**PUERTO RICO’S POLITICAL STATUS:**

**MAIN FEATURES AND SOME COMPARISONS**

**TO THE MOROCCAN INITIATIVE**

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 The purpose of this paper is to summarize the main features of the current political status of Puerto Rico and to offer some comparisons to the *Moroccan Initiative for Negotiating an Autonomy Status for the Sahara Region.* This presentation is not meant to be either an endorsement or a critique of the *Initiative.* Its aim is to supply hopefully useful information to aid in the proposal’s analysis by those responsible for the ultimate evaluation of its merits or demerits.

**Background information on Puerto Rico**

 Puerto Rico is the name given to a group of islands located between the Atlantic Ocean and the Caribbean Sea. It is roughly 4,560 square miles in size. Its population is about 3.7 million. Slightly over four million persons of Puerto Rican origin live in the United States of America.

 The country became a colony of Spain in 1493 and remained so until it was relinquished to the United States as a result of the Cuban-Spanish-American War of 1898. Spanish is the language spoken by most of the population, although English is also an official language.

 At the beginning of the 20th century, Puerto Rico was largely a rural society whose economy was based mainly on agriculture. Through a long process of social and economic change, it eventually evolved into a mostly urban population whose economy is currently based on manufacture (mainly pharmaceutical products and medical equipment), retail commerce, financial services, tourism and a substantial amount of very diverse informal economic activities. It has high unemployment and low labor participation rates. It depends on large amounts of monetary transfers in the form of entitlements and welfare benefits from the United States federal government.

**The legal Framework**

 The United States acquired Puerto Rico from Spain by virtue of the Treaty of Paris signed on 1898.[[1]](#footnote-1) Article IX of the Treaty expressly declared that the “civil rights and political status” of the inhabitants of the territories ceded by Spain “shall be determined by Congress”. Immediately upon acquiring Puerto Rico, the US established a military government which lasted two years. In 1900 the US Congress passed a statute known as the Foraker Act, which provided for a civilian government and for the basic features defining the relationship between the US and its new possession.[[2]](#footnote-2) The Puerto Rican government established by the Foraker Act consisted in a Legislative Assembly, a Governor, and a system of courts presided by the Supreme Court of Puerto Rico. The Legislative Assembly was constituted by a popularly elected lower house and an Executive Council, appointed by the President of the United States, which would perform both legislative and executive functions. The Governor was appointed by the President and acted as the representative of the US government in the islands. The members of the Supreme Court were also appointed by the President of the United States.

 In 1917, Congress passed the Jones Act, which rearranged the civilian government, providing for a popularly elected upper house, called the Senate, and extended US citizenship collectively to people born in Puerto Rico.[[3]](#footnote-3)

 From 1901 to 1922 the Supreme Court of the United States decided a series of cases relating to Puerto Rico and other territories of the US. Collectively known as the *Insular Cases*, those decisions have provided the basic constitutional framework for the current relationship between the US and Puerto Rico.[[4]](#footnote-4)

 In essence, the Insular Cases decided that Puerto Rico should be considered an “unincorporated territory” of the United States. Such a territory is defined as one “belonging to, but not a part” of the US. The Court was in fact inventing a new category in US constitutional jurisprudence, for, before those decisions were handed down, US territories had not been classified into incorporated and unincorporated ones. According to the Court, Congress has plenary powers over the territories under the Territorial Clause (Article IV, Section 3, clause 2) of the US Constitution, which provides that Congress “shall have power to dispose and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...” By virtue of that plenary power, Congress may legislate for the territories to provide for their government and other affairs. In unincorporated territories, that power is only limited by some “fundamental rights” which protect their inhabitants. The Court chose to define those rights in a piecemeal fashion, as controversies arose. It made clear, however, that the US Constitution does not apply fully to such territories. The Court also decided that the extension of US citizenship to residents of Puerto Rico did not imply that Congress was “incorporating” the territory for constitutional purposes.[[5]](#footnote-5)

 In the exercise of its plenary powers, in 1947 Congress passed legislation to allow Puerto Ricans to elect their own governor.[[6]](#footnote-6) The first elected governor took office in 1948.

