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'DECOLONIZING' PUERTO RICO, U.S. STYLE

PEDRO A. CABAN, Ph.D.

If the United States Committee on Energy and Natural Resources has its way, Puerto Rico's political status may finally be resolved by the end of 1991. Congressional committees, an Executive Branch task force, the leadership of Puerto Rico's established political parties and dozens of law firms and professional lobbyists will be engaged in heated negotiations for the next year in a process that may result in a referendum on the three status options: Statehood, Independence or "Enhanced Commonwealth." The proposed Puerto Rican Status Referendum Act (U.S. Senate Bill S-712), co-sponsored by Senators Bennett Johnston (Democrat-Louisiana) and James McClure (Republican-Idaho), provides for the referendum to be held in Puerto Rico on June 4, 1991.

continued on page 7...
It was on January 17, 1989 that leaders of Puerto Rico's three electoral parties signed an historic statement calling on President George W. Bush to begin a process to resolve Puerto Rico's troubled political status. The event was unusual for three reasons:

First, during his reelection campaign, Puerto Rico Governor Rafael Hernandez Colon assured the country that, if elected, his Administration would concentrate on addressing Puerto Rico's serious social and economic problems and not seek to alter the Island's political status. But, to the surprise of many political observers, the Governor, in his inaugural address in January 1989, called for a plebiscite to be held during his tenure.

Second, the three major parties issued a statement that "since Puerto Rico came under the sovereignty of the United States of America, under the terms of the Treaty of Paris in 1898, the people of Puerto Rico have not been formally consulted by the United States of America as to its preference on the final political status." (author's translation from the Spanish) The phrase was significant; for the first time the pro-commonwealth Partido Popular Democratico (PPD) publicly declared that the Commonwealth is not a compact of free association by two sovereign peoples.

Third, while each political party has tried individually to persuade the U.S. government to initiate a consulta on Puerto Rico's political status, their January statement was the first joint public call for the U.S. government to do so. Barely six months later, the U.S. Senate Committee on Energy and Natural Resources drafted three status-related bills that would permit the people of Puerto Rico to choose among the three status options.

Why a Referendum Now?

The speed with which these events have unfolded, after nearly four decades of U.S. inaction on the status of Puerto Rico, leaves little doubt that the joint statement of January 17, 1989 was encouraged, if not actually proposed, by Washington. Clasividad, the newspaper of the pro-independence Partido Socialista Puertorriqueño (PSP), reported that the Bush Administration was preparing to hold a referendum on the status issue soon after the President's inauguration. On January 1, 1989, Andrew Card, White House Deputy Chief of Staff, informed Hernandez Colon that he had instructions from President Bush to announce the Administration's intention to "present a proposal for consultations on the status issue." Card gave Hernandez Colon the option of calling for a referendum.

The U.S. federal government's decision to authorize the referendum appears to have been the product of more than a decade of internal discussions and policy reviews on the problem of Puerto Rico's status at the highest levels of the Executive Branch. The Carter Administration was cautiously moving toward proposing a plebiscite on the Island's future status, with independence as a viable option. Since the late 1970s, numerous studies on the subject have been published by think tanks, research centers and government agencies. Despite this flurry of intellectual activity, the Reagan Administration did not promote status change. Whatever the reasons for this notable inactivity during the Reagan years, President Bush's decision to act seems to have been the outcome of a process that has been percolating for over a decade. When the 101st Congress convened in January 1989, Senator Bennett Johnston and the Bush Administration were prepared to move quickly on the referendum.

The question that everyone is asking is why the U.S. government chose this moment in time to initiate the referendum process. Juan Manuel Garcia Passalacqua, the well-known Puerto Rican political commentator, has for years been telling Puerto Ricans that Washington believes the huge financial costs of keeping the colony are unacceptable. By the mid-1980s, these policy makers, he reports, were discussing how to ease Puerto Rico toward independence. The problem of skyrocketing budget deficits, which dominated much of the 1988 presidential campaign, provided the necessary context for the Bush Administration to initiate the referendum process.

Ruben Berrios Martinez, President of the pro-independence Partido Independentista Puertorriqueno (PIP) considered the following reason decisive:

Since the end of the Second World War, fundamental changes have occurred at the international level that require important internal adjustments to the North American economy and demand new directions in the foreign policy of that nation to adapt to the present global economy and new geo-political realities. (author's translation)
The U.S. Senate Committee worked feverishly to conclude the hearings and drafted the referendum bill before the Committee of 24 met on August 16 and 17, 1989. By including the independence option in S.712, the Bush Administration hoped to persuade the Committee of 24 that the referendum process conformed to international law and to not take up the matter of Puerto Rico.

Another factor that may help to explain the timing of the referendum initiative is the decision by U.S. strategic planners to promote a more comprehensive geo-political and economic strategy for the Caribbean that requires a "redefinition" of Puerto Rico's status and role in the region. In a Village Voice article, Ed Morales pointedly observed: "As the priorities of U.S. military power shift from the cold war to the drug war, and as Ronald Reagan's Caribbean Basin Initiative...works to prevent the reemergence of mixed economies like Michael Manley's Jamaica and Maurice Bishop's Grenada, a reassessment of Puerto Rico's status now seems overdue."

Manuel Casiano, publisher of the influential Caribbean Business, a weekly based in Puerto Rico, says the referendum was strictly Hernández Colón's idea. He argues that the Governor wanted a referendum on the status issue because his extremely narrow margin of victory in the last gubernatorial elections made him vulnerable, and he wanted to "stop the statehood party once and for all before the next election." According to this view, Hernández Colón felt that the political climate was propitious to obtain Congressional support for some changes in the Commonwealth formula, which would ultimately benefit his Administration. Casiano is echoing doubts that the Bush Administration wanted to move on the status issue at this time, a theory that enjoys considerable support in some independence circles.

