

## CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

EDITED BY KRISTEN E. EICHENSEHR\*

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\* Jack V. Hoover, Kevin Krotz, Pierce MacConaghy, Kyle McGoey, Margaret Shin, and Lucianna Stamper contributed to the preparation of this section.

## STATE DIPLOMATIC AND CONSULAR RELATIONS

*Investigations Continue into Mysterious Illness Affecting U.S. Officials in Havana and Elsewhere*  
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In late 2016, officials at U.S. and Canadian diplomatic posts in Havana, Cuba, began reporting a cluster of symptoms, including nausea, severe headaches, and dizziness, that came to be known as “Havana Syndrome.”<sup>1</sup> The illnesses prompted the departure of U.S. personnel from Havana in 2017, and subsequent cases have been reported among personnel assigned to the U.S. consulate in Guangzhou, China and elsewhere.<sup>2</sup> In recent months, three reports related to the illnesses and the government’s response have become public. A Center for Disease Control (CDC) report examined medical records and produced a case definition.<sup>3</sup> A National Academies for Sciences, Engineering, and Medicine (NASEM) standing committee considered possible causes, including “directed, pulsed radio frequency (RF) energy, . . . chemical exposures, infectious diseases and psychological issues,” and concluded that the symptoms were consistent with RF effects.<sup>4</sup> Additionally, a recently declassified Accountability Review Board (ARB) report criticized the Trump administration’s response to the illnesses in Havana.<sup>5</sup> Amid reports of increasing cases, including some occurring in the United States, the Biden administration is attempting to determine the cause of the illness and has committed to support affected personnel.

The first case of Havana Syndrome emerged at the end of 2016, when a Central Intelligence Agency (CIA) officer in Havana reported experiencing strange sounds and pressure, along with painful headaches and dizziness.<sup>6</sup> At least fifty-nine U.S. citizens in Cuba and China were evaluated or treated for the illness, and the total number of U.S. personnel affected reportedly now exceeds 130.<sup>7</sup> Canadian embassy personnel posted to Havana

<sup>1</sup> Ana Swanson, Edward Wong & Julian E. Barnes, *U.S. Diplomats and Spies Battle Trump Administration Over Suspected Attacks*, N.Y. TIMES (Oct. 19, 2020), at <https://www.nytimes.com/2020/10/19/us/politics/diplomat-attacks-havana-syndrome.html>.

<sup>2</sup> See *id.* Similar incidents have been reported in Uzbekistan and Russia. See U.S. DEP’T OF STATE, HAVANA, CUBA ACCOUNTABILITY REVIEW BOARD REPORT 2 (2018), at <https://nsarchive.gwu.edu/briefing-book/cuba/2021-02-10/secrets-havana-syndrome-how-trumps-state-department-cia-mishandled-mysterious-maladies-cuba> [<https://perma.cc/24W4-8Vfy>] [hereinafter ARB Report]. Recent media reports have cited additional cases in locations including Europe, Asia, Washington, D.C., and northern Virginia. See, e.g., Julian E. Barnes, Edward Wong & Eric Schmitt, *Mysterious Ailments Are Said to Be More Widespread Among U.S. Personnel*, N.Y. TIMES (May 12, 2021), at <https://www.nytimes.com/2021/05/12/us/politics/biden-cia-brain-injury.html>.

<sup>3</sup> CENTER FOR DISEASE CONTROL, CUBA UNEXPLAINED EVENTS INVESTIGATION – FINAL REPORT (2019), available at <https://nsarchive.gwu.edu/documents/cdc-report-havana-syndrome-medical-mystery-remains-unresolved/CDC%20%2320200983DOS255%20Final%20Report.pdf> [<https://perma.cc/7F39-ZZQU>] [hereinafter CDC Report].

<sup>4</sup> NATIONAL ACADEMIES OF SCIENCES, ENGINEERING & MEDICINE, AN ASSESSMENT OF ILLNESS IN U.S. GOVERNMENT EMPLOYEES AND THEIR FAMILIES AT OVERSEAS EMBASSIES 2 (2020), at <https://www.nationalacademies.org/news/2020/12/new-report-assesses-illnesses-among-us-government-personnel-and-their-families-at-overseas-embassies> [<https://perma.cc/D6A6-S3RK>] [hereinafter NASEM Report].

