



United States Department of State

Washington, D.C. 20520

February 11, 1991

UNCLASSIFIED
MEMORANDUM

SUBJECT: Puerto Rico: S. 244: Additional State Department
Comments

The Department wishes to supplement its comments on S.244 by noting its opposition to §403(d) of the bill, which is found in Title IV (regarding the enhanced commonwealth option). It provides as follows:

The Governor of Puerto Rico may enter into international agreements to promote the international interests of Puerto Rico as authorized by the President of the United States and consistent with the laws and international obligations of the United States.

This provision is identical in language and section number to a precursor bill -- S.712 -- which was under consideration by the Senate in 1989. In testimony of July 11, 1989 before the Senate Committee on Energy and Natural Resources, the Department of State's witness noted the Department's objection to that provision on the grounds that allowing a sub-entity of the United States to pursue its own foreign policy and international agreements derogates from the foreign relations power of the President and inescapably raises constitutional and political issues. (See testimony of Principal Deputy Legal Adviser Mary V. Mochary).

Following that testimony, the Department further explained its position in response to a Committee question submitted for the record. The Department stated:

Puerto Rico has no formal role in the formulation of U.S. foreign policy. As you know, the scope and responsibility for U.S. foreign policy formulation is described and regulated by Article II of the Constitution. In practice, the Federal Government consults with Puerto Rico on foreign relations matters which touch Puerto Rican interests, such as, for example, international trade and transportation agreements. Although Puerto Rico has, from time to time, entered into arrangements with certain foreign countries in the areas of cultural and sports exchanges, the State Department does not regard these activities as representing a "role" in the process of making and implementing foreign policy.

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The foregoing views on the former §403(d) continue to represent the Department's views on that section of S.244. We therefore reiterate our opposition to §403(d) and urge its deletion from the bill. It is possible that the drafters of §403(d) may have believed that constitutional and political issues could be avoided by using the phrase "as authorized by the President of the United States and consistent with the laws and international obligations of the United States", as a limitation on the Puerto Rican Governor's authority. However, such a limitation on the Governor's authority would not remove the fundamental constitutional and political conflicts that would be created by implementing §403(d). For instance, in the event of Puerto Rico's breach of or non-compliance with any obligations undertaken in an agreement concluded pursuant to §403(d), would the United States Government be held accountable for such breach or non-compliance by the foreign government in question? How could the U.S.G. ensure that implementation of any such agreement was consistent with U.S. foreign policy at any given point in time?

An additional reason for deleting such a provision is because it would be deceiving. As drafted, it implies that the Governor of Puerto Rico could expect presidential authorization for a significant number of agreements that Puerto Rico deems important to its "international interests." In reality, except for narrow arrangements such as cultural and sports exchanges, many proposed agreements that Puerto Rico would submit to the President for approval are likely to be disallowed for the very constitutional and political reasons underlying the Department's overall objection to §403(d). Thus, this provision would likely institutionalize conflict between the U.S.G. and Puerto Rico.

Recommendation: Delete §403(d) entirely.