Thank you for this opportunity to provide the views of the Department of Justice, and I am glad to answer any questions that you may have.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Treanor follows:]

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Mr. DOOLITTLE. Our next witness is Mr. Robert Dalton, Assistant Legal Advisor for Treaty Affairs of the U.S. Department of State in Washington, D.C. Mr. Dalton?

STATEMENT OF ROBERT DALTON

Mr. DALTON. Mr. Chairman, members of the committee, I am pleased to have this opportunity to discuss some aspects of H.R. 4751, the proposed legislation on the future status of Puerto Rico. My prepared statement has a discussion of three points and I ask that it be admitted into the record.

Mr. DOOLITTLE. Yes, without objection, so ordered.

Mr. DALTON. I will briefly discuss elements of those three points. We are concerned about the foreign relations aspect of the legislation, particularly the proposed provisions regarding Puerto Rico's ability to enter into agreements with foreign nations and participate in international organizations. The sections of the legislation that cover this are Section 2, Paragraph 5, and Section 3, Paragraph 7. We are concerned, as other members of this panel have suggested, about implications of the proposal that residents of Puerto Rico be granted U.S. citizenship under Section 2, Paragraph 1, Section 3, Paragraphs 6 and 13.

And finally, Mr. Chairman, there are constitutional issues posed by the legislation as drafted with respect to executive branch prerogatives in the conduct of foreign relations. Those provisions are Section 3, Paragraphs 17, 21, and 22.

The proposed legislation would purport to make the Commonwealth a nation legally and constitutionally and provide it with many trappings of a sovereign nation. Yet at the same time, the legislation would retain or create links to the United States that are inconsistent with sovereignty as that term is understood in international law. It is this hybrid nature of the arrangement contemplated in the legislation that renders it untenable as a functional matter.

Under our system of government, the conduct of foreign affairs is constitutionally vested in the Federal Government. Just as with States of the Union, there are many types of foreign activities in which a U.S. territory or commonwealth or State may choose to engage. At the same time, however, the Federal Government is responsible internationally for the affairs of all its territories and for the affairs of territories and commonwealths in the same way as it is for the States of the Union. It is responsible for meeting commitments and ensuring that obligations to other nations are met and that rights of the United States under treaties are formed by other countries. So the efficacy of U.S. international relations depends on the foreign activities of territories and commonwealths as well as the States fitting into the framework of an overall United States foreign policy.

It is essential that the component parts of U.S. foreign policy form a consistent and internally consistent whole. This cannot be accomplished if areas that are within U.S. control are populated primarily by U.S. citizens, conduct their own foreign affairs. It benefits neither the United States as a whole or the territories and commonwealths if the United States is perceived as speaking with many inconsistent voices internationally.

The Founding Fathers, based on the unhappy lessons learned under the Articles of Confederation, widely recognized this in framing the Constitution. The conclusion of international agreements, for example, is one of the most basic functions of foreign policy and the framers emphasized the exclusive authority of the Federal Government with respect to foreign policy functions by inserting the provisions of Article 1, Section 10, Clauses 1 and 3 in the U.S. Constitution.

The juxtaposition of these provisions and of Article 4, Section 3, Clause 2, concerning the power of the Congress to make regulations concerning the territories, raise a number of issues. Should the rules with respect to making international agreements applicable to the States be narrower than those made to the territory? How broadly should the term "agreement" in Clause 3 of Article 1, Section 10, of the Constitution be read? Would the proposed legislation with respect to the making of international agreements be an unconstitutional delegation of authority by the Congress? These are questions that are difficult.

We are concerned with such a broad obligation in the international agreement field because it risks the existence of different, perhaps conflicting obligations to foreign countries. Such cases could make it impossible for the United States to fulfill its commitments and guarantee that all of its constituent units comply with U.S. treaty obligation.

Under the current arrangements with Puerto Rico, matters of foreign relations and national defense are conducted by the United States, as they are with the States in the Union. We feel that the legislation would adversely affect that system, could result in inconsistent foreign policy commitments, and trouble our foreign relations.

In sum, Mr. Chairman, we think that the hybrid nature of the status proposed for Puerto Rico would render it impossible for the United States to maintain a unitary foreign policy with respect to all areas under is control. Therefore, we oppose the provisions of the legislation relating to the foreign affairs powers to be conferred on Puerto Rico which would be untenable functionally in the overall context of the proposed arrangement.

One of my colleagues on the panel spoke about citizenship issues, and those are the second areas in which the Department has concern. We have concern about the proposal that would legislate dual nationality for residents of Puerto Rico, since it appears to be grounded in the recognition of the conferred citizenship on citizens of another nation, which is incompatible with the notion of sovereignty. There are also problems that are explained in my testimony about the diplomatic protection of U.S. citizens who would be in Puerto Rico and the responsibilities that a United States embassy would have under U.S. law to protect those rights.

Finally, Mr. Chairman, I turn to the third question, the question of the unconstitutional delegation of executive, or the unconstitutional interference with executive prerogatives in the negotiating area. The legislation appears to dictate the size and structure of the U.S. negotiating team. It would require that the executive branch sponsor membership for Puerto Rico in international organizations. We believe that these provisions interfere with executive branch authority and we, therefore, are opposed to them.

This completes the high points of my remarks, Mr. Chairman, and I would be glad to answer any questions.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Dalton follows:]

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Mr. DOOLITTLE. Our final witness is Mr. Dick Thornburgh, who is with the firm of Kirkpatrick and Lockhart and a former distinguished Attorney General of the United States. Mr. Thornburgh?

STATEMENT OF DICK THORNBURGH

Mr. THORNBURGH. Thank you, Mr. Chairman. I have submitted a statement with attachments that I ask be made part of the record. I am obviously not a spokesman for the administration, as my predecessors were, I guess more like a member of the government in exile. Nonetheless, I am pleased to note that there is a great deal of agreement and little variance between our position on the issues that you are addressing today.

As Attorney General of the United States under President Bush, I testified before Congress nearly a decade ago on the need for a legitimate process of self-determination to resolve the political status of millions of United States citizens in Puerto Rico. I appear today as a private citizen, advising the Citizens' Educational Foundation of Puerto Rico on constitutional and self-determination issues. My views on the need for such a process, however, have only grown stronger with the passage of time and events.

I want to take note first that there is a basic fallacy at the heart of the formula set forth in H.R. 4751. The fallacy is that there is somehow a third path to a non-territorial status other than Statehood or independence that can be achieved within the framework of our Federal system of national government under the United States Constitution. Let me be direct and make it very clear. Under U.S. constitutional law and our system of federalism as a form of domestic government, there is no third path to a non-territorial status. There is Statehood and there is territorial status. Congress can be creative in how it administers a territory and Congress can grant significant levels of autonomy to a territory. However, Congress does not have the power by statute to create a new form of permanent union or political status within the union that is binding on a future Congress.

Simply put, Congress has no power to implement this formula or any formula based on the central elements of this proposal because it defines a status that is not available under the U.S. Constitution. To mislead people to believe that the only barrier to implementation of this formula is the attitude of Congress, when it is the rule of law that precludes it, merely perpetuates the colonial mentality about status options and self-determination.