of how the issue arose and why it has remained unresolved for so long.
- **Part II** will examine some of the claims made against Cuba in U.S. courts under relatively new anti-terrorism laws. The arguments sustaining those claims will be compared with any previously unknown or unconsidered facts that can be elucidated from the Cuban side.
- **Part III** is a primer on the Cuban claims against the United States – mention of these claims in previous U.S. studies is cursory at best and dismissive at worst; the Cuban claims are generally characterized as a “bargaining” chip, contrived to offset U.S. claims. We will evaluate the evidence regarding these claims.

Part I

U.S. claims related to the process of Cuban nationalizations of assets owned by U.S. citizens and corporations.

Historical context

It is impossible to comprehend this particular issue without considering the political, social, economic and international **context** of the era in which these actions unfolded.

From March 10, 1952 onward, the government of Fulgencio Batista had become deeply corrupt and repressive. The evidence that thousands of Cubans were murdered, tortured and mutilated by the regime's repressive forces is well-documented. The Cuban people, idiosyncratically rebellious, were fed up with the situation, and an insurrectional movement gained force that would eventually overthrow the putschist Batista despite his full support from successive U.S. governments.

Meanwhile, U.S. property in Cuba, purchased at fire-sale prices throughout the twentieth century under the open pressure of military intervention from Washington, had come to include more than two-thirds of Cuba's principal economic sectors. This was an irritant not only to Cuba's most impoverished classes but also to the middle and upper-middle classes, as they could clearly see their own advancement possibilities extremely curtailed.

We should add that declassified documents from the period show that the U.S. government's impression of what was really taking place in Cuba was seriously vague and distorted.

At a [meeting of the National Security Council](#) in Washington on December 23, 1958, CIA Director Allen Dulles expressed:

“...the situation in Cuba was worsening. Batista was unlikely to take any action to remedy conditions, short of a desperate military move for which the Army does not appear to have the stomach. The Communists appear to have penetrated the Castro movement, despite some effort by Fidel to keep them out. If Castro takes over in Cuba, Communist elements can be expected to participate in the government.”

From this date forward, the possibility of a military intervention or financial and weapons support to a third party (neither Batista nor Castro), to take power by force, began to take hold. The notes from that particular meeting show that President Eisenhower and his advisers believed that between Castro and Batista “...Castro was the greater of the two evils.”

This was the environment in which the insurrectional movement led by Fidel Castro emerged triumphant on January 1, 1959, following extended guerrilla combat, with support from urban cells.

From the beginning of that movement's struggle, when as a prisoner for the assault on the Cuban military's Moncada Barracks in 1953, Castro wrote his own defense plea (“History will Absolve Me”), his plan for governing was quite clear. It was highlighted by the desire to

undertake an agrarian reform that would turn land over to the campesinos who worked it, and finally rid Cuba of its *latifundios* (immense landholdings in the hands of a single owner), without regard to the nationality of their owners.

Simultaneously, he also referred to the necessity of a government by and for its people.

It's worth highlighting that on repeated occasions – documented in print and film – Castro was shown to be seeking a relationship of mutual respect and acceptance of *Cuban sovereignty over its natural resources*; a principle supported by various international treaties endorsed by countries worldwide, the U.S. included.

For a deeper understanding of these actions that occurred more than half a century ago, it is helpful to view them through the lens of a chronology that allows each event to be situated in the order in which they occurred, facilitating their proper evaluation.

Chronology of events relevant to the U.S./Cuban relationship during the first years after the 1959 Cuban Revolution.¹

- January 10, 1959 – Earl T. Smith resigns his post as U.S. Ambassador to Cuba.
- January 16, 1959 – Prime Minister Fidel Castro, speaking at the Presidential Palace in Havana, asks the United States to follow the Extradition Treaty of the Americas and return to Cuba the war criminals from the Batista regime.
- January 21, 1959 – An event with massive public participation (estimated at more than a million according to press accounts at the time) is held in front of the Presidential Palace in Havana to respond to the U.S. media campaign criticizing Cuban judicial measures against the criminals from the Batista regime. At least 380 journalists from throughout the hemisphere attend. The Cuban government calls the event “Operation Truth.” In the middle of his speech, Prime Minister Castro turns to the diplomats present and asks them to imagine that they are facing an enormous jury of a million Cubans and says, “I’m going to ask this jury a question; I’ll ask the people. Those who agree with the justice being applied, those who agree that [Batista’s] hitmen should be sent to the firing squad, raise your hands. [The masses unanimously raise their hands.] Honorable members of the diplomatic corps, honorable journalists from all over the continent, a jury of a million Cubans of all persuasions and social classes has voted.”
- March 3, 1959 – Through Law 122 the Cuban government decides to annul the concessions granted by the Batista government to the Cuban Telephone Company, an affiliate of the International Telephone and Telegraph corporation (ITT). Law 122 also provides for the Cuban government to intervene² the company, lower telephone rates, and stipulates that employees must not be removed or replaced. The CTC concession granted by the Batista government had included uncontrolled rate increases, while the company actively attempted to rid itself of employees sympathetic to the revolutionary government.
- May 17, 1959 – Cuba’s First Agrarian Reform law is enacted, putting a limit on land holdings and expropriating the remainder with compensation offered in 20-year fixed-term government bonds paying an annual interest rate of 4.5 percent. (U.S. investment-grade corporate bonds paid an average of 3.8 percent in 1958.) The basis for compensation is the value of land as assessed for taxes. Foreigners own 75 percent of Cuba’s arable land. Five U.S. sugar companies own or control more than two million acres.

¹ Chronology specific to strictly claims-related events gathered from a variety of Cuban sources (newspapers of the period, academic texts) and Jane Franklin’s *Cuba and the United States – A Chronological History*, 1997 ed.

² Victor Rabinowitz, one of the lawyers who represented Cuba in the landmark Sabbatino case explained intervention this way: “Intervention is a Latin American procedure which does not deprive the owner of title to his property but gives to a government agent, the ‘interventor,’ the power to manage it for a time. It is roughly analogous to a receivership in our law. Intervention, when it lasts for a long time, is much the same as nationalization, and in the Cuba cases, the United States courts have refused to recognize a difference.”

- June 3, 1959 – The Agrarian Reform Law goes into effect.
- June 5, 1959 – U.S. Senator George Smathers (D-Florida) proposes an amendment to reduce the Cuban sugar quota.
- June 10, 1959 – A [diplomatic note](#) sent by U.S. Ambassador to Cuba, Philip Bonsal, recognizes Cuba’s right to expropriate property for public purposes but also attempts to insert the [Hull Doctrine](#), insisting on an obligation to provide “prompt, adequate and effective” compensation.”
- June 16, 1959 – The Cuban government [responds](#) to the note sent by the U.S. in reference to its Agrarian Reform and warns that due to the precarious economic situation in which the country has found itself due to the malfeasance of the Fulgencio Batista government, it is impossible to provide prompt and effective compensation for expropriated lands, and suggests instead the issuance of bonds to be paid over a set period.
- August 27, 1959 – The American Foreign Power Company, a subsidiary of the powerful U.S. electric monopoly Electric Bond and Share, and parent company of the Cuban Electricity Company, cancels \$15 million dollars in financing planned for the latter. The measure is taken due to the 30% reduction in electricity rates decreed by Cuba’s revolutionary government one week before, and is an action mentioned by Fidel Castro in his Moncada defense.
- September 8, 1959 – Che Guevara returns from an international tour and denounces the worldwide campaign led by the U.S. government to limit sales to Cuba.
- October 5, 1959 – The InterAmerican Press Association (IAPA) refuses membership to the Cuban newspaper *Revolución* as a result of U.S. pressure.
- November 13, 1959 – The U.S. government pressures the United Kingdom to refrain from selling fighter aircraft to Cuba.
- January, 1960 – Cuba expropriates 70,000 acres of property owned by U.S. sugar companies, including 35,000 acres of pasture and forests owned by United Fruit Company in Oriente province. United Fruit has deep ties in the CIA and State Department, with CIA Director Allen Dulles and his predecessor Walter Bedell Smith having served as former presidents of the company while Allen’s brother, John Foster Dulles, Secretary of State is a long time legal adviser to the company and stockholder. UN Ambassador Henry Cabot Lodge has served on the company’s board of directors.
- January 11, 1960 – The U.S. government sends a [diplomatic note](#) protesting the interventions of U.S. owned properties whose owners had refused to collaborate with Cuba’s new authorities.
- February 4, 1960 – The U.S. government turns down Brazil’s offer to mediate the sugar dispute between Cuba and the United States. Cuba will supply the Soviet

Union with 5 million tons of sugar over five years and will receive \$100 million dollars in credits carrying an interest rate of 2.5%.