The U.S. Senate Hearings

Whatever the reasoning behind the Bush Administration's decision to proceed in January 1989 with its "decolonization process," it was ready to quickly put into place an agenda for change. The first set of exploratory talks with the presidents of the Puerto Rican Independence Party (PIP), the Partido Popular Democrático (PPD), and the pro-statehood Partido Nuevo Progresista (PNP), took place during the last week of February 1989. Party platforms and conditions for participating in the referendum, the procedures for conducting the consulta and a preliminary timetable for the referendum were arranged at these meetings. Each representative agreed to provide proposals to the Senate Committee on their respective party's status options, the so-called "wish lists," to be included in the Committee's draft legislation.

Three sets of hearings were initially scheduled. The first hearings were held in early June 1989 in Washington, D.C., and were limited to testimony from the Island's three electoral political parties. This was followed by another set of hearings in San Juan in mid-June, limited to individuals and organizations invited by the Senate Committee. The third set of hearings was scheduled again in Washington in early July to hear the Bush Administration's reaction to the status proposals.

June 1 and 2, 1989 Hearings: Capitol Hill

In his opening statement, Senator Johnston cautioned that the effects of any status change would have to be revenue neutral, meaning the U.S. government would not approve status proposals that increased the federal deficit. He drew attention to "the harsh fiscal reality facing Congress" that would "make budget 'neutrality' an objective during its consideration." If a status "definition includes an increased benefit," Johnston pointed out, "then Congress will be looking for a way to offset the cost of that benefit." Johnston assured the Island's representatives that it was Congress' intention to respect the wishes of the people of Puerto Rico and abide by the referendum results. Once the S.712 referendum results are ratified, the preferred option would go into effect without further Congressional action - the so-called "self-executing" provisions of the bill.

During the hearings in Washington, each proposal submitted by the political parties in Puerto Rico was scrutinized and challenged by the U.S. Senate Committee. Briefly, virtually all of the elements included in the PPD proposal for "enhanced commonwealth" were deemed unacceptable by the Committee. Senators Johnston and McClure rejected any changes in existing legislation that implied a diminution or constraint in the exercise of congressional and executive branch powers over Puerto Rico.

The U.S. Senate Committee expressed serious reservations with the pro-statehood position that Spanish be recognized as the official language of Puerto Rico. It also cautioned statehood forces against expecting immediate and sizable increases in federal transfer payments without a concurrent phasing-in of federal taxes.

In response to the PIP's proposal for the demilitarization of Puerto Rico, Johnston and McClure insisted that the U.S. would not relinquish its
military bases. The PIP recognized the security interests of the United States and agreed that the issue of the military bases was negotiable. All the parties called for retention or lengthy phase-out of section 936 of the Internal Revenue Code. 14

June 16, 17 and 19 Hearings: San Juan

In its hearings conducted in Puerto Rico, the U.S. Senate Committee explicitly rejected United Nations jurisdiction over the referendum. The U.S. Senators argued that by acceding to the PIP's condition for the transfer of sovereign powers if independence is the preferred status, the U.S. had complied with the requirements of international law on the right of self-determination. This position was challenged by the PIP, who maintained that all three status formulas must provide for the transfer of sovereignty in order to comply with the UN resolution on decolonization.

In Puerto Rico, Senator Johnston was decidedly more conciliatory to the commonwealth and statehood proposals. The concept of Spanish as the official language for Puerto Rico was not expressly rejected and was left for future negotiation. The PPD was assured that the U.S. was sensitive to the needs of the Commonwealth government to have some input in assessing the domestic impact of federal legislation.

These hearings allowed a wider cross section of political and social forces to express their views on the proposed referendum. Carlos Gallisa, President of the Puerto Rican Socialist Party, provided one of the most dramatic moments in the hearings when he challenged the legitimacy of the referendum process Congress had devised. Gallisa called on the U.S. Senate Committee to recognize Puerto Rico's colonial status and argued that "this is of primary importance because if you disavow the nature of the problem, that Puerto Rico is a colony, then nothing will be solved by the hearings; we would be repeating the futile exercise of 1967 and would be holding the same mockery of a plebiscite." 15

Witnesses from different political sectors called for the Senate Committee to comply with international law in drafting the referendum bill. Gallisa called upon Congress to comply with resolution 1514 (XV), which he referred to as the "Magna Carta of Decolonization." Nora Matías Rodriguez, President of the Colegio de Abogados de Puerto Rico, asked that U.S. Senate Bill 712 be amended to provide for a constituent assembly that would draw up an alternate proposal conforming to internationally accepted standards of self-determination. She called upon the U.S. government to "renounce all power and authority exerted over Puerto Rico, transferring [it] to the people of Puerto Rico in an unconditional manner and with no reservations." She warned that "the process of decolonization should be carried out free of any ... interference by colonial powers." 16

July 11, 13 and 14: Back on Capitol Hill

The hearings held in Washington gave the Bush Administration an opportunity to present its reactions to the three status formulas. Serious reservations were expressed about each of the options, although Administration representatives reaffirmed President Bush's preference for statehood.

Virtually all the elements of the "enhanced commonwealth" proposal were challenged. State Department representative Mary V. Mochary argued that the enhanced commonwealth proposal would create an unprecedented political status and "would grant to Puerto Rico significant attributes of sovereignty which would be incompatible with remaining part of the United States." The Department, she declared, objected to delegating Puerto Rico authority vested in the Executive Branch by the U.S. Constitution and the PPD's proposal for Puerto Rico to enter into international agreements was "most objectionable." She testified that as "long as Puerto Rico enjoys a status less than that of independence," it could not gain greater freedom to participate in international organizations than it is currently permitted. 17 The Bush Administration reaffirmed the U.S. Senate Committee's opposition to "enhanced commonwealth."

The Bush Administration reacted most favorably to the statehood proposal, and its officials repeatedly noted the statehood option posed the least difficulty with respect to the issues of concern to the Executive Branch. Nonetheless, objections were raised to proposals for the use of Spanish in the U.S. District Court, the matter of excise taxes, tariffs on imported coffee, the 200-mile jurisdiction of territorial waters, and the provision for Congress to enact an omnibus bill to "ensure that the people of Puerto Rico attain equal social and economic opportunities with the residents of the several states." Despite these concerns, the statehood proposal received a very favorable review by the Bush Administration, which chose not to raise explicit objections to recognizing Spanish as an official language of Puerto Rico. 18

While the Administration was not dismissive toward the PIP proposal, it left little doubt that a demilitarized Puerto Rico was unacceptable. Brigadier General M.J. Byron asserted in his testimony that, "the Department of Defense considers Puerto Rico as a strategic pivot point of major importance to U.S. national security..." and strongly recommended that the seven military installations in
Puerto Rico (including the huge Roosevelt Roads complex) be retained.

