



STATEMENT OF RAMON LUIS NIEVES, ESQ.
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Before the Subcommittee on Insular Affairs
Committee on Resources
US Congress
March 22nd, 2007

My name is Ramón Luis Nieves. I am an attorney-at-law in the private sector. I appear before you as executive director of Movimiento Autonomista Socialdemócrata (MAS). MAS is a political organization that advocates for the adoption of a Compact of Free Association between the United States (US) and Puerto Rico, and for diverse ideas of social justice and economic development. The option of free association advocated by MAS would be based in the US constitutional experience in the Pacific, but also taking into account the important differences between Puerto Rico and the Micronesian nations, including US citizenship; Puerto Rican national identity and; levels of economic assistance and integration with the US.

I also appear as a person who has studied the US-Puerto Rico relationship for half of my life. As result of such studies, I published a book titled “ESTADO LIBRE ASOCIADO DEL SIGLO XXI”, whose second edition appeared in 2004. The abovementioned book, an argument for free association, contains a critical analysis of Commonwealth status, as well as a detailed analysis of the Compacts of Free Association between the United States, the Federated of Micronesia, the Marshall Islands and Palau. It also includes discussions about the negotiations for “Compact II”, approved by the 108th Congress and President George W. Bush in 2003, a process which I followed closely.

Let me begin by commending Chairwoman Donna M. Christensen, for convening hearings to discuss both HR 900 and HR 1230. We are grateful for the opportunity to appear before the Subcommittee to share our views on both bills.

MAS has decided not to state an official preference either for HR 900 nor HR 1230. Our goal is to share our thoughts as to both bills, in the hope that future action by Congress provides for an effective procedural mechanism in furtherance of self determination for the Puerto Rican nation.

The Basic Premises: Fundamental Fairness and Expediency

The discussion of process must be based on two (2) basic premises: *fundamental fairness* and *expediency*.

The US government must take into account that, since the 19th Century, the Puerto Rican nation has been debating its definitive political status. Three main currents of political thought or aspirations have emerged during the process: independence, statehood and an alternative of political association, which has prevailed in all the referenda held during the last part of the 20th Century.

Fundamental fairness requires that any bill approved by Congress provides a mechanism that does not “play favorites” with any status formula. MAS submits that the US would violate recognized principles of international law, such as the right of self determination, if it approves any process that fails to recognize, on equal grounds, the options of statehood, independence and political association. International law on the subject, as codified by United Nations Resolution 1541 (XV), recognizes integration, independence and free association as separate options of self government. American constitutional experience has also recognized such options when it granted independence to the Philippines; when it incorporated into the Union thirty seven (37) territories and; when Congress approved Compacts of Free Association with the former Strategic Trust Territories in the Pacific.

In addition to the aforementioned legal and constitutional framework, Congress should take notice that no advancement has been made in previous congressional efforts where one or more status options have been excluded from the process. Three options, separated from each other, presented in a fair way for their evaluation and approval by the Puerto Rican nation: that is the fundamental fairness required for any real process to advance.

The other premise of any status process is *expediency*. The economy of Puerto Rico is currently undergoing a historic crisis. The current crisis of the Puerto Rican economic model includes as factors the end of federal tax incentives (known as IRC Section 936 / 30A), which were an important element of the Puerto Rican economy during most part of the 20th Century; a self inflicted fiscal crisis; problems in governance of the Commonwealth government and social ills and basic inequality in Puerto Rican society, expressed by an increase in substance abuse, alienation, violence at all levels and an alarming decrease of general civility. The Puerto Rican crisis has caused the migration to the US of thousands of well-educated professionals and workers, mostly to Florida, in search of the quality of life and material opportunities that they have not been able to find in our Islands.

MAS believes that resolution of the status problem is key to the acquisition of the tools required to implement permanent solutions to the economic and social problems that affect the Puerto Rico. Hence, MAS submits that the process to solve the status problem must begin sooner rather than later.

In accordance with the abovementioned premises, I hereby submit our comments to HR 900 and HR 1230.