- February 11, 1960 – Electric Bond and Share, the monopoly owner of the Cuban Electricity Company threatens Cuba with an “energy shortage” if lowered electricity rates are not raised. Data published in Cuban newspapers of the time show the company to have obtained a net profit in 1959 of \$7,527,068 pesos. In addition, during 1959 the company suspended all shipments of spare parts for its plants and cancelled previously planned investments.
- February 13, 1960 – The Cuban and Soviet governments sign the first trade agreement between the two countries that will supply petroleum and its derivatives, as well as wheat, fertilizers, steel and machinery.
- February 17, 1960 – An article by journalist James Reston appears in *The New York Times* about the explosion over Cuba of a small aircraft piloted by two U.S. citizens. The flight originated in the United States and according to documents found at the site, one of the pilots was named Robert Kelly and belonged to the U.S. armed forces. The article revealed the existence of a U.S. plan coordinated by the Assistant Secretary of State for Inter-American Affairs (Roy Rubottom), specifically designed to destabilize Cuba. The attempt to encourage other Latin American countries to contain Castro, a redrafting of the Sugar Act, insistence on compensation for intervened U.S. properties, and the construction of a shortwave radio station for psychological warfare against the Cuban government are all parts of the plan.
- March 4, 1960 – The steamship *La Coubre*, carrying Belgian weapons sold to Cuba in defiance of U.S. pressure against it, is sabotaged in Havana’s harbor. From this moment forward, the United States prohibits the sale of helicopters to Cuba and reduces the number of merchant ships allowed to sail to the island.
- *March 17, 1960 – President Eisenhower [secretly orders the CIA](#) to organize and train Cuban exiles for an invasion of Cuba which will serve as a pretext for U.S. intervention and the overthrow of Fidel Castro’s government.*
- April 6, 1960 – Deputy Assistant Secretary of State for Inter-American Affairs Lester D. Mallory sends a [memorandum](#) to Assistant Secretary of State Roy R. Rubottom, outlining U.S. policy toward Cuba and expressing the need to “weaken the economic life of Cuba...to bring about hunger, desperation and overthrow of government.”
- May, 1960 – The U.S. Embassy in Havana announces that it will not provide aid to Cuba unless the President determines it to be in Washington’s national interest, according to the Mutual Security Law of 1960.
- May 8, 1960 – Cuba and the USSR re-establish diplomatic relations.
- May 17, 1960 – The CIA radio station Radio Swan begins its transmissions toward Cuba from Swan Island in an attempt to foment chaos and disorder in the country.

- May 24, 1960 – Cuba requires that foreign-owned oil refineries in Cuba (the only kind that exist in Cuba) process the crude oil imported from the Soviet Union.
- June 7, 1960 – Texaco, Esso and Shell announce that they will not send so much as a single barrel of oil to Cuba and prohibit the use of their Cuban refineries to process any crude purchased by Cuba from the Soviet Union.
- June 27, 1960 – The Agriculture Committee in the U.S. House of Representatives approves a resolution empowering President Eisenhower to reduce purchases of Cuban sugar (the “sugar quota”) for the U.S. market.
- June 28, 1960 – Cuba passes Resolution 188, ordering the Texas Oil Company of Cuba (Texaco) to refine crude oil purchased from the Soviet Union, or be intervened.
- July 3, 1960 – Congress enacts the measure that allows Cuba’s sugar quota to be terminated.
- July 6, 1960 – At 8:25 a.m. President Eisenhower issues [Presidential Proclamation 3355](#). Cuba calls it the “Ley puñal” [Lethal Law] reducing the quota for sugar to be purchased from Cuba in 1960 and part of 1961, from 3,119,655 tons to 39,752 tons – the amount purchased so far in 1960.
- July 6, 1960 – Through Law 851, nationalization is authorized for any U.S. business or commercial property located in Cuba and considered strategic to the Cuban economy.
- July 7, 1960 – The U.S. National Security Council holds its [450th meeting](#) in Washington, where the following decisions are taken:
 - Persuade Greek shipping magnates (Onassis and Niarchos) to refuse to transport Soviet oil to Cuba and convince others to do the same.
 - Force the Cuban government to confiscate property in order to justify new measures against Cuba.
 - Impede the functioning of key industries in Cuba for lack of spare parts and inputs.
 - Discuss the Cuban case at the upcoming meeting with NATO allies on July 13 and urge them to freeze Cuban assets and any other measures as necessary, reminding them that the U.S. has provided them with billions of dollars for mutual security and therefore they should join in the effort to “prevent developments which would jeopardize the security arrangements of the Western Hemisphere.”
 - Eliminate Cuba’s communications with the outside world by prohibiting the use of the two cables that connect the island with the world; one U.S. owned, the other British-owned.
 - Not to interfere, should the mafia decide to physically eliminate Fidel Castro.

- Meet with the OAS and use it against Cuba.
 - Assign the U.S. Embassy in Cuba the task of urging U.S. residents to abandon the island.
 - Develop a program of “positive assistance” (the eventual Alliance for Progress) as an incentive for Latin American governments to support U.S. actions against Cuba.
 - Obtain NATO’s and Canada’s cooperation in implementing economic measures against Cuba.
 - Evaluate the necessity (or not) of issuing a new emergency presidential proclamation that would provide legal continuity for future actions such as: the termination of preferential tariffs, the freezing of Cuban assets, the prohibition of exports, transactions and controls on transportation.
 - Military contingency planning.
 - Increased anti-Cuban propaganda via radio, to explain the benefits of U.S. actions.
- July 8, 1960 – During a televised program, Fidel Castro points out the following fundamental aspects of the blockade under which Cuba finds itself:
 - Defamation campaign
 - Fear campaign – aimed at tourists
 - Campaign to isolate Cuba from the rest of Latin America
 - Battle over oil
 - July 11, 1960 – The U.S. government decides, via the Vatican, to pressure the church to play a more active anti-Castro role.
 - July 16, 1960 – U.S. Ambassador Bonsal delivers a [note](#) to the Cuban government protesting the expropriations of U.S. properties in Cuba.
 - August 6, 1960 – The Cuban government issues Resolution No. 1, under Law 841, nationalizing the telephone and electric companies, the oil refineries and 36 sugar mills.
 - August 27, 1960 – At the Seventh Conference of OAS (the Washington-based Organization of American States) Foreign Ministers, held in San José, Costa Rica, the “[San José Declaration](#)” is issued, expelling Cuba from the organization, among other announcements.
 - September, 1960 – U.S. citizens living in Cuba are advised to send their families back to the United States.

- September 2, 1960 – Via popular vote, the [First Declaration of Havana](#) is approved, responding to the OAS decision to expel Cuba.
- September 17, 1960 – Resolution No. 2 is issued by Cuba’s Council of Ministers, under Law 851, nationalizing the First National City Bank of New York, the First National Bank of Boston and Chase Manhattan in Cuba.
- September 26, 1960 – Prime Minister Fidel Castro addresses the United Nations General Assembly, summarizing the pre-1959 situation in Cuba which generated the need for a revolution. He decries the U.S. nickel mining concession approved under Batista that allowed for a \$120 million investment to be completely amortized within five years, tax-free. He says that Cuba was being called “a Red peril” before it even “had the opportunity to exchange letters” with the Soviet Union and that Cuba’s clash with huge international businesses “was more than the United States government – or rather, the representatives of the United States monopolies – could possibly tolerate.”
- September 29, 1960 – The U.S. government notifies Cuba of the closure of the nickel plant at Nicaro, Cuba, owned by U.S. mining interests.
- September 30, 1960 – The U.S. government urges its citizens not to travel to Cuba. Prime Minister Castro responds by urging U.S. citizens living in Cuba to stay.
- October 13, 1960 – Cuban Law 890 goes into effect, nationalizing sugar businesses, distilleries, factories, maritime enterprises, construction companies, railroads, retailers, etc. through expropriation, regardless of the nationality of their owners.
- October 13, 1960 – Through Law 891, banking is declared to be a public function, with the guaranteed right to compensation for the shareholders or partners of banking entities dissolved or closed. The national bank is also nationalized, with a compensatory procedure based on bonds payable in 15 years, except for Canadian banking entities located in Cuba, whose shares are purchased outright.
- October 19, 1960 – The Eisenhower Administration declares a partial embargo on trade with Cuba, prohibiting all exports except for foodstuffs, medicines, medical supplies and a few items that require special licenses.
- October 24, 1960 – Resolution No. 3 from Cuba’s Council of Ministers, under Law 841, is issued, nationalizing another 163 U.S. companies in all sectors of the Cuban economy.
- November, 1960 – The first restrictions begin on postal service between Cuba and the United States. Later, postal service will be completely blocked by Washington.
- December 16, 1960 – President Eisenhower [reiterates](#) that Cuba’s sugar quota will remain at zero for the first quarter of 1961.

