



COMMONWEALTH OF  
PUERTO RICO  
GOVERNOR

ALEJANDRO J. GARCÍA-PADILLA

December 26, 2015


His Excellency Ban Ki-Moon  
Secretary-General of the United Nations  
United Nations Headquarters  
405 East 42<sup>nd</sup> Street  
New York, NY 10017

Dear Mr. Secretary-General:

I write as Governor of the Commonwealth of Puerto Rico regarding the Commonwealth's status under Article 73 of the Charter of the United Nations.

On January 17, 1953, the then-Governor of Puerto Rico, the Honorable Luis Muñoz Marín, wrote to the then-President of the United States of America, the Honorable Harry S. Truman, regarding the United States' compliance with its obligations with respect to Puerto Rico under Article 73 of the United Nations Charter. In that letter (attached hereto as Tab A at p.5), Governor Muñoz Marín stated that:


[I]n response to the wish of an overwhelming majority of the people of Puerto Rico pursuant to a compact between them and the Government of the United States[] Puerto Rico became a Commonwealth in free and voluntary association with the United States and its people have now attained a full measure of self-government. Accordingly, I respectfully suggest on behalf of the Commonwealth of Puerto Rico that the Government of the United States takes steps to notify the United Nations of the status of Puerto Rico[;] that it is no longer a non-self-governing area, and that reports concerning it are no longer appropriate under Article 73(e) of the Charter.

The United States accepted Governor Muñoz Marín's suggestion, and notified the United Nations by Memorandum dated April 20, 1953 (attached hereto as Tab A at p. 2), that it would henceforth cease to transmit information regarding Puerto Rico pursuant to Article 73. In particular, the United States explained that in 1950 its Congress had enacted a law, Public Law No. 600, that "expressly recognized the principle of government by consent," Apr. 20 Memo ¶ 11, and offered the people of Puerto Rico a "compact" whereby "the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." Pub. L. No. 81-600, 64 Stat. 319 (1950). As the United States further explained, the people of Puerto Rico

accepted that “compact,” and adopted their own Constitution, which established the Commonwealth of Puerto Rico. See Apr. 20 Memo ¶¶ 11-14.

The Memorandum emphasized that under the Puerto Rico Constitution, the “political power [of the Commonwealth] emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America,” (quoting P.R. Const. Art. I, § 1), and in this regard characterized the Puerto Rico Constitution as “similar to that of a State of the Federal Union.” Apr. 20 Memo ¶ 15. In addition, the Memorandum noted that “[t]he Legislative Assembly [...] has full legislative authority in respect to local matters.” *Id.* ¶ 16. In describing the “Present Status of Puerto Rico,” the United States represented that “Puerto Rico has voluntarily entered into the relationship with the United States which it has chosen to describe as a ‘commonwealth’ relationship,” and that “[t]he people of Puerto Rico have complete autonomy in internal economic matters and in cultural and social affairs under a Constitution adopted by them and approved by the Congress.” *Id.* ¶¶ 21-22. The Memorandum concludes that:

The United States Government [...] has decided that, with the entry into force on July 25, 1952, of the new constitutional arrangements establishing the Commonwealth of Puerto Rico, it is no longer appropriate for the United States to continue to transmit information to the United Nations on Puerto Rico under Article 73(e) of the Charter. This conclusion constitutes a recognition of the full measure of self-government which has been achieved by the people of Puerto Rico. *Id.* ¶ 25; see also *id.* ¶ 4 (“As a result of the change in the constitutional position and status of Puerto Rico as described in this memorandum, the Government of the United States considers it unnecessary to transmit further information under Article 73(e) of the Charter concerning the Commonwealth of Puerto Rico.”).



Shortly thereafter, the General Assembly agreed. By Resolution 748 of November 27, 1953 (attached hereto as Tab B), the General Assembly “recogniz[ed] that the people of the Commonwealth of Puerto Rico, by expressing their will in a free and democratic way, have achieved a new constitutional status.” Res. 748 ¶ 2. The General Assembly further “[e]xpresse[d] the opinion that it stems from the documentation provided that the association of the Commonwealth of Puerto Rico with the United States of America has been established as a mutually agreed association,” and “[r]ecognize[d] that, when choosing their constitutional and international status, the people of the Commonwealth of Puerto Rico have effectively exercised their right to self-determination.” *Id.* ¶¶ 3, 4. It follows, as the General Assembly further recognized, “that, in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity.” *Id.* ¶ 5. Under these circumstances, the General Assembly agreed that the United States was no longer required to transmit information regarding Puerto Rico under Article 73 of the United Nations Charter. See *id.* ¶¶ 6-8.

In a legal brief filed before the United States Supreme Court on December 23, 2015 (attached at Tab C), the United States Government abruptly reversed course, and took the position that the Constitution and laws of the Commonwealth of Puerto Rico do

not emanate from the people of Puerto Rico after all. The brief takes the position that, under the United States Constitution, Congress has no power to authorize the people of a territory to engage in an exercise of popular sovereignty by democratically enacting their own Constitution, which then serves as the ultimate source of their laws. Under this view, there can be no such thing as meaningful self-government by the people of Puerto Rico under the U.S. Constitution: the only options are to be (1) a colony subject to the plenary power of Congress, (2) a State, or (3) an independent Nation. In other words, the U.S. Government has effectively taken the position that the Commonwealth of Puerto Rico is unconstitutional insofar as it is based on an exercise of popular sovereignty by the people of Puerto Rico. In a footnote, the brief dismisses the United States' communications with the United Nations in 1953, asserting that those communications "did not characterize Puerto Rico as a sovereign." U.S. Br. 33-34 n.7. But that assertion is erroneous at best; as even cursory examination of those documents reveals, the United States clearly informed the United Nations that the Puerto Rico Constitution emanates from the people of Puerto Rico, see Apr. 20 Mem. ¶ 15, and "change[d] ... the constitutional position and status of Puerto Rico." *Id.* ¶ 4. And, the General Assembly clearly understood as much (as have the people of Puerto Rico for the past 63 years), by "recogniz[ing] that, in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity." Res. 748. ¶ 5.

The Commonwealth believes that the recent interpretation made by the Solicitor General on behalf of the United States of America is misguided and should not prevail in the Supreme Court. However, in light of the grave importance of this matter, I hereby fulfill my duty to the People of Puerto Rico and the international community by informing you of this development.

I remain respectfully yours,

The Governor of the Commonwealth of Puerto Rico



Alejandro J. García-Padilla

cc The Honorable Barack Obama, President of the United States of America  
The Honorable John Kerry, Secretary of State of the United States of America  
The Honorable Loretta E. Lynch, Attorney General of the United States of America  
The Honorable Donald B. Verrilli, Solicitor General of the United States of America  
The Honorable Eduardo Bhatia Gautier, President of the Senate of Puerto Rico  
The Honorable Jaime Perelló Borrás, Speaker of the House of Representatives of Puerto Rico