 In 1950, largely as a result of internal turmoil and international pressures riding on the worldwide decolonization wave, Congress approved Law 600, which authorized Puerto Ricans to adopt their own internal Constitution.[[7]](#footnote-7) Pursuant to the terms of that statute, a constitutional convention was assembled. The convention produced a constitutional text which was submitted to and endorsed by Puerto Rican voters. As required by Law 600, the Constitution was forwarded to the President of the US, who in turn submitted it to Congress. The latter body approved the Constitution with amendments.[[8]](#footnote-8) The Puerto Rican Constitutional Convention ratified the amendments and the new Constitution of Puerto Rico was proclaimed in July 1952. The amendments introduced by the US Congress were sanctioned by Puerto Rican voters in the next general election held to elect the new government. The Constitution adopted two new official names for the Puerto Rican polity: in Spanish, it was called the *Estado Libre Asociado de Puerto Rico* and, in English, the Commonwealth of Puerto Rico.

The Constitution adopted in 1952 provides for the structure of the government of Puerto Rico as it currently exists. It contains a Bill of Rights that includes provisions guaranteeing civil and political rights similar to those found in the US Constitution and some social and economic rights, such as education and employment rights.

 Law 600 repealed all provisions of the Foraker and Jones Acts that referred to the internal organization of the Puerto Rican government, but left in effect the provisions relating to the basic relationship between the US and Puerto Rico. The latter provisions were reorganized in a new Puerto Rico Federal Relations Act, which is still in effect.

 Since its founding, the United Nations had included Puerto Rico in the list of non-self-governing territories. As a result, the United States was bound to send annual reports on Puerto Rico to the UN. It did. However, after the Constitution of Puerto Rico was proclaimed in 1952, the United States notified the UN that, since Puerto Rico had achieved a sufficient degree of self-government, the US would no longer report on its condition.[[9]](#footnote-9) In 1953, the General Assembly approved a resolution accepting the US position and relieving it from sending further reports on Puerto Rico.[[10]](#footnote-10)

**Main features of Puerto Rico’s autonomy**

1. *Powers of the Puerto Rican and US governments*

 The powers of the Puerto Rican government are not specified in any single document. They are the result of a composite of the provisions of the US Constitution, the Puerto Rico Federal Relations Act, the Constitution of Puerto Rico, relevant federal legislation and federal case law relating to state-federal relations.

 The general understanding and practice in this regard is to the effect that the Puerto Rican government may exercise general powers of government over matters relating to local taxes, the organization of state and local (or municipal) governments, Puerto Rican elections, the Puerto Rican judiciary, education, health, security, welfare, the environment, family law, criminal law, contracts, the regulation of commerce, transportation, corporations and other areas pertaining to local affairs.

 These competencies are not by any means exclusive. They may be and are conditioned by the powers of the US federal government to legislate on matters under its jurisdiction in accordance with US constitutional jurisprudence. The immense power acquired by the US federal government as a result of the US Supreme Court’s expansive interpretation of such provisions of the US Constitution as the commerce clause, the necessary and proper clause, the spending power and the military powers of the federal government has significantly eroded the local powers of the states of the Union in many areas. The US federal government, thus, has moved to regulate education, health, internal security, welfare, the environment, and other areas traditionally left to the states in the past. In practice this same effect has been visited upon the US territories, including Puerto Rico, so that many local powers have been gradually diminished. In the eyes of many observers, during the past decades, Puerto Rico has witnessed a process of increasing “federalization” of its internal affairs.

 The US government, in turn, retains exclusive control over foreign relations, military affairs, international commerce, immigration and naturalization, the currency, postal matters, maritime jurisdiction, patents and bankruptcies.

 One has to add the so called “plenary powers” of Congress which allows that body to regulate differently than in the sates matters pertaining to non-state jurisdictions, such as the territories.

1. *Internal organization*

The Puerto Rican government has a republican form, structured on the US separation of powers model.

Legislative power is vested in a bi-cameral legislature, composed of a House of Representatives and a Senate, both popularly elected on the basis of equally apportioned electoral districts. Both houses also have at-large members elected island-wide.