- December 19, 1960 – Fidel Castro announces the commitment by the socialist bloc to purchase 4 million tons of sugar in response to the U.S. suspension of Cuba’s sugar quota.
- January 3, 1961 – United States breaks diplomatic and consular relations with Cuba.
- February, 1961 – The U.S. Commerce Department amends its Export Regulations to prohibit exportations to Cuba under general license.
- March 31, 1961 – Through [Presidential Proclamation 3401](#), President Kennedy announces the complete suspension of the Cuban sugar quota for 1961.
- April 15, 1961 – Mercenary pilots trained and financed by the U.S. begin aerial bombing and strafing of Cuba’s main airports and adjacent areas in preparation for the Bay of Pigs invasion two days later. The bombers fly to Cuba from Nicaragua with CIA-paid pilots, but the CIA wants the bombers to look like Cuban planes flown by Cubans; so one pilot, Mario Zúñiga, flies a B-26 to Miami and poses as a defector. At an emergency session of the UN General Assembly’s Political Committee, Cuba’s Foreign Minister Raúl Roa García charges that the air attacks are the “prologue to a large-scale invasion” while Ambassador Adlai Stevenson denies U.S. involvement. Stevenson uses a wire photo of the “defector’s” fake Cuban B-26 to bolster his case. Roa points out that anybody can paint markings on a plane. Meanwhile, journalists show that Zúñiga’s story is as full of holes as his B-26, which was shot up by the CIA before it left Nicaragua. Stevenson later calls that UN session the most “humiliating experience” of his public life, saying he felt “deliberately tricked” by his own government.
- April 16, 1961 – At the massively attended burial for seven victims of the previous day’s aerial attacks, Fidel Castro announces the socialist character of the Cuban Revolution. He announces that the invasion is on the way and the landing is imminent.
- April 17-19, 1961 – CIA backed mercenaries invade Cuba at the Bay of Pigs.
- April 19, 1961 – Less than 72 hours after the beginning of the invasion, Prime Minister Castro announces victory. Among the more than 1,000 prisoners are men who previously possessed 914,859 acres of land in Cuba, 9,666 houses, 70 factories, five mines, two banks and ten sugar mills.
- September 4, 1961 – The [U.S. Foreign Assistance Act](#) is passed in the U.S. Congress. Section 620(a) requires that no assistance of any kind be given to the Republic of Cuba. The establishment and maintenance of a complete embargo on all trade between the U.S. and Cuba is authorized.
- December 1, 1961 – President Kennedy signs [Presidential Proclamation 3440](#) establishing that Cuba’s sugar quota for the first half of 1962 will be zero.
- February 3, 1962 – President Kennedy issues [Executive Order 3447](#), which imposes a complete embargo on trade between the United States and Cuba. Simultaneously,

the president orders the U.S. Treasury Secretary to implement all necessary measures to effectively prohibit U.S. imports of all products of Cuban origin, purchased from or through Cuba. Meanwhile, the U.S. Commerce Secretary is directed to continue and reinforce measures prohibiting all U.S. exports toward Cuba.

- February 4, 1962 - At the Plaza de la Revolucion in Havana, the Cuban government announces the [Second Declaration of Havana](#) in response to the establishment of a complete embargo against Cuba by the U.S. government.
- March 23, 1962 – The U.S. embargo on Cuban imports is extended to all goods containing Cuban materials, even those made in other countries.
- May 24, 1962 - The United States unilaterally removes Cuba’s “Most Favored Nation” trade status and cancels the previously agreed exclusive customs and trade agreement signed by both countries. This is given formal recognition in the Treasury Department’s Decision 55636 of June 13, 1962, in force since May 24, 1962.
- October 23, 1962 – The CIA issues a memorandum regarding the effects of a comprehensive embargo which does not include food and medicines, concluding that such an embargo would not by itself be likely to topple the Castro government unless extended for many months.
- January 28, 1963 – Cuba issues Resolution No. 4, backed by Law 851, nationalizing Kendall de Cuba S.A., The Dearborn Chemical Company of Cuba, North American Trading and Importing Corporation, International Cigar Machinery Corporation and Pitney-Bowes, Inc., through forced expropriation.
- April 17, 1963 – U.S. Secretary of State Dean Rusk informs President Kennedy that the efforts to reduce maritime shipping to Cuba by U.S. allies have been successful. The governments of Liberia, Turkey, Honduras and Panama had officially prohibited their ships from trading with Cuba. West Germany had issued a decree to prohibit ships registered there from participating in trade with either the Soviet bloc or Cuba. The Greek government had ordered its ships not already chartered to the Soviet bloc to cease shipping to Cuba, and the Lebanese government had promised to revise its maritime laws in order to accommodate U.S. policy objectives. The British, however, were a stumbling block. Whitehall insisted that there was no legal basis to block navigation to Cuba.

Rusk offered various proposals based on the following: 1) the United States would make a new proposal to the U.K. through its Ambassador to the United States, as well as the U.S. ambassador in London, seeking cooperation and indicating that the U.S. would need to take some kind of escalated action unless British maritime shipping to Cuba was quickly reduced. 2) Similar proposals ought to be directed at Norway, Italy and Spain. 3) At a determined moment, the U.S. ought to be prepared to extend the dispositions of National Security Action Memo 220 to ships owned or controlled by persons involved in trade with Cuba, offering a 45 day grace period to allow for ships already enroute to be recalled. 4) Request that U.S. owned or controlled oil companies voluntarily abstain from provisioning ships known to be

involved in trade with Cuba, and seek cooperation from the United Kingdom in applying a similar policy to British oil companies.³

- May 23, 1963 – The Cuban government issues Resolution No. 5, backed by Law 851, forcefully expropriating the U.S. company Merck Harp & Dohne Internacional.
- July 9, 1963 – President Kennedy [orders](#) virtually all financial transactions severed with Cuba. Despite the previous embargo on trade with Cuba, the new currency restrictions freeze \$33 million dollars of Cuban bank deposits in the United States. The State Department says that among other effects, the freeze will prevent Havana from using those deposits to finance subversion in Latin America.
- December 14, 1963 – Cuba issues Resolution No. 6, under Law 851, nationalizing Texaco Petroleum company and Mathieson Pan American Chemical Corporation, through forced expropriation.
- January 3, 1964 – Resolution No. 7, backed by Law 851 is issued by Cuba, sanctioning the nationalization through forced expropriation of Westrex Co. Caribbean which is associated with the marketing of filmmaking equipment.
- April 17, 1964 – Cuba issues Resolution No. 8, backed by Law 851, sanctioning nationalization through forced expropriation of American International Life Insurance Co.; American International Underwriters (Cuba) S.A.; Compañía de Seguros Federales de Cuba S.A.; American International Land Company S.A.
- December 30, 1964 – Resolution No. 9, backed by Law 851 sanctions nationalization through forced expropriation of Allied Artists de Cuba Inc., Buenavista International Inc., and Paramount International Films Inc.
- February 17, 1965 – Resolution No. 10, backed by Law 851 sanctions the nationalization through forced expropriation of Fidelity and Deposit Company of Maryland (insurance).

As can be observed, the climate between the two countries was openly hostile, with Eisenhower and his administration opting for an attempted overthrow of the Cuban government in lieu of diplomacy. Vice President Richard Nixon's role in this endeavor is noteworthy, as he turned the battle against the Cubans into a kind of personal vendetta and assumed a remarkably active role in promoting and implementing the overthrow plan.

When former U.S. Ambassador Philip Bonsal's memoir "Cuba, Castro and the U.S." was published in 1971, he was interviewed by Henry Raymont for *The New York Times*. Bonsal claimed that the State Department and Embassy in Havana had advised "a policy of restraint and non-intervention" but that "the pressure of private American oil and sugar interests and...**Richard M. Nixon's office**, the Central Intelligence Agency and the Treasury Department" had generated a "harsher attitude toward Cuba." [*Emphasis ours*]

³ Dean Rusk Memorandum to President Kennedy, April 17, 1963, NSA

Bonsal added that the economic asphyxiation of Cuba was deliberate and calculated:

“In June and July, 1960, the United States confronted Castro with situations in the economic field designed to accelerate his downfall. The American measures included the pressing advice given companies having a virtual monopoly on oil refining in Cuba to refuse to handle the crude petroleum the Cuban Government was acquiring from the Soviet Union and the refusal to allow the importation into the United States of the sugar unshipped from Cuba under the American quota in effect for 1960. Also during the spring and summer of 1960 there was a concerted removal of key Cuban and American personnel from American companies in Cuba...to hamper the functioning of important units of the island economy...complemented...by United States-directed and subsidized covert operations by United States-selected Cuban opponents of the regime.”

In the face of this kind of avalanche from a global economic titan like the United States, Castro would have had little other option but to approach the Soviet Union, which had offered its full support from the start.

Castro was thinking more though about the Latin American reaction and as a result, continually resisted any closer relationship with the USSR beyond that of trade. This was evident in his repeated insistence that the Cuban Revolution was not associated with the international communist movement, but was as green as the palms of Cuba.

The nationalization process in Cuba

How did the nationalization process begin in Cuba?

Two factors were key. The first was establishing a **legal framework** that would allow for the nationalizations to occur according to national and international law. The second was finding the ideal moment to **implement the nationalizations**, now that social nature of the Cuban economy had become evident – the same outlined by Castro in his [Moncada defense](#) of 1953.

Changes to the legal framework, prior to the nationalizations

One of the first actions by the new Cuban government was the re-establishment of the progressive parts of Cuba's bourgeois [Constitution of 1940](#) which had been illegally repealed in the coup d'état of March 10, 1952 led by Fulgencio Batista. [The Founding Law of the Republic](#) was passed by the revolutionary government on February 7, 1959, providing norms for the country's institutions through the re-establishment of those portions.