Although he did not categorically reject the PIP's request for the U.S. to recognize "the right of the people of Puerto Rico to strive toward the total demilitarization of its territory," Byron cautioned that such a policy would involve degradation of U.S. military capabilities and impose enormous financial costs on the federal government.\textsuperscript{19} U.S. State Department representative Mochary was more blunt in her testimony, stating that, "Owing to the strategic importance of existing military installations and operations in Puerto Rico," the provision calling for the Republic of Puerto Rico to close its territory to any and all military forces of foreign nations was "directly at odds with U.S global military interests.\textsuperscript{20}

But, it was Senator Johnston who got to the core of the issue when he admonished: "We must ensure in an independence situation ... that Puerto Rico would not become a Soviet base or a Cuban base.\textsuperscript{21}

**Dynamics of the Senate Bill**

The U.S. Senate Committee revised each of the three proposals and approved S.712 by a slim margin of eight to eleven on August 8, 1989.\textsuperscript{22} Legislative activity, however, has been unusually slow and marred by frequent claims that the PPD is relying on its allies in the U.S. Congress to derail the status legislation. Senator Johnston has been visibly annoyed at the Bush Administration's laggard response to his request for reports and position papers, and with the seeming procrastination by its interagency task force to exercise leadership in the referendum process. Serious Congressional divisions on key provisions of S.712 threaten to scuttle the referendum.

**The Legislative Process**

S.712 was submitted to the U.S. Senate Finance Committee, chaired by Senator Lloyd Bentsen (Dem.-Texas), the 1988 Democratic candidate for Vice-President. But the Finance Committee waited until November 15, 1989 to hold hearings on the revenue and expenditure effects of S.712. Puerto Rico's political party leaders essentially reaffirmed the economic provisions of their original proposals. The Finance Committee may hold an additional hearing before drafting a revised version of S.712.

Despite pressure from Senator Johnston, Ron de Lugo (Dem.), Delegate to the U.S. Congress for the Virgin Islands, who chairs the U.S. House Insular and International Affairs Subcommittee that has jurisdiction on the referendum, failed to introduce legislation in 1989. De Lugo has held hearings in 1990 thus far in Washington, DC, Puerto Rico and announced that he will hold one in New York City. He also observed that the referendum bill was bogged down in the U.S. Senate. Assuming that the Subcommittee does introduce a bill, it is expected to differ significantly from S.712. A conference committee will have the difficult task of writing a compromise measure before submitting the revised bill to the full Congress for a vote.

Congressman Ronald Dellums (Dem.-California) introduced a House Joint Resolution "to submit to the Puerto Rican electorate in a referendum...the offer of full empowerment to a Constitutional Assembly elected by the people of Puerto Rico..." The resolution calls for the Legislative Assembly of Puerto Rico, and not the U.S. Congress, to conduct the referendum. It requires the Legislature to "guarantee the proportional representation of all political parties and independent slates that present candidates to the Constitutional Assembly.\textsuperscript{23} The resolution is an attempt to be consistent with the principle of self-determination as specified in the UN resolution 1514 (XV) and concurs with the Colegio de Abogados de Puerto Rico's position on decolonization. The Dellums resolution has been bottlenecked in the U.S. House Subcommittee on International Economic Development and Trade since April 4, 1989.

**Self-Executing Provisions**

The self-executing provision of S.712 is the most troublesome feature of the bill for Congress. According to this provision, the status option that obtains a simple majority of the Island vote will automatically go into effect within a period specified in the legislation, with no further congressional action required.\textsuperscript{24} Immediately after the bill was approved by the Johnston Committee, House Speaker Thomas Foley (Dem.-Washington) questioned whether Congress can commit itself to a prospective act that accepts the referendum results as binding upon their certification, "rather than a two-stage process where we hear the results of the Puerto Rican plebiscite and then commit ourselves...to reflecting those wishes in legislation.\textsuperscript{25}

The U.S. House leadership announced it would not introduce S.712 because of its self-executing provision. Virgin Islands Delegate de Lugo insisted that the three Puerto Rican political parties drop the provision as a condition for his Committee to introduce a House referendum status bill. However, because of intense opposition by the PNP, he may decide to permit each of the parties to submit its own bill. But, he is insistent that "self-execution doesn't have a chance.\textsuperscript{26} This development did not surprise Ruben Berrios, who has maintained all along that the provision would commit Congress to granting Puerto Rico statehood if its people chose this option, something he is certain Congress will not permit.
Eliminating the self-executing provision raises the obvious concern that the U.S. government could seek further changes and impose additional conditions before certifying the status option chosen by the Puerto Rican people. To include a requirement that Congress not legally commit itself to automatically accept the referendum results would appear to violate the clause in S.712 that stipulates the U.S. "recognizes the principle of self determination and other applicable principles of international law with respect to Puerto Rico." The Puerto Rican political party leaders contend that without Congress’ prior commitment to accept all the provisions of the winning option, the plebiscite would be a mere "beauty contest."27

Costs of Status Change

Puerto Rican independence and commonwealth advocates, as well as some members of Congress, contend that S.712 is unbalanced because it "front loads" or gives more economic advantages to the statehood option. Hernández Colón insists that by providing for a marked increase in benefits to impoverished Puerto Ricans once the Island becomes a state, the pro-statehood PNP's prospects for victory are significantly enhanced. In an arrant attempt to counter this bias in the bill, Governor Hernandez Colón pleaded before the Senate Finance Committee for an additional $2 billion in increased federal transfer payments for the enhanced commonwealth proposal. A San Juan Star article in November 1989, reported that:

Rubén Berrios, President of the Puerto Rican Independence Party, was particularly vehement, warning Congress against giving Puerto Rican residents "a cornucopia of (federal funds) if they vote for the present status of political subordination."