The chief executive officer is a Governor, popularly elected for a renewable term of four years. He is assisted by cabinet members and other heads of departments and agencies. Cabinet members and some heads of departments, known as secretaries of government, are appointed by the Governor with the advice and consent of the Senate. The Secretary of State requires the consent of the House of Representatives as well. There is a large state bureaucracy comprising numerous departments and agencies. There are also a number of independent public corporations usually overseen by a board of directors and managed by an executive director.

A Supreme Court, whose chief and associate justices are appointed by the Governor with the advice and consent of the Senate, is at the apex of the Puerto Rican judicial system. There is also an intermediate appellate court and numerous courts of first instance, whose members are also appointed by the Governor with the advice and consent of the Senate. There is a system of diffuse judicial review, which means that any judge may pass on the constitutionality of legislation and administrative actions. The Supreme Court is the ultimate interpreter of the Puerto Rican Constitution and Puerto Rican legislation.

The city of San Juan, the capital, is the seat of government.

There are seventy-seven additional municipalities, each governed by a mayor and a municipal assembly. All mayors and members of the assemblies are popularly elected during general elections for four year terms.

1. *Relations with the US Government*

The Constitution of the United States applies to Puerto Rico, with some exceptions. By virtue of Section 9 of the Puerto Rico Federal Relations Act, all federal legislation applies in Puerto Rico unless it is “locally inapplicable”, an ambiguous phrase which has never had any practical effect. In practice, all federal legislation is extensive to Puerto Rico, unless otherwise indicated by the US Congress. Treaties signed by the US are binding on Puerto Rico to the same extent that they are in the states of the Union.

By virtue of said Section 9 of the Federal Relations Act, residents of Puerto Rico are exempted from paying federal income tax, although federal social security, unemployment and other taxes are collected in the islands to the same extent as in the states. Duties collected under the internal revenue laws of the US on goods produced in Puerto Rico and transported to the United States, or consumed in the islands, are returned to the Puerto Rican government.

People born in Puerto Rico automatically become US citizens. This, however, is a statutory citizenship, conferred on Puerto Rican-born citizens by virtue of the Jones Act of 1917 and subsequent legislation, and not the constitutionally grounded citizenship acquired by those born in the United States proper.[[11]](#footnote-11) Puerto Rican born US citizens may enter freely into the United States, establish residence and work there. They may hold US passports to travel abroad. They are also eligible for US military service. When military service was obligatory in the US, Puerto Rican residents were subject to the draft. Those residing in Puerto Rico qualify for many federal entitlements and welfare benefits, such as Social Security, Unemployment Compensation, Medicare, Medicaid, student grants and loans, and other such programs.

Puerto Rican residents cannot vote for the President of the United States or elect voting representatives to the US Congress. Puerto Rico is represented in the US Congress by a single Resident Commissioner who sits in the House of Representatives. He or she is elected by popular vote during the general elections held in Puerto Rico every four years and is considered a federal officer. There is no representation in the US Senate. The Resident Commissioner may be assigned to congressional committees, but cannot vote in the full House even on legislation affecting Puerto Rico. In fact, Puerto Rico need not be consulted on such legislation except to the extent that the Resident Commissioner may participate in the process of its creation as a member of the relevant congressional committees, by testifying before such committees or by intervening, without a vote, on the floor debates of the House of Representatives. Puerto Rican government officials, including the Governor, may appear, as any other citizen, at hearings held by congressional committees considering legislation on Puerto Rico.

There is no single official representative of the US government in Puerto Rico, in the style of the governors-general or other such officers in the European colonial tradition. The US government operates in Puerto Rico through the many federal agencies which have offices in Puerto Rico dealing with a variety of federal regulatory, administrative, and quasi-judicial functions. In this regard the situation is similar to that prevailing in the states of the Union. There is also a significant, although declining, US military presence in the islands by way of military bases, surveillance infrastructure and recruiting posts.

A federal US court system operates in Puerto Rico in very much the same fashion as in the states. The structure is the following. There is a federal district court for the District of Puerto Rico, which is the federal court of first instance. It is located in San Juan. As other federal courts in the United States, it has limited jurisdiction, specified in the US Constitution. The main sources of that jurisdiction are the so-called diversity of citizenship cases (involving litigants from different states, territories or foreign countries) and those raising a “federal question”, that is, an issue relating to the Constitution, laws or treaties of the United States. Decisions from the district court may be appealed to the Circuit Court of Appeals for the First Circuit, located in Boston, Massachusetts. The decisions of this appellate court may, in turn, be reviewed by the Supreme Court of the United States.

