

Next Steps in the Normalization of US-Cuban Relations: Thoughts From the Cuban Five

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Global Research, July 04, 2015

[Truthout](#) 2 July 2015

Region: [Latin America & Caribbean, USA](#)

Theme: [History](#), [Law and Justice](#)

Now that the United States and Cuba are preparing to open embassies in each other's countries, what else needs to happen to support the process of détente between the two countries?

During a recent visit to Cuba I posed this question to René González and Antonio Guerrero, two of the “Cuban Five” – five Cuban men who traveled to the United States in the 1990s to gather information about terrorist plots against Cuba and then became celebrated Cuban heroes during their subsequent incarceration by the United States.

Their reply? End the embargo and return Guantánamo Bay to Cuba.

“We have to remember that relations between the countries have never been normal,” González said, arguing that the normalization of relations won't happen overnight. He added:

We were occupied by US troops in 1898. From then on, we were a subject of the US government and especially the US corporations. Then came the Revolution, which tried to correct that imbalance. Then came a different stage – of aggressions, blockade and policies against Cuba, which has lasted for more than 56 years. You cannot expect that establishing normal relations ... [for] the first time in history is going to be an easy process.



Marjorie Cohn with René González and his wife, Olga. (Photo courtesy of Marjorie Cohn)

Guerrero noted that the US had taken one major step toward normalization already by removing Cuba from its list of countries alleged to support terrorism but noted that the next step toward normalization will require a much larger step – ending the US embargo, which in Cuba is more commonly referred to as the “blockade.” Normalization, González said, will require “the dismantling of the whole system of aggression against Cuba, especially the blockade. Everybody knows how damaging it has been for the Cuban people. It's a small island. For 50 years, it has been asphyxiated by the biggest power in the world. It had a cost on the Cuban people, on their economy.”

The Illegal Occupation of Guantánamo Bay

González also listed the return of Guantánamo to Cuba as necessary for normalization. After

the blockade is lifted and Guantánamo is returned to Cuba, he told me, “I believe the process will take speed.”

González rightly pointed out that the US occupation of Guantánamo is illegal. The United States gained control of Guantánamo Bay in 1903, when Cuba was occupied by the US Army after its intervention in Cuba’s war of independence against Spain. Cuba was forced to accept the Platt Amendment to its Constitution as a prerequisite for the withdrawal of US troops from Cuba. That amendment provided the basis for a treaty granting the United States jurisdiction over Guantánamo Bay.

The 1903 Agreement on Coaling and Naval Stations gave the United States the right to use Guantánamo Bay “exclusively as coaling or naval stations, and for no other purpose.” A 1934 treaty maintained US control over Guantánamo Bay in perpetuity until the United States abandons it or until both Cuba and the United States agree to modify it. That treaty also limits its uses to “coaling and naval stations.”

None of these treaties or agreements gives the United States the right to use Guantánamo Bay as a prison, or to subject detainees to torture or cruel, inhuman or degrading treatment – which has been documented at the prison. The United States thus stands in violation of the 1934 treaty.

Moreover, the doctrine of *rebus sic stantibus*, enshrined in the Vienna Convention on the Law of Treaties and a norm of customary international law, allows one party to a treaty to abrogate its obligations when there is a fundamental change in circumstances. Using Guantánamo Bay as a prison and torturing detainees is a fundamental change in circumstance, which constitutes grounds for Cuba to terminate the treaty.

The Diplomatic Importance of Freeing the Cuban Five



Marjorie Cohn with Antonio Guerrero.
(Photo courtesy of Marjorie Cohn)

The United States and Cuba would not likely have announced this week their plans to reopen embassies in each other’s countries if President Barack Obama had not successfully negotiated the full release of the Cuban Five in the agreement he reached with Cuban President Raul Castro on December 17, 2014. That deal, to work toward normalization of relations between the two countries, had eluded Obama’s 10 predecessors over a 55-year period. It will likely be Obama’s signature foreign policy achievement.

A part of the deal that had enormous symbolic significance to the people of Cuba was the freeing of Gerardo Hernandez, Antonio Guerrero and Ramón Labañino – the three members of the Cuban Five who were still imprisoned at the time of the agreement. On December 17, 2014, the three men were granted clemency and returned to Cuba. The other two members of the Cuban Five – René González and Fernando González – had previously been released in 2011 and 2014, respectively, after serving their full sentences.

The case of the Cuban Five garnered international condemnation in particular because the five men had traveled to the United States to gather intelligence on Cuban exile groups for a

very legitimate reason. Since Cuba's 1959 Revolution, terrorist organizations based in Miami, including Alpha 66, Commandos F4, the Cuban American National Foundation and Brothers to the Rescue, have carried out terrorist acts against Cuba in an attempt to overthrow the Castro government. The most notorious was the in-air bombing of a Cubana airliner in 1976, which killed all 73 persons aboard, including the entire Cuban fencing team. [These groups have acted with impunity in the United States.](#)

The Cuban Five peacefully infiltrated these organizations. They then turned over the results of their investigation to the FBI. But instead of working to combat terrorist plots in the United States against Cuba, the US government arrested them and charged them with crimes including conspiracy to commit espionage and conspiracy to commit murder. Although none of the Five had any classified information or engaged in any acts to injure the United States, they were convicted in a Miami court in 2000 and sentenced to four life terms and 75 years collectively.