Article 90 of the 1940 Constitution said the following in regard to the latifundio:

“The latifundio is prohibited, and as for the effects from its disappearance, the law will indicate the maximum property extension that each person or entity may possess for each kind of use to which the land is dedicated, taking into account respective particulars...The law will place restrictive limits on the acquisition and possession of land by foreign persons and companies and will adopt measures disposed to returning the land to Cuban hands.”

Likewise, in the third transitory provision of Title IV in the 1940 Constitution, the following mandate appears:

“...in the cases of forced expropriation that may be carried out in order to implement Agrarian Reform and the consequent land distribution, compensation via prior cash payment will not be essential. The law may establish other means of payment as long as the necessary guarantees are in place.”

Certain articles from the 1940 Constitution were reconfigured to adapt to the conditions of the new political process underway:

Article 24 from the 1940 Constitution says:

“The confiscation of assets is prohibited. No-one may be deprived of their property unless by a competent judicial authority and for a cause justified by public utility or social interest, and always given that the corresponding indemnification is paid in cash, set judicially. Non-compliance with these requirements will grant the expropriated a right to protection by the Courts, and when/where appropriate, their property shall be returned to them. In case of challenge, the certification of cause for reasons of public utility or social interest and the need for expropriation will be decided by the Courts.”

The 1959 Constitution modified this article as follows:

Article 22: The State acknowledges the property of political, mass and social organizations over the assets allocated to meet their needs.

Article 23: The State acknowledges the property of joint enterprises, societies and economic associations constituted in accordance with the law. The use, enjoyment or disposition of assets owned by the above mentioned entities is/are governed by the provisions of the Law and [international] treaties, as well as by their own statutes and regulations.

Article 24: The State acknowledges the right to inheritance in regard to dwellings and all other personal property. Land and all other production related assets that constitute the property of small farmers may be inherited, adjudicated only to those heirs who work the land, save for exceptions and according to procedures established by law. The law sets the cases, conditions and manner in which the assets from cooperative property may be inherited.

Article 25: Expropriation of assets for reasons of public utility or social interest is authorized, with **due compensation**. [*Emphasis ours*] The law establishes the procedure for expropriation and the bases for determining its utility and necessity, as well as the form of compensation, considering the interests and economic and social needs of the expropriated.

As can be seen, the changes were directed first, at complementing the rights and responsibilities of the owners and second, at bringing the state's right to expropriation in line with current international norms.

These actions demonstrate that the Cubans designed a legal framework to carry out the nationalization process, having realized that as a consequence of the approaching changes to the country's socio-political structure, sooner or later a change in the correlation between private and collective property would be needed.

Nationalization Implementation

The nationalization process in Cuba took place between 1959 and 1968 and included various legal procedures such as: confiscation, forced expropriation by a judicial or administrative authority (with compensation), intervention by state agencies prior to confiscation, and the nationalization or liquidation of private property. The transfer of Cuban private property to state hands in Cuba was carried out through confiscation or expropriation of the assets belonging to a born or naturalized citizen, or corporate entity.

Cuba has insisted that the U.S. properties on the island were expropriated, not confiscated. The United States has taken the opposite position. It is quite possible that this conceptual problem is where the United States as well as Cuba will have to concentrate their efforts, because a resolution to the question of U.S. claims in Cuba will largely depend on whatever agreement is reached there.

The terms confiscation, nationalization and expropriation have distinct definitions:⁴

Confiscation: [Forfeiture]

- (1) The divestiture of property without compensation;
- (2) The loss of a right, privilege or property because of crime, breach of obligation or neglect of duty.
Title is instantaneously transferred to another, such as the government, a corporation, or a private person.
- (3) Something (especially money or property) lost or confiscated by this process, a penalty.

Nationalization: The act of bringing an industry under governmental control or ownership.

Expropriation: A governmental taking or modification of an individual's property rights, esp. by eminent domain. Also termed (in England) compulsory purchase, (in Scotland) compulsory surrender (...)

Let's evaluate the points of view from both sides in this regard.

Ever since the first laws on nationalization appeared in Cuba, the U.S. side has assumed a position that has remained basically unchanged to the present day. This position is reflected fairly precisely in the [note](#) of protest sent by U.S. Ambassador Bonsal to the Cuban government on July 16, 1960, where among other items, he expressed:

[In reference] to the law issued by the Council of Ministers of the Government of Cuba on July 6, 1960, which is entitled the "Nationalization Law" and which **applies exclusively to nationals of the United States who own property in Cuba...**the United States considers this law to be manifestly in **violation of those principles of international law** which have long been accepted by the free countries of the West.

It is in its essence **discriminatory, arbitrary and confiscatory**.

The Nationalization Law is **discriminatory** in that it is specifically limited in its application to the seizure of property owned by nationals of the United States.

It is **arbitrary** because it was admittedly enacted in retaliation for recent actions taken by the Congress and President of the United States to assure the needs of the sugar consuming public of the United States. These actions were required because of the publicly stated intention of the Government of Cuba to reduce its dependence on sugar concomitantly with its efforts to enlarge sales of sugar in newer markets and to alter radically its traditional pattern of trade with the United States. Moreover the hostile attitude toward the United States so often expressed by the present Government of Cuba has made abundantly clear the economic imprudence of relying on Cuba for a very high proportion of the United States need for this important commodity.

⁴ Black's Law Dictionary, 8th edition, 2004

The Nationalization Law is both **arbitrary and confiscatory** in that its provisions for compensation for property seized fail to meet the most minimum criteria necessary to assure the payment of **prompt, adequate and effective compensation and in its specific prohibition of any form of judicial or administrative appeal** from the resolutions of the expropriating authorities. [*Emphasis ours*]

... should this law be employed by the Government of Cuba to seize properties of American nationals, it will be viewed by the Government of the United States as further evidence and confirmation of a pattern of economic and political aggression against the United States under the guise and pretext of accelerating the social and economic progress of the Cuban people.

Now we'll review the question from the Cuban side, expressed from the legal perspective by jurists who dedicated a great part of their life's work to analyzing this subject.

The late Dr. Olga Miranda Bravo, who served as the Legal Adviser at Cuba's Ministry of External Relations (MINREX) for nearly three decades, expressed Cuba's view in regard to the points specifically mentioned in the Ambassador's letter⁵. In regard to the U.S. claim that the expropriations had been arbitrary, she warned of the abundant confusion among U.S. diplomats regarding international legal terminology and explained how reprisals are viewed under international law:

According to international law, **reprisals are intrinsically unlawful acts** whose justification, by way of exception, is based on the fact that **they respond to a previous unlawful act**, and are intended to achieve the annulment, reparation or correction of such act. States have the right to nationalize foreign-owned property, and this is acknowledged in international law. Therefore, if the Cuban government's behavior is adequate in regard to its international obligations and protected by its sovereign powers, these actions may not be considered illicit, or by extension, reprisals.

According to [Cuban jurist Serafín Seriocha] Fernández Pérez, "Ambassador Bonsal's complaint that Cuban nationalizations of U.S. property were **confiscatory** was based on two points: first that the proposed method of compensation did not assure prompt, adequate and effective compensation, and second, because the law did not offer the possibility of judicial appeal. Both complaints are lacking in seriousness and support in international law. The juridical nature of an expropriation, which may be carried out through an administrative or judicial procedure, being a decision left to the internal workings of the State which implements it, makes an appeal irrelevant to its effects. As for the argument that the Cuban nationalizations were confiscatory because they did not assure a prompt, adequate and effective compensation, this is an attempt by the United States to ignore international practice following the Second World War, where the idea of **full and immediate compensation** promoted by capital

⁵ Olga Miranda Bravo, *Las nacionalizaciones en el derecho internacional: El caso Cuba* [*Nationalizations and international law: The Cuban Case*]

exporting countries was replaced by that of **appropriate, global compensation, adjusted to the financial situation of the expropriating State.**” [*Emphasis ours*]

Expressing Cuba’s perspective regarding the genesis of the nationalizations, Dr. Miranda wrote:

- The nationalization process in Cuba is a socio-economic rectification, for reasons of national interest and popular benefit, accompanied by appropriate compensation, as established by Cuba’s Constitution.
- The first measure that affected the interests of U.S. proprietors in Cuba was the Agrarian Reform Law (May, 1959), due to their being the majority owners of the that had become the fundamental obstacle to the country’s agricultural development. For this reason they were expropriated as part of a policy to deliver land to those who actually worked it.
- The Agrarian Reform law acknowledged the constitutional right of property owners to receive compensation (See Art. 29). The Reform established that the compensation for expropriated properties would be paid in negotiable bonds. Toward this end, a series of bonds would be issued by the Republic of Cuba in quantities, with terms and conditions to be determined at the appropriate moment. The bonds would be valid for twenty years, with an annual interest rate of up to four and a half percent (4-1/2%). According to Law 576, of 1959, Cuba would issue an initial series of bonds valued at \$100 million Cuban pesos.
- From a legal point of view, Law 112 of February 2, 1959 and Law 151 of March 17, 1959, passed as a complement to Law 112, clearly defined the process for confiscating assets pertaining to the tyrant Batista and his political collaborators. Law 438 of July 7, 1959, for its part, dealt directly with the persons and entities that the revolutionary government proved had enriched themselves illicitly, under the shelter of public agencies during the tyranny.
- Article 24 of the Founding Law of the Republic and Law 851 (July 6, 1960), authorizes the Presidency of the Council of Ministers to nationalize U.S. companies located in Cuba, along with their banking institutions, an action which became effective through Resolutions 1 and 2 by the Presidency of the Council of Ministers, in August and September, 1960.
- Law 851 established the possibility of compensation for U.S. properties through Republic issued bonds, which would carry an interest rate of not less than 2% annually, over 30 years. The fund for the payment of these bonds would be obtained in part through the sales of sugar to the U.S. market, supposing that the possibility of these sales was reinstated, something that the U.S. government did not approve, thereby impeding this method of compensation. As [Serafín Seriocha] Fernández Pérez states, “the 30 year term that was offered can be considered adequate,

appropriate and fair, given the country's financial situation and if we take into account that these were properties valued in the billions of dollars – as comparison, England gave Mexico 15 years to pay a \$130 million dollar debt.”