Since federal law is supreme within its sphere, these federal courts may invalidate any law, regulation or administrative action of the Puerto Rican government which is contrary to any provision of the Constitution, laws, regulations or treaties of the United States. The Supreme Court of the United States may also review, in appropriate cases, final decisions of the Supreme Court of Puerto Rico involving the interpretation or application of federal law. Any controversy regarding the relationship between the United States and Puerto Rico is by definition a federal question which may be ultimately settled by the Supreme Court of the United States.

International relations are conducted by the US government. Puerto Rico has had very limited participation in international and regional bodies. One salient exception is its participation as a full member in the International Olympic Committee and in regional sports organizations and events. In fact, Puerto Rican participation in the international arena has been promoted mostly by private actors in the sports, labor, cultural, academic, and intellectual fields[[12]](#footnote-12) and by a growing insertion in global networks on the part of its public university and its private counterparts. In terms of official entities, the Commonwealth of Puerto Rico has been accepted as an associate member or as an observer in a few international or regional organizations, such as the World Tourism Organization (UNWTO) and the Caribbean Community and Common Market (Caricom).

**Some Comparisons to the Moroccan Initiative**

 This section will compare some elements of the Puerto Rican status of autonomy with salient features of the Moroccan Initiative. After brief comments about the process that led to the current status of Puerto Rico and the procedure envisioned by the Initiative, I will address some similarities and differences between the two frameworks for autonomy.

1. *The Process*

 In terms of procedure, the first thing to note is that the particulars of the current political condition of Puerto Rico *vis-à-vis* the United States were the product of well over half a century of piecemeal developments. They started in 1900 with the establishment of a civilian government and provisions for the economic relationship between the US and Puerto Rico, such as the so-called “fiscal autonomy” of Puerto Rico (not having to pay federal income tax and the ability to collect local taxes) and the free transit of goods between one country and the other. Those developments were followed by events such as the extension of US citizenship in 1917, the provision for an elected Governor in 1947, the authorization to draft a Constitution in 1950, and the resulting local appointment of all other officials of the Puerto Rican government. Many of the features of today’s political status, then, have roots in developments that took place well before the adoption of the Constitution of 1952.

 Secondly, the process unleashed by Law 600 in 1950 leading to the adoption of the Constitution was not strictly speaking the result of a formal negotiation between two parties seating at a negotiating table under the auspices of an international body like the United Nations. It was the outcome of an initiative taken in the Congress of the United States, strongly promoted by the then Resident Commissioner of Puerto Rico in Washington, and marshaled through the regular legislative process of the metropolitan power. There is a clear difference between that process and the one envisioned by the Moroccan Initiative.

 Thirdly, there was no intervention of the United Nations in the process leading to the approval of the Puerto Rican Constitution. The UN’s intervention occurred post hoc by way of a declaration, at the urging of the United States, proclaiming that Puerto Rico had achieved a measure of self-government that justified ceasing the transmission of reports on the country by the metropolitan power. This marks another difference with the Moroccan Initiative, which has been submitted as a proposal to initiate negotiation within the framework of a process undertaken under the aegis of the UN.

 Fourthly, both Law 600 and the Constitution of Puerto Rico were submitted to the voters in a referendum, offering only two options: to accept or reject the proposal put forth by Congress. Other options, such as independence or becoming another state of the Union, were not then on the table. Paragraph 27 of the Moroccan Initiative seems to come close to this conception of self-determination. Further below, I will comment on the difficulties this approach has yielded in the case of Puerto Rico.

 Finally, it is noteworthy that the Kingdom of Morocco proposes to declare a blanket amnesty, precluding any legal proceedings, arrest, detention, imprisonment or intimidation of any kind, based on the facts covered by the suggested amnesty. In contrast, Puerto Rico’s process leading to the adoption of its current Constitution and the proclamation of the Commonwealth transpired while there were still independence supporters in US and Puerto Rican prisons for acts committed in furtherance of their political position regarding the status of Puerto Rico. There was also in effect a Puerto Rican gag law criminalizing various forms of political expression that was widely used to persecute the independence movement.[[13]](#footnote-13) The law was later repealed.

