

***Statement on Puerto Rico Political Status Bills for the House of
Representatives Committee on Natural Resources June 16, 2021 hearing***

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Mr. Chairman:

I would like to begin by thanking the Chair and the House Committee on Natural Resources for holding these hearings on the two bills addressing Puerto Rico’s political status question. Any public discussion which draws attention to the political disenfranchisement of Puerto Rico’s American citizens is in itself, already, a step in the right direction.

In the previous hearing the Committee heard from various witnesses, among them Prof. Christina Ponsa-Krauss, whose statements succinctly presented the constitutional constraints and difficulties of *HR 2070 Puerto Rico Self-Determination Act* and – in contrast – of the legal and political solvency of *HR 1522 Puerto Rico Statehood Admission Act*. I fully subscribe to her views on the matter, together with my earlier remarks submitted for the written record for the April 14, 2021 hearing, which I herein include by reference.

Instead of repeating what has already been so eloquently stated by others on the urgency of moving forward with the *PR Statehood Admission Act*, I would like to focus my attention on certain aspects of *PR Self-Determination Act* which I believe require closer scrutiny.

The *PR Self-Determination Act* calls on the right of the people of Puerto Rico to convoke a Status Convention through which they would exercise what is referred to as their natural right to self-determination. The unexpressed assumption of this bill is that Puerto Ricans are not Americans, notwithstanding their American citizenship, and the cry for “self-determination” in this context aims to impede the electoral majority call for statehood.

From a legal perspective, its justification implicitly relies on international legal principles. At the time of its creation in 1945 the United Nations included Puerto Rico under the list of non-autonomous territories. In 1952 the United States Congress authorized Puerto Rico to draft its own Constitution and create its own local self-governing institutions. Upon ratification, the United States informed the United Nations that Puerto Rico had acquired a level of self-government that justified its exclusion of the list of non-autonomous territories. In 1953 the United Nations exempted the United States from presenting further reports on Puerto Rico, exemption which continues to this day.

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In 1960 the United Nations approved Resolution 1514 (XV) which declared the rights of national self-determination and decolonization. Those factions which favor independence have long tried to have Puerto Rico relisted as a colonial possession subject to the jurisdiction of the United Nations. Notwithstanding the consistent recommendation by the United Nations Special Committee on Decolonization – led by Cuba and Venezuela - the General Assembly has rejected the Committee’s recommendation on 38 occasions.

The long held political strategy of the pro-independence factions has been to place the status question within the context of international law, to underscore the political and legal difference between the people of Puerto Rico and the people of the United States. The *PR Self-Determination Act* implicitly endorses this view.

Contrary to these efforts, the United States has historically argued – correctly in my estimation - that the issue regarding Puerto Rico’s political future is a domestic matter, under the jurisdiction of the Constitution and the laws of the United States. Surely International Law is relevant, but always within the constitutional context, not the other way around

By virtue of the 1898 Treaty of Paris, Spain ceded Puerto Rico to the United States, which under the terms of the Treaty acquired the rights to dispose of the civil rights of its inhabitants by Congress. In 1900 the Foraker Act created a civil government, among other provisions. We should highlight that the people of Puerto Rico, as legal category, is a creation of this statute and not of any philosophical claims of political identity.

Although it is true that international treaties signed by the United States are part of its statutory law, as Supreme Law of the land, they are still under the Constitution. Contrary to what some would have us believe, international treaties and obligations are not above constitutional authority. When Congress exercises its plenary powers under the Territorial Clause, international provisions do not govern its actions, which in any case are not self-executing according to long held judicial precedent. The 2016 *PROMESA*, which created a Financial and Oversight Management Board to supervise the bankrupt government of Puerto Rico and the treatment of Puerto Rico as a foreign jurisdiction for purposes of the Internal Revenue Code are two on-going example of the exercise of this authority.

In the recent *Commonwealth of Puerto Rico v. Sanchez Valle* (2016) the Supreme Court left no doubt that Puerto Rico’s sovereignty lies in the United States, in Congress, and that any sovereign claim to the contrary must pass through the Territorial Clause of the Constitution. More timely, the constitutional challenge currently before the Supreme Court in the case of *United States v. Vaello-Madero*, regarding the exclusion of SSI benefits to American citizens in Puerto Rico, assumes congressional authority to dispose of the territory without the direct participation of the people of Puerto Rico.

Any pretense of placing Puerto Rico outside of the Territorial Clause must necessarily do so either as a State or as an independent nation, in any of its guises. The continuous efforts by certain factions of trying to carve out a mythical constitutional space where Puerto Rico is not subject to the ultimate authority of Congress under the Territorial Clause has been consistently and decisively rejected by all branches of the United States government. Ironically, the *PR Self-Determination Act* itself is a belated recognition that Puerto Rico is under the authority of Congress and does not have the constitutional or legal right to exercise any natural law claim.

Puerto Rico is a territory of the United States, and the use of loaded terms such as “colonial” and “self-determination” are underhanded attempts to place the status question within the context of International Law instead of the United States Constitution, where it belongs. Although perfectly understandable as part of the give and take of political discourse, it is disconcerting that Congress would even consider a piece of legislation which implicitly undermines its own constitutional authority.

A Status Convention which purports to be the depository of the will of the people of Puerto Rico would necessarily need to include all sectors of the island’s political spectrum, including those that favor statehood. What exactly would a Status Convention propose that has not already been proposed in the last 122 years by the different political parties and analyzed by the political branches of the federal government? Invariably a Status Convention would reproduce the same positions that everybody is familiar with. Are we to believe that the delegates to such a convention are to discover any new constitutionally viable formula that has not been part of the political debate for the last century? From a practical point of view, a Status Convention would not offer any other alternative that we haven’t already had before us and that can be settled by means of a plebiscite or referendum.

The fundamental purpose of the Status Convention is to lay the legal groundwork for Puerto Rico to claim sovereignty over and against the United States and the will of the same people they claim to represent. As a matter of political reality, the Puerto Ricans have been exercising their right to self-determination in every electoral event since the approval of the 1952 Constitution and subsequent general elections and local plebiscites, albeit incompletely and inconclusively. The next step in this long overdue process is a federally mandated referendum.

I endorse *PR Statehood Admission Act* and oppose *PR Self Determination Act*. Thank you.