<sup>5</sup> See ARB Report, *supra* note 2.

<sup>6</sup> Adam Entous & Jon Lee Anderson, *The Mystery of the Havana Syndrome*, NEW YORKER (Nov. 19, 2018), at <https://www.newyorker.com/magazine/2018/11/19/the-mystery-of-the-havana-syndrome>.

<sup>7</sup> Swanson, Wong & Barnes, *supra* note 1; Barnes, Wong & Schmitt, *supra* note 2.

reported similar symptoms.<sup>8</sup> Although symptoms vary, the NASEM report explained, “[t]he most common and distinctive features of the initial onset and acute phase” among officials in Havana “were the sudden onset of a perceived loud sound, sometimes described as screeching, chirping, clicking, or piercing, a sensation of intense pressure or vibration in the head, and pain in the ear or more diffusely in the head,” with the sound or sensation “seem[ing] to originate from a particular direction” or occurring “only in certain physical locations.”<sup>9</sup> For some affected individuals, the symptoms recurred and became chronic.<sup>10</sup>

In response to the health incidents, the U.S. embassy adopted “liberal curtailment [of tour of duty] policies” in March 2017 to limit further potential exposure, and the Bureau of Medical Services began an investigation.<sup>11</sup> In the following months, the U.S. Department of State, CIA, and Federal Bureau of Investigation (FBI) attempted unsuccessfully to establish the cause of the illness.<sup>12</sup> As cases continued to rise,<sup>13</sup> the Trump administration announced on September 29, 2017 “the departure of non-emergency personnel” from the Havana embassy,<sup>14</sup> and issued a warning advising against travel to Cuba.<sup>15</sup> On October 3, the United States expelled fifteen Cuban diplomats, and the State Department explained that “[t]he decision was made due to Cuba’s failure to take appropriate steps to protect our diplomats in accordance with its obligations under the Vienna Convention [on Diplomatic Relations].”<sup>16</sup>

In March 2018, the State Department announced that the Havana Embassy had reached the maximum time allowable in ordered departure status, but that the embassy would “continue to operate with the minimum personnel necessary to perform core diplomatic and consular functions, similar to the level of emergency staffing maintained during ordered departure” and that it would be “an unaccompanied post,” that is, one “at which no family members are permitted to reside.”<sup>17</sup> The State Department noted the lack of “definitive answers on the source or cause of the attacks,” and that “an investigation into the attacks is ongoing.”<sup>18</sup> In May 2018, the State Department created the Health Incident Response Task Force to coordinate a multi-agency response to the health incidents.<sup>19</sup> The same

<sup>8</sup> Dan Bilefsky, *Canadian Diplomats Sue Their Government Over Mysterious Cuban Disease*, N.Y. TIMES (Feb. 7, 2019), at <https://www.nytimes.com/2019/02/07/world/canada/havana-syndrome-canada.html>.

<sup>9</sup> NASEM Report, *supra* note 4, at 11.

<sup>10</sup> *Id.*

<sup>11</sup> ARB Report, *supra* note 2, at 10.

<sup>12</sup> For an account of the agencies’ efforts to isolate the cause of the illness, see Entous & Anderson, *supra* note 6.

<sup>13</sup> *Id.*

<sup>14</sup> U.S. Dep’t of State Press Release, *Actions Taken in Response to Attacks on U.S. Government Personnel in Cuba* (Sept. 29, 2017), at <https://2017-2021.state.gov/actions-taken-in-response-to-attacks-on-u-s-government-personnel-in-cuba/index.html> [<https://perma.cc/XXF4-X5WM>].

<sup>15</sup> U.S. Embassy in Cuba, *Security Message for U.S. Citizens: Cuba Travel Warning* (Sept. 29, 2017), at <https://cu.usembassy.gov/security-message-u-s-citizens-cuba-travel-warning> [<https://perma.cc/XX2M-4FB7>].

<sup>16</sup> U.S. Dep’t of State Press Release, *On the Expulsion of Cuban Officials from the United States* (Oct. 3, 2017), at <https://2017-2021.state.gov/on-the-expulsion-of-cuban-officials-from-the-united-states/index.html> [<https://perma.cc/79TW-A8XG>].

<sup>17</sup> U.S. Dep’t of State Press Release, *End of Ordered Departure at U.S. Embassy Havana* (Mar. 2, 2018), at <https://cu.usembassy.gov/end-ordered-departure-u-s-embassy-havana> [<https://perma.cc/S43G-WBER>].

