

GUANTÁNAMO BAY'S QUASI-COLONIAL STATUS: FROM LEASEHOLD TO DETENTION CAMP

MARÍA ALEJANDRA TORRES*

I.	INTRODUCTION	97
II.	BACKGROUND	98
III.	RECOURSE FOR CUBA UNDER U.S. PROPERTY LAW	100
IV.	RECOURSE FOR CUBA UNDER INTERNATIONAL LAW	103
V.	CONCLUSION	109

I. INTRODUCTION

Guantánamo Bay is globally known for its military detention center, where the United States has held 780 people since 2002, nine of whom have died in custody.¹ A symbol of the U.S. “War on Terror,”² it has been called a “permanent United States penal colony floating in another world.”³ Because of the United States’ grip on Guantánamo Bay, much humanitarian and legal analysis has been given to the egregious treatment of detainees, and rightly so.⁴

It is easy to forget that the Guantánamo Bay detention camp is located on the southeastern coast of the Republic of Cuba.⁵ The United States has retained a military presence in

* This online annotation was written in the course of the author’s tenure as a Staff Editor on the *N.Y.U. Journal of International Law & Politics*.

1. *The Guantánamo Docket*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/guantanamo>, <https://perma.cc/EV64-C3UA> (last updated Jan. 21, 2021).

2. Samantha Pearlman, *Human Rights Violations at Guantánamo Bay: How the United States Has Avoided Enforcement of International Norms*, 38 SEATTLE U. L. REV. 1109, 1109 (2015).

3. Amy Kaplan, *Where Is Guantánamo?* 57 AM. Q. 831, 831 (2005).

4. *See, e.g.*, Pearlman, *supra* note 2, at 1109 (arguing that the “United States’ actions at Guantánamo Bay violate its obligations under the Third Geneva Convention, the International Covenant for Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and customary international law”).

5. The United States has also Anglicized the bay’s name to erase the Spanish accent mark over the second “a.” *See, e.g.*, Miriam Pensack, *An*

Guantánamo Bay for more than a century, first under the guise of protecting Cuban independence and later under the pretense of protecting the world from suspected terrorists.⁶ But more recently, in the last months of President Barack Obama’s administration, former Cuban President Raúl Castro demanded that the United States hand Guantánamo Bay back to Cuba.⁷ This annotation will examine what recourse, if any, Cuba has under both U.S. property law and international law to reclaim this land. Such a reclamation, if possible, could yield full territorial sovereignty to Cuba and shut down the “penal colony.”⁸ Part II outlines Guantánamo Bay’s complicated history as a “transitional political” and “liminal national” space.⁹ Part III explores potential remedies under U.S. property law. Finally, Part IV identifies remedies under international law.

II. BACKGROUND

Perhaps intentionally, Guantánamo Bay holds a unique quasi-colonial status; it is not facially clear whether it belongs to the United States or Cuba.¹⁰ In 1898, the United States intervened against Spain to assist Cuba—perhaps ironically—in its anti-colonial struggle, leading to the brief Spanish-

American Century of Brutal Overseas Conquest Began at Guantánamo Bay, INTERCEPT (July 4, 2018, 10:00 AM), <https://theintercept.com/2018/07/04/guantanamo-bay-cuba/> (noting that in U.S. military parlance, the base is called “GTMO”).

6. See generally *id.* (“The invasion at Guantánamo marked the formal beginning of an American penchant for intervening militarily in the affairs of other nations.”).

7. Dan Roberts & Jonathan Watts, *Castro Demands Return of Guantánamo Bay During Historic Obama Visit*, GUARDIAN (Mar. 21, 2016, 7:53 PM), <https://www.theguardian.com/world/2016/mar/21/raul-castro-demands-return-guantanamo-bay-obama-visit>.

8. Kaplan, *supra* note 3, at 831.

9. *Id.* at 831–32.

10. See Pensack, *supra* note 5 (stating that the Bush administration exploited the bay’s “legal liminality,” making it “an ideal place to commit human rights abuses.”). However, the U.S. Supreme Court has since clarified Guantánamo Bay’s juridical space. See *Rasul v. Bush*, 542 U.S. 466 (2004) (holding that U.S. federal courts have jurisdiction to consider legal appeals filed on behalf of Guantánamo detainees); *Boumediene v. Bush*, 553 U.S. 723 (2008) (holding that Guantánamo detainees are not barred from seeking federal habeas corpus review).