- The Cuban government has reiterated that the form of compensation envisioned in Law 851 of 1960 is subject to negotiation and even, that the mentioned sum would be determined through the appraised value of the expropriated assets, that is, on the basis of their value. This procedure was rejected by the U.S. side, with the argument that the declared value of the assets did not correspond to the true value of the real estate and industries in question. This phenomenon can be attributed to the conspiratorial agreements that existed between U.S. businesses and the revolving-door Cuban governments prior to 1959, which accepted undervalued appraisals on land and inputs in order to reduce their taxes. In the end, it was the U.S. companies who would be harmed by such practices, since by declaring such values to the tax authority for their operations or acquisitions, they would have seen their value considerably diminished.
- By 1990, the \$1.8 billion dollars that the Federal Claims Settlement Commission set as the sum of the claims presented to it by U.S. citizens who considered themselves affected by Cuban nationalizations, could have been paid.
- The Cuban nationalizations were internationally recognized as non-discriminatory, as these laws were applied both to Cubans and foreigners. Nor were they taken in reprisal for the cancellation of the sugar quota, but as a public matter, consistent with the decision to adopt measures to advance and ensure the social and economic development of the Cuban people. Furthermore, Cuban laws had directed that compensation be paid for nationalized properties.
- U.S. nationals were in fact privileged and not exactly discriminated against, as claimed. First of all, because U.S. citizens and corporations received unequal treatment with respect to other citizens of other countries. But this inequality was found precisely in the fact that Law 851 envisioned a kind of compensation that might be negotiated; while in the case of all other countries and Cuban citizens, fundamentally affected by Nationalization Laws 890 and 891, the referenced form of compensation was a posterior juridical norm that was never enacted, and these compensations would [eventually] be resolved on the basis of bilateral compensation agreements between the Cuban government and the affected states. Therefore, the United States had two options, either to accept the method contained in the law, or to negotiate a bilateral compensation agreement, in accordance with international practice.
- Former president Fidel Castro pointed out in 1963, “We’re prepared to argue, as we’ve said. All right then, we’re prepared to argue over formulas for compensation, as we’ve done with the Canadians; a relationship that might serve as a model for

relations between a socialist country and a capitalist one, good relations, because they don't interfere in our internal affairs. And when the nationalization laws came about, we compensated the Canadians, and we've always resolved any difference amicably.”

- It should be noted that whether these claims are attributed to intervention, sale/purchase, or expropriation, according to international civil procedure they may be rejected if they are presented 15 years after the fact and if the term proposed for resolving them has passed, as has occurred in this case. Law 851 (1960) set a term of 30 years for the payment of bonds to the expropriated, after which period any claim becomes inviable.

Notwithstanding any statute of limitations, the Cubans remain willing to negotiate.

Article 3 of Law 80 “Reaffirmation of Cuba’s Dignity and Sovereignty” (1996), approved by popular vote, says: “The claims for compensation for expropriation of U.S. properties nationalized in Cuba via a legitimate process and validated by Cuban and international law, as referenced in the previous article (Article 2), may be part of a process of negotiation between the U.S. government and the government of the Republic of Cuba, on the basis of equality and mutual respect. The claims for compensation due to the nationalization of said properties will be examined jointly with the compensation to which the Cuban state and people are entitled, as a result of the damages caused by the economic blockade and all kinds of aggressive actions, for which the government of the United States of America is responsible.”

Having considered the positions of both the United States and Cuba, let's review how the subject of nationalizations or expropriations is dealt with at the international level.

Agreements and International Resolutions

[Resolution 1803](#), passed by the United Nations General Assembly in 1962, marked an important milestone, due to the acknowledgement by capital exporting countries that each State has the right to full and permanent sovereignty over its own wealth and natural resources. As part of this sovereignty, according to this Resolution, States may nationalize private property, including foreign-owned property, for reasons of public interest, as long as the nationalizations are non-discriminatory and adequate compensation is paid.

The significance of this Resolution lies in the fact that it was overwhelmingly approved by developed as well as underdeveloped countries, and by the United States of America. Its fourth paragraph establishes that compensation shall be paid to owners according to current regulations in the State that implements the nationalization and in accordance with international law. This formulation means that nationalizations are considered valid if the national law that governs their implementation meets the above mentioned requirements.

For its part, the United States assumes that the “[Hull Doctrine](#),” whose very name suggests is not a legal regulation but a U.S. desire, serves as the basis for the U.S. interpretation regarding the way expropriations ought to be compensated in the context of international processes. According to Dr. Miranda, “The attempt by the United States to impose the “Hull Doctrine” on the world is based on the U.S. supposition that its will is the source of [international law](#), ignoring the fact that the numerous rules which make up international law have as their origins the principles established by custom, practice, doctrine, jurisprudence and international treaties.”

U.N. Resolutions [523](#) (VI) of January 12, 1952; [626](#) (VII) of December 21, 1952, [1515](#) (XV) of December 15, 1962; and [2158](#) (XXI) of December 10, 1967, establish the rights of States to permanent sovereignty over their natural resources.

These resolutions were issued by the international community both before and during the period in which Cuba’s nationalizations took place.

Juridical precedents for global, gradual compensation

As we analyze the kinds of compensation for expropriation-related claims, considering that the national laws of the expropriator have priority, it is essential to evaluate whether any international treaty between the U.S. and Cuba modifies this rule. Our research for this study produced no references to any kind of general or partial agreement of this kind during the period in question (1959-1962).

There is also no record of any kind of legislation that establishes the sum of the compensation to be paid to former owners.

The most important precedents established by Europe, the United States, and Cuba, which endorse the principle of global and gradual compensation adjusted to the financial situation of the expropriating country are:

- a) The agreement between the United States of America and Mexico, November 19, 1941, on compensation for the nationalization of Standard Oil. The sum was set at \$29 million dollars, payable over five years. A similar agreement was also reached with England, on February 6, 1946 and September 1, 1947, for \$130 million dollars, payable over 15 years.
- b) The agreement between France and Switzerland (November 21, 1949); France and Canada (January 26, 1951), and France and Great Britain (April 11, 1951) to cover foreign shareholders affected by the French law passed on April 8, 1946, nationalizing gas and electricity.
- c) The compensation agreements for nationalizations carried out after 1945 and 1946 by socialist countries in Eastern Europe (Czechoslovakia, Hungary, Poland, Romania and Yugoslavia), between those states and the USA, France, Great Britain and Switzerland.
- d) The compensation agreements for nationalizations carried out by the Cuban government after 1959; reached with France (March 17, 1967), Switzerland (April 14, 1967), Canada (November 7, 1980) and Spain (November 16, 1986).

The above mentioned compensation agreements were reached on the basis of the principle of global and gradual payment, adjusted to the financial situation of the expropriating State. Even Eastern European States generally preferred to make payments through scaled deliveries of commodities (coal, raw materials, etc.) rather than cash.

All this explains why, following World War II, states have increasingly insisted on the option of global compensation adjusted to the financial situation of the expropriating country. Nevertheless, as a consequence of the pressure from industrialized countries, investment capitalists have recently begun imposing their own rules about compensation as part of bilateral agreements with countries receiving investment capital.

By analyzing the publicly available instruments of international law with regard to the rights of States to nationalize foreign property located within their territory, the relevant basic principles can be summarized as follows:

1. States have the sovereign right to nationalize, expropriate or seize foreign owned properties, for reasons of public interest, or national interest or security.
2. The nationalizing State has the right to establish the form of compensation, that is, the sum and form of payment, in conformance with its laws, taking into account both international law and all of the circumstances that may be considered opportune.
3. The nationalizing State has the right to carry out its expropriation process in accordance with the national law that governs said process.

4. In the case of disputes or litigation related to the compensation, such litigation is subject to the jurisdiction of the nationalizing State.
5. Despite the abovementioned principle, the States involved may freely and mutually, and on the basis of equal sovereignty between States, resort to other peaceful means such as arbitration or international judicial arrangements, whether by previous agreement or by mutual disposition at the time of nationalization.

According to Fernández Pérez:

“Another angle from which Cuba has evaluated the nationalizations it carried out during the first years of the Cuban revolution has to do with whether or not they were carried out in accordance with national law, and their legitimacy from the perspective of two social variables. First, as a process that resulted from a social revolution, the source of its legitimacy. And second, the validity of constitutional law through which revolutionary policy was revealed.