A three-judge panel of the 11th Circuit US Court of Appeals unanimously overturned their convictions in 2005, ruling that the Five could not get a fair trial in Miami due to the pervasive anti-Cuba sentiment there. Nevertheless, the 11th Circuit, sitting en banc, upheld the convictions, and Hernandez's life term was affirmed on appeal.

Years of Wrongful Imprisonment

The Cuban Five endured years of harsh conditions and wrongful imprisonment before their release. After being arrested, they were immediately put into solitary confinement and held in "The Hole" for 17 months. Solitary confinement amounts to torture or cruel, inhuman, or degrading treatment or punishment, according to United Nations special rapporteur Juan E. Méndez.

"I believe they expected to break us down," González added. The US government "used the CIPA [Classified Information Procedures Act] and randomly classified everything," which "allowed them to prevent us from looking at the evidence," González said. "So they put us in "The Hole" and then put the evidence in another hole."

Yet, González noted, "Sometimes you have to react as a human with your dignity. And they went after our dignity. And we had to defend it. We were more committed. We were more encouraged to go to trial, and that's what we did."

"For us," González said, "going to trial was great. We wanted to go to trial every day because we wanted to face them and expose the truth of terrorism against Cuba and how the government of the United States supported those terrorists."

"They decided to behave like thugs." he told me. "And then you have to resort to your moral values, again to your human dignity and defend that." González said, "We always knew what we were doing there. We knew that we never intended to make any harm to the United States at all, to the US people. We were very clear on that. As a matter of fact, there was nothing in the whole evidence that would show hatred toward the United States or the US people or an intent to damage anybody. We knew that we were defending human life. And going to prison for defending the most precious thing which is the human life - it makes you strong."

Surviving Prison Through Poetry and Art

I asked González and Guerrero how they survived prison for all those years. “Our humor never went down,” González said. “We played chess from one cell to another by yelling. We did poetry. Sometimes we had fun just reading the poetry through the doors.”

Guerrero also began writing poetry in prison.

“I started writing poems without even having paper,” he said. “A poem came to my head after they arrested me ... And I cannot explain how because I wasn’t a poet. And then I started writing poems.” Guerrero never imagined that his poems would be published, but he shared them with the other prisoners and shared them with people in court. He couldn’t believe it when his first book of poems, *Desde Mi Altura* (“From My Altitude”), was published.

Guerrero also became a painter in prison. “The penitentiary is very tough,” he said. “So one day I went to the art room ... that was another way to free my mind.”

I was thrilled when Guerrero gave me a copy of his newly published book, *Absolved by Solidarity*, a collection of his paintings depicting the different stages of the trial.

The Five Return to Cuba

When I asked what it was like when all the members of the Cuban Five were back in Cuba together, Guerrero said: “It’s a sense of joy. It’s a sense of victory. It’s a sense of returning to the place where you belong to. And it feels great.”

González added: “My little daughter was four months when I was arrested. I came to Cuba two days before her 15th birthday. I have a grandson now which is a beautiful boy.”

Both González and Guerrero said they had thought they would never see Hernandez in Cuba again because he was serving a term of life imprisonment. “My biggest fear was he would die there,” González said. “And let’s not fool ourselves. The US wanted him to die in prison. And the prosecutor wanted him to die in prison.”

“We know how hard it is to take him from those appetites,” he added, “and we managed to do that. It speaks a lot about Cuba, a lot about the Cuban people, because the Cuban people together as one did everything possible for the Five and it’s just pure joy.”

The Way Ahead

In the days ahead, the normalization of relations between Cuba and the United States will rely most of all on the United States’ willingness to act out of respect for Cuban self-determination. “The only thing we want is respect,” Guerrero said. “Let’s try to build something now – good for you, good for us – with respect in the middle. ... The point is, we don’t know if the interest of the American government is really to be respectful and friendly to the Cuban government.”

Guerrero said that even if millions of American tourists come flooding in to visit Cuba, he cannot conceive of Cuba becoming a capitalist country and forgetting about the Revolution. “Somebody may bring drugs, or somebody may bring a lot of money and try to buy things,” Guerrero said. “We are not accustomed to that. But we are ready to deal with that and create our security and our understanding. They will be received with peace, with love.”

González added that the Cuban people don't have hatred or resentment toward the American people specifically. "We don't blame the American people for the faults of the their government," he said. "We know they are people like people anywhere. I believe that all of us have more in common than things that divide us. ... And I hope sincerely that this new relationship with the US will allow Americans to come here and share with us this beautiful island."

In June, the Cuban Five visited Robben Island in South Africa, where Nelson Mandela was imprisoned for 18 years by the apartheid regime. Hernandez wrote in the guest book, "It has been a great honor to visit this place together with some of the brave compañeros of Nelson Mandela," who were "a source of inspiration and strength for the Five Cubans to withstand the more than 16 years in US jails." Hernandez added that Mandela's legacy is one "the Five will honor for the rest of our lives."

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