American War.¹¹ The United States remained in Cuba for three years after the war, and only agreed to withdraw its troops by forcing the Platt Amendment into Cuba's novel constitution.¹² Approved by the U.S. Congress on March 2, 1901, Section VII of the Platt Amendment reads:

*That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points to be agreed upon with the President of the United States.*¹³

Pursuant to Section VII, on February 23, 1903, the two nations entered into a lease agreement for Guantánamo Bay. Article III of the Agreement reads, in relevant part, that “the United States recognizes the continuance of the *ultimate sovereignty of the Republic of Cuba*” while Cuba consents to the United States’ occupation of the area over which the United States “*shall exercise complete jurisdiction and control.*”¹⁴ The two parties then abrogated the Platt Amendment on May 29, 1934, and extended the lease of forty-five square-miles of land into perpetuity, unless both nations agree to cancel it, or the United States abandons the naval station.¹⁵ Cuba’s revolutionary government has not cashed the United States’ annual checks for its rent of Guantánamo Bay, currently valued at \$4,085.00.¹⁶

11. Kaplan, *supra* note 3, at 834.

12. *Id.* at 835.

13. *Transcript of Platt Amendment (1903)*, art. VII, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=false&doc=55&page=transcript> (last visited Feb. 19, 2021) (emphasis added).

14. *Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval Stations*, art. III, AVALON PROJECT, https://avalon.law.yale.edu/20th_century/dip_cuba002.asp (last visited Feb. 19, 2021) (emphasis added) [hereinafter *U.S.-Cuba Lease Agreement*].

15. *Treaty Between the United States of America and Cuba*, art. III, AVALON PROJECT, https://avalon.law.yale.edu/20th_century/dip_cuba001.asp (last visited Feb. 19, 2021) [hereinafter *U.S.-Cuba Treaty*].

16. Fidel Castro once cashed a check, but he claimed it was done in error. Ryan Faith, *Here's Why the US Is Still Using Guantanamo to Squat in Cuba*, VICE (Mar. 24, 2016, 12:30 PM), <https://www.vice.com/en/article/59ejma/heres-why-the-us-is-still-using-guantanamo-to-squat-in->

III. RECOURSE FOR CUBA UNDER U.S. PROPERTY LAW

The United States' decision to enter into a lease with Cuba differs from traditional colonial enterprises. Amy Kaplan explains that "a lease, as opposed to outright annexation, allowed for greater maneuverability of imperial powers, in part because it enhanced [the United States'] immunity from political and legal accountability to all forms of governance, both in the colony and the metropolis."¹⁷ Although Cuba is the lessor and absolute titleholder of the leased land,¹⁸ because the United States has complete jurisdiction and control over the bay and is a perpetual lessee, the United States provides the property law for Cuba's title to the area.¹⁹

Notably, the lease gives the United States the authority to construct a coaling station and naval base, but does not expressly contemplate detention facilities. A detention camp for foreigners suspected of terrorism arguably does not fall within the meaning of a naval base,²⁰ which could mean that the United States has deviated from the established scope of

cuba. The lease was originally priced at two thousand dollars in gold coins. *Lease to the United States by the Government of Cuba of Certain Areas of Land and Water for Naval or Coaling Stations in Guantanamo and Bahia Honda*, art. I, AVALON PROJECT, https://avalon.law.yale.edu/20th_century/dip_cuba003.asp (last visited Feb. 19, 2021). See also *U.S. De Facto Protectorate of Cuba, 1898-1934*, DWK COMMENTS. (Aug. 27, 2019), <https://dwkcommentaries.com/2019/08/27/u-s-de-facto-protectorate-of-cuba-1898-1934/> ("In 1934, the [United States] recalculated the gold equivalent rent for Guantanamo at \$3,386. In 1973 the [United States] recalculated the rent at \$3,676 and in 1974 at \$4,085," the current price).

17. Kaplan, *supra* note 3, at 837.

18. *U.S.-Cuba Lease Agreement*, *supra* note 14, art. I.

19. Joseph Lazar, *International Legal Status of Guantanamo Bay*, 62 AM. J. INT'L L. 730, 739 (1968). See also Fiona de Londras, *Guantánamo Bay: Towards Legality*, 71 MOD. L. REV. 36, 42-43 (2008) (arguing that the bay is accordingly brought "within the Supreme Court's territorial jurisdiction").