HR 900 - “The Puerto Rico Democracy Act of 2007”

HR 900 provides for the calling of at least two plebiscites. The first of such plebiscites would be held in 2009. That first plebiscite would allow the Puerto Rican voters to decide if the current territorial status shall continue, or if they would prefer to pursue a path toward a so-called “constitutionally viable permanent nonterritorial status”. If the majority of the voters agree with the continuation of territorial status, plebiscites would be held every eight (8) years, until the voters favor the other option.

If voters choose the “pathways” option, a second plebiscite would be held between two (2) alternatives: a path towards statehood, or a path toward a “sovereign nation”, either fully independent from or in free association to the US. This second plebiscite would be held during the 112th Congress, in 2011, four (4) years and two (2) subsequent terms of Congress later.

If HR 900 has been conceived in furtherance of democratic principles for the Puerto Ricans, it would do so very late. Assuming that the voters approve the “pathways” option in 2009, they will not begin to walk towards their chosen “path” until 2011. The proponents of the bill apparently have figured that the process of self determination would be affected if it is debated on an election year for the Presidential election, the Puerto Rican general election, and future congressional elections. This appears to be the only reason for the proposed stalling of our self determination.

However, MAS believes that such considerations are contrary to the urgent economic needs of the Puerto Rican nation. Moreover, the Puerto Rican electorate is more than ready to cast their votes. One hundred and nine (109) years of painful and costly political education is more than enough time. Puerto Ricans should not be required to wait another two, three, or even eight years to conclude the status issue.

MAS also opposes the proposed first plebiscite. In our view, there is no need to vote in order to express dissatisfaction with the current territorial status. The vast majority of Puerto Ricans, and the three registered political parties in Puerto Rico, already have expressed their desire for a non-territorial status option. Even the Popular Democratic Party, which has advocated in the past for minor “modifications” to the current form of Commonwealth, now officially advocates on its platform and by mandate of its governing bodies, for an option of non-territorial political association based in the sovereignty of the Puerto Rican People.

As to the US, the apparent consensus in the body politic since the early 1990's is that Puerto Rico remains a territory under the Constitution. Both Congress and the Executive branch have repeatedly referred to Puerto Rico as a “territory”. The federal body politic has even described the creation of the Commonwealth during the 1950's as an “arrangement”, as opposed to a legitimate political association. The apparent honesty in confessing the colonial nature of its relationship with Puerto Rico serves to explain why the US has not vehemently opposed the annual resolutions passed by the United Nations Committee on Decolonization since the 1990's. The end, both of the Cold War and the strategic significance of the Puerto Rican Islands, accelerated the process whereby the US has come out of its colonial closet.

An additional argument to oppose the first plebiscite proposed on HR 900 is that it could severely damage the self determination process itself. If the electorate rejects the current territorial relationship by voting for the “pathways” option, Puerto Ricans would have effectively and directly ended the legitimacy of US sovereignty over Puerto Rico. As argued above, the legitimacy of US sovereignty has already been put into question by the majority of Puerto Ricans in the political discourse. However, a direct rejection of current territorial status through the ballot would place Puerto Rico in a state of pure and unadulterated colonial rule by the US. Puerto Rico would be back to 1949, all over again.

MAS also objects to the “sovereign pathway” proposed as alternative in the second plebiscite contemplated on HR 900. This so-called “pathway” runs counter to the premise of *fundamental fairness* mentioned above. Instead of a sole pathway to sovereignty, MAS proposes separate columns for the independence and free association options.

As it is, HR 900 will contribute to “play favorites” with the “pathway” toward statehood. Although some Puerto Ricans desire independence, advocates for statehood have historically claimed that free association, or even minor modifications to Commonwealth status, are really a backdoor to independence. These are precisely the type of political games that have been rejected and vehemently opposed by the Puerto Rican nation in the not so distant past. Congress should not be confused or impressed by those who articulate the apparent value of simplifying the status option in order to manufacture a fraudulent and artificial majority in favor of the “pathway” to statehood.

MAS strongly considers urges you to consider that the option of political association is neither “derivative”, nor dependent, on full independence. This position has been validated by US constitutional practice and international law on the subject.