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Dep’t of State Press Release, *Cuba Accountability Review Board Fact Sheet* (Aug. 30, 2018), at <https://2017-2021.state.gov/cuba-accountability-review-board/index.html> [<https://perma.cc/7UJS-W7DG>] [hereinafter Fact Sheet].

month, consular employees in China began exhibiting symptoms of the illness.<sup>20</sup> Additional reports of health incidents arose from posts in Uzbekistan and Russia.<sup>21</sup>

The Trump administration faced pressure to respond more actively to the cases. The American Foreign Service Association, the U.S. foreign service's union, released statements in 2017 and 2018, expressing concern for those affected and encouraging the U.S. government to ensure that affected individuals receive appropriate care.<sup>22</sup> U.S. lawmakers also criticized the administration's response. In a January 2018 oversight hearing, Senator Robert Menendez (D-NJ) said the Trump administration's "reaction to the Cuban government, completely abrogating its obligations under the Vienna Convention to protect our diplomats, is laughable" and characterized the State Department's response as "bureaucratic, inadequate, and troubling."<sup>23</sup> In 2019, Congress passed and Trump signed an omnibus spending bill that included a provision allowing officials and their dependents, injured while working at a post in Cuba or China, to receive medical and employment benefits.<sup>24</sup> Senator Jeanne Shaheen (D-NH), who authored the provision, said that the uncertainty surrounding the causes of those injuries "should in no way prevent our government from caring for those who have sacrificed so much in the line of duty."<sup>25</sup> Victims of the illness continued to criticize the Trump administration for downplaying the attacks and failing to provide necessary medical treatment.<sup>26</sup>

The CDC and NASEM reports shed additional light on the clinical symptoms U.S. personnel experienced and on possible causes, though a definitive explanation has not been established.<sup>27</sup>

The CDC "CUBA Unexplained Events Investigation – Final Report" focused on identifying and analyzing patterns in the symptoms of possible cases of the illness. On December 29, 2017, the State Department asked the CDC to investigate the "unexplained

<sup>20</sup> Alex Johnson, *U.S. Evacuates China Consulate Staffers as Illness Mystery Deepens*, NBC NEWS (June 7, 2018), at <https://www.nbcnews.com/news/world/u-s-evacuates-china-consulate-staffers-illness-mystery-deepens-n880781>.

<sup>21</sup> See Dilanian, Mitchell & Breslauer, *supra* note 2; ARB Report, *supra* note 2, at 2.

<sup>22</sup> American Foreign Service Assoc. Press Release, Statement on Attacks on U.S. Diplomatic Personnel in Cuba (Sept. 1, 2017), at <https://www.afsa.org/statement-attacks-us-diplomatic-personnel-cuba> [<https://perma.cc/L9H3-B2V3>]; see also American Foreign Service Assoc. Press Release, AFSA Statement on Medical Concerns Regarding Cuba and China (July 3, 2018), at <http://www.afsa.org/afsa-statement-medical-concerns-regarding-cuba-and-china> [<https://perma.cc/NB2W-ZWVW>].

<sup>23</sup> Attacks on U.S. Diplomats in Cuba: Response and Oversight: Hearing Before the Subcommittee on Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women's Issues of the Committee on Foreign Relations United States Senate, 115th Cong. 4 (Jan. 9, 2018), available at <https://www.foreign.senate.gov/imo/media/doc/01%2009%2018%20Attacks%20on%20US%20Diplomats%20in%20Cuba%20-%20Response%20and%20Oversight1.pdf> [<https://perma.cc/8JDR-W5WP>].

<sup>24</sup> See Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, 133 Stat. 3079 (codified at 22 U.S.C. § 2680b (2019)).

<sup>25</sup> "Havana Syndrome" U.S. Diplomats Get Benefits in Spending Bill, REUTERS (Dec. 16, 2019), at <https://www.reuters.com/article/us-usa-budget-congress-diplomats/havana-syndrome-u-s-diplomats-get-benefits-in-spending-bill-idUSKBN1YK24Z>.

<sup>26</sup> See Ana Swanson & Edward Wong, *Report Points to Microwave "Attack" as Likely Source of Mystery Illnesses That Hit Diplomats and Spies*, N.Y. TIMES (Dec. 5, 2020), at <https://www.nytimes.com/2020/12/05/business/economy/havana-syndrome-microwave-attack.html>.