Yet, a Congressional Budget Office report, released on November 2, 1989, estimates federal payments for all entitlement programs would increase substantially under statehood. Federal average monthly adult public assistance payments are currently capped at $32, and are expected to jump to $360 if Puerto Rico becomes a state. In addition, total federal costs were estimated at $9.3 billion for the four-year transition period before Puerto Rico is absorbed into the federal tax system. Committee member Senator Malcolm Wallop (Rep.-Wyoming) reacted that S.712, "...misleads the people of Puerto Rico by inducing beneficiaries of various programs to vote for statehood in order to obtain immediate increases in welfare benefits---even though within a few years the loss of the special tax programs could mean a massive loss of jobs and greater impoverishment of the Island."30

The Future of Section 936

As has been already pointed out, economic considerations have been at the center of the public hearings and negotiations on the proposed referendum. In particular, the future of Section 936 has transfixed the Puerto Rican leadership, the U.S. Senate Committee and the Bush Administration.

Section 936 of the Internal Revenue Code is a complex fiscal measure that essentially permits U.S. corporations with subsidiary branches in Puerto Rico to repatriate earnings derived from these operations without paying taxes to the federal government. Section 936, when combined with the generous industrial incentives, including tax exemptions and low wages provided by the Commonwealth government and Puerto Rican labor, has converted the Island into an incredibly profitable investment site for international conglomerates. In the pedestrian words of Treasury official Kenneth Gideon, "Because Puerto Rican tax law provides generous exemptions to certain business operations there, Section 936 corporations enjoy a low aggregate effective tax rate."32
Why did the Puerto Rican Independence Party (PIP) call for a twenty-five year phase-out of Section 936 instead of its elimination? Simply put, because the multinational corporations that migrate to Puerto Rico are the mainstay of the economy. These multinational corporations are primarily in the pharmaceutical, scientific instruments and electronics sectors; however, labor-intensive textile and apparel industries also benefit from Section 936 tax credits. According to a recent report by the Puerto Rico, U.S.A. Foundation (a lobbying organization in Washington representing more than 70 corporations with operations in Puerto Rico), approximately one-third of the Island’s employment is directly or indirectly related to these 936 corporations.33

Moreover, these corporations are crucial to the Puerto Rican financial sector. Funds deposited by Section 936 corporations account for approximately 41% of the commercial bank deposits on the Island.34 Loans financed by these deposits are expended for mortgages and government development projects, and thus furnish capital to the vitally important and locally-owned construction industries.

In reality, Puerto Rico’s economy is excessively dependent on Section 936, a provisional fiscal mechanism that was devised by Congress and is subject to its review and cancellation. Because these corporations are crucial to the economy, any phase-out of the Section 936 credit will result in major dislocations for the Puerto Rican people. Given this, it is not surprising that the leadership of all the Island’s political parties aggressively petitioned Congress and the Bush Administration to retain, or failing this, to agree to a slow and gradual phase-out of Section 936.

The U.S. government is acutely aware of the significance of Section 936 tax credits to employment and investment on the Island. According to U.S. Treasury official Kenneth Gideon, "a phase-out of Section 936 would cause economic dislocation in Puerto Rico," and will result in many firms leaving the Island.35 Nonetheless, since 1976 the U.S. Treasury Department has attempted to persuade Congress to rescind the Section 936 tax credit as a way of reducing the federal deficit.

Although defeated by monumental lobbying efforts in 1976 and 1985, the Treasury has, with its revenue-enhancing allies in Congress, systematically chipped away at Section 936 and diminished its profit-enhancing value. In its annual reports on the "possessions corporation system of taxation," the Treasury argues that Section 936 is a giveaway for the multinational corporations and that the U.S. Treasury foregoes billions of dollars in lost revenue as a result.36

The referendum bill provided the U.S. Treasury Department an opportunity to advance its goal of eliminating Section 936. Treasury apparently persuaded Senator Johnston that provisions for an accelerated phase-out of Section 936 benefits should be included in the statehood and independence options.37 In the hearings in Puerto Rico, Senator Johnston was most insistent that the provision for a twenty-five year phase-out (which all the parties supported) was unacceptable. He demurred that, "The desire in eliminating the 936 funds is because people think that it is an expense for the Treasury of the United States."38 (author's translation) Johnston also concluded that,

It is a problem of having your cake and eating it too. You see, each of the three statuses has stated its wish list of what they want. And each wants all aspects ... I mean the statehooders want all the benefits of commonwealth, Section 936 and all the goodies. Independents, they want all of the obligations that the United States has assumed toward Puerto Rico.39

While Section 936 is seen in Washington as a form of subsidy for Puerto Rico detrimental to the federal treasury, in reality Section 936 is a subsidy for U.S. multinational corporations. The 936 corporations are criticized for transferring their overseas profits to Puerto Rico and claiming them as income derived from their subsidiary operations in the Island. Most observers feel the fate of Section 936 will be determined by the U.S. Senate Finance Committee that is expected to submit a revised referendum bill sometime in 1990. This committee will no doubt be barraged by the Puerto Rico, U.S.A. Foundation, the leadership of the Puerto Rican political parties, and their congressional allies, all of whom will demand more generous phase-out arrangements for Section 936.

The Bottom Line

Jibaro Statehood Impossible

As stated earlier, the pro-statehood PNP obtained U.S. Senate Committee approval for most of its proposals, although in modified form. S.712 retains the current favorable tax treatment until January 1, 1994 and requires a five-year phase-out of Section 936. Federal transfer payments would increase immediately upon certification as a State of the Union because Puerto Rico would receive equal treatment under the Constitution.

But the PNP lost on the crucial issue of U.S. "guarantees" to preserve Puerto Rico’s language and cultural traditions. The U.S. Senate Committee rejected the sections recognizing Spanish and English
as official state languages, and Puerto Rico's "... right to preserve and enhance its rich Hispanic culture." In reaction, Rodríguez Matías of the Colegio de Abogados declared before the UN Committee of 24 that, "This violates the fundamental right of any people to maintain its individuality and cultural characteristics."