1. *The content: Similarities*

 The Moroccan Initiative and the Puerto Rican model have the following main similarities in terms of substantive content.

1. Local powers. In both models, local powers may be exercised over similar areas (local administration; local police force and jurisdictions; economic development; local planning; promotion of investment, trade, industry, tourism and agriculture; the autonomous region’s budget and taxation; infrastructure; housing; education; health; employment; sports; social welfare [with the exception of social security in the Puerto Rican case]; cultural affairs; and the environment.)
2. Central powers. In both cases, the central authority retains exclusive jurisdiction over the attributes of sovereignty, especially the flag, the national anthem and the currency, as well as over national security, external defense, external relations, and the juridical order of the Kingdom (in the case of Morocco) and the federal government (in the case of Puerto Rico). Puerto Rico is allowed to have its own flag and national anthem, but the US flag is required to be displayed alongside the Puerto Rican flag in official buildings and events.
3. Financial resources. In both instances provision is made for the autonomous entity to have access to financial resources stemming from local taxes, proceeds from the development of natural resources, funds allocated by the central authority and proceeds from the autonomous territory.
4. The judiciary. In both cases there is provision for a local judiciary for the autonomous entity. Both the Initiative and the Puerto Rican Constitution provide for a high court that shall give final decisions regarding the interpretation of the autonomous entity’s legislation, without prejudice to the powers of the Kingdom’s Supreme Court or Constitutional Council, in one case, and the US Supreme Court, in the other.
5. Local laws. The Initiative proposes that laws, regulations and court rulings issued by the autonomous Region shall be consistent with the Region’s autonomy Statute and with the Kingdom’s Constitution. Likewise, the Constitution of Puerto Rico shall be consistent with the Resolution of Congress approving said constitution, with the applicable provisions of the US Constitution, with the Federal Relations Act, and with Public Law 600 of 1950. The laws and regulations of Puerto Rico shall be consistent with the US Constitution and federal legislation, and Puerto Rico court rulings must conform to US Supreme Court interpretations of the US Constitution and federal legislation.
6. Human rights. According to Par. 25 of the Initiative, the Region’s populations shall enjoy all the guarantees afforded by the Moroccan Constitution in the area of human rights as they are universally recognized. Puerto Rican residents are protected by most constitutional rights enshrined in the US Constitution and by those human rights recognized in treaties and conventions ratified by the United States and adopted as domestic law.
7. *The content: Differences*

 The following are some salient differences between the Puerto Rican model and the Moroccan Initiative.