20. See, e.g., *Naval Station*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/naval%20station> (last visited Feb. 19, 2021) ("a command ashore whose mission is to provide local logistic support to units of the operating forces (as in ship repair, personnel administration, pilotage, aerology, flight control, medical care)."); *Naval Base*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/naval%20base> (last visited Feb. 19, 2021) ("an area command normally including a seaport that includes and integrates the shore activities (as a shipyard, ammunition depot, hospital) which provide local logistic services to the fleet.").

use for the land.²¹ A naval base might normally include a brig or pretrial detention facility for U.S. service members accused of wrongdoing,²² but the scale of the detention facility at Guantánamo Bay far exceeds anything that may be reasonably inferred from the lease terms.

Guantánamo Bay is arguably now predominately a detention facility with a navy base attached—not the other way around. Donald Rumsfeld called Guantánamo Bay “a small military base” and deemed it the “least worst place” for a detention facility to house “captured enemy combatants from the war on terrorism.”²³ Although the Guantánamo Bay base once had more than 10,000 military personnel, it was demoted to Minimum Pillar Performance in the mid-1990s and by August 29, 2001 it was “minimally funded” with “less than 1,000 military personnel.”²⁴ As of late 2019, there are 6,000 residents on the naval station, more than 2,000 of whom are troops and civilians assigned to the detention operation.²⁵ The detention camp runs an annual tab of \$540 million,²⁶ which dwarfs the \$60 million annual cost of naval base operations.²⁷

21. See JENNIFER K. ELSEA & DANIEL H. ELSE, CONG. RSCH. SERV., R44137, NAVAL STATION GUANTANAMO BAY: HISTORY AND LEGAL ISSUES REGARDING ITS LEASE AGREEMENTS 1 (2016) (stating that the naval station “must be distinguished from the military commissions and detention facilities located within its boundaries, which are separate and independent military organizations with the naval station acting as host to the other two.”).

22. See *Brigs*, U.S. MYNAVYHR, <https://www.mynavyhr.navy.mil/Support-Services/Corrections-Programs/Brigs/> (last visited Feb. 19, 2021) (listing naval bases with brigs and pre-trial detention centers).

23. Scott Packard, *How Guantanamo Bay Became the Place the U.S. Keeps Detainees*, ATLANTIC (Sept. 4, 2013) <https://www.theatlantic.com/national/archive/2013/09/how-guantanamo-bay-became-the-place-the-us-keeps-detainees/279308/>.

24. *Id.* Packard, the author of this article, is a former Marine who commanded the Marine Corps Security Force Company at the Guantánamo Bay base.

25. Carol Rosenberg, *The Cost of Running Guantánamo Bay: \$13 Million Per Prisoner*, N.Y. TIMES, <https://www.nytimes.com/2019/09/16/us/politics/guantanamo-bay-cost-prison.html> (last updated Dec. 15, 2020).

26. *Id.*

27. Sacha Pfeiffer, *Guantánamo Has Cost Billions; Whistleblower Alleges ‘Gross’ Waste*, NPR (Sept. 11, 2019, 5:00 AM) <https://www.npr.org/2019/09/11/759523615/guant-namo-court-and-prison-have-cost-billions-whistleblower-alleges-gross->

government for the damages sustained.³³ Thus, the Tucker Act seems an unlikely means through which Cuba could recover its land. The most plausible scenario, notwithstanding current sanctions against Cuba, may be congressional-executive action to terminate the lease or label the naval station as foreign excess property and then abandon it and return it to Cuba.³⁴

IV. RECOURSE FOR CUBA UNDER INTERNATIONAL LAW

If arguments based on U.S. property law fail, Cuba may nevertheless argue that the United States should return the territory pursuant to international law. While both states are entitled to appear before the International Court of Justice (ICJ),³⁵ they would each have to submit to the ICJ's compulsory jurisdiction.³⁶ If this were to happen, Cuba could bring a case challenging the validity of the lease agreement due to the United States' behavior. Under Article 52 of the Vienna Convention on the Law of Treaties (Vienna Convention), "a treaty is void if its conclusion has been procured by the threat or use of force."³⁷ The Platt Amendment and accompanying Agreement could have violated this article because the leasing provision was a threatening ultimatum.³⁸ The first Cuban government

33. 7A FED. PROC., L. ED. § 19:40.

34. ELSEA & ELSE, *supra* note 22, at 9–13; 40 U.S.C.A. § 704(b)(3) (West 2002).

35. *States Entitled to Appear Before the Court*, INT'L CT. JUST., <https://www.icj-cij.org/en/states-entitled-to-appear> (last visited Feb. 19, 2021).