<sup>27</sup> Karen DeYoung, *Classified Assessment Found Slow and Chaotic Response to Brain Injuries Affecting Diplomats in Cuba*, WASH. POST (Feb. 10, 2021), at [https://www.washingtonpost.com/national-security/cuba-us-diplomats-brain-injuries/2021/02/10/4a0231e6-6af3-11eb-ba56-d7e2c8defa31\\_story.html](https://www.washingtonpost.com/national-security/cuba-us-diplomats-brain-injuries/2021/02/10/4a0231e6-6af3-11eb-ba56-d7e2c8defa31_story.html).

phenomenon.”<sup>28</sup> The CDC completed its report in December 2019, and as a result of a Freedom of Information Act (FOIA) request, a redacted version was made publicly available in January 2021.<sup>29</sup> The CDC reviewed medical records, obtained from universities and federal agencies,<sup>30</sup> of ninety-five potentially affected individuals.<sup>31</sup> While acknowledging limitations it faced, including inconsistent medical records, incomplete data, and delayed clinical evaluations of affected individuals,<sup>32</sup> the CDC established a case definition focused on “[b]iphasic symptom onset with initial symptom onset while in Cuba or within two weeks of returning from Cuba,” and including at least one symptom such as head pressure, disorientation, nausea, headache, or vestibular disturbances, coupled with a “secondary phase of symptoms,” including either “vestibular disturbances” or “cognitive deficits” with “no alternative explanation.”<sup>33</sup> The CDC concluded that “[t]he evaluations conducted thus far have not identified a mechanism of injury, process of exposure, effective treatment, or mitigating factor for the unexplained cluster of symptoms experienced by those stationed in Havana, Cuba.”<sup>34</sup>

At the request of the State Department, a NASEM standing committee undertook a similar investigation,<sup>35</sup> and in December 2020, the committee released a report titled “An Assessment of Illness in U.S. Government Employees and Their Families at Overseas Embassies.”<sup>36</sup> Like the CDC, the committee examined clinical data on U.S. embassy personnel published by university researchers and presented by the National Institutes of Health (NIH), and provided a similar description of symptoms.<sup>37</sup> In assessing the possible causes of the illness, the committee narrowed its investigation to four possible causes: directed radio frequency (RF) energy attacks, chemical causes, infectious causes, and psychosocial causes.<sup>38</sup>

The committee determined that “many of the acute, sudden-onset, early phase signs, symptoms, and observations reported by” U.S. personnel “are consistent with RF effects,” as are “many of the chronic, nonspecific symptoms.”<sup>39</sup> Although “the committee was not able to reach a conclusion about mass psychogenic illness as a possible cause” due to a lack of patient-level data,<sup>40</sup> it determined that infectious diseases, particularly Zika, which was widespread in Cuba in the relevant time period, were “highly unlikely” to have caused the

<sup>28</sup> CDC Report, *supra* note 3, at 3.

<sup>29</sup> Peter Kornbluh, *CDC Report on the “Havana Syndrome”: Medical Mystery Remains Unresolved*, NAT’L SECURITY ARCHIVE (Feb. 2, 2021), at <https://nsarchive.gwu.edu/briefing-book/cuba/2021-02-02/cdc-report-havana-syndrome-medical-mystery-remains-unresolved> [<https://perma.cc/9XN7-MWHZ>].

<sup>30</sup> CDC Report, *supra* note 3, at 15.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *Id.* at 13.

<sup>33</sup> *Id.* at 6.

<sup>34</sup> *Id.* at 14.

<sup>35</sup> NASEM Report, *supra* note 4, at 5.

<sup>36</sup> The National Academies of Sciences, Engineering, & Medicine Press Release, *New Report Assesses Illnesses Among U.S. Government Personnel and Their Families at Overseas Embassies* (Dec. 5, 2020), at <https://www.nationalacademies.org/news/2020/12/new-report-assesses-illnesses-among-us-government-personnel-and-their-families-at-overseas-embassies> [<https://perma.cc/T7JV-M6WV>].

<sup>37</sup> NASEM Report, *supra* note 4, at 10–11.

<sup>38</sup> *Id.* at 17–28.