1. Constitutional status of the autonomous government. The Initiative promises to incorporate the autonomy Statute into the Moroccan Constitution (Par. 29). Puerto Rico’s political status does not have express recognition in the US Constitution. The only reference to its constitutional location in the US system is the general grant of power given to the US Congress to govern US territories, under Art. IV, Sec. 3 of the Constitution.
2. Local exclusive powers. Paragraph 5 of the Initiative refers to “exclusive powers” of the autonomous entity, which presumably would be those contained in Paragraph 12. There is no express provision for “exclusive powers” in Public Law 600 or the Federal Relations Act in the case of Puerto Rico. The extent to which Puerto Rico may legislate on general matters may, in theory, be conditioned by the plenary powers of the US Congress under the Territorial Clause of the US Constitution and, in theory as well as in practice, by the development of US constitutional jurisprudence regarding federal-state relations.
3. Participation in central government. This is one of the most prominent differences between both systems. The Initiative proposes that the populations of the Sahara autonomous Region be represented in the Moroccan Parliament and other national institutions and that they shall take part in all national elections. As explained above, Puerto Rico has only one non-voting representative in the US Congress and no representation in the US Senate. Its residents cannot vote for the President of the United States. In this sense, the Initiative is more akin to the model of autonomous regions in Spain than to the framework for territorial government in the United States.
4. Foreign affairs. The Initiative provides that State responsibilities with respect to external relations shall be exercised in consultation with the Sahara autonomous Region for those matters which have a direct bearing on the prerogatives of the Region (Par. 15). No such obligation exists on the part of the United States regarding the handling of foreign affairs that affect Puerto Rico.
5. Constitution for the autonomous entity. Puerto Rico was authorized to draft and adopt its own constitution, subject to approval by the US Congress. No analogous provision is made in the Initiative. The organization, composition and other features of the Puerto Rican government are determined by its own Constitution. The only requirement made by the US Congress regarding the structure of government was that it be of a republican form. It also required that the Constitution include a Bill of Rights. The Initiative is more detailed in its provisions for the internal government of the Sahara Region.
6. System of government. The main difference between the systems of government proposed and established in each case is that the Saharan model is parliamentary, within the framework of a constitutional monarchy, while Puerto Rico’s government is republican in nature and of the presidential type in structure. There are differences between the mode of election of the members of the Regional Parliament and the members of the Puerto Rican Legislative Assembly, wholly explainable by the differences in the demographic and social composition of both populations. One salient feature of the Initiative is that it calls for adequate representation of women in the Regional Parliament. No such provision is made either in US or Puerto Rican law. While the Head of Government in the Sahara Region will be elected by the regional Parliament, in accordance with the tradition of parliamentary governments elsewhere, in Puerto Rico the Chief Executive is directly elected by the voters in a general election. The Initiative proposes that the Saharan Head of Government shall be invested by the King; the Governor of Puerto Rico, however, takes office without any official intervention on the part of the President of the United States.
7. Representative of the State. According to the Initiative, the powers of the State in the autonomous Region shall be exercised by a Representative of the Government (Par. 16). Paragraph 20, in turn, provides that the Representative of the State in the Region will be the Head of Government, elected by the Regional Parliament. Before 1952, the Governor of Puerto Rico, who was appointed by the President of the United States, was considered the representative of the federal government in the country. But after the adoption of the 1952 Constitution, that understanding changed. In principle, the elected Governor is answerable to the People of Puerto Rico. The powers of the federal government are exercised in Puerto Rico directly by the US Congress, by the President of the United States and by the numerous federal administrative and military agencies that conduct operations in Puerto Rico, through their local offices and their regional and central headquarters.

**Problems and Pitfalls Encountered by the Puerto Rican Model**

 This section will highlight some of the problems and pitfalls encountered by the Puerto Rican model after 1952. Its purpose is not to suggest that, to the extent that there may be similarities between Puerto Rico’s political condition and the Moroccan Initiative, the latter will necessarily face the same difficulties. On the other hand, it is not safe to predict that, because there are differences, the Initiative will be spared facing the same or similar challenges. Developments in these respects will greatly depend on the specific local, regional, national and global circumstances in which the Saharan question will eventually be resolved. The aim of these comments is, rather, to produce further information that may contribute to a more productive process of negotiation.

 The main criticism leveled at Puerto Rico’s present political status in terms of process has to do with two circumstances. The first of these is the fact that the current arrangement was not the result of a negotiation between two parties conducted in conditions of material or even formal parity. As described above, it was rather the product of a legislative process initiated and controlled by the legislative organ of the metropolitan state, which claimed its power to ultimately determine its procedures and outcome. The second circumstance is the fact that the referenda held to ratify Law 600 and the Constitution of Puerto Rico offered voters only the options of accepting or rejecting the proposal, without including other options such as full independence or full integration to the United States. Both these features of the process have led to generalized claims that Puerto Rico has never fully exercised its right to self-determination.

 In terms of substance, the principal critique has been the appreciation that rather than a system of political autonomy, the status of Puerto Rico still reflects a condition of political subordination. The grounds for this assertion include: (a) the constant reaffirmation by the Executive, Legislative, and Judicial branches of the United States that Puerto Rico is still subject to the plenary powers of the US Congress under the Territorial Clause of the United Sates Constitution; (b) the wholesale, unilateral extension of US federal laws to Puerto Rico without Puerto Rico collectively having a say in the matter; and (c) the lack of representation of Puerto Rico with full voting rights in the US Congress (which passes laws that apply in Puerto Rico) and the inability of Puerto Rican residents to vote for the President of the United States, who is the Chief Executive and Commander in Chief of the nation, invested with immense powers over the territory. These realities have led the most diverse sectors of Puerto Rican society to variously characterize the relationship as being afflicted by an intolerable democratic deficit, harboring a system of second-class citizenship for Puerto Rican nationals, or simply being a modern, sophisticated version of colonialism.