36. STEPHEN P. MULLIGAN, CONG. RESEARCH SERV., LSB10206, THE UNITED STATES AND THE "WORLD COURT" 1–2 (2018); *see Declarations Recognizing the Jurisdiction of the Court as Compulsory*, INT'L CT. JUST., <https://www.icj-cij.org/en/declarations> (last visited Feb. 19, 2021) (listing countries that have accepted the ICJ's compulsory jurisdiction).

37. Vienna Convention on the Law of Treaties, art. 52, May 23, 1969, 1155 U.N.T.S. 331, 344 [hereinafter VCLT].

38. *See* Gary L. Maris, *International Law and Guantanamo*, 29 J. POL. 261, 277 (1967) (stating that "the threat of leaving foreign military forces in the territory of a State, obviously with the intention of being able to interfere with the governing affairs of that State, is a situation of duress created by the pressure exerted by a State vastly superior in military power"); *see also* Timothy Keen & Paul Gioia, *The Guantanamo Base, A U.S. Colonial Relic Impeding Peace with Cuba*, COUNCIL ON HEMISPHERIC AFF. (Feb. 12, 2015), <https://www.coha.org/the-guantanamo-base-a-u-s-colonial-relic-impeding->

extended the lease with unequal bargaining power³⁹; Cuba understood that U.S. military forces would remain on the island if the leasing arrangement was not made,⁴⁰ which constitutes a potential manifestation of duress.⁴¹

Jurisprudence on whether non-military coercion is sufficient to invalidate treaties is unsettled.⁴² It is difficult to assess the success of this argument because while “[n]umerous soft law instruments condemn . . . political coercion as undue interference in international affairs,” under hard law, the limits of these forms of coercion are still unclear.⁴³ Citing the work of Matthew Craven, Guilherme Del Negro argues that by focusing on military coercion, the Vienna Convention “crystallizes the North/South cleavage;” and the presumption of sovereign equality at the signing of a treaty obscures power dynamics that “may lead to abusive pressures and unwanted concessions.”⁴⁴ Nonetheless, as long as Article 52’s language continues to be interpreted narrowly, an argument to invalidate the treaty for duress may fail. The United States may respond that the language of the Agreement illustrates that Cuba consented to the occupation,⁴⁵ even if the history indicates otherwise.

Cuba may also invoke Article 62 of the Vienna Convention codifying the widely-recognized doctrine of *rebus sic stantibus*, which allows a state to abandon its obligations under a treaty because of fundamentally changed

peace-with-cuba/#_ftnref18.

39. Tellingly, the Cuban government cannot unilaterally abrogate the treaty but the United States government can. *U.S.-Cuba Treaty*, *supra* note 15, art. III.

40. Maris, *supra* note 40, at 277.

41. Duress is “a wrongful threat made by one person to compel a manifestation of seeming assent by another person to a transaction without real volition.” *Duress*, BLACK’S LAW DICTIONARY (11th ed. 2019).

42. Guilherme Del Negro, *The Validity of Treaties Concluded Under Coercion of the State: Sketching a TWAIL Critique*, 10 EUR. J. LEGAL STUD. 39, 39 (2017).

43. *Id.* at 40–41. Notably, during the Vienna Conference, a group of nineteen states from the Global South proposed to amend the language of the article on coercion to include political pressure within the scope of the threat, but the reluctance of some of the negotiators, especially the U.S. representative, led to the language being adopted in a separate declaration instead of being submitted to a vote. *Id.* at 49–50.

44. *Id.* at 55–56.

45. *U.S.-Cuba Lease Agreement*, *supra* note 14.

circumstances.⁴⁶ The doctrine is applicable where the change in circumstances is so fundamental as to fall outside of the normal allowance for future uncertainties and renders the treaty “greatly more burdensome.”⁴⁷ Because of the complexity of the doctrine, the ICJ may use a reasonable expectations test to determine whether the changed circumstances between Cuba and the United States render the treaty invalid.⁴⁸ A revolution may constitute a changed circumstance sufficient to terminate a treaty when there has been a “radical change in national policies and identity”—such as wealth redistribution and power shift between social classes—accompanied by a halt in “legal continuity” between the old and new regime.⁴⁹ Philip Noonan further writes that the status of treaties during a revolution is also contingent on a number of factors: (1) conditions at the time of making the agreement; (2) the nature of the agreement; (3) the type of revolution and its purpose, duration and factual effect; (4) the nature and extent of the changed conditions associated with the revolution; (5) and the factual effect of these changed conditions on the agreement.⁵⁰