Last, but not least, this Congress must respond a fundamental policy question: whether to allow non-resident persons who claim Puerto Rican descent to participate in the self determination process. HR 900 would bar from the process persons who, although born outside of Puerto Rico, claim Puerto Rican descent. On the other hand, HR 1230 would allow the vote of non-resident persons either born in Puerto Rico, or who have one parent born in the Islands. This policy question goes to the heart of the debate of national identity. The definition of who could be considered a member of the Puerto Rican nation is fundamental to our process of self determination.

MAS agrees with the approach proposed on HR 1230 as to this important issue. The economics of colonialism are mostly responsible for the migration to the US and the national identity issues of people of Puerto Rican descent living in the US. Hence, exclusion of persons who claim Puerto Rican descent from a self determination process would be a cruel and cynical position to assume.

HR 1230 - “The Puerto Rico Self-Determination Act of 2007”

HR 1230 provides for the recognition by Congress of “the inherent authority of the People of Puerto Rico to call a Constitutional Convention” for the purpose of proposing a “Self-Determination Option” to the People of Puerto Rico. The so-called “Self-Determination Options” are statehood, independence and a “new or modified Commonwealth status”; all of which “must be based on the sovereignty of the People of Puerto Rico and not subject to the plenary powers of the territorial clause of the Constitution of the United States”.

In Puerto Rico, the language of politics, or the politics of language, has electoral consequences. In all fairness, the combination of Puerto Rican sovereignty with the term “new or modified Commonwealth status” should be clarified. The explicit clarification of the non-territorial and sovereign nature of the association option is the paramount issue here. MAS would support the association option as long as its *non-territorial* and *sovereign* nature is clear and in compliance with applicable international and US constitutional law.

An important point has to be raised as to the process to consider free association (or the so-called new or improved “sovereign” Commonwealth.) as a “Self-Determination Option”. HR 1230 must be amended to establish an adequate and workable process to implement the “sovereign association” alternative. In the case of “sovereign association”, the nature of the political process would require that the “Self Determination Option” that the Constitutional Convention would submit to the electorate be prepared in the form of a “declaration of principles” of association. The existing Compacts of Free Association, their Subsidiary

Agreements, and even the CNMI Covenant, are complex documents which were the result of lengthy negotiations.

MAS includes, as an Exhibit, a "STATEMENT OF PRINCIPLES FOR FREE ASSOCIATION BETWEEN THE UNITED STATES OF AMERICA AND PUERTO RICO". The enclosed "Statement of Principles" is based on the "Hilo Principles" agreed upon between the US and Micronesia during a crucial stage of the Compact I negotiations, in the late 1970's. A similar "statement of principles" would be the type of proposal that, in reality, could be submitted to the electors, and then be included as part of the joint resolution contemplated in Section 4 of HR 1230.

Considering the constitutional experience of the US as to the negotiation of compacts of free association, MAS proposes that Section 4 of HR 1230 be amended to provide that, in the case of the approval of a "Self Determination Option" named either as "free association" or "sovereign association", the joint resolution to be passed by Congress instructs the executive branches of both the US and Puerto Rico to designate representatives to a bilateral commission, sixty (60) days after its approval. This bilateral commission would be in charge of negotiating, drafting and agreeing on a Compact of Free Association, which would then be submitted both to the Puerto Rican electorate and the Congress. MAS also proposes that the joint resolution instructs the bilateral commission to conduct negotiations for a Compact and its Subsidiary Agreements on a period of no more than two (2) years, with the possibility of an additional one-year extension.

It is proper to address the issue of uncertainty in the time-frame to start the process of self-determination proposed in HR 1230. This is a gray area. An instruction by Congress of a time-frame to conclude approval by a Constitutional Convention of a "Self-Determination Option" could be construed as an obstacle to our right of self-determination. However, the abovementioned need for expediency leads the MAS to propose that Section 3 of HR 1230 be amended to express that the initial process of proposing a "Self-Determination Option" would not last more than two (2) years, counted from the moment the bill becomes Federal law, with an additional one-year extension, which would be approved by the Convention itself. MAS believes that two (2) years is a fair time-frame to call the Convention, elect the delegates, prepare the proposal, and submit it to the electorate. HR 1230 already provides for the situation whereby the voters reject the proposal of the Convention, and such mechanism would not be affected by the proposed time-frame.