The PNP, which has always been vulnerable to the charge that statehood would result in the destruction of Puerto Rico's unique cultural attributes, had clearly included these provisions to assuage voter anxiety. Gerda Bikales, founding member of the "U.S. English" movement, revived this apprehension when she testified before the U.S. Senate Committee that it was incumbent upon Congress to include provisions in the bill for informing Puerto Ricans "that statehood implies a transition to English as the official language of government." In the March 2, 1990 hearing of the U.S. House Subcommittee on Insular and International Affairs in Washington, DC, Romero Barceló testified that the PNP would no longer insist on Spanish as the official language of Puerto Rico under statehood. He concluded that current U.S. laws on freedom of speech guarantee that the use of Spanish under statehood would be protected for local matters.

**A Diluted Enhanced Commonwealth**

The U.S. Senate Committee rejected 17 of the 20 provisions in the PPD's proposal for "enhanced commonwealth." In fact, the Committee concluded, "If enhanced commonwealth is certified, the relationship between Puerto Rico and the United States remains essentially the same." Senator Johnston objected to the section of the PPD's statement of purposes that referred to the Puerto Rican people as having "adopted in their own sovereign right their own Constitution and formed an autonomous political community in permanent union with the" U.S. It seemed Hernández Colón was saying Puerto Rico was sovereign and autonomous, which are unsustainable conditions since the Island is an unincorporated territorial possession of the U.S. subject to the U.S. Constitution. The PPD was compelled to substitute a statement on the principles of commonwealth that expressly acknowledged United States sovereignty over Puerto Rico.

The PPD also sought assurances on Section 936. However, U.S. Treasury official Kenneth W. Gideon instructed Congress that it "should make clear that tax benefits such as section 936 cannot be regarded as benefits that will last indefinitely," but as incentives for investments subject to Congressional revision.

The PPD always chafes with discontent when the U.S. applies legislation and regulations that interfere with the Commonwealth's management of the local economy. In order to limit the scope of federal intervention in this area, the PPD requested a partial veto of federal statutes. Hernández Colón requested authority to notify Congress as to the inappropriateness of U.S. laws, with the President being given the power to declare such laws inapplicable if Congress did not issue a specific finding within sixty days. This move toward "enhanced autonomy" was rejected by the Senate Committee on a variety of grounds, including violation of the principle of separation of powers. On this issue, S.712 merely extends the Commonwealth government to ask Congress to reconsider the applicability of federal laws and establishes a complex legislative procedure that extends Congressional oversight into Puerto Rican affairs.

**Derailing Independence**

The independence proposals were also systematically weakened. The PIP had requested a twenty-five year transition period for phasing out Section 936. But the U.S. Senate Committee recommended termination of the tax benefit upon proclamation of independence. The PIP also wanted to establish unrestricted free trade between the Republic of Puerto Rico and the United States for twenty-four years. The U.S. Senate Committee rejected this proposal for preferential trade relations. Bill S.712 (Section 305) simply calls for a Joint Transition Commission under the independence option to develop provisions for governing trade relations, merely committing Congress to consider negotiating mutual free trade relations.

To be economically viable, an independent Republic of Puerto Rico will require U.S. assistance for an extended period. The PIP requested federal block grants that amounted to the "aggregate funding of all programs" Puerto Rico currently receives, for a period of ten years, followed by a ten-year phase-out. The U.S. Senate Committee consented to provide federal block grants for a period of nine years, the amount to be negotiated by the Joint Transition Commission, but estimated at $3.8 billion annually.

Given these conditions, it seems likely an independent Republic of Puerto Rico will experience major economic dislocations. With the immediate termination of Section 936, such a Republic's capacity to retain multinational corporate investments would be seriously impaired. For many, the U.S. government has, by rejecting the economic proposals in the independence option, openly repudiated its obligation to provide compensation for ninety-one years of colonial administration. If Congress retains the economic provisions in S.12, they will doubtlessly frustrate efforts by a Republic of Puerto Rico to
engineer a gradual transition from a dependent colony to viable independent republic.

In addition, the defense provisions imposed by the U.S. Senate Committee undermine the principle of sovereignty that was the linchpin of the independence proposal. Congress requires specific arrangements for the use of military installations and territory that would "come into effect simultaneously with the proclamation of independence." These include unrestricted access to existing military facilities, an agreement to deny third countries use of Puerto Rican territory for military purposes without U.S. authorization, and an agreement that these conditions are subject to change only by mutual agreement pursuant to specific Congressional legislation. Congress has made certification of independence contingent on resolving these military preoccupations to the satisfaction of the U.S. Joint Chiefs of Staff.

The Colonial Bias

The revisions to the original S.712, imposed by the U.S. Senate Committee and the Bush Administration, will decisively influence the referendum results. Popular support for the PIP option will be seriously impaired if independence is perceived to mean future economic deterioration. Similarly, the PPD's prospects may have been damaged by its humiliating failure to obtain changes to the Puerto Rico Federal Relations Act, which would have bestowed a modicum of autonomy to the Commonwealth government.

On the other hand, statehood now, more the ever, appears to be a realistic option that enjoys support in the highest levels of the Bush Administration. Prior to the hearings, popular skepticism was widespread about U.S. willingness ever to accept Puerto Rico as a state. While the doubt still lingers, the Bush Administration's open endorsement for statehood and the increased federal transfer payments Puerto Rico would receive as a state, fortifies the PNP's electoral prospects, whether or not the referendum is held.

The hearings demonstrated the U.S. government's resolve to safeguard its security interests and to avoid incurring additional financial obligations. S.712 reveals that, while the U.S. government symbolically acknowledges the right of the Puerto Rican people to self-determination, in reality it intends to closely regulate the referendum process. Disputes would be mediated by the federal courts, the political campaigns would be financed by Congress, a referendum information officer would be appointed by the President of the United States, and United States Marshalls will monitor the referendum.