46. VCLT, *supra* note 39, art. 62 (establishing that a state may terminate a treaty if the circumstances that “constituted an essential basis for the consent of the parties to be bound by the treaty” have fundamentally changed in unforeseen ways); Maris, *supra* note 40, at 279. *See, e.g.*, Philip Noonan, *Revolutions and Treaty Termination*, 2 PA. STATE INT’L L. REV. 301, 315 n.74 (1984) (illustrating with examples from state practice that “the majority of authority confirms the doctrine’s existence as part of international law” despite “controversy surround[ing] the precise ambit of [and] procedures for [its] application.”).

47. Noonan, *supra* note 49, at 316. Moreover, there is both a subjective and objective theoretical basis for the doctrine. *Id.* at 316–17 (“Applying *rebus sic stantibus* to revolutions using the shared-intentions basis of the rule, one asks whether the changes brought about by the revolution altered the outlook and policies of the revolutionary state in a manner and to an extent that could not have been envisioned by any of the contracting parties. Using the rule-of-law basis, the question is whether the changes brought about by the revolution altered the nature of the obligations agreed to by the parties, and made those obligations greatly more onerous.”).

48. *Id.* at 325.

49. *Id.* at 327.

50. *Id.* at 327–28 (citing Graham, *The Effects of Domestic Hostilities on Public and Private International Agreements: A Tentative Approach*, 3 W. ONTARIO L. REV. 128, 129–30 (1964)). For further discussion on considerations and a draft article on changes of government and treaty termination, see *id.* at 328–30.

Circumstances in U.S.–Cuban relations have certainly changed since Fidel Castro overthrew U.S.-supported Fulgencio Batista and established a revolutionary socialist state in Cuba in 1959.⁵¹ The principle of “joint defense” and friendly relations motivated the 1934 treaty between the United States and the first Cuban administration.⁵² However, in light of their contrary stances in the Cold War, it is questionable whether U.S.–Cuban relations of the past half-century (or ever) have been friendly. The Bay of Pigs Invasion, the Cuban Missile Crisis, the U.S. trade embargo, the U.S. State Department’s recent withdrawal of most staff from the U.S. Embassy in Habana,⁵³ and the War on Terror, are but a few examples of changed circumstances that may have exceeded the reasonable expectations of the original parties—an established nation and an infant one. The Agreement has arguably long lost its *raison d’être* of mutual defense through the establishment of U.S. coaling and naval stations.

Alternatively, rather than advance the notion that the treaty is invalid, Cuba may hold that the United States breached the lease Agreement under Article 60 of the Vienna Convention.⁵⁴ As previously discussed, a detention camp was not expressly included within the scope of the lease. If Cuba agreed—either willingly or reluctantly—to a coaling or naval station, it likely could not have anticipated the addition of a detention camp where people have been held indefinitely without trial and allegedly tortured.⁵⁵ Regardless of whether

51. *U.S.-Cuban Relations*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/timeline/us-cuba-relations> (last visited Feb. 19, 2021).

52. Maris, *supra* note 40, at 280.

53. *U.S.-Cuban Relations*, *supra* note 54.

54. VCLT, *supra* note 39, art. 60 (a material breach consists of “[t]he violation of a provision essential to the accomplishment of the object or purpose of the treaty”).

55. See Shahrhad Nasrolahi Fard, *Is Reciprocity a Foundation of International Law or Whether International Law Creates Reciprocity?* 143–45 (2013) (Ph.D. dissertation, Aberystwyth University) (on file with Cadair, Aberystwyth University) (noting that legal advisors to the Bush Administration argued that the interrogation of detainees does not amount to torture under U.S. domestic or international law). *But see* Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85 (“‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he

the United States envisioned that the naval station would have a detention center, it has a non-derogable obligation under international law to ban torture and foresee situations that might potentially lead to acts of torture.⁵⁶ In this way, Cuba, which remains a communist nation,⁵⁷ may have a stronger claim, under the doctrine of *rebus sic stantibus*. Given the changed sociopolitical relations between the two nations and the United States' unforeseen use of the naval station, the United States may have materially breached the bilateral treaty, allowing Cuba to declare the treaty terminated or suspended.