It is generally accepted that both social variables are intimately interrelated, since as sources of law, revolutions are the legitimate gestors of new concepts of constitutional law.

It is undeniable that revolutions have that quality – as sources of law. To deny it would lead to the absurd conclusion of denying legitimacy and legality to such independence revolutions as for instance, the **thirteen U.S. colonies against England, and their Republican Constitution**. It would also mean invalidating the great French Revolution and her Declaration of the Rights of Man and of the Citizen.”⁶ [*Emphasis ours*]

⁶ Lic. Serafín Seriocha Fernández Pérez, *El proceso nacionalizador en Cuba, la apertura a la inversión extranjera y el diferendo con los Estados Unidos*, Revista Cubana de Derecho, Núm. 12, Diciembre 1998, p. 104

Defining the Claimants and the Claims

Another important aspect in the issue of U.S. claims concerns the persons or corporations who have the right to be included as claimants.

Over the years, the question has been highly manipulated, with the U.S. side initially considering the claims of its own citizens at the time of nationalization. Despite international law making no provision for the inclusion of Cuban-Americans who were not U.S. citizens at the time of the expropriations, there is some insistence in the United States for their claims to be taken into account.

One thing to keep in mind about the process of defining who has the right to lodge a claim and who doesn't, is the fact that the very question has been tainted by political considerations. While it is true that between 1959 and 1961 the United States received a flow of Cuban migrants displaced from the ruling class by Cuba's new political situation, it's important to clarify that the majority of these migrants viewed their immigration situation as something temporary and often left their real estate and other assets in Cuba in the care of friends, servants, etc., expecting the new political situation to be rapidly overturned.

The FCSC did not begin its **claims registration** process until 1964. According to Cuban authorities, this process was a direct result of the fact that despite the predictions of the ruling class in the United States, the Castro government still had not fallen. In order to continue Cuba's economic asphyxiation and even amplify it, "documentation" of the claims served a useful pretext: validating U.S. hostility toward Cuba. The FCSC process cannot be viewed as a serious attempt to begin negotiations to resolve the claims. And in fact, during the course of more than 50 years and despite the multiple proposals offered by the Cubans to resolve the disagreement – as we will discuss later in further detail – the United States has rejected the idea and even gone so far as to torpedo those who have attempted direct negotiations with the Cuban government.

In reality, the claims from Cubans excluded from any previous registration for lack of U.S. citizenship at the time of expropriation ought to be presented directly to the Cuban government and its institutions for adjudication.

As for **confiscated property**, the Cuban government issued Law 70 (February 13, 1959), as part of the Organic Law of the Ministry for the Recovery of Misappropriated Assets. This ministry was empowered to substantiate the records regarding confiscation, so that those affected could contribute the proof they considered opportune.⁷

The first stage of property confiscation occurred in 1959 and 1960. During these two years, the government seized assets, placing them under the control of the recently created Ministry for the Recovery of Misappropriated Assets. Ultimately the Ministry confiscated the possessions of 640 individuals accused of having participated in an official capacity in the Batista government between 1952-1958 (in the executive, legislative and judicial branches plus

⁷ Fernández Pérez, p. 106

as governors, mayors and union representatives), along with another 126 individuals accused of having benefited from corruption during the Batista era. Simultaneously, information regarding the property confiscations from more than 3,000 citizens and corporations and the investigations of another 4,000 in accordance with Law 78 (1959) were published in Cuba's *Gaceta Oficial*. Once the Ministry for the Recovery of Misappropriated Assets had issued a resolution, an appeal could be filed before the Accounts Tribunal and after that process had been exhausted, under Law 95 (1960), a motion for reconsideration of an administrative decision could be filed before the Finance Ministry, with no further appeal.

These persons could not be included in the claims process underway on the U.S. side because at the time they were Cuban citizens and as such, their claims should have been dealt with in Cuban courts, according to the procedures established at the time. However, as this was a confiscatory procedure established by Cuban law, no compensation whatsoever was owed in any case.

For its part, the Cuban government considers itself obliged to evaluate the subject of compensation for U.S. claims, and for that reason granted the affair a legal character, reflected in Law 80, passed in 1996, where Article 2 says: "The disposition of the Government of the Republic of Cuba, expressed in the nationalization laws implemented more than 35 years ago, in relation to an adequate and just compensation for the expropriated goods of persons and corporations which had U.S. citizenship or nationality at that time, is reaffirmed."

Dueling appraisals

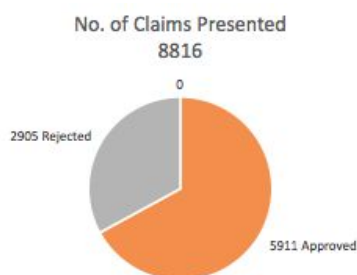
As for the process of Cuban nationalizations carried out against U.S. citizens and corporations, the proposed appraisals and compensations have also been analyzed and argued over by specialists and politicians on both sides.

Cuba's position is that the total compensation for owners of expropriated property ought to be determined based on the valuations submitted to Cuban tax authorities prior to October 10, 1958. This was not accepted by the U.S. side, which preferred to use the properties' true market value to determine the sum of the expropriations, with interest added.

As mentioned previously by Dr. Miranda Bravo, the divergence comes in the fact that the great majority of the U.S. properties were undervalued in order to achieve a tax assessment far below the true market rate; a consequence of the Batista government's concessions to U.S. capital. Consequently, the difference between the Cuban and U.S. appraisal figures amounts to hundreds of millions of dollars.

- According to a detailed analysis of the values published by various sources, the Cuban side has appraised the value of said expropriations at somewhere between \$900 million – \$1 billion dollars.
- On the U.S. side, the appraisals range from \$956 million to \$1.851 billion dollars depending on the moment of the valuation.

In 1964, the U.S. Foreign Claims Settlement Commission (FCSC), a quasi-independent agency associated with the U.S. Department of Justice, called for documentation from U.S. citizens and corporations regarding their claims for Cuban expropriations from 1959 to date. The FCSC received 8,816 claims, totaling \$3.2 billion dollars. It certified 5,911 of them, for an approximate total of \$1.851 billion dollars. Interestingly, 26 of the claims (.04% of the total number) amount to \$1.3 billion (72.3%) of the total value, and the remaining 5,888 claims amount to \$513 million (27.7%) of the certified total.



Furthermore, the FCSC determined that in this case, interest should be applied starting from the moment of the expropriation, at a rate of 6% annually. This puts the current total at approximately \$7 or \$8 billion dollars.

It is important to understand that the figures claimed before the FCSC were determined by the claimants themselves. In some cases appraisals performed by unrecognized entities or

persons were presented, and another curious point is that a good portion of the claims demanded compensation for losses of well under \$100 dollars. (See partial table below).

Partial table of U.S. claimants demanding compensation for Cuban nationalizations
1959-1968

Claim Number	Decision Number	Name of Claimant	Type of loss	Location of property	Amount of loss certified
CU-0411	2992	Booras, Thomas	Securities	Cuban-Venezuelan Oil Voting Trust	29.92
CU-0432	2860	Zeitlin, Betty	Securities	Cuban-Venezuelan Oil Voting Trust	11.97
CU-0489	2859	Wann, Dorothy	Securities	Cuban-Venezuelan Oil Voting Trust	11.97
CU-0542	2755	Chiocchi, Frank J.	Securities	Cuban-Venezuelan Oil Voting Trust	11.97
CU-0640	3515	Harz, Helen	Securities	Cuban-Venezuelan Oil Voting Trust	7.98
CU-0654	3511	Rapp, Charles F.	Securities	Cuban-Venezuelan Oil Voting Trust	17.96
CU-0707	2811	Shuk, Ursula C.	Securities	Cuban-Venezuelan Oil Voting Trust	5.99
CU-0744	2825	Anderson, Clifford	Securities	Cuban-Venezuelan Oil Voting Trust	5.98
CU-0744	2825	Anderson, Dean Motz	Securities	Cuban-Venezuelan Oil Voting Trust	5.98
CU-0782	2836	Broussard, Sybille	Securities	Cuban-Venezuelan Oil Voting Trust	6.27
CU-0782	2836	Fite, Ramona	Securities	Cuban-Venezuelan Oil Voting Trust	6.27
CU-0782	2836	Spurlock, Daniel	Securities	Cuban-Venezuelan Oil Voting Trust	6.27
CU-0798	2805	Kaplan, Emanuel	Securities	Cuban-Venezuelan Oil Voting Trust	5.97
CU-0798	2805	Kaplan, Dora	Securities	Cuban-Venezuelan Oil Voting Trust	5.99
CU-0822	2780	Fishman, Sara W.	Securities	Cuban-Venezuelan Oil Voting Trust	1.00
CU-0822	2780	Fishman, Nelson I.	Securities	Cuban-Venezuelan Oil Voting Trust	2.00
CU-0823	3170	Fishman, Bessie Y.	Securities	Cuban-Venezuelan Oil Voting Trust	2.99
CU-0851	2861	Ochfeld, Eleanor F.	Securities	Cuban-Venezuelan Oil Voting Trust	2.99
CU-0851	2861	Ochfeld, Robert	Securities	Cuban-Venezuelan Oil Voting Trust	3.00
CU-5878	4061	Post, Charlotte	Securities	Vertientes-Camaguey	43.50
CU-5878	4061	Post, David	Securities	Vertientes-Camaguey	43.50
CU-6317	6609	Bodkin, Christopher J., Jr.	Securities	Tropical Gas	4.59
CU-8088	5200	David, William	Securities	Altantica del Golfo	11.56
CU-8131	4067	Schaub, Catherine	Securities	Cuban-Venezuelan Oil Voting Trust	5.99
CU-8131	4067	Schaub, Raymond	Securities	Cuban-Venezuelan Oil Voting Trust	5.99
CU-8132	4068	Schaub, Catherine	Securities	Cuban-Venezuelan Oil Voting Trust	11.9
CU-8148	6735	Sanders, Katherine L.	Securities	Tropical Gas	9.18
CU-8805	6821	Lepinske, Harry	Securities	Cuban-Venezuelan Oil Voting Trust	5.98
CU-8805	6821	Lepinske, Lee C.	Securities	Cuban-Venezuelan Oil Voting Trust	5.99

Cuban Settlement Offers Repeatedly Rejected by the U.S.