 Although for some time after 1952 the current Commonwealth status seemed to enjoy the support of a majority of the population, the above dissatisfactions, conjoined with the emergence of serious social and economic problems, have generated increasing calls for substantial changes. Four main solutions have been proposed: (a) full independence; (b) becoming another state of the Union; (c) acquiring a status of sovereignty in close, formal association with the United States; or (d) some form of enhanced autonomy (whose features are not clearly defined) that closely resembles the current arrangement, but somehow addresses the democratic deficiencies mentioned above. In other words, the claim for self-determination has not subsided.

 In response to the repeated demands for a revision of the present status, since 1952 the Puerto Rican government has held three plebiscites, all of which were the product of legislation adopted by the Puerto Rican legislature, not by Congress. Therefore, they were not binding on the United States.

 In 1967 more than 60.4% of the voters preferred Commonwealth over Statehood (becoming a state of the Union), which garnered 39%, and over Independence, which obtained 0.06%. It is to be noted, however, that most of the independence movement boycotted the election.

 In 1993 the results were: Commonwealth, 48.6%, a substantial drop in support when compared to that obtained twenty six years before; Statehood, 46.3%; and Independence, 4.4%.

 An interesting outcome was registered in a plebiscite held five years later, in 1998. Commonwealth, as defined by the pro-statehood political party then in power, obtained 0.1% of the votes, after a campaign by the pro-commonwealth party rejecting the definition. Statehood remained at 46.5%; Independence was supported by 2.5% of the voters; and a new option, the Freely Associated State, registered 0.3%. The winning formula was contained in a “fifth column” labeled “None of the Above”, which pulled 50.3% of the votes cast. A common explanation of the outcome was that the plebiscite was used as an opportunity for disenchanted voters to punish the government for its perceived mismanagement of public funds and abusive use of power.

 The current, pro-statehood, government, with the support of the Pro Independence Party, has scheduled a new plebiscite for November 2012 providing two sets of options. On one part of the ballot the voters will be asked to vote *yes* or *no* on keeping the actual Commonwealth status. A second part will then provide for choosing between three alternatives: Statehood, Independence or something called “Sovereign Commonwealth” (in Spanish, literally, Sovereign Freely Associated State). The Pro-Commonwealth Party has called on its supporters to vote *yes* on the first part and to abstain from voting in the second. The outcome is far from certain.

 Since 1952, several attempts have been made to move the US Congress to provide for a federally sanctioned process to settle the question of the political status of Puerto Rico. All have failed.

 Notwithstanding the UN 1953 Resolution relieving the United States from sending reports to that body on Puerto Rico, the independence movement, joined subsequently by other political, social, and professional groups and organizations, returned to the UN seeking redress for the claim that Puerto Rico is still under a condition of colonial subordination. Reliance was placed on UN Resolution 1514 (XV) of 1960 calling on colonial powers to decolonize all non-self governing territories, those held in trust and those which had not yet attained their independence.[[14]](#footnote-14) The aim was to have Puerto Rico included in the agenda of the UN Decolonization Committee. Eventually, the Committee assumed jurisdiction over the Puerto Rican case and for a number of years has called on the United States to honor Puerto Rico’s right to self-determination and independence. [[15]](#footnote-15) The General Assembly has not acted on these resolutions, except to receive the committee’s reports.

 The purpose of recounting this story is to illustrate how the processes leading to the current political arrangement between the United States and Puerto Rico have not, by any means, resolved the question of the political condition of Puerto Rico. That is still a burning issue that consumes enormous amounts of attention, energy, and resources. No prompt resolution is in sight.