<sup>39</sup> *Id.* at 20.

<sup>40</sup> *Id.* at 27.

officials' symptoms.<sup>41</sup> The committee also concluded that a chemical cause was unlikely, although exposure to insecticides could have aggravated the symptoms.<sup>42</sup> Notably, this conclusion explicitly disagreed with a report by Dalhousie University researchers, who examined Canadian diplomats and their families who reported experiencing symptoms in Cuba around the same time as the U.S. personnel.<sup>43</sup> The Dalhousie report suggested "organophosphorus insecticides as a likely source" of the illnesses,<sup>44</sup> but the NASEM report concluded that the data used by the Dalhousie researchers "cannot . . . be considered supportive of [their] hypothesis."<sup>45</sup>

The NASEM report provoked responses, both internationally and domestically. The Cuban Academy of Sciences stated that it "disagree[d] with the final conclusion regarding the causes of the ailments" and criticized the report for failing to justify its RF energy conclusion with scientific evidence.<sup>46</sup> Citing the report, U.S. Senator Patrick Leahy (D-VT) characterized the Trump administration's response to the illness as "sluggish, superficial, disjointed, overly secretive, and infected by politics."<sup>47</sup> A bipartisan group of senators responded to the report by introducing a bill to provide additional compensation to injured State Department and CIA employees at the discretion of the relevant agency head.<sup>48</sup> A bipartisan group of lawmakers has introduced similar legislation, now titled the "Helping American Victims Afflicted by Neurological Attacks Act of 2021," or the "HAVANA Act of 2021," in the current Congress, and it passed the Senate by unanimous consent in June.<sup>49</sup>

The third significant report on Havana Syndrome to become public in the past few months came from the State Department ARB. In cases of serious injury at a U.S. mission abroad, U.S. law requires the secretary of state to convene an ARB,<sup>50</sup> comprised of four members appointed by the secretary and one appointed by the director of national intelligence (DNI).<sup>51</sup> On January 12, 2018, then-Secretary of State Rex Tillerson convened the Cuba ARB to review the State Department's response to the "unexplained medical conditions"

<sup>41</sup> *Id.* at 23–24.

<sup>42</sup> *Id.* at 23.

<sup>43</sup> ALON FRIEDMAN, ET AL., HAVANA SYNDROME AMONG CANADIAN DIPLOMATS: BRAIN IMAGING REVEALS ACQUIRED NEUROTOXICITY 3 (2019), available at <https://www.medrxiv.org/content/10.1101/19007096v1.full.pdf> [<https://perma.cc/6BAG-M48H>] [hereinafter Dalhousie Report].

<sup>44</sup> *Id.* at 11.

<sup>45</sup> NASEM Report, *supra* note 4, at 21.

<sup>46</sup> *Cuba Rejects U.S. Report on Diplomat Health Incidents*, REUTERS (Dec. 15, 2020), at <https://www.reuters.com/article/us-cuba-usa-diplomats/cuba-rejects-u-s-report-on-diplomat-health-incidents-idUSKBN28P2ZE>.

<sup>47</sup> Office of Senator Patrick Leahy Press Release, Reaction of Senator Patrick Leahy to the National Academies of Science's Report, "Assessment of Illness in U.S. Government Employees and Their Families at Overseas Embassies" (Dec. 6, 2020), at [https://www.leahy.senate.gov/press/reaction-of-senator-patrick-leahy-to-the-national-academies-of-sciences-report\\_assessment-of-illness-in-us-government-employees-and-their-families-at-overseas-embassies](https://www.leahy.senate.gov/press/reaction-of-senator-patrick-leahy-to-the-national-academies-of-sciences-report_assessment-of-illness-in-us-government-employees-and-their-families-at-overseas-embassies) [<https://perma.cc/9Y44-K4L6>].

<sup>48</sup> See S. 4973, 116th Cong. (2020).

<sup>49</sup> S. 1828, 117th Cong. (2021); H.R. 3356, 117th Cong. (2021); see Office of Senator Susan Collins Press Release, Senators Collins, Warner, Rubio, Shaheen Introduce Bill to Support Victims of "Havana Syndrome" (May 19, 2021), at <https://www.collins.senate.gov/newsroom/senators-collins-warner-rubio-shaheen-introduce-bill-support-victims-%E2%80%98havana-syndrome%E2%80%99#> [<https://perma.cc/7EXY-9H68>].