Cuba acceded to the Vienna Convention on September 9, 1998, and the United States signed it on April 24, 1970.⁵⁸ Although a signature does not bind the signatory state, it symbolizes the signatory state's willingness to continue the treaty-making process.⁵⁹ Accordingly, the United States is still obligated to refrain from acts that would defeat the purpose of the Vienna Convention,⁶⁰ including the failure to maintain international peace and friendly relations.⁶¹ But Cuba would face another obstacle in Article 4 of the Vienna Convention, which states that the Convention applies only to treaties concluded *after* its entry into force.⁶² In other words, because the U.S.-Cuba treaty at issue here was concluded before the Vienna Convention, it is not bound by any of the Vienna

or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”).

56. Fard, *supra* note 59, at 142.

57. See Keen & Gioia, *supra* note 40 (contending that the revolution altered the previous Cuban government such that the original “bilateral consent necessary for the validity of the treaty could be considered nullified”).

58. *Status of Treaties*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en (last updated Feb. 20, 2021).

59. *What Is the Difference Between Signing, Ratification and Accession of UN Treaties?*, DAG HAMMARSKJÖLD LIBRARY (Apr. 26, 2018), <https://ask.un.org/faq/14594>.

60. *Id.*

61. VCLT, *supra* note 39, pmbl.

62. *Id.* art. 4.

Convention articles.⁶³

Yet even if Cuba could not invoke the Vienna Convention, it may rely on the principle of reciprocity.⁶⁴ The principle of reciprocity, “a fundamental aspect of bilateralism [which] involve[s] some element of *quid pro quo*,” is a “meta-rule” in customary international law.⁶⁵ It serves as an “alternate safeguard” for contract enforcement “in the absence of a recognized rule of law.”⁶⁶ Practically, reciprocity is an enforcement measure that maintains the balance between the rights and duties of states, both by encouraging them to fully observe a treaty’s provisions and, in the absence of observance, allowing the injured state to suspend its own treaty obligations.⁶⁷ Reciprocity operates on a “tit-for-tat policy” that puts states on notice that their wrongful actions will be met with reciprocal retaliation in the form of self-defense or countermeasures.⁶⁸ Violation of the principle of reciprocity can be considered a violation of international law.⁶⁹ It may be that the United States is violating international law insofar as it fails to follow the terms of its contractual relationship with Cuba,⁷⁰ thus permitting Cuba to take further remedial measures. Whatever countermeasures Cuba takes must be proportionate and compelling, but which specific measure meet these criteria is debatable. For example, Fidel Castro once shut off water to the base to coax the United States to leave, but the United States responded by dismissing more than 2,000 Cubans who were employed there.⁷¹ In light of the previous discussion, Cuba’s reclamation of the base could potentially constitute reciprocal retaliation. The other remedial measures Cuba may take should be further explored beyond this annotation.

63. Keen & Gioia, *supra* note 40.

64. The Vienna Convention nevertheless imposes reciprocity on all treaty-created international law. VCLT, *supra* note 39, art. 21.

65. Francesco Paris & Nita Ghei, *The Role of Reciprocity in International Law*, 36 CORNELL INT’L L.J. 93, 106, 120 (2003).

66. *Id.* at 105.

67. Fard, *supra* note 59, at 61, 159, 161.

68. *Id.* at 159, 221.

69. Paris & Ghei, *supra* note 69, at 121.

70. See Keen & Gioia, *supra* note 40 (alleging that the United States, as one of the contractors, has not mutually respected the rules of the arrangement).

71. Pensack, *supra* note 5.

V. CONCLUSION

Guantánamo's part in the War on Terror tracks the "rhetoric and logic" of the Platt Amendment.⁷² Miriam Pensack writes that "the United States' argument for coercively leasing the territory as a coaling and naval station to 'protect Cuban independence' closely echoes the call to torture and illegally detain enemy combatants for the sake of U.S. national security."⁷³ Even if Cuba had willingly agreed to a perpetual lease of part of its territory to the United States for the construction of coaling and naval stations in exchange for U.S. protection, it is reasonable to claim that Cuba did not agree to the future establishment of a detention camp. Under both U.S. property law and international law, the United States may have violated the terms of the lease. Provided that both states submit to the ICJ's jurisdiction, Cuba would have more of a cognizable claim under international law based on the customary international law principles of *rebus sic stantibus* and reciprocity. Yet Cuba may face great difficulty in the form of jurisdictional issues or political constraints. Thus, the ability of Cuba to reclaim its territory and thereby close the detention camp will depend on future U.S. or joint actions to modify or terminate the lease.

72. *Id.*

73. *Id.*