The U.S. government has stated that Cuba has never been serious in its attempts to negotiate compensation for expropriated and nationalized properties. Washington's argument assumes that the compensation must be realized under the rules it establishes. Its demands include:

- Application of the Hull Doctrine demanding compensation that is “prompt, effective and adequate.”
- Valuations set according to market values admitted by the U.S.
- Inclusion of interest as part of the compensation.

For its part, Cuba has insisted on numerous occasions that it would like to resolve the disagreement.

As the U.S. Commerce Department's Deputy Assistant Secretary for the Western Hemisphere between 1987-1990, Dr. Timothy Ashby participated in the creation and implementation of trade policy with Latin America and the Caribbean. His [study](#) of the claims issue published in 2009⁸ includes numerous stillborn settlement attempts from late 1959 to the spring of 1964:

- A September 1959 meeting in Washington D.C., where the owners of the largest sugar interests in Cuba met to “discuss the offer of Agrarian Reform Bonds as compensation for their nationalized assets. The sugar interests were advised that the U.S. government considered the offer of bonds to be inadequate, especially as the expropriated properties had not been properly valued and no bonds had been printed. Reportedly, a senior government official suggested that the bonds offer be rejected, as **the Castro regime could not remain in power for long.** [*Emphasis ours* Corporate counsel present expressed the concern that accepting bonds would constitute an accord and satisfaction, which could render the assets irretrievably lost even if the Cuban government was overthrown. The participants agreed not to deal with the Cubans and promised to keep the meeting secret.”⁹
- A November 1959 meeting of attorneys for the major sugar interests (American Sugar – later Amstar – Manati Sugar, Francisco Sugar, and United Fruit Company). As the shareholders in these companies were beginning to wonder whether all possible legal remedies had been pursued, the attorneys debated methods to accept the bonds, “under protest” for example, without completely relinquishing claim to the property. They were uncertain about how this would function under Cuban law and as a result did not reach final agreement or accept the bonds.
- The December 1959 [mention by Cuba's Foreign Minister](#) that the Cuban government was willing to begin negotiations on compensation for nationalized U.S. properties.

⁸ Dr. Timothy Ashby, *U.S. Certified Claims Against Cuba: Legal Reality and Likely Settlement Mechanisms*, *Inter-American Law Review*, March 19, 2009

⁹ Ashby, p. 107

As the CIA's plans to topple Fidel Castro were already in full swing, the offer was turned away.

(Proof of this is found in the December 18, 1958 [National Security Council meeting](#) just prior to the rebels taking power in Cuba, where "President Eisenhower suggested that perhaps Batista should be induced to turn power over to his successor," to which CIA Director Allen Dulles answered that "such a move should be made to look like a coup d'etat against Batista. Eisenhower approved." In [another meeting](#) with the National Security Council several days later, on December 23, 1958, when Dulles pointed out "the need to prevent a Castro victory," President Eisenhower said "he believed this was the first time that statement had been made in the National Security Council." "Secretary [of State] Herter observed that opinion as to the undesirability of a Castro regime appeared to be unanimous." The president was hopeful about the creation of a "third force" that might grow in power and influence "if...organized around an able man and provided with money and arms.")

- A February 29, 1960 Diplomatic Note from Cuba, proposing that negotiations on all bilateral issues begin through diplomatic channels as long as the U.S. government would agree to refrain from any unilateral actions against Cuba that might derail the negotiations or cause harm to the Cuban people or their economy.

Fidel Castro had already named a negotiating delegation to be sent to Washington for the purpose but the U.S. government refused, answering by [Diplomatic Note](#) that the U.S. "must remain free, in the exercise of its sovereignty, to take whatever steps it deems necessary." Whenever protests arose about Cuban nationalizations during these early years, the Cubans would always issue reminders about their offer of compensation through agrarian bonds, and the U.S. would always insist on immediate payment in cash.

- The March 1964 secret offer from Fidel Castro to the U.S. government via the Swiss ambassador to pay \$1 billion in compensation for expropriated American properties and to release all political prisoners in exchange for restoring the Cuban sugar quota. The White House was aware of the offer but did not act on it and did not acknowledge it either. "Despite the fact that the offer followed both the failed Bay of Pigs Operation and the Cuban Missile Crisis (which resulted in a U.S. pledge not to invade Cuba), the U.S. government's internal position was that "Castro won't last," and thus settling the claims would prevent the restitution of U.S. assets when the Cuban government was toppled."¹⁰

Dr. Ashby would later have the unpleasant experience of finding himself in the crosshairs of the U.S. government's refusal to negotiate settlement when as a private individual no longer in government service, he attempted in 2006 to negotiate a number of claims that had been purchased by investors.¹¹ The Bush administration quashed the effort, issuing a notice

¹⁰ Ashby, p. 108

¹¹ Seth Stevenson, *Claimed*, Slate, Nov. 29, 2015, available at http://www.slate.com/articles/news_and_politics/foreigners/2015/11/u_s_claims_in_cuba_the_strange_battle_that_is_exciting_speculators_and_could.html

through the Treasury Department's Office of Foreign Assets Control (OFAC) that the outstanding claims were considered "property in which Cuba has an interest," and therefore their sale or purchase could not be negotiated without OFAC permission. Such permission never materialized.

"It is reasonable to assume that the OFAC Notice was a politically motivated attempt by the Bush Administration to 'chill' claims acquisition transactions across the board," commented Ashby, in his Law Review article.

"The OFAC Notice constituted a general and unsolicited regulatory interpretation by a federal agency and is not U.S. law *per se*. Such an interpretation by OFAC hardly seems reasonable, given a 1981 decision by the Supreme Court regarding U.S. certified claims. In *Dames & Moore v. Regan*, the Court stated that '[t]he claims of American citizens against Iran are not in themselves transactions involving Iranian property or efforts to exercise any rights with respect to such property.' Thus by analogy, it would appear that claims against Cuba are not in themselves property in which Cuba has an interest. The OFAC Notice also contradicts a contemporary policy statement by the Chairman of the FCSC that '[i]t is not illegal to sell or purchase these claims.'"¹²

Meanwhile, as the years passed following the Cuban revolution, U.S. allies who at first had put their faith in the U.S. "variant," began to comprehend that U.S. stubbornness on the claims issue was not to their benefit and one by one, began to enter into orderly negotiations with the Cuban government.

Spain accepted compensation for expropriated Spanish properties in 1986 through a bilateral agreement between the two governments. As a result, taking advantage of their common language and cultural history, Spanish executives swiftly became the most entrepreneurial force in the Cuban economy, staking significant claims in tourism, finance and exports, as reflected in the Melia hotel chain, Sabadell and BBVA banks, and Bodegas Torres.

But these are not the only examples. The French and Canadians have also demonstrated that distancing themselves from the policy of waiting for the Cuban government's overthrow was the correct decision.

¹² Ashby, p. 110, 111

Suggested Settlement Mechanisms

What is the **current situation** and what settlement mechanisms are being proposed by both sides?

The current status of the process is quite complex, due to the highly politicized environment that governs the relations between the two countries. It is impossible to analyze U.S. claims against Cuba from a legal, social, economic or historical point of view without confronting the ideological polarization between the two countries.

Various U.S. proposals have been produced as a means of suggesting guidelines for the process. Among these, we considered the USAID funded Creighton University Study from 2007, Rolando Anillo's 2008 study, Dr. Timothy Ashby's 2009 analysis, and Richard Feinberg's 2015 study for the Brookings Institution.

Some of the studies are clearly aimed at fueling continued disagreement by presenting "options" that are evidently unacceptable for one of the parties. Others are more balanced and evidently well-intentioned, as they seek an intermediate position supported to some extent by international precedent. But despite offering analyses based on the current rules of international practice, all of the studies without exception, lack a serious examination of the interests of the Cuban side, and this makes them inviable.