Given the history of FBI activities against independence advocates and socialists, this provision has caused alarm among some Puerto Ricans. Roberto Roldan-Burgos, General Coordinator of the Puerto Rican Institute of Civil Rights, expressed the concerns of many independientistas when he testified that:

FBI and U.S. marshalls committed many civil rights abuses during the operation of August 30, 1985, in which the alleged macheteros were arrested. It should be ensured that there is no such intervention or persecution during this referendum process.48

The entire process resulting in S.712 was carefully orchestrated by the U.S. Senate Committee to limit discussion to a manageable, self-selected group of political elites and policy makers. The political party leaders did not hold conventions or meetings of their membership to discuss the status options and rules for conducting the referendum.49 Substantive negotiations have been, and will continue to be conducted beyond the scope of public inquiry and participation. While the hearings in Puerto Rico gave the impression of open dialogue, this was not a substitute for a comprehensive and genuinely open discussion of the complex legal and political issues that a status referendum entails. Nonetheless, since the hearings were televised, they were an important vehicle that enlightened the Puerto Rican population about the colonial nature of the referendum process.

It would appear the Puerto Rican Independence Party (PIP) has paid a high price in order to participate in the referendum. It includes its agreement to relinquish Puerto Rico's sovereign right over the use of national territory and to negotiate defense and security arrangements with allies of its own choosing. In a 1977 report on decolonization, the Colegio de Abogados de Puerto Rico argued that, "...the unconditional maintenance of U.S. military bases in Puerto Rico decisively affects the process of self determination."50 The Colegio reaffirmed this position in its testimony before the UN Decolonization Committee in August 1989.

By conceding sovereignty over natural territory to the U.S., it could be said that the PIP has been an accomplice to an act that deprives Puerto Rico of its "right to self-determination and independence."51 Even PIP Vice-President Fernando Martin has referred to S.712 as a "flagrant breach of the minimal norms of international law on decolonization," and stated the military provisions "grotesquely" condition the independence option.52 Why, then, does the PIP continue to participate in the referendum process?  

The PIP says the referendum is "an instrument that can create positive conditions for an authentic decolonizing process in the future."53 It is certain the
U.S. will not grant Puerto Rico statehood and cites the U.S. House of Representatives' rejection of the self-executing provision as an indication of this. Moreover, Ruben Berrios contends that the referendum process has discredited the Commonwealth status and eroded the the PPD's electoral prospects. He adds that "the plebiscite process and the participation of the PIP has led the United States --- voluntarily or by accident --- to begin to legitimize independencia before the people, giving it political credibility and economic viability to those Puerto Ricans who are not independenstas." In the first hearing of the House Subcommittee on Insular and International Affairs, the PIP also reaffirmed Puerto Rico's right to secede under statehood.

The View of Socialists and other Independentistas

It is important to realize the PIP does not represent all the political tendencies and social movements that are calling for Puerto Rico's independence. Since January 17, 1989, when the three political parties called for a consulta, the position of some sectors of the independence movement not affiliated with the PIP has undergone a gradual transformation.

The Socialist Reaction

For many socialists and independenstas, the hearings were clearly a calculated political exercise designed to portray the U.S. in a favorable light in the decolonization hearings in the United Nations this past August. In their testimony before the Senate Committee, Juan Mari Bras and Carlos Galllisa (of the Puerto Rican Socialist Party), the two major figures in the Puerto Rican socialist movement, supported the PIP's participation in the referendum process. However, each rejected S.712 as an exercise in colonial intervention orchestrated by "pro counsels." They called for a transfer of sovereign powers to the Puerto Rican people as a precondition to conducting a legitimate referendum. Mari Bras, president of Causa Comun Independenista, objected that the U.S. Senate Committee arbitrarily stipulated the conditions it would accept for each of the status options.

During an August 12, 1989 march at the United Nations organized by pro-independence organizations, a diverse group of speakers called for a boycott of the "false referendum" and demanded a UN-defined and supervised plebiscite under the requirements of international law. The conditions for a legitimate referendum, according to the organizers, include: 1) the prior transfer of all sovereign powers to Puerto Rico; 2) the release of all political prisoners prior to the transfer of powers; 3) the withdrawal of all U.S. troops; 4) the participation in the referendum of all Puerto Ricans whether living on the Island or in the United States; and 5) U.S. economic reparations "necessary for the transition from colonialism to independence."

On July 30, 1989, six Puerto Rico-based leftist groups publicly rejected the U.S. Senate-devised referendum process as unacceptable for failing to comply with international law. But the group did not call for a boycott at the time, since it was felt this would divide the independence movement and undermine the position of the PIP. Rather, they called for grassroots organizational work, continuous agitation against S.712, and coordinating the activities of anti-colonial groupings in order to pressure the United States to accept international standards and permit Puerto Ricans to undertake a genuine decolonization process.

Since then, some sectors on the left have spurned the PIP for its continued involvement in the referendum process. Pensamiento Crítico, an important journal of leftist political thought in Puerto Rico, criticized the PIP for deluding itself into thinking that independence could be achieved through the ballot box. They argued the PIP is organizationally weakened and increasingly divorced from popular and community-based movements as a consequence of its referendum activities.

Conforming to International Law

During hearings, the U.S. Senate Committee and the Bush Administration expressed hostility to the concept of transfer of powers, dismissed alternative referendum proposals, argued that the proposed referendum complied with international law and challenged the moral and legal authority of members of the UN Committee of 24 to rule on the issue of democratic self-determination for the people of Puerto Rico. U.S. Senator Johnston has concluded that,

The United Nations' resolutions may reflect international law, but they do not rise to the status of international law. International law is a body of rules devised over the years, and it is not a statutory group of laws enacted by the United Nations.

Ironically, while the U.S. Senate Committee imposed this limitation on the applicability of UN resolutions, the U.S. State Department frequently but selectively, cites the 1953 UN resolutions (that have since been superseded) to document the U.S. position that Puerto Rico is not a colony. The U.S. Senate Committee ultimately rejected "international monitoring of the referendum because Puerto Rico's political status is an internal United States matter." For these reasons, among others cited above, the current referendum bill is seen by proponents of independence, and even PPD adherents, as a violation of international law with
The insistence of the United States to retain its military installations in Puerto Rico under the independence formula is a violation with respect to the territorial integrity of the people according to resolution 1514(XV) of the United Nations. United States insistence in maintaining its military installations in Puerto Rico against the will of the Puerto Rican people is cause for alarm.