<sup>50</sup> 22 U.S.C. § 4831 (1986).

<sup>51</sup> 22 U.S.C. § 4832 (1986); see also 50 U.S.C. § 3001 Note (directing that references to the CIA director as head of the intelligence community be construed to refer to the DNI). Retired ambassador Peter Bodde was selected to chair the ARB. Elise Labott, *Retired Ambassador to Libya to Lead Cuba Attacks Review*, CNN (Jan. 10, 2018), at <https://www.cnn.com/2018/01/10/politics/retired-libya-ambassador-cuba-attacks-review>.



affecting U.S. diplomatic agents in Havana.<sup>52</sup> The ARB provided its report to Secretary Tillerson's successor, Mike Pompeo, on June 7, 2018.<sup>53</sup> In response to a FOIA request, a redacted version was made public in February 2021.<sup>54</sup>

The report explained that the Board's "mandate" was "not to determine the mechanism or identify the perpetrator, but to make written findings on the adequacy of security" and to issue security-related recommendations.<sup>55</sup> Although the Board concluded that "security at the mission was generally adequate at the time the incidents began,"<sup>56</sup> it sharply criticized the response to the events in Havana:

The Department of State's response to these incidents was characterized by a lack of senior leadership, ineffective communication, and systemic disorganization. No senior official was ever designated as having overall responsibility, which resulted in many of the other issues this report presents. The interagency response was stove-piped and largely ad hoc.<sup>57</sup>

The report praised the Bureau of Medical Services for its "competent, professional" response, but found that the administration's "response . . . was characterized by excessive secrecy that contributed to a delayed response."<sup>58</sup> The report highlighted the "lack of a designated official at the Under Secretary level to manage the response" as "the single most significant deficiency in the Department's response."<sup>59</sup> The ARB also pointed out that, although the State Department asked the CDC to investigate, the Department itself impeded CDC access to necessary medical records.<sup>60</sup> The report made thirty recommendations, including the creation of a task force, support for a comprehensive CDC-led study, and provisions for long-term medical treatment for affected individuals.<sup>61</sup>

Media reports and some government officials have speculated that a nation-state may be responsible for symptoms U.S. personnel experienced.<sup>62</sup> Suspected governments have denied involvement. In August 2017, when asked by media to respond to "suspicions" that Russia was responsible, Russian Foreign Ministry spokeswoman Maria Zakharova unequivocally denied Russia's involvement in the attacks.<sup>63</sup> In a speech to the UN General Assembly, in

<sup>52</sup> Fact Sheet, *supra* note 19.

<sup>53</sup> *Id.*

<sup>54</sup> Peter Kornbluh, *U.S.-Cuba: Secrets of the "Havana Syndrome,"* NAT'L SECURITY ARCHIVE (Feb. 10, 2021), at <https://nsarchive.gwu.edu/briefing-book/cuba/2021-02-10/secrets-havana-syndrome-how-trumps-state-department-cia-mishandled-mysterious-maladies-cuba> [<https://perma.cc/D3CV-S5AH>].

<sup>55</sup> ARB Report, *supra* note 2, at 1.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 2.

<sup>58</sup> *Id.* at 20, 30.

<sup>59</sup> *Id.* at 14–15.

<sup>60</sup> *Id.* at 26–27.

<sup>61</sup> *Id.* at 5–8.

<sup>62</sup> See, e.g., Lara Seligman & Andrew Desiderio, *Russian Spy Unit Suspected of Directed-Energy Attacks on U.S. Personnel*, POLITICO (May 10, 2021), at <https://www.politico.com/news/2021/05/10/russia-gru-directed-energy-486640>; Swanson & Wong, *supra* note 26.