Lastly, the Subcommittee must consider a political reality in Puerto Rico as to the procedural alternative of a constitutional convention. The Independence Party of Puerto Rico and the Popular Democratic Party, who favor independence and sovereign association, respectively, currently agree on a constitutional convention as the preferred process of self determination. Together, they represent more than half of the voters in Puerto Rico. However, the pro-statehood New Progressive Party officially opposes the alternative of a constitutional convention. The official objection of the party leadership is that a direct election through plebiscites is by nature more democratic than the People acting through delegates to a Convention. The real basis for their opposition is that the party suspects that pro-independence and pro-association advocates would create a political alliance in favor of sovereign free association.

Sadly, the opposition of the New Progressive Party represents an important roadblock to the procedural mechanism contemplated by HR 1230. The party represents almost half of the electorate. Furthermore, the New Progressive Party has a history of ignoring and, in fact, acting in opposition to the democratic wishes of the People. Such was the aftermath of pro-Commonwealth results in the 1967 and 1993

plebiscites, which were not respected by the pro-statehood party. The history of non-compliance with the will of the People by the pro-statehood party presents an important challenge to the mechanism proposed in HR 1230.

Conclusion

MAS believes that Puerto Rico inherent to sovereign free association, in available for our nation in the global economy.



needs the political and economical powers order to maximize the opportunities

We sincerely hope that the Subcommittee on Insular Affairs takes our comments into consideration. The Puerto Rican nation also hopes that this Congress agrees on a fair and expedient mechanism in furtherance of our right of self determination, as well as the democratic ideals and international obligations of the United States of America.

EXHIBIT

“Statement of Principles for Free Association between

the United States of America and Puerto Rico”

- 1- The United States and the Free Associated State of Puerto Rico shall negotiate and enter into a Compact of Free Association, which could only be altered by mutual consent;
- 2- The People of Puerto Rico shall retain all powers not specifically delegated in the Compact to the United States;
- 3- The United States will provide financial and technical assistance to the Free Associated State of Puerto Rico, in furtherance of the economic advancement and self reliance of the People of Puerto Rico. Both nations shall identify target sectors to enhance the social and economic development of Puerto Rico (education, health, infrastructure, etc.), and will collaborate intensively in the design and implementation of strategies for the effective investment of federal funding in initiatives to promote job creation and business development;
- 4- The Compact of Free Association will provide for the continued transmission of the United States citizenship. The Constitution and laws of the Free Associated State of Puerto Rico shall provide for the recognition of Puerto Rican citizenship;
- 5- Puerto Rico will continue to be eligible for U.S. federal grants and assistance, on a government-to-government basis. Individuals shall retain their economic entitlements as U.S. citizens, including their Social Security benefits, as well as other job-related entitlements (as federal employees and veterans);
- 6- Free transit of goods, services, capitals and persons between the United States and the Free Associated State of Puerto Rico shall be maintained;
- 7- The Free Associated State of Puerto Rico will have full capacity to conduct its foreign affairs; to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations, including the U.N.
- 8- The Constitution of Puerto Rico will remain in full force and effect, as well as the applicable laws of the U.S. pursuant to the Compact. Nevertheless, the Constitution of Puerto Rico shall be amended to incorporate the new governmental powers obtained through the Compact of Association;
- 9- The United States and the Free Associated State of Puerto Rico will establish special areas of mutual assistance and cooperation to secure the well-being of both the Puerto Rican and American peoples, for example: law enforcement efforts against drug trafficking; illegal immigration; terrorism; natural disasters; environmental protection; labor protection and standards; communications and; technological advancement to secure the well being of the people and the Puerto Rican economy;
- 10- The United States shall maintain full authority and responsibility in security and defense matters of Puerto Rico, in accordance with the provisions of the Compact. The Free Associated State of Puerto Rico shall foreclose access to or use of its territory for the military or strategic purposes of any third country.