The Colegio de Abogados de Puerto Rico has issued numerous reports during the last twenty-six years on various aspects of Puerto Rican-U.S. relations and the constitutional status of the Puerto Rican people. It has consistently called for the implementation of a decolonization process that conforms to international law.

In the U.S. Senate hearings held in San Juan, Rodriguez Matías criticized S.712 because in redefining each of status options, the Senate Committee violated the principles of self-determination. She called for a new bill that would include the following provisions: 1) that each status option provide for the sovereignty of the Puerto Rican people; 2) that the U.S. renounce the power and authority it exercises over Puerto Rico; 3) that the U.S. unconditionally transfer these powers to the Puerto Rican people; 4) that the decolonization process be free of pressure and interference, including removal of military forces, to permit equal participation by all sectors; and 5) that the United Nations supervise the referendum.61

PRO-ELA, a self-declared non-partisan organization that promotes autonomy for Puerto Rico, testified, "...if the referendum is held outside the norms of international law ... [it] should be condemned by the [UN] Committee as yet another attempt to circumvent the inalienable right of the Puerto Rican people to self-determination." The socialist and independence representatives similarly denounced the palpably colonial elements of the U.S. Senate Committee bill.

The United States did, however, score an important victory at the UN. Puerto Rican independence advocates were certain that more UN Committee of 24 members would endorse a Cuban draft resolution on the decolonization of Puerto Rico than in previous years.63 Venezuela was expected to cast the decisive vote that would have set the context for a possible ratification of the resolution when it would be brought before the Committee of 24 again in 1990. However, in a demonstration of the significance the United States truly attaches to the UN hearings, it appears that Venezuela bowed to pressure from Washington and abstained from voting. Independence forces were dismayed at Venezuela’s decision to do so on the grounds that it would be premature for the UN Committee of 24 to declare Puerto Rico a colony, given the ongoing referendum process.64

According to Freddy Muñoz, General Secretary of the Venezuela Socialist Movement, "the first reason to consider for the abstention was that the United States and Governor Hernandez pressured Venezuela.65 This recent incident suggests the United States is still compelled to exert its diplomatic weight to combat growing international pressure to declare Puerto Rico a colony and thus be forced to relinquish its sovereignty over the Island.66

The Consequences to Date

The referendum process has been an event of vital consequence for the independence movement in Puerto Rico. It has rekindled a debate that has been dormant and has unified diverse political tendencies in opposing colonial rule. Popular reaction against the referendum increased and support for independence has widened, as attested to by the unprecedented anti-colonial march of 70,000 to 80,000 puertorriqueños in San Juan on June 17, 1989 during the U.S. Senate hearings. Because of its role in the referendum process thus far, the Partido Independentista Puertorriqueno appears to have gained prestige as a pragmatic political organization, whose leadership is sophisticated and able to negotiate effectively with Washington.

Domestically, the ongoing status debate has reinforced the sense of cultural identity and historical resonance of the U.S.-resident Puerto Rican population. Ignored and systematically marginalized, Puerto Ricans have attained a new political visibility. Puerto Ricans in the United States have demonstrated their keen interest in developments on the Island and are demanding that their voices be heard on matters pertaining to the future of Puerto Rico. The Puerto Rican political leadership on the Island has been forced to contend with the reality that they must acknowledge the important role of the exile Puerto Rican population in any process that may lead to a redefinition of Puerto Rico’s political status.

In recognition of this reality, the U.S. House Subcommittee on Insular and International Affairs recently announced plans to hold a hearing on June 8, 1990 in New York City in East Harlem (El Barrio). According to the press release announcing this hearing.

...de Lugo (Chair of the subcommittee) pointed
out that, contrary to a published report in San Juan, Congress has not "dismissed" a proposal for Puerto Ricans in the United States to vote in the referendum. The issue has not been addressed yet.\(^67\)

Despite these important political and social by-products, many Puerto Ricans on the Island feel that the status debate has resulted in a lamentable consumption of political resources and intellectual talent that could be better used to address the deplorable human conditions on the Island. The redistribution of political resources and the feeding of deeply rooted human conditions on the Island has distracted attention from the genuinely critical issues that the status debate has resulted in a lamentable distraction from the seriously deteriorating social institutions.

For these Puerto Ricans, the status debate has distracted attention from the genuinely critical issues that threaten the decomposition of society and it has consumed the government and political leadership from responsibly addressing these matters. Moreover, they point out that important victories in civil rights, working conditions, housing, environmental protection, and other critical areas, have been achieved through political organizing and struggle, and not through the ballot box. Whether the crisis that confronts Puerto Rican society is a function of colonialism, symptomatic of a wider process of social and ecological deterioration typical of modern societies, or a combination of both, is of secondary concern for this sector of the Puerto Rican people. What is in doubt is the seriousness of the United States claim to be willing to relinquish its colonial grasp over Puerto Rico.

These concerns are particularly relevant since there is a growing realization that it is doubtful the referendum will be held, given Congressional degradation of the status formulas and the feuding between U.S. Senate and House Committees over the final version of bill.\(^68\) But if it is held according to the conditions set by S.712, it appears that one or more of the three parties will boycott the referendum, thus discrediting the outcome.