<sup>63</sup> Russian Ministry of Foreign Affairs Press Release, Briefing by Foreign Ministry Spokesperson Maria Zakharova (Aug. 31, 2017), at [https://www.mid.ru/en/kommentarii\\_predstaviteley/-/asset\\_publisher/7gVir6Z7EIX8/content/id/2850802#25](https://www.mid.ru/en/kommentarii_predstaviteley/-/asset_publisher/7gVir6Z7EIX8/content/id/2850802#25) [<https://perma.cc/7XXF-HHWS>]; see also Barnes, Wong & Schmitt, *supra* note 2 ("Moscow has repeatedly denied any involvement."). In the 1970s, the Soviet Union spent more

September 2017, Cuban Foreign Minister Bruno Eduardo Rodriguez Parrilla strongly denied Cuban involvement, saying that “Cuba has never perpetrated nor will it ever perpetrate actions of this sort. Cuba has never allowed nor will it ever allow its territory to be used by third parties with that purpose.”<sup>64</sup> Cuba has since continued to maintain its innocence.<sup>65</sup> After the first case of Havana Syndrome was reported in China, China said that it had investigated the case and could find no explanation.<sup>66</sup>

The CIA has signaled that it intends to investigate the cause of injuries to its personnel more thoroughly. In December 2020, the agency announced the establishment of its own task force,<sup>67</sup> complementing investigations by the Pentagon.<sup>68</sup> The Biden administration’s new CIA director, William Burns, committed to “‘make it an extraordinarily high priority to get to the bottom of who’s responsible’ for the attacks,” as well as to ensure that affected CIA officers receive treatment at the NIH and Walter Reed National Military Medical Center.<sup>69</sup> Following Burns’ confirmation hearing, the CIA announced that its task force would expand its efforts to establish the cause of the injuries to its officers.<sup>70</sup>

The Biden administration has indicated that it intends to facilitate greater interagency cooperation in its efforts to identify the cause of the illness.<sup>71</sup> On March 12, 2021, the State Department named Ambassador Pamela Spratlen, a career foreign service officer, as Senior Advisor to the Health Incident Response Task Force.<sup>72</sup> Secretary of State Antony Blinken explained that “[Spratlen] will streamline [the State Department’s] coordination efforts with the interagency community, and reaffirm our commitment to make certain that those affected receive the care and treatment they need.”<sup>73</sup> In remarks to the U.S. Senate Select Committee on Intelligence on April 14, DNI Avril Haines said that the

than three years firing microwaves at the U.S. embassy in Moscow. At the time, U.S. officials thought this was an attempt to cause electronic equipment malfunction. See Associated Press, *Soviet Halts Microwaves Aimed at U.S. Embassy*, N.Y. TIMES (May 30, 1979), at <https://www.nytimes.com/1979/05/30/archives/soviet-halts-microwaves-aimed-at-us-embassy.html>.

<sup>64</sup> Abigail Williams & Tracy Connor, *Cuba Tells U.N. It’s Not Behind Sonic Incidents, Blasts Trump*, NBC NEWS (Sept. 22, 2017), at <https://www.nbcnews.com/news/us-news/cuba-tells-u-n-it-s-not-behind-sonic-incidents-n803936>.

<sup>65</sup> Brenda Breslauer, Ken Dilanian & Josh Lederman, *“Havana Syndrome” Likely Caused by Pulsed Microwave Energy, Government Study Finds*, NBC NEWS (Dec. 5, 2020), at <https://www.nbcnews.com/news/all/havana-syndrome-likely-caused-microwave-energy-government-study-finds-n1250094>.

<sup>66</sup> *U.S. Expands China Health Alert Amid Illness Reports*, REUTERS (June 7, 2018), at <https://www.reuters.com/article/us-china-usa-illness/u-s-expands-china-health-alert-amid-illness-reports-idUSKCN1J408E>.

<sup>67</sup> Julian E. Barnes, *C.I.A. to Expand Inquiry into Mysterious Health Episodes Overseas*, N.Y. TIMES (Mar. 4, 2021), at <https://www.nytimes.com/2021/03/04/us/politics/cia-havana-syndrome-mystery.html>.

<sup>68</sup> See Adam Entous, *Are U.S. Officials Under Silent Attack?*, NEW YORKER (May 24, 2021), at <https://www.newyorker.com/magazine/2021/05/31/are-us-officials-under-silent-attack>; Betsy Woodruff Swan, Andrew Desiderio, Lara Seligman & Erin Banco, *Pentagon Investigated Suspected Russian Directed-Energy Attacks on U.S. Troops*, POLITICO (Apr. 22, 2021), at <https://www.politico.com/news/2021/04/22/pentagon-russia-attacks-us-troops-484150>.

<sup>69</sup> Julian E. Barnes, *Biden’s C.I.A. Pick Warns of China and Russia at Amicable Confirmation Hearing*, N.Y. TIMES (Feb. 24, 2021), at <https://www.nytimes.com/2021/02/24/us/politics/william-burns-cia-confirmation-hearing.html>.