1. Treaty of Paris, December 10, 1898, U.S.-Spain, 30 Stat. 1754. [↑](#footnote-ref-1)
2. 31 Stat. 77 (1900) (codified at 48 U.S.C. §731). [↑](#footnote-ref-2)
3. 39 Stat. 951 (1917) (codified at 48 U.S.C. §731). [↑](#footnote-ref-3)
4. See De Lima v. Bidwell, 182 U.S. 1 (1901); Goetz v. United States, 182 U.S. 221 (1901); Grossman v. United States, 182 U.S. 221 (1901); Dooley v. United States, 182 U.S. 222 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Huus v. New York and Porto Rico Steamship Company, 182 U.S. 392 (1901); Dooley v. United States, 183 U.S. 151 (1901); Fourteen Diamond Rings v. United States, 183 U.S. 176 (1901); Hawaii v. Mankichi, 190 U.S. 197 (1903); González v. Williams, 192 U.S. 1 (1904); Kepner v. United States, 195 U.S. 100 (1904); Dorr v. United States, 195 U.S. 138 (1904); Mendozana v. United States, 195 U.S. 158 (1904); Rasmussen v. United States, 197 U.S. 516 (1905); Trono v. United States, 199 U.S. 521 (1905); Grafton v. United States, 206 U.S. 333 (1907); Kent v. Porto Rico, 207 U.S. 113 (1907); Kopel v. Bingham, 211 U.S. 468 (1909); Dowdell v. United States, 221 U.S. 325 (1911); Ochoa v. Hernández, 230 U.S. 139 (1913); Ocampo v. United States, 234 U.S. 91 (1914); and Balzac v. Porto Rico, 258 U.S. 298 (1922). [↑](#footnote-ref-4)
5. For a full discussion of the background, doctrine and immediate and long-term effects of the Insular Cases, see Efren Rivera Ramos, *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico* (Washington, DC: APA Books, 2001). [↑](#footnote-ref-5)
6. Elective Governor Act 1947, 48 U.S.C. §737 *et seq.* [↑](#footnote-ref-6)
7. 64 Stat. 319, 48 U.S.C. A. §731b (1950). [↑](#footnote-ref-7)
8. Public Law 447, 66 Stat. 327 (1952). [↑](#footnote-ref-8)
9. Memorandum by the Government of the United States of America Concerning the Cessation of Transmission of Information Under Article 73(e) of the Charter with Regard to the Commonwealth of Puerto Rico (1953), in Marcos Ramírez Lavandero (ed.), *Documents on the Constitutional Relationship of Puerto Rico and the United States* (Puerto Rico Federal Affairs Administration, 3d. ed., 1988), at 616-624. [↑](#footnote-ref-9)
10. United Nations General Assembly Resolution 748 (VIII): Cessation of the Transmission of Information Under Article 73(e) of the Charter in Respect to Puerto Rico, in *Documents*, supra note 8, at 614-615. [↑](#footnote-ref-10)
11. See Constitution of the United States, Amendment XIV, which states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside”. [↑](#footnote-ref-11)
12. See Arnaldo J. Teissonnière Ortiz, “Situación de Puerto Rico frente al Derecho Internacional, con especial referencia al Derecho Internacional del Trabajo y la participación en la OIT”, *Cuadernos de Estudios Empresariales*, Vol. 12 (2002) 325-348, at 329-30. [↑](#footnote-ref-12)
13. Puerto Rico Public Law 53 of 1948. This statute was a mirror image of the infamous US law known as the Smith Act of 1940, under which many people were prosecuted for allegedly advocating the overthrow of the US government. A number of those convictions were set aside by the US Supreme Court, which ruled them unconstitutional. See, for example, Yates v. United States, 354 U.S. 298 (1957). [↑](#footnote-ref-13)
14. United Nations General Assembly Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples (1960). [↑](#footnote-ref-14)
15. See *Documents*, supra note 8, “Introductory note”, at 613; General Assembly, GA/COL/3160, Department of Public Information, News and Media Division, New York, Special Committee on Decolonization, 5th & 6th Meetings, ‘Special Committee on Decolonization calls on United States to Expedite Puerto Rico’s Self-Determination Process’, 14 June 2007; Kevin Mead, ‘UN decolonization committee eyes PR’, Caribbean Business, Sunday, June 26th, 2011, on line edition at <http://www.caribbeanbusiness.com/news03.php?nt_id=58665&ct_id=1>. [↑](#footnote-ref-15)