A referendum that fails to respect the principle of self-determination will lack any legitimacy and undoubtedly fail to resolve the Island's colonial status. Nonetheless, the U.S. will no doubt attempt to portray the results in the international arena as a free and binding decision by the Puerto Rican people in support of either annexation or colonialism. Doubtless, the issue of Puerto Rico will continue before the UN. In this context, given the intensity of Puerto Rican nationalism that crosses all party lines, the U.S. government might ponder Carlos Gallisa's alarm:

If...you insist on asserting the colonial rule or in forcefeeding us the culmination of that rule which is statehood, you would find yourselves not with a 51st state, but with a Northern Ireland within your confederation.\(^69\)

The unanswered question is whether the U.S. government is willing to orchestrate a charade that leaves unresolved the very problems that have compelled it to address the crisis of colonialism in the first place. The dilemma of whether to participate in the referendum or to repudiate it as an exercise in imperial manipulation is under intense debate within the independence movement. Some within the movement see independence as a historical inevitability and define their task as one of pressing the U.S. government to recognize the existence of the Puerto Rican nation and to accept the impossibility of harmoniously integrating the Island and its people into the metropolis. In the long term, it may be in the best interests of the U.S. government to devise a decolonization process that truly respects the principles of self-determination for Puerto Rico.

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\(^{67}\) The political parties and their presidents were: Ruben Berrios Martinez, Partido Independentista Puertorriqueno (PIP - independence); Rafael Hernandez Colón, the Partido Popular Democratico (PPD - commonwealth); Baluasar Corrado del Río, Partido Nuevo Progresista (PNP - pro-statehood).

\(^{68}\) The transcript of the letter appeared in Claridad (January 19-25, 1989).

\(^{69}\) Hernández Colón has stated that, "Due to our unique relationship with the United States, Puerto Rico has no participation in the making of laws that apply to us. A lack of democratic legitimacy to the application of those laws is a basic problem in the political structure of the Commonwealth we have long been aware of since 1952." (San Juan Star, February 26, 1989)


8. Garcia writes that, ... a mediados de la decada de 1980 empieza a hacerse visible el inicio del debate interno en la metropolis sobre el timorreo de la colonia hacia la independencia." (El Nuevo Dia, May 20, 1989).

9. "Independencia y plebiscito," Claridad (October 20-26, 1989); also in El Nuevo Dia (October 8, 1989).


11. Editorial, Caribbean Business, December 7, 1989. As another observer melodramatically put it more recently,

A restless traveler, the tall, dark-haired Hernández Colón frequently buzzes around the island in a National Guard helicopter when he's not off wooing politicians in Washington, attending Latin American inaugurals, luring investors in Tokyo, or jetting to Malcolm Forbes's birthday party. In December 1988, he skipped the year-end fiestas that fill Puerto Rican plazas to stroll alone on the Scottish moors and contemplate the narrowness of his recent re-election. There he reached a momentous decision: to call for a plebiscite (now set for 1991) to decide if Puerto Rico should declare independence, become the 51st State, or retain ... albeit in a more precisely defined and updated form ... its singular status as a commonwealth.


12. By this time, Baltasar Corrada del Rio had been deposed as President of the PNP by ex-Governor Carlos Romero Barcelo.


15. Hearings, Vol. 2, pages 137-139. Gallisa was referring to the plebiscite of 1967 that was boycotted by the PIP. The crucial difference between the 1967 plebiscite and the proposed referendum is that the former was not proposed nor managed by the Congress.


18. For a strident anti-statehood position of a sector of U.S. conservatives that includes White House Chief of Staff John Sununu, see Patrick Buchanan's February 26, 1990 column in the Washington Times.


22. The legislation discussed in this article is S. 712, "A Bill To Provide for a Referendum on the Political Status of Puerto Rico" (101st U.S. Senate, 101st Congress, 1st Session, September 6, 1989).

24. Each of the options has a specific date on which the new status will be proclaimed.


27. *San Juan Star* (December 20, 1989).


36. To date, six reports have been issued, the most recent in March 1989. Treasury estimates the annual tax benefits at $1.9 billion for the 936 corporations. See note 14 above.


40. U.S. Senate Committee on Energy and Natural Resources, "S-712, Title II, Section 17" (April 5, 1989).


44. *Report*, page 60.


46. The PPD substituted the following statement that affirmed Puerto Rico's subordination to the U.S.: "The Commonwealth of Puerto Rico is a self-governing body politic joined in political relationship with the United States and under the sovereignty of the United States. This relationship is permanent unless revoked by mutual consent." U.S. Senate Committee on Energy and Natural Resources, "S-712, Title IV Section 402" (April 5, 1989).


49. Juan Manuel Delgado, of the Comite Anti· Plebiscito, presented a particularly forceful denunciation of the anti-democratic practices that have characterized the referendum process. He observed the referendum process has been rushed through so quickly that it has prevented serious analysis and reflection by the people of Puerto Rico. See United Nations General Assembly Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Verbatim Record, 1359th Meeting (August 17, 1989). "UN Hearings" in subsequent references.


52. Written Statement, UN Hearings.


55. Humberto Garcia Muñiz has pointed out that neither the PNP nor the PPD represent all the statehood and autonomy-commonwealth sectors.

56. Puerto Rico Libre (July/August 1989).


58. No. 2 (November 1989).


61. UN Hearings (A/AC.109/PV, 1356), pages 9-10.

62. UN Hearings (A/AC.109/PV, 1356), page 19.

63. As it has every year since 1960, Cuba drafted and sponsored the following resolution this year: "The Special Committee reaffirms the inalienable right of the people of Puerto Rico to self-determination and independence, in conformity with General Assembly Resolution 1514(XV) of 14 December 1960, and the full applicability of the fundamental principles of that resolution with respect to Puerto Rico."

64. Testimony of Pulido Santana, Venezuela's representative to Committee of 24, UN Hearings (A/AC.109/PV.1359), page 91.

65. San Juan Star (August 18, 1989).

66. Robert Pastor notes that,

Few domestic issues have consistently generated as much international debate as that of Puerto Rico. It has been on the UN agenda since representatives of the Puerto Rican Nationalist Party went to San Francisco for the signing of the UN Charter in 1945. Although the U.S. Government may have convinced itself that it removed Puerto Rico from the international agenda in 1953, few others are convinced ... The United States invests a great deal of energy, prestige and resources --- mostly diplomatic, but occasionally economic and political --- each year to try to keep from being condemned as a colonial power.


68. See, for example, José Vera Irizarry, "No Habra Plebiscito en 1991," El Diario-La Prensa (March 14, 1990), page 12.