<sup>70</sup> Barnes, *supra* note 67.

<sup>71</sup> *Id.*

<sup>72</sup> U.S. Dep’t of State Press Release, *Ambassador Pamela Spratlen Designated as Senior Advisor to Department Health Incident Response Task Force* (Mar. 12, 2021), at <https://www.state.gov/ambassador-pamela-spratlen-designated-as-senior-advisor-to-department-health-incident-response-task-force> [<https://perma.cc/S5X8-KFT5>].

<sup>73</sup> *Id.*



intelligence community continued to track “anomalous health incidents that have affected a number of our personnel,” and “is committed to investigating the source of these incidents, preventing them from continuing, and caring for those affected.”<sup>74</sup> In a joint statement released on April 30, Senate Select Committee Chairman Mark Warner (D-VA) and Vice Chairman Marco Rubio (R-FL) noted:

For nearly five years, we have been aware of reports of mysterious attacks on United States Government personnel in Havana, Cuba and around the world. This pattern of attacking our fellow citizens serving our government appears to be increasing. The Senate Intelligence Committee intends to get to the bottom of this. . . .

[W]e welcome CIA Director Burns’ renewed focus on these attacks. Our committee will continue to work with him, and the rest of the Intelligence Community, to better understand the technology behind the weapon responsible for these attacks. We will focus on ensuring we protect our personnel and provide the medical and financial support the victims deserve. Ultimately we will identify those responsible for these attacks on American personnel and will hold them accountable.<sup>75</sup>

If the United States does conclude that a foreign government is responsible for the illnesses, it may be able to invoke international legal remedies.<sup>76</sup> Pursuant to the international law of state responsibility, states that are responsible for internationally wrongful acts must cease such acts and guarantee their non-repetition,<sup>77</sup> as well as make reparations for the injuries they have caused.<sup>78</sup> If the officials’ symptoms resulted from deliberate actions carried out by or otherwise attributable to a state, such an action might, for example, constitute a use of force in violation of customary international law and the UN Charter.<sup>79</sup> The host states in which diplomats have suffered symptoms might also be in breach of their obligations under the Vienna Convention on Diplomatic Relations, which requires host states to “take all appropriate steps to prevent any attack on [a diplomatic agent’s] person, freedom, or dignity.”<sup>80</sup>

<sup>74</sup> U.S. Senate Select Committee on Intelligence, DNI’s Final ATA Oral Remarks (Apr. 14, 2021), available at <https://www.intelligence.senate.gov/sites/default/files/documents/os-ahaines-041421.pdf> [<https://perma.cc/6DZ4-TX4F>].

<sup>75</sup> Office of Senator Mark Warner Press Release, Statement of Senate Intel Chair Warner and Vice Chair Rubio on Investigation into Attacks on U.S. Personnel (Apr. 30, 2021), at <https://www.warner.senate.gov/public/index.cfm/2021/4/statement-of-sen-warner-on-cosponsoring-bipartisan-bill-to-reduce-sexual-assault-in-the-military> [<https://perma.cc/6PJ3-7XU9>].

<sup>76</sup> See generally Draft Articles on Responsibility of States for Internationally Wrongful Acts, Art. 2, in Report of the International Law Commission on the Work of Its Fifty-Third Session, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), available at [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf).

<sup>77</sup> *Id.* Art. 30.

<sup>78</sup> *Id.* Art. 31; see also *id.* Arts. 34–37 (detailing different forms of reparation).

<sup>79</sup> For an argument along these lines, see Raul Pedrozo, *The International Legal Implications of “Havana Syndrome,”* LAWFARE (Dec. 23, 2020), at <https://www.lawfareblog.com/international-legal-implications-havana-syndrome>; see also Lara Seligman & Andrew Desiderio, “It’s an Act of War”: Trump’s Acting Pentagon Chief Urges Biden to Tackle Directed-Energy Attacks, POLITICO (May 3, 2021), at <https://www.politico.com/news/2021/05/03/acting-pentagon-chief-miller-attacks-485236>.

<sup>80</sup> Vienna Convention on Diplomatic Relations, Art. 29, Apr. 18, 1961, 23 UST 3227, 500 UNTS 95.