The proposals as a whole generally suggest three settlement variants:

1. Negotiations between the United States and Cuba – through a bilateral property claims settlement process
2. Direct negotiations between the claimants and the Cuban government
3. Creation of special purpose funds to satisfy claimants' demands

Let's analyze these proposals.

Alternative 1: Bilateral Property Claims Settlement

Through the "Espousal Doctrine," the U.S. State Department has the option to settle U.S. claims against Cuba for any amount of money. The terms it decides upon would be impossible for claimants to appeal.

The U.S. government has rarely negotiated a resolution that truly meets the requirement envisioned by the Hull Doctrine in terms of "prompt, adequate and effective" compensation for expropriations carried out by a foreign government. Although many U.S. analysts assume otherwise, the Doctrine on its own is not a requirement of international law; nor is it recognized by the United Nations. U.S. courts in turn have tended to defer to agreements negotiated by the State Department in return for normalized diplomatic relations. The record of these negotiations shows that the majority of claimants did not receive the full amount demanded by the FCSC and with the exception of Germany, interest was never included.

The U.S. government routinely includes interest in the negotiations as a “bargaining chip” in order to obtain some kind of concession from the other side.

The Cuban government is resolutely opposed to the FCSC valuations, as they were not established through a procedure where both sides were represented. The FCSC certifications consisted of administrative hearings where only the claimants presented proof regarding the scope and value of their losses. The U.S. Department of Commerce calculated a book value in 1961 of \$956 million for the expropriated U.S. properties in Cuba. The FCSC figure was practically twice that.

For their part, the Cubans place special emphasis on using the taxable values declared in October of 1958 as a basis for evaluating the expropriated properties and on this point, international law supports the expropriating country, granting it the power to decide the rules for carrying out an appraisal and compensation process according to Cuban laws.

But beyond that, the Cubans will not accept these negotiations occurring in a vacuum, where their demands for the “damages suffered by Cuba as a result of the United States blockade” are not taken into account. Law 80, approved by the Cuban people in a 1996 plebiscite acknowledges the right of U.S. citizens and corporations whose properties were nationalized in the 1960s to receive an adequate and effective compensation for their expropriated properties, despite the long passed expiration deadline for settlement. But the law also establishes that “the claims for compensation due to the nationalization of said properties must be examined **jointly** with the compensation to which the State and Cuban people are entitled.”

Alternative 2: Direct negotiations between the claimants and the Cuban government.

Whether as part of a solution agreed to by both governments or independently, the U.S. claimant could be authorized to receive compensation directly from Cuba for their expropriation claims. This compensation could be the result of individual private negotiations with the Cuban government or through the participation of U.S. claimants in a formal Cuban program to resolve claims.

While there is no direct precedent for such a procedure and the courts have said that individual claimants do not have the right to negotiate directly with the debtor government, the U.S. side believes that in Cuba’s case, a flexible agreement of this kind may best serve the interests of all parties.

It should be understood that whether the claims are the result of an intervention, sale/purchase, or expropriation, they may be rejected if submitted 15 years after the fact, or outside a particular deadline set by the expropriating country. In the Cuban case the expiration date for claims on land expropriated during the Agrarian Reform would have been 1979. For the nationalizations contemplated by Law 851, the deadline was 1990, the date when the bonds authorized under the law were set to expire. Unlike Alternative 1, direct negotiations between the claimants and the Cuban government are not validated by Law 80

(1996) meaning that private claimants would not be authorized to negotiate the Cuban claims for damages caused by the U.S. embargo.

Basically, the claimants will be dependent on the willingness of the Cuban government to consider their claims, or not.

In terms of direct negotiations with the Cuban government, the Starwood case is worth a mention.

In 2006, at the request of U.S. Secretary of State Condoleezza Rice, the FCSC re-opened its call for documentation of outstanding claims for expropriated U.S. property in Cuba. Five claims were submitted, two of which were certified. One belonged to Starwood Hotels and Resorts Worldwide, of White Plains, NY. Starwood had acquired its claim from ITT (International Telephone and Telegraph) whose subsidiary Radio Corporation of Cuba was the owner of two parcels of land and a bank account that were expropriated by Cuba after the FCSC's initial claims review process was completed in 1972.

Aside from the unusual precedent of re-opening a long closed claims examination process to benefit a single company, one of the more interesting features of the Starwood claim is the method Starwood used to calculate its property values. Like claimants in the original FCSC process, the property values presented by Starwood were based on the company's own uncontested estimates; in this case real estate values were furnished for comparable land in Puerto Rico and other Caribbean countries, despite the FCSC having rejected this appraisal method in a prior claim against the former German Democratic Republic. Starwood's self-calculated estimate was \$51 million.

As the visit of President Obama in March, 2016 drew near, the pressure escalated for tangible results on both sides, to demonstrate that rapprochement efforts had been worthwhile. According to reliable sources, Starwood's application for an OFAC license to negotiate with Cuba was approved just one day prior to the president's visit. In a single day, Starwood and the Cuban government negotiated and signed an agreement that would allow Starwood to enter into a management contract similar to those of other non-American hotel chains operating in Cuba.

We do not have access to the agreement signed by Starwood and Cuba, but considering past Cuban performance and other well-known agreements, we believe that this contract does not grant Starwood any kind of equity ownership nor guaranteed right to receive payment from the Cuban government. Starwood will likely only receive the right to receive the percentage of earnings specified by its Cuban partner for its management and marketing of the property, and the right to invest in improvements to the property.

As for the \$51 million claim, neither side responded to questions about it, but the safe assumption is that it no longer exists. It would be extremely uncharacteristic, indeed illogical, for the Cuban government to enter into business negotiations with counterparts wielding this kind of threat, either actively or passively.

Today Starwood is operating its first hotel property in Cuba under the Four Points Sheraton brand.



One source close to both sides told us that the Obama administration views this sort of agreement as a possible model for the largest claims-holders. However, both Starwood's sudden isolated registration of a \$51 million figure as well as the *ad hoc* nature of the negotiation have the appearance of isolated, politically motivated gestures executed at sensitive moments, rather than a realistic general approach to claims resolution.

First, the Cuban government will not accept any reckoning where it is not a participant, and will insist that negotiations occur according to the rights it enjoys under international law. Additionally, negotiations of this kind do not recognize the Cuban government's statutory obligation to negotiate such claims jointly with the Cuban demands for damages associated with the U.S. embargo.

The deal in fact bears similarity to the unilateral Cuban purchases of U.S. agricultural products (in spite of obviously unfavorable terms; full cash payment in advance). These served to demonstrate Cuban willingness and capacity to develop normal trade with the United States, but nothing more. As that trade unfolded over the years, Cuba made it quite clear that this was not a path it intended to pursue indefinitely, and the agreement began to shrivel against more competitive offers from non-U.S. producers.

What the Starwood agreement with the Cuban government *does* demonstrate is that when political willingness to negotiate exists, barriers evaporate, and very quickly. Conversely, a lack of willingness to negotiate, and an eternally open claims process compounds the problem.

Alternative 3: Special purpose funds

Both Feinberg and Ashby discuss the creation of special purpose funds to satisfy the demands of U.S. claimants. Feinberg's proposals range from a highly improbable tax on travel to Cuba, to payment for claimants from the pool of penalties collected by OFAC sanctions

against foreign banks, to an IMF loan program, should Cuba decide to request IMF membership.

Ashby's suggestions are a bit more creative. After analyzing the distressed debt market and explaining possible applications to the Cuban question, he proposes something like a massive purchase of the claims by private capital, to be traded on the speculative market, so that in a later valuation, they might be negotiated with the Cuban government in return for equity or tangible property.

The weakest points of this proposal start with the fact that in order to implement it, OFAC would need to change its position and authorize the sale of these claims so that they might be removed from U.S. territory (to preserve them from negotiation under the Espousal Doctrine). Anyone familiar with the reality of U.S./Cuban relations will understand immediately that OFAC is the U.S. institution least apt to take any action likely to improve relations between the two countries. The influence exerted within the office by the most reactionary wing of the Cuban community in the United States makes the proposal a non-starter.

But additionally, as a method of resolving U.S. claims in Cuba, the idea is little more than magical thinking on Ashby's part. The hope of receiving equity ownership or even of receiving intangible or tangible property rights ("debt-for-equity or debt-for-property swap"¹³) is simply not within the lexicon of Cuban authorities, for which reason its simple mention is a gaffe that no-one familiar with the subject would seriously consider.

In any case, the underlying problem with any of the special purpose fund proposals is the associated assumption that the Cuban claims are unduly exaggerated while the U.S. claims are more realistic, with the final balance tilting toward Cuba offering compensation toward the U.S. side, not the reverse. This is the basis for suggested payment theories.

Because we view this perspective as one that is narrowly focused on exactly one-third of the problem, we believe it is unlikely to receive a serious hearing at the bargaining table, and therefore will not offer further analysis here.

- End of Part I -

In the following two sections of this study we will engage in a deeper examination of the likely Cuban position in any eventual negotiation – considering the history and evidence surrounding two additional pillars of the claims negotiations:

- 1) Default judgments in U.S. courts for civil claims lodged against Cuba
- 2) Cuban claims for damages associated with the U.S. embargo/blockade.

¹³ Dr. Ashby, p. 118